ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

1 TAC §§22.1, 22.7, 22.9, 22.17, 22.19, 22.23, 22.29, 22.37

The Texas Ethics Commission (the TEC) adopts amendments to Texas Ethics Commission Rules in Chapter 22 (relating to Restrictions on Contributions and Expenditures). Specifically, the TEC proposes amendments to §22.1 regarding Certain Campaign Treasurer Appointments Required Before Political Activity Begins, §22.7 regarding Contribution from out-of-State Committee, §22.9 regarding Cash Contributions Exceeding $100 Prohibited, §22.17 regarding Prohibition on Personal Use of Political Contributions, §22.19 regarding General Restrictions on Reimbursement of Personal Funds, §22.23 regarding Restrictions on Certain Payments, §22.29 regarding Activity After Death or Incapacity of Candidate or Officeholder, and §22.37 regarding Virtual Currency Contributions.

The amended rules are adopted without changes to the proposed text as published in the October 24, 2025, issue of the *Texas Register* (50 TexReg 6941). The amended rules will not be republished.

This adoption, along with the contemporaneous adoption of repeals in Chapter 22, amends the rules relating to restrictions on contributions and expenditures at the Ethics Commission.

State law requires state agencies to "review and consider for readoption each of its rules … not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id*.

The TEC is continuing its comprehensive review with a review of the TEC's rules regarding restrictions on contributions and expenditures, which are codified in Chapter 22. The repeal of some rules and adoption of amendments to other rules will shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on these restrictions.

No public comments were received on these proposed amended rules.

The amended rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted amended rules affect Title 15 of the Election Code.

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

Filed with the Office of the Secretary of State on December 11, 2025.

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Amanda Arriaga
General Counsel
Texas Ethics Commission
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For further information, please call: (512) 463-5800

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1 TAC §§22.3, 22.6, 22.11, 22.21, 22.27

The Texas Ethics Commission (the TEC) adopts the repeal of certain Texas Ethics Commission Rules in Chapter 22 (relating to Restrictions on Contributions and Expenditures), including §22.3 regarding Disclosure of True Source of Contribution or Expenditure, §22.6 regarding Reporting Direct Campaign Expenditures, §22.11 regarding Prohibition on Contributions during Regular Session, §22.21 regarding Additional Restrictions on Reimbursement of Personal Funds and Payments on Certain Loans, and §22.27 regarding Time Limit on Retaining Unexpended Contributions.

These repeals are adopted without changes to the proposed text as published in the October 24, 2025, issue of the *Texas Register* (50 TexReg 6944). The rules will not be republished.

This adoption, along with the contemporaneous adoption of new rules in Chapter 22, amends the rules relating to restrictions on contributions and expenditures at the Ethics Commission.

State law requires state agencies to "review and consider for readoption each of its rules … not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id*.

The TEC is continuing its comprehensive review with a review of the TEC's rules regarding restrictions on contributions and expenditures, which are codified in Chapter 22. The repeal of some rules and adoption of amendments to other rules seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on these restrictions.

No public comments were received on these proposed changes.

The repealed rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted repealed rules affect Title 15 of the Election Code.

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

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CHAPTER 24. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES APPLICABLE TO CORPORATIONS AND LABOR ORGANIZATIONS

1 TAC §24.1, §24.17

The Texas Ethics Commission (the TEC) adopts amendments to Texas Ethics Commission Rules in Chapter 24 (relating to Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations). Specifically, the TEC proposes amendments to §24.1 regarding Corporations and Certain Associations Covered, and §24.17 regarding Corporate Expenditures for Get-Out-the Vote Campaigns Permitted.

These amendments are adopted without changes to the proposed text as published in the October 24, 2025, issue of the *Texas Register* (50 TexReg 6944). The rules will not be republished.

These adoptions, along with the contemporaneous adoption of the repeal of one other rule in Chapter 24, amend the rules regarding restrictions on contributions and expenditures that are applicable to corporations and labor organizations.

State law requires state agencies to "review and consider for readoption each of its rules … not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id*.

The TEC is continuing its comprehensive review with a review of the TEC's rules regarding restrictions on contributions and expenditures applicable to corporations and labor organizations, which are codified in Chapter 24. The repeal of one rule and adoption of amendments to other rules will shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on these restrictions.

The amended rules are adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted amended rules affect Title 15 of the Election Code.

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

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Amanda Arriaga
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1 TAC §24.5

The Texas Ethics Commission (the TEC) adopts the repeal of Texas Ethics Commission §24.5 (regarding Corporate Loans) in Chapter 24 (relating to Restrictions On Contributions And Expenditures Applicable To Corporations And Labor Organizations).

This repeal is adopted without changes to the proposed text as published in the October 24, 2025, issue of the *Texas Register* (50 TexReg 6946). The rule will not be republished.

This adoption, along with the contemporaneous adoption of amendments of certain other rules in Chapter 24, amends the rules regarding restrictions on contributions and expenditures that are applicable to corporations and labor organizations.

State law requires state agencies to "review and consider for readoption each of its rules … not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date." Tex. Gov't Code §2001.039. The law further requires agencies to "readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section." *Id*.

The TEC is continuing its comprehensive review with a review of the TEC's rules regarding restrictions on contributions and expenditures applicable to corporations and labor organizations, which are codified in Chapter 24. The repeal of some rules and adoption of amendments to other rules seek to shorten, simplify, and reorganize the rules to eliminate surplusage and improve clarity on these restrictions.

No public comments were received on these proposed changes.

The repealed rule is adopted under Texas Government Code §571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code and Chapter 571 of the Government Code.

The adopted repealed rule affects Title 15 of the Election Code.

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

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PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 87. NOTARY PUBLIC

The Office of the Secretary of State (Office) adopts, in Title 1, Part 4, Texas Administrative Code, Chapter 87, new §§87.5, 87.8, and 87.9, concerning the qualification requirements of Texas notary public applicants. The Office adopts these rules to implement the new education requirements for notaries in Senate Bill 693, enacted by the 89th Legislature, Regular Session, codified at Chapter 406 of the Texas Government Code (SB 693).

The Office further adopts amendments to Chapter 87, §§87.13, 87.14, and 87.20, to clarify that, in accordance with Chapter 406 of the Texas Government Code, an applicant is not qualified to be commissioned as a traditional or online Texas notary public unless the applicant satisfies the mandatory education requirements.

Sections 87.5, 87.8, 87.9, 87.13, 87.14, and 87.20 are adopted with changes to the proposed text as published in the October 24, 2025, issue of the *Texas Register* (50 TexReg 6946). These rules will be republished. The changes to §87.5 provide that the fee for the notary education or continuing education course will be $20. The changes to §87.8 and §87.9 reflect that the Office will establish and offer the education and continuing education courses, as required by SB 693; an applicant must successfully answer a minimum of 70% of questions presented to the applicant during the education or continuing education course; and an applicant must take the education or continuing education course on or before the 90th day after the date on which the Office receives the course fee from the applicant. The changes to §87.13, §87.14, and §87.20 clarify that the proof of successful completion of the notary education or continuing education course remains valid for a year before the applicant submits a notary public application to the Office. The Office made each of these changes in response to public comments received, as described below.

BACKGROUND INFORMATION AND JUSTIFICATION

The adoption implements SB 693 (89th Legislature, Regular Session), which creates a framework in Chapter 406 of the Texas Government Code to require and provide education for the appointment of a notary public applicant and continuing education for the reappointment of a notary public. The bill took effect on September 1, 2025.

As enacted by SB 693, Chapter 406 of the Texas Government Code requires the Office to adopt rules necessary to establish education requirements for appointment and continuing education requirements for reappointment as a notary public not later than January 1, 2026.

Texas Government Code §406.023(d)(1) specifies that the Office may not require a person to complete more than two hours of education for appointment or two hours of continuing education for reappointment as a notary public. Texas Government Code §406.023(d)(2) directs the Office to establish and offer education and continuing education courses and allows the Office to charge a reasonable fee for those courses. Texas Government Code §406.023(d)(3) directs the Office to require that the education and continuing education course hours required for appointment or reappointment as a notary public may only be completed through a course established and offered by the Office. In addition, Texas Government Code §406.023(d)(4) prohibits the Office from requiring a person appointed as a notary public before September 1, 2025 to complete education requirements required for initial appointment as a notary public on or after that date. SB 693 also established that the successful completion of a notary education course or continuing education course is now a mandatory qualification for commissioning as a Texas notary public or renewal of an existing Texas notary public commission under Texas Government Code §406.006 and Texas Government Code §406.011.

The purpose of these new rules under Chapter 87 (Notary Public) is to provide information regarding the education requirements for persons applying for or renewing a Texas notary public commission in accordance with SB 693. The changes will apply to notary public appointment and reappointment applications submitted to the Office on or after January 1, 2026.

COMMENTS

The 30-day comment period ended on November 23, 2025. During this period, the Office received comments regarding the proposed rules from 12 interested parties. A summary of the comments relating to the proposed rules and the Office's responses follows.

Comment: Several commenters noted that proposed §87.8 and §87.9 did not indicate that the Office would "offer" the education and continuing education courses, as required under Texas Government Code §406.023(d)(2), or otherwise describe how the Office would develop, review, and maintain the curriculum for each course.

Response: The Office appreciates the request for clarity regarding the presentation of the education and continuing education courses. The Office has established a curriculum for each course and secured a technological platform to provide the notary education, the details of which are outside the scope of the proposed rules. The Office has revised §87.8(c) and §87.9(c) to reflect that the Office will establish and offer the courses.

Comment: The Office received 11 comments expressing opposition to the proposed $50 fee to take the initial education course or the continuing education course. The commenters suggested a range of alternative fee options ranging from no cost to $35 per course.

Response: The Office appreciates the comments related to the proposed fees and has revised §87.5 to provide that the fee for the education or continuing education course is $20.

Comment: Several commenters suggested that §87.8(d) and §87.9(d) be revised to allow an applicant 90 daysâ€"rather than 60 daysâ€"to complete the education or continuing education course after submitting payment to the Office. One of the commenters stated that a 90-day period would provide greater flexibility for applicants with professional or personal obligations.

Response: The Office appreciates these comments and has revised §87.8(d) and §87.9(d) to require an applicant to take the education or continuing education course on or before the 90th day after the date on which the Office receives the course fee from the applicant.

Comment: Several commenters suggested that §87.13, §87.14, and §87.20 be revised to specify the length of time for which the proof of course completion remains valid before an individual applies for a notary public commission.

Response: The Office appreciates these comments and has revised §87.13(a)(2)(E), §87.14(a)(2)(D), and §87.20(e)(2)(D) to clarify that the proof that the applicant has successfully completed the notary education or continuing education course remains valid for one year before the applicant submits a notary public application to the Office.

Comment: Several commenters suggested that §87.13, §87.14, and §87.20 be revised to remove the requirement that an applicant provide proof of payment of the course fee with a notary public application. The commenters believed that the course completion certificate should suffice as proof of payment because the course is established and offered directly by the Office.

Response: The Office declines to revise §87.13, §87.14, or §87.20 as suggested. The existing wording in §87.13(a)(2)(F), §87.14(a)(2)(E), and §87.20(e)(2)(E) is intended to ensure clarity regarding the course fee. In these provisions, the Office intends to address instances in which a person pays for and successfully completes the notary education course, later requests a refund or chargeback of the fee, and seeks to be commissioned as a notary public based on their completion of the education course.

Comment: Several commenters expressed their opposition to the requirement in §87.5(c), §87.8(d), and §87.9(d) that an applicant pay a new fee for each attempt of the education or continuing education course. The commenters suggested that the Office should assess only a nominal fee, if any, for an applicant to retake the course.

Response: The Office appreciates the comments and took these considerations into account in the proposed rules. The Office believes that requiring an applicant to pay the course fee for each attempt will help maintain the integrity of the notary education process and encourage the applicant to adequately prepare for the questions presented during the course. In addition, the Office determined that this provision was consistent with other professional examinations administered in Texas. The Office made no changes to the rules in response to these comments.

Comment: Several commenters stated that the Office should not limit the number of times that an applicant may attempt to take the education or continuing education course over a defined time period.

Response: The Office appreciates the comments and took these considerations into account in the proposed rules. The Office determined that imposing a limit on the number of times that an applicant may attempt to complete the course in a 3-month period, as provided in proposed §87.8(e) and §87.9(e), would promote the effective training of well-prepared notaries public. The Office made no changes to the rules in response to these comments.

Comment: Several commenters suggested that §87.8(c) and §87.9(c) be revised to require only completion of the education or continuing education course rather than a passing score on an examination. On the other hand, some commenters expressed their support for the testing provisions in §87.8(c) and §87.9(c).

Response: The Office appreciates the comments and took these considerations into account in the proposed rules. The Office strongly supports testing to verify that an applicant demonstrates the requisite knowledge of the laws and rules governing notaries public. In addition, the testing provisions in §87.8 and §87.9 are consistent with Texas Government Code §406.006 and Texas Government Code §406.011, which provide that the successful completion of an education or continuing education course is a mandatory qualification for commissioning as a Texas notary public or renewal of an existing Texas notary public commission. The Office made no changes to the rules in response to these comments.

Comment: Several commenters expressed their opposition to the 80% passing-score threshold in §87.8(c) and §87.9(c), including suggesting that the minimum passing score be reduced to 70%, consistent with other professional examinations administered in Texas.

Response: The Office appreciates these comments and has revised §87.8(c) and §87.9(c) to provide that an applicant must successfully answer a minimum of 70% of questions presented to the applicant during the education or continuing education course.

Comment: Several commenters suggested that the proposed rules be amended to remove the requirement that an applicant applying for an online notary commission take a separate education course containing online notary public subject matter. Some of the commenters recommended that the Office establish a single notary-practices course, with one fee, containing education encompassing the responsibilities of a traditional notary public and an online notary public.

Response: The Office declines to revise any of the proposed rules as suggested. The education courses for traditional notary commissions and online notary commissions are two separate curricula. Most of the topics in the two courses do not overlap, as the Office has strived to limit the amount of duplicative information in the courses. As traditional notarizations and online notarizations are subject to different laws and rules, the Office believes it is important that the processes for these notarizations are taught in their respective courses.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §87.5

STATUTORY AUTHORITY

The new rule is adopted as authorized by Texas Government Code §406.023 and Texas Government Code §2001.004(1). Texas Government Code §406.023 authorizes the Office to adopt rules necessary to implement the notary public education requirements in Chapter 406 of the Texas Government Code. Texas Government Code §2001.004 requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures.

§87.5. Notary Education Fees.

(a) The nonrefundable fee for the notary education course is $20.00.

(b) The nonrefundable fee for the notary continuing education course is $20.00.

(c) An applicant must pay a separate notary education course fee or notary continuing education course fee each time the applicant takes a course.

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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Adam Bitter
General Counsel
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SUBCHAPTER B. ELIGIBILITY AND QUALIFICATION

1 TAC §87.8, §87.9

STATUTORY AUTHORITY

The new rules are adopted as authorized by Texas Government Code §406.023 and Texas Government Code §2001.004(1). Texas Government Code §406.023 authorizes the Office to adopt rules necessary to implement the notary public education requirements in Chapter 406 of the Texas Government Code. Texas Government Code §2001.004 requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures.

§87.8. Notary Education.

(a) An applicant must fulfill the education requirement under Texas Government Code §406.006 before the applicant may apply for appointment as a Texas notary public.

(b) To fulfill the education requirement, an applicant must first pay the notary education course fee specified in §87.5(a) of this title (relating to Notary Education Fees).

(c) After payment of the required notary education course fee, an applicant must take a notary education course that does not exceed two hours and has been established and offered by the secretary of state. The applicant must successfully answer a minimum of 70% of questions presented to the applicant during the education course.

(1) If an applicant is applying for a traditional notary public commission, the applicant fulfills the education requirement by taking a notary education course and successfully answering questions on traditional notary subject matter.

(2) If an applicant is also applying for an online notary public commission, the applicant fulfills the education requirement by taking a notary education course and successfully answering questions on online notary public subject matter.

(d) An applicant must take the notary education course on or before the 90th day after the date on which the secretary of state receives the course fee from the applicant. Failure to take the education course within 90 days will result in forfeiture of the course fee, and any completion of the course after the 90-day period has expired will not fulfill the education requirement. The applicant must pay a new fee to reattempt the notary education course.

(e) An applicant may not complete a notary education course more than 3 times in a 3-month period to fulfill the education requirement.

§87.9. Continuing Education.

(a) A Texas notary public must fulfill the continuing education requirement under Texas Government Code §406.011 before the notary public may apply for reappointment as a Texas notary public.

(b) To fulfill the continuing education requirement, a notary public must first pay the notary continuing education course fee specified in §87.5(b) of this title (relating to Notary Education Fees).

(c) After payment of the required notary continuing education course fee, a notary public must take a continuing education course that does not exceed two hours and has been established and offered by the secretary of state. The notary public must successfully answer a minimum of 70% of questions presented to the notary during the continuing education course.

(1) If an applicant is applying for the renewal of a traditional notary public commission, the applicant fulfills the continuing education requirement by taking a notary continuing education course and successfully answering questions on traditional notary subject matter.

(2) If an applicant is also applying for the renewal of an online notary public commission, the applicant fulfills the continuing education requirement by taking a notary continuing education course and successfully answering questions on online notary public subject matter.

(d) A notary public must take the notary continuing education course on or before the 90th day after the date on which the secretary of state receives the course fee from the notary. Failure to take the continuing education course within 90 days will result in forfeiture of the course fee, and any completion of the course after the 90-day period has expired will not fulfill the continuing education requirement. The notary public must pay a new fee to reattempt the notary continuing education course.

(e) A notary public may not complete a notary continuing education course more than 3 times in a 3-month period to fulfill the continuing education requirement.

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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Adam Bitter
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1 TAC §87.13, §87.14

STATUTORY AUTHORITY

The amendments are adopted as authorized by Texas Government Code §406.023 and Texas Government Code §2001.004(1). Texas Government Code §406.023 authorizes

the Office to adopt rules necessary to implement the notary public education requirements in Chapter 406 of the Texas Government Code. Texas Government Code §2001.004 requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures.

§87.13. Issuance of the Traditional Notary Public Commission by the Secretary of State.

(a) The secretary of state shall issue a traditional notary public commission to a qualified applicant. An applicant is qualified if:

(1) the applicant meets the eligibility requirements stated in §87.10 of this title (relating to Eligibility to Hold the Office of Notary Public);

(2) the applicant submits:

(A) a properly completed and executed application;

(B) the bond as provided in §406.010, Government Code, if required;

(C) the statement of officer required by article XVI, §1 Texas Constitution;

(D) payment to the secretary of state of fees required by §406.007, Government Code; and

(E) proof that the applicant has successfully completed the notary education course required by §406.006(6), Government Code, within one year preceding the date on which the applicant submits the application; and

(F) proof of payment of the notary education course fee under §87.5 of this title (relating to Notary Education Fees); and

(3) no good cause exists for rejecting the application.

(b) The secretary of state shall not commission an applicant if the applicant had a prior application rejected or a commission revoked due to a finding of ineligibility or good cause and the reason for ineligibility or grounds for good cause continues to exist.

(c) When all conditions for qualification have been met, the application shall be approved and filed. The secretary of state shall cause a commission to be issued and sent to each traditional notary public who has qualified. A commission is effective as of the date of qualification.

§87.14. Issuance of the Online Notary Public Commission by the Secretary of State.

(a) The secretary of state shall issue an online notary public commission to a qualified applicant. An applicant is qualified if:

(1) the applicant meets the eligibility requirements stated in §87.11 of this title (relating to Eligibility to be Commissioned as an Online Notary Public);

(2) the applicant submits:

(A) a properly completed and executed application;

(B) the statement of officer required by article XVI, §1 Texas Constitution;

(C) payment to the secretary of state the application fee of $50; and

(D) proof that the applicant has successfully completed the notary education course required by §406.006(6), Government Code, within one year preceding the date on which the applicant submits the application; and

(E) proof of payment of the notary education course fee under §87.5 of this title (relating to Notary Education Fees); and

(3) no good cause exists for rejecting the application.

(b) The secretary of state shall not commission an applicant if the applicant had a prior application rejected or a commission revoked due to a finding of ineligibility or good cause and the reason for ineligibility or grounds for good cause continues to exist.

(c) When all conditions for qualification have been met, the application shall be approved and filed. The secretary of state shall cause a commission to be issued and sent to each online notary public who has qualified. A commission is effective as of the date of qualification and shall expire on the same date as applicant's corresponding traditional notary public commission.

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

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Adam Bitter
General Counsel
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SUBCHAPTER C. NOTARIES WITHOUT BOND

1 TAC §87.20

STATUTORY AUTHORITY

The amendment is adopted as authorized by Texas Government Code §406.023 and Texas Government Code §2001.004(1). Texas Government Code §406.023 authorizes the Office to adopt rules necessary to implement the notary public education requirements in Chapter 406 of the Texas Government Code. Texas Government Code §2001.004 requires a state agency to adopt rules of practice stating the nature and requirements of formal and informal procedures.

§87.20. Qualification by an Officer or Employee of a State Agency.

(a) An applicant who is an officer or employee of a state agency is not required to provide a surety bond. For the purpose of this chapter, "state agency" has the meaning assigned by §2052.101, Government Code.

(b) An applicant who is an officer or employee of a state agency and does not provide a surety bond must complete the traditional notary public application entitled "Application for Appointment as a Notary Public Without Bond" (Form 2301-NB).

(c) The State Agency employing the applicant must submit the completed application to the State Office of Risk Management.

(d) The State Office of Risk Management shall complete the verification certificate on the application and forward the completed application to the Office of the Secretary of State for processing.

(e) The secretary of state shall commission the applicant if:

(1) the applicant meets the eligibility requirements stated in §87.10 of this title (relating to Eligibility to Hold the Office of Notary Public);

(2) the applicant submits:

(A) a properly completed and executed application verified by the State Office of Risk Management;

(B) the statement of officer required by article XVI, §1 Texas Constitution;

(C) the payment of fees required by §406.007(a)(2) and§406.007(b), Government Code; and

(D) proof that the applicant has successfully completed the notary education course required by §406.006(6), Government Code, within one year preceding the date on which the applicant submits the application; and

(E) proof of payment of the notary education course fee under §87.5 of this title (relating to Notary Education Fees); and

(3) no good cause exists for rejecting 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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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 20. PHYSICAL THERAPY SERVICES

1 TAC §354.1291

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts an amendment to §354.1291, concerning Benefits and Limitations.

Section 354.1291 is adopted with changes to the proposed text as published in the July 4, 2025, issue of the *Texas Register* (50 TexReg 3845). The rule will be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendment is to expand Medicaid reimbursement for physical therapy (PT) services provided to a Medicaid recipient. The rule currently provides that PT services must be prescribed by a physician to be reimbursed by Medicaid. This amendment permits Medicaid reimbursement for PT services that are prescribed by a licensed physician assistant (PA) or an advanced practice registered nurse (APRN) licensed as a certified nurse practitioner (CNP) or a clinical nurse specialist (CNS), as authorized by their professional licensure and state law. This amendment aligns with the rules governing physical therapy as a home health benefit in Texas Administrative Code Title 1, §354.1031(b)(1)(B) and §354.1039(a)(5)(C).

COMMENTS

The 31-day comment period ended August 4, 2025.

During this period, HHSC received comments regarding the proposed rule from four commenters. HHSC received comments from the Texas Nurse Practitioners (TNP), the Texas Academy of Physician Assistants (TAPA), the Texas Medical Association (TMA), and one individual. A summary of comments relating to the rule and HHSC's responses follows.

Comment: TNP and the TAPA expressed support for the proposed amendment to §354.1291 and encouraged HHSC to adopt the amendment.

Response: HHSC appreciates this support to adopt the proposed rule.

Comment: One individual disagreed with the removal of "licensed" from subsection (f) of the rule proposal, when referring to a physical therapist. The individual stated that by removing "licensed," the rule indicates that physical therapists, both licensed and non-licensed, can provide PT services.

Response: HHSC agrees that physical therapists and physical therapy assistants are required to be licensed to provide PT services. Definitions of "physical therapist" and "physical therapy assistant" were added to the proposed rule in subsection (a)(2) and (3) and defined to mean licensed individuals. Therefore, "licensed" was removed from subsection (f).

Comment: The TMA suggests removal of APRNs from the definition of an allowed practitioner because the Nursing Practice Act excludes the prescription of therapeutic or corrective measures. TMA states prescribing PT services is therefore outside of a nurse's scope of practice. TMA asserts that APRNs are limited to ordering "drugs or devices" under Texas Occupations Code Chapter 157, Subchapter B. TMA also states that the statutory authority for PAs to make referrals does not come from Chapter 157, Subchapter B. Rather, under a PA's scope of practice, services may be delegated by a supervising physician, including ordering therapeutic procedures and making appropriate referrals, under Texas Occupations Code §204.202. The TMA states a physical therapist is prohibited from providing treatment without a referral from a referring practitioner including a physician, dentist, chiropractor, or podiatrist.

Response: HHSC appreciates the comment and agrees that PAs and APRNs must follow state law and scope of practice requirements according to their professional licensure with regard to prescribing PT services. This rule is not intended to authorize PAs and APRNs to prescribe PT services; rather, it is intended to permit Medicaid reimbursement for PT services prescribed by a PA or APRN if prescribing PT services is within their professional licensure and consistent with any other state law governing prescriptive authority. HHSC made changes to the definition of "allowed practitioner" in subsection (a)(1) to clarify this intent and correct references to licensure statutes. All Medicaid providers

are presumed to know and act within state law and their professional licensure when providing services to Medicaid recipients.

STATUTORY AUTHORITY

The amendment is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and provides the executive commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021, which provides HHSC with the authority to administer the federal medical assistance program in Texas and to adopt rules and standards for program administration.

§354.1291. Benefits and Limitations.

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

(1) Allowed practitioner--An individual who follows state law and scope of practice requirements according to the individual's professional licensure with regard to prescribing physical therapy services and:

(A) is licensed as a physician assistant under Texas Occupations Code Chapter 204; or

(B) is licensed as an advanced practice registered nurse under Texas Occupations Code Chapter 301 as a:

(i) certified nurse practitioner; or

(ii) clinical nurse specialist.

(2) Physical therapist--An individual licensed under Texas Occupations Code Chapter 453.

(3) Physical therapist assistant--An individual licensed under Texas Occupations Code Chapter 453.

(4) Physical therapy--This term has the meaning assigned in Texas Occupations Code §453.001.

(5) Physician--A Doctor of Medicine or Doctor of Osteopathy legally authorized to practice medicine or osteopathy at the time and place the service is provided.

(6) Prescribing provider--A physician or an allowed practitioner.

(b) Subject to the specifications, conditions, requirements, and limitations established by HHSC, physical therapy services, which include necessary equipment and supplies provided by a licensed physical therapist, are covered by Texas Medicaid. Covered services also include the services of a physical therapist assistant when the services are provided under the direction of and billed by the licensed physical therapist.

(c) To be reimbursable, physical therapy services must be:

(1) provided by a physician, physical therapist, or a physical therapist assistant under the supervision of the physical therapist;

(2) reasonable and medically necessary, as determined by HHSC, or its designee;

(3) expected to significantly improve the recipient's condition in a reasonable and generally predictable period of time, based on the prescribing provider's assessment of the recipient's restorative potential after any needed consultation with the physical therapist; and

(4) prescribed by the recipient's prescribing provider.

(d) The following are not reimbursable physical therapy services under Texas Medicaid:

(1) services relating to activities for the general good and welfare of a recipient such as general exercises to promote overall fitness and flexibility;

(2) services relating to activities to provide diversion or general motivation; and

(3) repetitive services designed to maintain a recipient's function after the recipient reaches the maximum level of improvement.

(e) The physician or physical therapist who provides physical therapy services must have on file and available for inspection for each Medicaid recipient treated:

(1) a signed and dated physical therapy treatment plan based on the prescribing provider's prescription. The treatment plan addresses:

(A) diagnosis;

(B) modalities, if any;

(C) frequency of treatment;

(D) expected duration of treatment; and

(E) anticipated goals; and

(2) a prescription signed and dated by the recipient's prescribing provider for therapy services.

(f) Physical therapists who are employed by or remunerated by a physician, hospital, facility, or other provider may not bill Texas Medicaid directly for physical therapy services if the therapist's billing would result in duplicate payment for the same services. If physical therapy services are covered and reimbursable by Texas Medicaid, payment may be made to the physician, hospital, or other provider (if approved for participation in Texas Medicaid) who employs or reimburses the licensed physical therapist.

(g) The basis and amount of Medicaid reimbursement depends on the services actually provided, who provided the services, and the reimbursement methodology utilized by Texas Medicaid as appropriate for the services and providers involved.

(h) Physical therapy services provided by or under the direction of a physical therapist in long-term care facilities must be billed to the Medicaid recipient's nursing facility.

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 December 15, 2025.

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Texas Health and Human Services Commission
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Proposal publication date: July 4, 2025
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TITLE 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER A. RULES FOR REGULATED LENDERS

The Finance Commission of Texas (commission) adopts amendments to §83.301 (relating to Definitions), §83.302 (relating to Filing of New Application), §83.303 (relating to Transfer of License; New License Application on Transfer of Ownership), §83.306 (relating to Updating Application and Contact Information), §83.307 (relating to Processing of Application), §83.308 (relating to Relocation), §83.309 (relating to License Inactivation or Voluntary Surrender), §83.311 (relating to Applications and Notices as Public Records), §83.403 (relating to License Term, Renewal, and Expiration), and §83.404 (relating to Denial, Suspension, or Revocation Based on Criminal History); and adopts the repeal of §83.304 (relating to Change in Form or Proportionate Ownership), §83.305 (relating to Amendments to Pending Application), and §83.402 (relating to License Display) in 7 TAC Chapter 83, concerning Regulated Lenders and Credit Access Businesses.

The commission adopts the amendments to §83.306, §83.307, §83.309, §83.311, §83.403, and §83.404, and adopts the repeal of §83.304, §83.305, and §83.402, without changes to the proposed text as published in the November 7, 2025, issue of the *Texas Register* (50 TexReg 7172).

The commission adopts the amendments to §83.301, §83.302, §83.303, and §83.308 with changes to the proposed text as published in the November 7, 2025, issue of the *Texas Register* (50 TexReg 7172).

The rules in 7 TAC Chapter 83, Subchapter A govern regulated loans. In general, the purposes of the rule changes to 7 Chapter 83, Subchapter A are to implement the OCCC's transition to the NMLS licensing system for regulated lenders, to remove rule text that is no longer necessary, and to make other technical corrections and updates related to licensing.

Adopted amendments and repeals in §83.301 through §83.404 implement the OCCC's transition to the NMLS system. The Nationwide Multistate Licensing System (NMLS) is an online platform used by state financial regulatory agencies to manage licenses, including license applications and renewals. NMLS was created in 2008. The federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 explains that the purposes of NMLS include increasing uniformity and reducing regulatory burden. SAFE Act, 12 USC §5101. Each state currently uses NMLS for licensing individual RMLOs, and states are increasingly using the system to license consumer finance companies. NMLS is managed by the Conference of State Bank Supervisors and is subject to ongoing modernization efforts and enhancements.

Under Texas Finance Code, §14.109, the OCCC is authorized to require use of NMLS for certain license and registration types, including regulated lender licenses under Texas Finance Code, Chapter 342. The OCCC has begun a phased process of migrating license groups from ALECS (the OCCC's previous licensing platform) to NMLS. In 2025, a majority of licensed regulated lenders completed their transition to NMLS. The OCCC believes that moving to NMLS will improve the user experience of the licensing system and promote efficiency. This is particularly true for entities that hold licenses with the OCCC and with another state agency, because these entities will be able to manage multiple licenses through NMLS.

Adopted amendments to §83.301 replace the term "principal party" with "key individual" to be consistent with the terminology in NMLS. Another amendment adds a definition of "NMLS." Since the proposal, a technical change has been made to add the word "an" between "including" and "individual" in the definition of "key individual."

Adopted amendments to §83.302 streamline license application requirements and refer to instructions that the OCCC has published through NMLS. Currently, §83.302 contains a detailed list of license application items, with requirements that differ based on the applicant's entity type (e.g., partnership, corporation, limited liability company). In addition to ensuring consistency with NMLS, the amendments significantly simplify §83.302, and ensure that an applicant can easily read and understand the rule. Since the proposal, a list of items for branch license applications has been added at §83.302(c). Separate licenses for branch locations are currently required by Texas Finance Code, §342.502(b). The additional language in §83.302(c) will clarify what the OCCC generally expects a licensee to provide with a branch license application (as opposed to a company license application). Since the proposal, the reference to any assumed names or other trade names has been moved to §83.302(b)(8) for clarity. Since the proposal, references to §83.303 and required items for a transfer of ownership have been added at §83.302(b)(12) and §83.302(c)(4), in order to provide additional clarity. An amendment at §83.302(d) explains that the OCCC may require additional, clarifying, or supplemental information to determine that the applicant meets statutory licensing requirements. An amendment at §83.302(e) explains that an applicant must immediately amend a pending application if any information changes requiring a materially different response, replacing language that will be removed from §83.306(a), as explained later in this preamble.

Adopted amendments to §83.303 streamline and simplify requirements for transfer of ownership and license transfer to ensure consistency with NMLS. In §83.303(b)(3), amendments streamline the definition of "transfer of ownership" while maintaining references to changes in management or control of a business, and also maintaining current exclusions relating to changes in proportionate ownership and relocations of transactions. The adoption maintains certain rule text in the definition of "transfer of ownership" that would have been removed in the proposed amendments. This change is based on further consideration since the proposal. In order for the OCCC to ensure that licensees operate lawfully and fairly, it may be appropriate and necessary for the OCCC to review certain changes of control of a single entity through the license application process. An amendment to §83.303(c) explains that to transfer a license, a transferor may request surrender of its license after the OCCC approves the transferee's new license application on transfer of ownership. Other amendments throughout §83.303 ensure consistency with this revised transfer process.

The adoption repeals §83.304, which currently requires licensees to notify the OCCC of changes to organizational form, mergers resulting in creation of a new or different surviving entity, and certain changes in proportionate ownership. Going forward in NMLS, the OCCC anticipates that these changes will be handled through the advance change notice process, as ex-

plained later in this preamble in the discussion of amendments to §83.306. Therefore, §83.304 will no longer be necessary.

The adoption repeals §83.305, which currently requires license applicants to provide supplemental information to the OCCC on request. Because of the adopted amendment at §83.302(c) explaining the OCCC may require additional information, §83.305 will no longer be necessary.

Adopted amendments to §83.306 consolidate and simplify the types of required notifications that a licensee must provide to the OCCC when a change occurs. In §83.306(a), the amendments list advance change notices. NMLS uses the term "advance change notice" to refer to notifications that must be provided on or before the date of the change, in accordance with an agency's written instructions. As explained in the amendments to §83.306(a), this includes changes to the legal name of the entity, the legal status of the entity, names of key individuals, branch location addresses, and other listed items. In §83.306(b), amendments list notifications that are required not later than 30 days after the licensee has knowledge of the information. These items include bankruptcies of the licensee or its direct owners, because a bankruptcy is a significant event that may impact the financial responsibilities of a licensee and its ability to address compliance issues. These items also include notifications of data breaches affecting at least 250 Texas residents. Data security is a crucial issue. The OCCC's 2025-2029 strategic plan includes action items to "[p]romote cybersecurity awareness and best practices among regulated entities" and "[m]onitor cybersecurity incidents and remediation efforts reported by regulated entities." Recent data breaches affecting financial institutions highlight the urgent need for vigilance in this industry. The notification amendments will help ensure that the OCCC can monitor this crucial issue.

Adopted amendments to §83.307 revise license application processing requirements to be consistent with NMLS and with the statute at Texas Finance Code, §342.104. An amendment at §83.307(d) explains that a license application may be considered withdrawn if a complete application has not been filed within 30 days after a notice of deficiency has been sent to the applicant, consistent with how license applications are processed in NMLS. Under Texas Finance Code, §342.104(b), if the OCCC finds that a license applicant has not met the eligibility requirements for a license, then the OCCC will notify the applicant. Under Texas Finance Code, §342.104(c), an applicant has 30 days after the date of the notification to request a hearing on the denial. Amendments at §83.307(d) specify that if the eligibility requirements for a license have not been met, the OCCC will send a notice of intent to deny the license application, as described by Texas Finance Code, §342.104(b). Amendments at §83.307(e) revise current language to specify that an affected applicant has 30 days from the date of the notice of intent to deny to request a hearing, as provided by Texas Finance Code, §342.104(c). An amendment removes current §83.307(e), regarding disposition of fees, because this language unnecessarily duplicates language in §83.310 (regarding Fees). Amendments to §83.307(f) clarify the 60-day target period to process a license application and the 60-day target period to set a requested hearing on an application denial, in accordance with Texas Finance Code, §342.104(c)-(d).

Adopted amendments to §83.308 revise requirements for notice of relocation of licensed offices. The adoption removes current §83.308(a), because the requirement to notify the OCCC of a branch office relocation will be moved to §83.306(a) as an advance change notice, as discussed earlier in this preamble. Since the proposal, a technical change has been made to ensure that an internal cross-reference correctly cites subsection (b).

Adopted amendments to §83.309 revise requirements for license surrender. The amendments explain that a licensee may surrender a license by providing the information required by the OCCC's written instructions, in accordance with Texas Finance Code, §342.160, and that a surrender is effective when the OCCC approves the surrender.

Adopted amendments to §83.311 remove a sentence about the return of original documents filed with a license application. This sentence is no longer necessary because the OCCC no longer accepts original paper documents with a license application.

The adoption repeals §83.402, which describes the requirement to display a license. This section is unnecessary because it duplicates the statutory license display requirement at Texas Finance Code, §342.152. Going forward, licensees may comply with the statutory license display requirement by printing out company license information from NMLS.

Adopted amendments to §83.403 revise requirements for license renewal. An amendment at §83.403(b) explains that a licensee must maintain an active account in NMLS (or a designated successor system) in order to maintain and renew a license, and that renewal may be unavailable to a licensee that fails to maintain an active account. An amendment at §83.403(d) specifies that the OCCC may send notice of delinquency of an annual assessment fee electronically through NMLS or by email to the primary company contact, removing current language that refers to a "master file" address under the OCCC's current system.

Adopted amendments to §83.404 revise criminal history review requirements to explain that the OCCC will obtain criminal history record information through NMLS and to use the term "key individual."

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 received one informal precomment, which was submitted by an association of regulated lenders. The OCCC appreciates the thoughtful input of stakeholders.

The OCCC received no official comments on the proposed amendments.

In its precomment, an association of regulated lenders requested that "the OCCC not expand the notice requirement in Section 83.306(b)(1) beyond items that relate to licensed activity or that would change an answer in an original application," and requested that this provision "be limited to final actions and relevant information." In response to this precomment, adopted §83.306(b)(1) states that notification is required for actions "that were not disclosed in the original application and would require a different answer than that given in the original license application." The commission and the OCCC agree that this item should be limited to actions that are relevant to licensing and would require a different answer from the license application. However, the commission and the OCCC disagree with the suggestion to limit this provision to "final" actions, since it may be appropriate to require information about significant pending civil or regulatory actions that are relevant to licensing.

DIVISION 3. APPLICATION PROCEDURES

7 TAC §§83.301 - 83.303, 83.306 - 83.309, 83.311

The rule changes are adopted under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. The rule changes are also adopted under Texas Finance Code, §14.109, which authorizes the OCCC to require that a person submit information through NMLS if the information is required under a rule adopted under Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

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

§83.301. Definitions.

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 342, have the same meanings as defined in Chapter 342. The following words and terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise.

(1) Key individual--An individual owner, officer, director, or employee with a substantial relationship to the lending business of an applicant or licensee. The following are key individuals:

(A) any individual who is a direct owner of 10% or more of an applicant or licensee;

(B) any individual who is a control person or executive officer of an applicant or licensee, including an individual who has the power to direct management or policies of a company (e.g., president, chief executive officer, general partner, managing member, vice president, treasurer, secretary, chief operating officer, chief financial officer); and

(C) an individual designated as a key individual where necessary to fairly assess the applicant or licensee's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly.

(2) Net assets--The total value of acceptable assets used or designated as readily available for use in the business, less liabilities, other than those liabilities secured by unacceptable assets. Unacceptable assets include, but are not limited to, goodwill, unpaid stock subscriptions, lines of credit, notes receivable from an owner, property subject to the claim of homestead or other property exemption, and encumbered real or personal property to the extent of the encumbrance. Generally, assets are available for use if they are readily convertible to cash within 10 business days. Debt that is either unsecured or secured by current assets may be subordinated to the net asset requirement pursuant to an agreement of the parties providing that the creditor forfeits its security priority and any rights it may have to current assets in the amount of $25,000. Debt subject to such a subordination agreement would not be an applicable liability for purposes of calculating net assets.

(3) NMLS--The Nationwide Multistate Licensing System.

§83.302. Filing of New Application.

(a) NMLS. In order to submit a regulated lender license application, an applicant must submit a complete, accurate, and truthful license application through NMLS (or a successor system designated by the OCCC), using the current form prescribed by the OCCC. An application is complete when it conforms to the OCCC's written instructions and necessary fees have been paid. The OCCC has made application checklists available through NMLS, outlining the necessary information for a license application.

(b) Company license application. A company license application will include the following information and any other information listed in the OCCC's written instructions:

(1) A company form including the name of the applicant entity, contact information, registered agent, location of books and records, bank account information, legal status, and responses to disclosure questions.

(2) An individual form for each key individual, including name, contact information, and responses to disclosure questions.

(3) A business operating plan describing the source of consumers, purpose of loans, size of loans, and source of working capital.

(4) A management chart showing the applicant's divisions, officers, and managers.

(5) An organizational chart if the applicant is owned by another entity or entities, or has subsidiaries or affiliated entities.

(6) A statement of experience detailing prior experience relevant to the license sought.

(7) A certificate of formation or other formation document.

(8) Any assumed names or other trade names that the applicant will use, and an assumed name certificate for each assumed name or other trade name.

(9) Franchise tax account information showing that the applicant entity is authorized to do business in Texas.

(10) Financial statement and supporting financial information complying with generally accepted accounting principles (GAAP). The OCCC may require a bank confirmation to confirm account balance information with financial institutions.

(A) If a financial statement is unaudited, then it should be dated no earlier than 60 days before the application date.

(B) If a financial statement is audited, then it should be dated no earlier than one year before the application date.

(11) Loan forms that the applicant intends to use, including disclosures and loan contracts.

(12) For a license application involving a transfer of ownership, documentation of the transfer of ownership as described by §83.303 of this title (relating to Transfer of License; New License Application on Transfer of Ownership).

(c) Branch license application. A branch license application will include the following information and any other information listed in the OCCC's written instructions:

(1) A branch form including the address of the branch, contact details, and business activities.

(2) Any assumed name or other trade name that the applicant will use, and an assumed name certificate for each assumed name or other trade name.

(3) A financial statement and supporting financial information, as described by subsection (b)(10) of this section.

(4) For a license application involving a transfer of ownership, documentation of the transfer of ownership as described by §83.303 of this title

(d) Supplemental information. The OCCC may require additional, clarifying, or supplemental information or documentation as necessary or appropriate to determine that an applicant meets the licensing requirements of Texas Finance Code, Chapter 342.

(e) Amendments to pending application. An applicant must immediately amend a pending application if any information changes requiring a materially different response from information provided in the original application.

§83.303. Transfer of License; New License Application on Transfer of Ownership.

(a) Purpose. This section describes the license application requirements when a licensed entity transfers ownership of the entity. If a transfer of ownership occurs, the transferee must submit a new license application on transfer of ownership under this section.

(b) Definitions. The following words and terms, when used in this section, will have the following meanings:

(1) License transfer--A sale, assignment, or transfer of a regulated loan license.

(2) Permission to operate--A temporary authorization from the OCCC, allowing a transferee to operate under a transferor's license while final approval is pending for a license transfer application or a new license application on transfer of ownership.

(3) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership that results in the exact same owners still owning the business (unless an owner that previously held less than 10% obtains an interest of 10% or more), and does not include a relocation of regulated transactions from one licensed location of the same licensee. Transfer of ownership includes the following:

(A) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(B) any transfer of a substantial portion of the assets of a licensed entity under which a new entity controls business at a licensed location; and

(C) any other purchase or acquisition of control of a licensed entity, or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs.

(4) Transferee--The entity that controls business at a licensed location after a transfer of ownership.

(5) Transferor--The licensed entity that controls business at a licensed location before a transfer of ownership.

(c) License transfer approval. No regulated loan license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §342.163. To transfer a license, a transferor may request surrender of its license after the OCCC approves the transferee's new license application on transfer of ownership. A license transfer is complete when the OCCC has approved the transferee's new license application and the transferor's license surrender.

(d) Timing. No later than 30 days after the event of a transfer of ownership, the transferee must file a complete new license application on transfer of ownership in accordance with subsection (e). A transferee may file an application before this date.

(e) Application requirements.

(1) Generally. This subsection describes the application requirements for a new license application on transfer of ownership. A transferee must submit the application in a format prescribed by the OCCC. The OCCC may accept prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The transferee must pay appropriate fees in connection with the application.

(2) Documentation of transfer of ownership. The application must include documentation evidencing the transfer of ownership. The documentation should include one or more of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a regulated loan license at the time of the application, then the application must include the information required for new license applications under §83.302 of this title (relating to Filing of New Application). The instructions in §83.302 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a regulated loan license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including disclosure questions, owners and principal parties, and a new financial statement, as provided in §83.302 of this title. The instructions in §83.302 of this title apply to these filings. The responsible person at the new location must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by §83.302 of this title need not be filed if the information on file with the OCCC is current and valid.

(5) Request for permission to operate. The application may include a request for permission to operate. The request must be in writing and signed by the transferor and transferee. The request must include all of the following:

(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

(B) an acknowledgement that the transferor and transferee each accept responsibility to any consumer and to the OCCC for any acts performed under the license while the permission to operate is in effect; and

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately surrender or inactivate its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e) includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. The denial of a request for permission to operate does not create a right to a hearing. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license. Two companies may not

simultaneously operate under a single license. A permission to operate terminates if the OCCC denies an application described by subsection (e).

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e), by the deadline described by subsection (d), then the transferee may engage in business as a regulated lender. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the application, then the transferee has a right to a hearing on the denial, as provided by §83.307(d) of this title (relating to Processing of Application).

(h) Responsibility.

(1) Responsibility of transferor. Before the transferee begins performing regulated lender activity under a license, the transferor is responsible to any consumer and to the OCCC for all regulated lender activity performed under the license.

(2) Responsibility of transferor and transferee. If a transferee begins performing regulated lender activity under a license before the OCCC's final approval of an application described by subsection (e), then the transferor and transferee are each responsible to any consumer and to the OCCC for activity performed under the license during this period.

(3) Responsibility of transferee. After the OCCC's final approval of an application described by subsection (e), the transferee is responsible to any consumer and to the OCCC for all regulated lender activity performed under the license. The transferee is responsible for any transactions that it purchases from the transferor. In addition, if the transferee receives a license transfer, then the transferee's responsibility includes all activity performed under the license before the license transfer.

§83.308. Relocation.

(a) Notice to debtors. Written notice of a relocation of an office, or of transactions as outlined in subsection (b) of this section, must be mailed to all debtors of record at least five calendar days prior to the date of relocation. A licensee may send notice to a debtor by email in lieu of mail if the debtor has provided an email address to the licensee and has consented in writing to be contacted at the email address. Any licensee failing to give the required notice must waive all default charges on payments coming due from the date of relocation to 15 calendar days subsequent to the mailing of notices to debtors. Notices must identify the licensee, provide both old and new addresses, provide both old and new telephone numbers, and state the date relocation is effective. The notice to debtors can be waived or modified by the commissioner when it is in the public interest. A request for waiver or modification must be submitted in writing for approval. The commissioner may approve notification to debtors by signs in lieu of notification by mail, if in the commissioner's opinion, no debtors will be adversely affected.

(b) Relocation of regulated transactions. If the licensee is only relocating or transferring regulated transactions from one licensed location to another licensed location, the licensee must comply with subsection (b) of this section and provide, if requested, a list of regulated transactions relocated or transferred. This list of relocated or transferred regulated transactions must include the loan number and the full name of the debtor.

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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Matthew Nance
General Counsel
Office of Consumer Credit Commissioner
Effective date: January 1, 2026
Proposal publication date: November 7, 2025
For further information, please call: (512) 936-7660

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7 TAC §83.304, §83.305

The rule changes are adopted under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. The rule changes are also adopted under Texas Finance Code, §14.109, which authorizes the OCCC to require that a person submit information through NMLS if the information is required under a rule adopted under Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

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

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

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DIVISION 4. LICENSE

7 TAC §83.402

The rule changes are adopted under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. The rule changes are also adopted under Texas Finance Code, §14.109, which authorizes the OCCC to require that a person submit information through NMLS if the information is required under a rule adopted under Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

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

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7 TAC §83.403, §83.404

The rule changes are adopted under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 342. The rule changes are also adopted under Texas Finance Code, §14.109, which authorizes the OCCC to require that a person submit information through NMLS if the information is required under a rule adopted under Texas Finance Code, Chapter 342. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

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

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CHAPTER 89. PROPERTY TAX LENDERS

The Finance Commission of Texas (commission) adopts amendments to §89.206 (relating to Application for Exemption), §89.207 (relating to Files and Records Required), §89.301 (relating to Definitions), §89.302 (relating to Filing of New Application), §89.303 (relating to Transfer of License; New License Application on Transfer of Ownership), §89.306 (relating to Updating Application and Contact Information), §89.307 (relating to Processing of Application), §89.308 (relating to Relocation of Licensed Offices), §89.309 (relating to License Inactivation or Voluntary Surrender), §89.311 (relating to Applications and Notices as Public Records), §89.403 (relating to License Term, Renewal, and Expiration), and §89.405 (relating to Denial, Suspension, or Revocation Based on Criminal History); adopts the repeal of §89.304 (relating to Change in Form or Proportionate Ownership), §89.305 (relating to Amendments to Pending Application), and §89.402 (relating to License Display); and adopts new §89.806 (relating to Payoff Request from Borrower) in 7 TAC Chapter 89, concerning Property Tax Lenders.

The commission adopts the amendments to §§89.206, 89.207, 89.306, 89.307, 89.308, 89.309, 89.311, 89.403, and 89.405, and adopts the repeal of §§89.304, 89.305, and 89.402, without changes to the proposed text as published in the November 7, 2025 issue of the *Texas Register* (50 TexReg 7183). The rules will not be republished.

The commission adopts the amendments to §§89.301, 89.302, and 89.303, and adopts new §89.806, with changes to the proposed text as published in the November 7, 2025 issue of the *Texas Register* (50 TexReg 7183). The rules will be republished.

The rules in 7 TAC Chapter 89 govern property tax loans. In general, the purpose of the proposed rule changes to 7 TAC Chapter 89 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039.

An adopted amendment to §89.206 removes a requirement to provide an individual's Social Security number on the form for an individual's exemption from licensing. Under Texas Finance Code, §351.051(c), certain individuals are exempt from licensing as property tax lenders, including individuals making five or fewer property tax loans in any consecutive 12-month period from the individual's own funds. This amendment would minimize sensitive personal information collected by the OCCC.

Adopted amendments to §89.207 update recordkeeping requirements for property tax lenders. Currently, provisions throughout §89.207 refer to both paper and electronic recordkeeping systems. Amendments throughout §89.207 simplify and rearrange this language to refer to electronic recordkeeping systems before referring to paper systems, based on licensees' increasing use of electronic systems rather than paper systems. Currently, §89.207(3)(L) describes different sets of records to be maintained for judicial foreclosures and nonjudicial foreclosures. Property tax lenders' ability to perform nonjudicial foreclosures was previously codified in Texas Tax Code, §32.06(c)(2), and was repealed in 2013 (SB 247 (2013)). Because the authority to perform nonjudicial foreclosures was repealed, the commission and the OCCC believe that it is no longer necessary to describe two different sets of documents, and that the rule should be simplified to describe one set of documents for foreclosures.

Additional adopted amendments to §89.207 relate to data security recordkeeping. An amendment at §89.207(9)(A) specifies that licensees must maintain written policies and procedures for an information security program to protect retail buyers' customer information, as required by the Federal Trade Commission's Safeguards Rule, 16 C.F.R. part 314. Another amendment at §89.207(9)(B) specifies that if a licensee maintains customer information concerning 5,000 or more consumers, then the licensee must maintain a written incident response plan and written risk assessments, as required by 16 C.F.R. §314.4. An amendment at §89.207(10) specifies that licensees must maintain data breach notifications to consumers and to the Office of the Attorney General under Texas Business & Commerce Code, §521.053. Data security is a crucial issue. The OCCC's 2025-2029 strategic plan includes action items to "[p]romote cybersecurity awareness and best practices among regulated entities" and "[m]onitor cybersecurity incidents and remediation efforts reported by regulated entities." Recent data breaches affecting financial institutions highlight the urgent need for vigilance in this industry. The adopted data security recordkeeping amendments will help ensure that the OCCC can monitor this crucial issue.

Adopted amendments and repeals in §89.301 through §89.405 would implement the OCCC's transition to the NMLS system.

The Nationwide Multistate Licensing System (NMLS) is an online platform used by state financial regulatory agencies to manage licenses, including license applications and renewals. NMLS was created in 2008. The federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 explains that the purposes of NMLS include increasing uniformity and reducing regulatory burden. SAFE Act, 12 USC §5101. Each state currently uses NMLS for licensing individual RMLOs, and states are increasingly using the system to license consumer finance companies. NMLS is managed by the Conference of State Bank Supervisors and is subject to ongoing modernization efforts and enhancements.

Under Texas Finance Code, §14.109, the OCCC is authorized to require use of NMLS for certain license and registration types, including property tax lender licenses under Texas Finance Code, Chapter 351. The OCCC has begun a phased process of migrating license groups from ALECS (the OCCC's previous licensing platform) to NMLS. In 2025, licensed property tax lenders completed their transition to NMLS. The OCCC believes that moving to NMLS will improve the user experience of the licensing system and promote efficiency. This is particularly true for entities that hold licenses with the OCCC and with another state agency, because these entities will be able to manage multiple licenses through NMLS.

Adopted amendments to §89.301 replace the term "principal party" with "key individual" to be consistent with the terminology in NMLS. Another amendment adds a definition of "NMLS." Since the proposal, a technical change has been made to add the word "an" between "including" and "individual" in the definition of "key individual."

Adopted amendments to §89.302 would streamline license application requirements and refer to instructions that the OCCC has published through NMLS. Currently, §89.302 contains a detailed list of license application items, with requirements that differ based on the applicant's entity type (e.g., partnership, corporation, limited liability company). In addition to ensuring consistency with NMLS, the amendments significantly simplify §89.302, and ensure that an applicant can easily read and understand the rule. Since the proposal, a list of items for branch license applications has been added at §89.302(c). Separate licenses for branch locations are currently required by Texas Finance Code, §351.052(b). The additional language in §89.302(c) will clarify what the OCCC generally expects a licensee to provide with a branch license application (as opposed to a company license application). Since the proposal, the reference to any assumed names or other trade names has been moved to §89.302(b)(8) for clarity. Since the proposal, references to §89.303 and required items for a transfer of ownership have been added at §89.302(b)(12) and §89.302(c)(4), in order to provide additional clarity. An amendment at §89.302(d) explains that the OCCC may require additional, clarifying, or supplemental information to determine that the applicant meets statutory licensing requirements. An amendment at §89.302(e) explains that an applicant must immediately amend a pending application if any information changes requiring a materially different response, replacing language that will be removed from §89.306(a), as explained later in this preamble.

Adopted amendments to §89.303 streamline and simplify requirements for transfer of ownership and license transfer to ensure consistency with NMLS. In §89.303(b)(3), amendments streamline the definition of "transfer of ownership" while maintaining references to changes in management or control of a business, and also maintaining the current exclusion relating to changes in proportionate ownership. The adoption maintains certain rule text in the definition of "transfer of ownership" that would have been removed in the proposed amendments. This change is based on further consideration since the proposal. In order for the OCCC to ensure that licensees operate lawfully and fairly, it may be appropriate and necessary for the OCCC to review certain changes of control of a single entity through the license application process. An amendment to §89.303(c) explains that to transfer a license, a transferor may request surrender of its license after the OCCC approves the transferee's new license application on transfer of ownership. Other amendments throughout §89.303 ensure consistency with this revised transfer process.

The adoption repeals §89.304, which currently requires licensees to notify the OCCC of changes to organizational form, mergers resulting in creation of a new or different surviving entity, and certain changes in proportionate ownership. Going forward in NMLS, the OCCC anticipates that these changes will be handled through the advance change notice process, as explained later in this preamble in the discussion of amendments to §89.306. Therefore, §89.304 will no longer be necessary.

The adoption repeals §89.305, which currently requires license applicants to provide supplemental information to the OCCC on request. Because of the adopted amendment at §89.302(c) explaining the OCCC may require additional information, §89.305 will no longer be necessary.

Adopted amendments to §89.306 consolidate and simplify the types of required notifications that a licensee must provide to the OCCC when a change occurs. In §89.306(a), the amendments list advance change notices. NMLS uses the term "advance change notice" to refer to notifications that must be provided on or before the date of the change, in accordance with an agency's written instructions. As explained in the amendments to §89.306(a), this includes changes to the legal name of the entity, the legal status of the entity, names of key individuals, branch location addresses, and other listed items. In §89.306(b), amendments list notifications that are required not later than 30 days after the licensee has knowledge of the information. These items include bankruptcies of the licensee or its direct owners, because a bankruptcy is a significant event that may impact the financial responsibilities of a licensee and its ability to address compliance issues. These items also include notifications of data breaches affecting at least 250 Texas residents, helping to ensure that the OCCC can effectively monitor the crucial issue of cybersecurity (as discussed earlier in the discussion of adopted amendments to §89.207).

Adopted amendments to §89.307 revise license application processing requirements to be consistent with NMLS and with the statute at Texas Finance Code, §351.104. An amendment at §89.307(d) explains that a license application may be considered withdrawn if a complete application has not been filed within 30 days after a notice of deficiency has been sent to the applicant, consistent with how license applications are processed in NMLS. Under Texas Finance Code, §351.104(b), if the OCCC finds that a license applicant has not met the eligibility requirements for a license, then the OCCC will notify the applicant. Under Texas Finance Code, §351.104(c), an applicant has 30 days after the date of the notification to request a hearing on the denial. Amendments at §89.307(d) specify that if the eligibility requirements for a license have not been met, the OCCC will send a notice of intent to deny the license application, as described by Texas Finance Code, §351.104(b). Amendments at

§89.307(e) revise current language to specify that an affected applicant has 30 days from the date of the notice of intent to deny to request a hearing, as provided by Texas Finance Code, §351.104(c). An amendment removes current §89.307(e), regarding disposition of fees, because this language unnecessarily duplicates language in §89.310 (regarding Fees). Amendments to §89.307(f) clarify the 60-day target period to process a license application and the 60-day target period to set a requested hearing on an application denial, in accordance with Texas Finance Code, §351.104(c)-(d).

Adopted amendments to §89.308 revise requirements for notice of relocation of licensed offices. The adoption removes current §89.308(a), because the requirement to notify the OCCC of a branch office relocation will be moved to §89.306(a) as an advance change notice, as discussed earlier in this preamble. An amendment to current §89.308(b) explains that a licensee may send notice of a relocation to a debtor by email if the debtor has provided an email address and consented in writing to be contacted at the email address, in order to accommodate electronic communications.

Adopted amendments to §89.309 revise requirements for license surrender. The amendments explain that a licensee may surrender a license by providing the information required by the OCCC's written instruction, in accordance with Texas Finance Code, §351.160, and that a surrender is effective when the OCCC approves the surrender.

Adopted amendments to §89.311 remove a sentence about the return of original documents filed with a license application. This sentence is no longer necessary because the OCCC no longer accepts original paper documents with a license application.

The adoption repeals §89.402, which describes the requirement to display a license. This section is unnecessary because it duplicates the statutory license display requirement at Texas Finance Code, §351.152. Going forward, licensees may comply with the statutory license display requirement by printing out company license information from NMLS.

Adopted amendments to §89.403 revise requirements for license renewal. An amendment at §89.403(b) explains that a licensee must maintain an active account in NMLS (or a designated successor system) in order to maintain and renew a license, and that renewal may be unavailable to a licensee that fails to maintain an active account. An amendment at §89.403(d) specifies that the OCCC may send notice of delinquency of an annual assessment fee electronically through NMLS or by email to the primary company contact, removing current language that refers to a "master file" address under the OCCC's current system.

Adopted amendments to §89.405 revise criminal history review requirements to explain that the OCCC will obtain criminal history record information through NMLS and to use the term "key individual."

Adopted new §89.806 describes requirements for property tax loan payoff requests authorized by a borrower. Currently, the rules in §89.801 through §89.805 describe requirements for payoff requests from another lienholder to a property tax lender, but these sections do not describe requirements for a payoff request that is authorized by a borrower. Property tax lenders have requested that the OCCC provide guidance and clear standards on this issue, in order to ensure that the payoff process functions properly, that borrowers are enabled to pay off their property tax loans in a reasonable amount of time, and that property tax lenders are able to safeguard borrowers' personal information. Consistent with the prohibition on prepayment penalties in Texas Tax Code, §32.065(d), and Texas Finance Code, §343.205 and §351.0021(a)(9), a borrower has a right to pay off a property tax loan early. New §89.806(a) explains this right. New §89.806(b) describes the payoff request process that should be used if a property tax lender obtains a borrower's authorization to pay off a property tax loan held by an existing property tax lender. This includes guidelines for the authorized property tax lender to obtain the borrower's written authorization and send the payoff request, as well as guidelines for the existing property tax lender to provide a payoff statement. Since the proposal, in response to comments received, changes have been made to §89.806(b) to add the term "certificate of authenticity" in reference to the proof of the borrower's signature, and to refer to the borrower's "signed authorization" for clarity.

The OCCC issued an advance notice of rule review and received three informal comments in response to that notice. Notice of the review of 7 TAC Chapter 89 was published in the *Texas Register* on August 1, 2025 (50 TexReg 5069). The commission received one official comment in response to that notice from Panacea Lending LLC, a property tax lender.

The OCCC distributed an early precomment draft of the proposed amendments to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received four precomments on the proposed amendments from stakeholders, consisting of one precomment from the Texas Property Tax Lienholders Association (TPTLA), two precomments from a law firm representing property tax lenders, and one precomment from Panacea Lending.

The OCCC received one official written comment on the proposed amendments. The official comment was from TPTLA. TPTLA generally supported the proposed amendments, although it recommended additional changes to §89.806, discussed later in this preamble. In addition, a representative of Panacea Lending testified on the proposed amendments at the Finance Commission's meetings August 15 and October 24, 2025, and reiterated the points from Panacea Lending's precomment and official comment on the rule review. In general, Panacea Lending expressed concerns that the proposed amendments did not sufficiently address various issues raised by Panacea Lending in its comments.

One precomment, provided by a law firm representing property tax lenders, addressed the proposed recordkeeping requirements in §89.207. The precomment recommended revising the current requirements on recordkeeping for the notice to cure the default and the notice of intent to accelerate, to remove the phrase "including verification of delivery of the notice," which is currently used in §89.207(L)(i)(II)-(III), because service is complete under Texas Property Code, §51.002(e) when the notice is placed in the mail. In response to this suggestion, the adopted version of this provision at §89.207(L)(ii)-(iii) states that the record includes "any mail tracking or other verification of delivery of the notice," with the word "any" indicating that property tax lenders would be required to maintain the information if they obtain it.

Several stakeholders commented on the new payoff statement rule at §89.806. The new rule was addressed in Panacea Lending's comments, TPTLA's comments, and a precomment filed by a law firm representing property tax lenders. Stakeholders generally expressed support for having clear guidelines on the issue of borrower payoff statements, although they differed in

suggestions for the timing of the payoff statement and technical requirements for the borrower's authorization.

Panacea Lending's comments argue that current rules "allow some lenders to delay, obstruct, or deny valid payoff requests based on technicalities or unreasonable demands." For this reason, Panacea Lending supports a rule specifying that borrowers have an unconditional right to authorize payoff of a property tax loan, that a borrower's electronic signature will be deemed valid, that a lender may not require a payoff request to be submitted through a particular platform, that each property tax lender must maintain a designated email address on its website solely for receiving payoff requests, that a lender must provide a full and accurate statement within three business days, and that refusal to accept a valid payoff request is an unfair or deceptive practice subjecting the property tax lender to an administrative penalty and corrective action. In response to other stakeholder concerns about the inability to verify payoff authorizations, Panacea Lending's precomment suggests that these concerns are "not genuine," and that payoff authorizations from a licensed lender should be presumed valid under a "safe harbor." Panacea Lending's precomment states that it should not be compelled to provide borrower phone numbers or email addresses due to concerns about compliance with the Gramm-Leach-Bliley Act (GLBA). Regarding concerns about Panacea Lending's use of an e-signature platform developed for the medical industry, Panacea Lending argues that its software provides "stronger user authentication, complete audit trails, encrypted records, and robust access controls." Regarding stakeholder concerns about providing payoff statements within three business days, Panacea Lending argues that payoff statements can be generated "within hours, not days," and that any exceptions for loans in litigation could be carved out of a general three-day rule.

In its official comment, TPTLA argues that "the current payoff system among property tax lenders is working effectively," and that there have been "very few complaints related to payoff procedures." TPTLA suggests that the proposed amendments to §89.806 "simply refine and codify best practices already followed by responsible lenders." TPTLA expresses concerns about a company using an e-signature platform designed for HIPAA compliance standards that do not apply to property tax lending, and that "the use of this system is misaligned with financial verification needs and obstructs lenders from confirming the borrower's authorization." TPTLA argues that "[w]ithout access to signer verification data, the lender receiving the payoff request cannot confirm that the borrower truly authorized the release." Therefore, TPTLA suggests that the proof of authorization include a certificate of authenticity containing the signer's name, IP address, email address, and date and time of signing. TPTLA also recommends a seven-business-day period for providing payoff statements due to consistency with industry norms and the federal standard for mortgages under Regulation Z, 12 C.F.R. §1026.36.

In a precomment, a law firm representing property tax lenders recommended a seven-business-day period for issuing the payoff statement and a 30-day period for relying on a payoff statement, citing current periods described by §89.802.

The commission and the OCCC appreciate that borrower payoff requests are an important issue warranting regulatory guidance. This importance underlies the rationale for the adopted amendments to §89.806.

Regarding the timing of the payoff statement, the commission and the OCCC believe that a seven-business-day period is appropriate and consistent with industry standards. This period is also consistent with the current seven-business-day requirement for payoff statements that property tax lenders provide to other lienholders under 7 TAC §89.802(i) (relating to Payoff Statements), and with the seven-business-day period for payoff statements for mortgage loans described in the Truth in Lending Act, 15 U.S.C. §1639g, and Regulation Z, 12 C.F.R. §1026.36(c)(3). For this reason, adopted §89.806(b)(3) contains a seven-business-day period for providing the payoff statement. The commission and the OCCC disagree with the suggestion to use a three-business-day period, because this is inconsistent with industry standards. The commission declines to adopt a specific 30-day period for relying on a payoff statement, because reliance for this amount of time could be impractical in particular situations.

Regarding technical requirements for the payoff request, the commission and the OCCC believe that concerns about validation are genuine, but want to ensure that the rule remains flexible enough to accommodate changing technology. The adopted amendments to §89.806 contain language explaining that lenders must maintain proof of electronic signatures "in accordance with standards for electronic signatures." In response to comments, changes have been made to §89.806(b) to refer to a certificate of authenticity, which would be the expected form of proof of the borrower's authorization. The commission and the OCCC disagree with Panacea Lending's suggestion that providing a borrower's email address or phone number would necessarily violate GLBA. This issue could be addressed by disclosing how the information will be used to the consumer in a privacy notice. See Regulation P, 12 C.F.R. §1016.6. The commission and the OCCC also disagree with Panacea Lending's suggestion to use a regulatory "safe harbor" under which requests from a licensed property tax lender would be presumed valid. It is a prudent data security practice for lenders to verify incoming requests before releasing a borrower's sensitive financial transaction information.

In its official comment on the rule review, Panacea Lending addressed additional issues that were not ultimately included in the proposed or adopted rule amendments. Panacea Lending also raised these issues in its precomment on the proposed amendments, and in its testimony at the August 15 and October 24 commission meetings. TPTLA's official comment on the proposed amendments included responses to the issues raised by Panacea Lending.

First, Panacea Lending's comments recommend mandatory compliance procedures requiring property tax lenders to conduct yearly internal reviews of residential property tax loans to determine whether borrowers are subject to homestead exemptions for being older than 65 or having a disability, and a requirement that property tax lenders send notices to borrowers who are subject to exemptions, with the notice confirming the exemption or deferment and explaining how the property owner may apply for it. In a supplement to the original comment, Panacea Lending suggests requiring additional documents at closing, as well as a disclosure to be read aloud to the borrower by a notary, asking about disabilities and whether the borrower is the surviving spouse of a first responder, as well as a required disclosure to be provided when a property tax lender is prohibited from making a loan. Panacea Lending cites Texas Attorney General Opinion No. GA-0787 (2010), in which the attorney general found that the Texas Tax Code prohibits a property tax lender from foreclosing on a property owner who has attained the age of 65 and filed a deferment of taxes. TPTLA's official

comment argues that existing Texas law at Texas Tax Code, §33.06 and §33.065 (among other provisions) already prohibit originating property tax loans for homeowners who qualify for age exemptions. TPTLA also asserts that licensed lenders follow stringent procedures to prevent these loans, including cross-referencing dates of birth and county appraisal records, and that there is no evidence of widespread non-compliance. Therefore, TPTLA argues that Panacea Lending's proposal is redundant and unnecessary.

Although the Tax Code's foreclosure requirements and prohibitions are an important compliance issue for property tax lenders, the commission and the OCCC disagree with the rule amendments proposed by Panacea Lending. The suggested amendments go significantly beyond the Tax Code's statutory requirements, may require property tax lenders to provide legal advice to borrowers, and may not be possible to fully implement in practice. For example, it is unclear how a property tax lender can determine, from a review of its files, whether a borrower currently has a disability making the borrower eligible for a deferment or exemption. Some of the disclosures described in the comment may be a prudent business practice for property tax lenders, but the prescriptive nature of the suggested disclosures goes beyond the intended scope of the rules in 7 TAC Chapter 89.

Second, Panacea Lending's comments recommend amending advertising rules to require the word "lender" to appear on all marketing pieces. Panacea Lending argues that this change is necessary to prevent misleading advertising. TPTLA's official comment responds that false and misleading advertising are already addressed by existing provisions and that the change proposed by Panacea Lending is unnecessary.

The rule at 7 TAC §89.208 (relating to Advertising) already prohibits false, deceptive, or misleading advertising; requires disclosure of the name of the property tax lender; and prohibits advertisements resembling government documents, among other advertising requirements. The rule at 7 TAC §89.507 (relating to Permissible Changes) allows property tax lenders to revise disclosures to use the term "transferee" for "property tax lender," and to use the term "tax lien transfer" for "property tax loan." The commission and the OCCC believe that Panacea Lending's suggested change requiring the word "lender" is unnecessary, given the existing advertising requirements and the alternative terminology for the transaction used in Texas Tax Code, Chapter 32.

Third, Panacea Lending's comments recommend amending 7 TAC §89.601 (relating to Fees for Closing Costs) to adjust the maximum closing costs for a residential property tax loan. Currently, 7 TAC §89.601 provides a general maximum of $900 for closing costs, plus up to $100 for each additional parcel of property past the first parcel, plus reasonable fees for certain direct costs to address title defects. The comment recommends adjusting the maximum to $1,500, indexed annually to inflation using the Consumer Price Index, based on increased costs of staffing, technology, and insurance. TPTLA's official comment opposes changing this maximum fee, arguing that the current rule protects consumers, that technological efficiencies have offset inflationary pressure, and that raising the maximum would invite high-fee, short-term lending.

The commission and the OCCC recognize that certain costs have increased for lenders. However, the commission and the OCCC believe that the $900 maximum (plus additional amounts for certain transaction) remains a fair maximum for lenders in relation to typical residential property tax loan amounts (which averaged $21,399 in calendar year 2024). The commission and the OCCC have not received sufficient information to support raising the maximum closing costs at this time.

Fourth, Panacea Lending's comments recommend adding a requirement for a property tax lender to obtain a signed loan application, and to provide a nonbinding pre-closing disclosure with a 48-hour waiting period for the property tax loan to be closed. Panacea Lending argues that this is necessary because borrowers may receive loan terms without a written record of what was actually offered, preventing borrowers from comparison shopping. TPTLA's official comment responds that these additional requirements are unnecessary because existing rules already required timely, signed pre-closing disclosures of transaction terms, and require lenders to maintain records of loan applications and disclosures.

Regarding the signed loan application, the commission and the OCCC believe that this requirement is unnecessary, because the recordkeeping rule at 7 TAC §89.207(3)(A)(ii) (relating to Files and Records Required) already requires property tax lenders to maintain a transaction file that includes the application and any written or recorded information used in evaluating the application. Regarding a nonbinding pre-closing disclosure and 48-hour waiting period, the commission and the OCCC believe that the Panacea Lending's suggested changes go beyond statutory requirements and the intended scope of the rules. Property tax loans are already subject to pre-closing disclosure requirements under Texas Tax Code, §32.06(a-4)(1) and 7 TAC §89.504 (relating to Requirements for Disclosure Statement to Property Owner). The pre-closing disclosure includes key loan terms, and lenders are required to amend disclosures promptly if they are inaccurate. See 7 TAC §89.504(c)(3). In addition, residential property tax loans are subject to a three-day right of rescission under Texas Tax Code, §32.06(d-1).

Fifth, Panacea Lending's comments recommend amending the rule at 7 TAC §89.802 (regarding Payoff Statements) for payoff statements that a property tax lender provides to certain lienholders. Panacea Lending suggests adding information about delinquent payments, late fees, and tax deferrals, in order to ensure that borrowers are informed about these items. TPTLA's official comment responds that current rules already require comprehensive payoff statements under §89.802 (including unpaid principal balance, accrued interest, additional fees with a description of each fee, and total payoff amount), and that the proposed changes would add unnecessary complexity, increasing administrative costs without improving borrower outcomes.

The commission and the OCCC disagree with Panacea Lending's suggested changes to 7 TAC §89.802. Unlike the payoff statements described in the adopted new rule at §89.806, payoff statements under §89.802 are primarily provided to other lienholders and would not achieve the intended effect of informing borrowers.

Sixth, Panacea Lending's comments recommend that trade organizations should be required to publicly disclose their meetings with the OCCC 60 days in advance. The comments also suggest that within 10 business days after a meeting with the OCCC, a trade organization should be required to disclose the date, time, and location of the meeting; the name of the hosting organization or sponsor; names and titles of all OCCC personnel in attendance; names and titles of property tax lenders' representatives in attendance; agenda topics or discussion summaries; copies of presentation slides shared by or with the OCCC; names of industry presenters; and a summary that clearly states each topic discussion. The comment argues that

this is necessary to address "unequal access" and a "perception of bias." TPTLA disagrees with this suggestion, arguing that TPTLA has a record of compliance and ethical conduct, and has built a collaborative relationship with the OCCC rooted in transparency and shared objectives.

The commission and the OCCC disagree with Panacea Lending's suggestion. The OCCC fully complies with government transparency requirements and strives to follow an open process that makes rules and guidance available to stakeholders. The OCCC generally meets with stakeholders on request, whether or not they are connected to a trade association. Panacea Lending's suggestions would unnecessarily impair the OCCC's communications with stakeholders and inappropriately single out trade associations as opposed to other stakeholders.

Seventh, Panacea Lending's comments recommend amending pre-closing disclosure requirements so that the requirements are uniform for residential property tax loans and commercial property tax loans, requiring commercial property tax lenders to disclose an NMLS ID number and additional loan calculations. Currently, the rule at 7 TAC §89.506 (relating to Disclosures) provides distinct pre-closing disclosure forms for residential and commercial property tax loans. TPTLA's official comment responds that these changes are inappropriate because Texas law differentiates between residential and commercial property tax loans in structure and borrower protections, and that merging the forms would create confusion and compliance risk.

The commission and the OCCC disagree with Panacea Lending's suggestion to merge the disclosures and require commercial lenders to provide residential disclosures. There are significant differences between residential property tax loans and commercial property tax loans, and these differences warrant distinct disclosures. For example, residential property tax loans are subject to Texas Finance Code, Chapter 180, which requires the individual residential mortgage loan originator to hold a license in NMLS, while commercial property tax loans are not subject to this requirement (meaning the individual originator of a commercial property tax loan might not have an NMLS ID). Also, under Texas Finance Code §351.0021, a prepayment penalty is authorized for commercial property tax loans but not residential property tax loans, and this distinction is reflected in the disclosures at 7 TAC §89.506.

Eighth, Panacea Lending's precomment requests clarification on "the source, scope, and authority of any limitation on the number of rules the OCCC may consider or advance during this rulemaking cycle." To clarify, there is no specific numerical limitation on how many rules can be addressed in a rule review. Rather, the scope of the commission's rulemaking authority and the OCCC's authority is limited by statute. The Finance Commission may only adopt rules to implement applicable statutory provisions (in this case, Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32). To minimize regulatory burden, the OCCC takes a restrained approach to regulation and works to ensure that rules are limited to what is necessary to enforce and administer the statute. The OCCC carefully considers this approach when presenting rule actions to the commission. The OCCC believes that the current adoption of amendments to 7 TAC Chapter 89 supports this approach.

Ninth, Panacea Lending's precomment expresses concerns about whether there was sufficient advance notice of the commission's and OCCC's reasons for not adopting Panacea Lending's proposed changes. The commission's and OCCC's reasons were included in the meeting materials posted in advance of the commission's meeting on October 24, 2025. Panacea Lending had an opportunity to review this material before testifying at the October 24 meeting. The commission and the OCCC provided sufficient formal responses to comments as required by statute under Texas Government Code, §2001.033 and §2001.039, in addition to providing numerous additional opportunities for informal stakeholder feedback to support a transparent rulemaking process.

SUBCHAPTER B. AUTHORIZED ACTIVITIES

7 TAC §89.206, §89.207

The rule changes are adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065. The rule changes are also adopted under Texas Finance Code, §14.109, which authorizes the OCCC to require that a person submit information through NMLS if the information is required under a rule adopted under Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

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SUBCHAPTER C. APPLICATION PROCEDURES

7 TAC §§89.301 - 89.303, 89.306 - 89.309, 89.311

The rule changes are adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065. The rule changes are also adopted under Texas Finance Code, §14.109, which authorizes the OCCC to require that a person submit information through NMLS if the information is required under a rule adopted under Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

§89.301. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 351 have the same meanings as defined in Chapter 351.

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

(1) Key individual--An individual owner, officer, director, or employee with a substantial relationship to the lending business of an applicant or licensee. The following are key individuals:

(A) any individual who is a direct owner of 10% or more of an applicant or licensee;

(B) any individual who is a control person or executive officer of an applicant or licensee, including an individual who has the power to direct management or policies of a company (e.g., president, chief executive officer, general partner, managing member, vice president, treasurer, secretary, chief operating officer, chief financial officer); and

(C) an individual designated as a key individual where necessary to fairly assess the applicant or licensee's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly.

(2) Net assets--The total value of acceptable assets used or designated as readily available for use in the business, less liabilities, other than those liabilities secured by unacceptable assets. Unacceptable assets include, but are not limited to, goodwill, unpaid stock subscriptions, lines of credit, notes receivable from an owner, property subject to the claim of homestead or other property exemption, and encumbered real or personal property to the extent of the encumbrance. Generally, assets are available for use if they are readily convertible to cash within 10 business days.

(3) NMLS--The Nationwide Multistate Licensing System.

§89.302. Filing of New Application.

(a) NMLS. In order to submit a property tax lender license application, an applicant must submit a complete, accurate, and truthful license application through NMLS (or a successor system designated by the OCCC), using the current form prescribed by the OCCC. An application is complete when it conforms to the OCCC's written instructions and necessary fees have been paid. The OCCC has made application checklists available through NMLS, outlining the necessary information for a license application.

(b) Company license application. A company license application will include the following information and any other information listed in the OCCC's written instructions:

(1) A company form including the name of the applicant entity, contact information, registered agent, location of books and records, bank account information, legal status, and responses to disclosure questions.

(2) An individual form for each key individual, including name, contact information, and responses to disclosure questions.

(3) A business operating plan describing the source of consumers, purpose of loans, size of loans, and source of working capital.

(4) A management chart showing the applicant's divisions, officers, and managers.

(5) An organizational chart if the applicant is owned by another entity or entities, or has subsidiaries or affiliated entities.

(6) A statement of experience detailing prior experience relevant to the license sought.

(7) A certificate of formation or other formation document.

(8) Any assumed names or other trade names that the applicant will use, and an assumed name certificate for each assumed name or other trade name.

(9) Franchise tax account information showing that the applicant entity is authorized to do business in Texas.

(10) Financial statement and supporting financial information complying with generally accepted accounting principles (GAAP). The OCCC may require a bank confirmation to confirm account balance information with financial institutions.

(A) If a financial statement is unaudited, then it should be dated no earlier than 60 days before the application date.

(B) If a financial statement is audited, then it should be dated no earlier than one year before the application date.

(11) Loan forms that the applicant intends to use, including disclosures and loan contracts.

(c) Branch license application. A branch license application will include the following information and any other information listed in the OCCC's written instructions:

(1) A branch form including the address of the branch, contact details, and business activities.

(2) Any assumed name or other trade name that the applicant will use, and an assumed name certificate for each assumed name or other trade name.

(3) A financial statement and supporting financial information, as described by subsection (b)(10) of this section.

(4) For a license application involving a transfer of ownership, documentation of the transfer of ownership as described by §89.303 of this title

(d) Supplemental information. The OCCC may require additional, clarifying, or supplemental information or documentation as necessary or appropriate to determine that an applicant meets the licensing requirements of Texas Finance Code, Chapter 351.

(e) Amendments to pending application. An applicant must immediately amend a pending application if any information changes requiring a materially different response from information provided in the original application.

§89.303. Transfer of License; New License Application on Transfer of Ownership.

(a) Purpose. This section describes the license application requirements when a licensed entity transfers ownership of the entity. If a transfer of ownership occurs, the transferee must submit a new license application on transfer of ownership under this section.

(b) Definitions. The following words and terms, when used in this section, will have the following meanings:

(1) License transfer--A sale, assignment, or transfer of a property tax lender license.

(2) Permission to operate--A temporary authorization from the OCCC, allowing a transferee to operate under a transferor's license while final approval is pending for a license transfer application or a new license application on transfer of ownership.

(3) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership that results in the exact same owners still owning the business, unless an

owner that previously held less than 10% obtains an interest of 10% or more Transfer of ownership includes the following:

(A) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(B) any transfer of a substantial portion of the assets of a licensed entity under which a new entity controls business at a licensed location; and

(C) any other purchase or acquisition of control of a licensed entity, or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs.

(4) Transferee--The entity that controls business at a licensed location after a transfer of ownership.

(5) Transferor--The licensed entity that controls business at a licensed location before a transfer of ownership.

(c) License transfer approval. No property tax lender license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §351.163. To transfer a license, a transferor may request surrender of its license after the OCCC approves the transferee's new license application on transfer of ownership. A license transfer is complete when the OCCC has approved the transferee's new license application and the transferor's license surrender.

(d) Timing. No later than 30 days after the event of a transfer of ownership, the transferee must file a complete new license application on transfer of ownership in accordance with subsection (e). A transferee may file an application before this date.

(e) Application requirements.

(1) Generally. This subsection describes the application requirements for a new license application on transfer of ownership. A transferee must submit the application in a format prescribed by the OCCC. The OCCC may accept prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The transferee must pay appropriate fees in connection with the application.

(2) Documentation of transfer of ownership. The application must include documentation evidencing the transfer of ownership. The documentation should include one or more of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a property tax lender license at the time of the application, then the application must include the information required for new license applications under §89.302 of this title (relating to Filing of New Application). The instructions in §89.302 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a property tax lender license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including disclosure questions, key individuals, and a new financial statement, as provided in §89.302 of this title. The instructions in §89.302 of this title apply to these filings. The responsible person at the new location must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by §89.302 of this title need not be filed if the information on file with the OCCC is current and valid.

(5) Request for permission to operate. The application may include a request for permission to operate. The request must be in writing and signed by the transferor and transferee. The request must include all of the following:

(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

(B) an acknowledgement that the transferor and transferee each accept responsibility to any consumer and to the OCCC for any acts performed under the license while the permission to operate is in effect; and

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately surrender or inactivate its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e) includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. The denial of a request for permission to operate does not create a right to a hearing. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license. Two companies may not simultaneously operate under a single license. A permission to operate terminates if the OCCC denies an application described by subsection (e).

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e), by the deadline described by subsection (d), then the transferee may engage in business as a property tax lender. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the application, then the transferee has a right to a hearing on the denial, as provided by §89.307(d) of this title (relating to Processing of Application).

(h) Responsibility.

(1) Responsibility of transferor. Before the transferee begins performing property tax lending activity under a license, the transferor is responsible to any consumer and to the OCCC for all property tax lending activity performed under the license.

(2) Responsibility of transferor and transferee. If a transferee begins performing property tax lending activity under a license before the OCCC's final approval of an application described by subsection (e), then the transferor and transferee are each responsible to any consumer and to the OCCC for activity performed under the license during this period.

(3) Responsibility of transferee. After the OCCC's final approval of an application described by subsection (e) of this section, the transferee is responsible to any consumer and to the OCCC for all property tax lending activity performed under the license. The transferee is

responsible for any transactions that it purchases from the transferor. In addition, if the transferee receives a license transfer, then the transferee's responsibility includes all activity performed under the license before the license transfer.

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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7 TAC §89.304, §89.305

The rule changes are adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065. The rule changes are also adopted under Texas Finance Code, §14.109, which authorizes the OCCC to require that a person submit information through NMLS if the information is required under a rule adopted under Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

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SUBCHAPTER D. LICENSE

7 TAC §89.402

The rule changes are adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065. The rule changes are also adopted under Texas Finance Code, §14.109, which authorizes the OCCC to require that a person submit information through NMLS if the information is required under a rule adopted under Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

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7 TAC §89.403, §89.405

The rule changes are adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065. The rule changes are also adopted under Texas Finance Code, §14.109, which authorizes the OCCC to require that a person submit information through NMLS if the information is required under a rule adopted under Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

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SUBCHAPTER H. PAYOFF STATEMENTS

7 TAC §89.806

The rule changes are adopted under Texas Finance Code, §351.007, which authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Chapter 351, and Texas Tax Code, §32.06 and §32.065. The rule changes are also adopted under Texas Finance Code, §14.109, which

authorizes the OCCC to require that a person submit information through NMLS if the information is required under a rule adopted under Texas Finance Code, Chapter 351. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules to ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 351 and Texas Tax Code, Chapter 32.

§89.806. Payoff Request from Borrower.

(a) Generally. A borrower has a right to pay off a property tax loan early, consistent with the prohibition on prepayment penalties in Texas Tax Code, § 32.065(d), and Texas Finance Code, §343.205 and §351.0021(a)(9). A property tax lender may not "lock out" a borrower or prevent a borrower from paying off the loan early. The borrower's right to pay off the loan early includes the right to authorize another person to pay off the property tax loan.

(b) Payoff request process. If a property tax lender obtains a borrower's authorization to pay off a property tax loan held by an existing property tax lender, then the parties should take these steps.

(1) The authorized property tax lender should obtain a signed written statement from the borrower authorizing the lender to pay off the property tax loan. If the signature is electronic, then the lender must maintain a certificate of authenticity or other proof of the signature in accordance with standards for electronic signatures.

(2) The authorized property tax lender should send a request for a payoff statement to the existing property tax lender. The request should include the borrower's signed authorization, and should include the certificate of authenticity or other proof of the signature. The request should include the borrower's name, the authorized person's name, a description of the property, and reasonable instructions for where to send the payoff statement.

(3) If the request includes the information necessary to complete a payoff statement, then the existing property tax lender should respond with a payoff statement to the authorized property tax lender within seven business days after the existing property tax lender receives the complete request. The payoff statement should include accurate payoff information, and the borrower and the authorized lender should be able to rely on it for a reasonable period of time. The payoff statement should include reasonable instructions for paying off the property tax loan. If the authorized property tax lender's request does not include the information described by paragraph (2) of this subsection, then the existing property tax lender should notify the authorized property tax lender of the deficiency within a reasonable period of time.

(4) The authorized property tax lender may pay off the existing property tax loan as described in the payoff statement.

(5) Once the property tax lender has received the payoff amount, the property tax lender must promptly assign the property tax loan to the authorized person or release the property tax lender's lien on the property.

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

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TITLE 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 amended 16 Texas Administrative Code (TAC) §24.101, relating to Appeal of Rate-making Decision, Pursuant to the Texas Water Code §13.043; §24.239, relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental; §24.240, relating to Water and Sewer Utility Rates After Acquisition; §24.243, relating to Purchase of Voting Stock or Acquisition of a Controlling Interest in a Utility; §24.357, relating to Operation of a Utility by a Temporary Manager; and §24.363, Temporary Rates for Services Provided for a Nonfunctioning System. The commission adopts these rules with changes to the proposed text as published in the September 5, 2025 issue of the *Texas Register* (50 TexReg 5824). The rules will be republished.

The amended rules will implement the expedited Sale, Transfer, Merger (STM) proceeding detailed under Texas Water Code §13.301 as revised by Senate Bill (SB) 1965 from the 88th Regular Session and SB 740 from the 89th Regular Session of the Texas Legislature. The amended rules will also implement Texas Water Code §§13.002, 13.412, 13.4132 as revised by SB 740 and new Texas Water Code §13.3021 as enacted by SB 740.

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

Clarifying Revisions Applicable to §24.239 and §24.243

Proposed §24.239(o) and §24.243(i) - Approval for the transaction to proceed

Proposed §24.239(o) provides that the commission order allowing the transaction to proceed expires 180 days from the date the order is issued and that if the sale has not been completed within that 180-day time period, the approval to proceed with the transaction is void, unless the commission extends the time period in writing. Proposed §24.239(i) provides that the commission approval of a transaction to proceed expires 180 days after the date of the commission order approving the transaction as proposed. The provision further establishes that if the transaction has not been completed within the 180-day time period, and unless the purchasing utility has requested and received an extension for good cause from the commission, the commission approval of the transaction to proceed is void.

The commission revises both provisions for clarity and mirrors them in each section as follows: "Except as otherwise provided by this section, the commission order granting approval for the

transaction to proceed expires 180 days after the date the order is issued. If the transaction has not been completed within the 180-day period, the commission's approval to proceed with the transaction will expire by operation of law unless, prior to the expiration of the 180-day period, the commission in writing extends the period." The revisions ensure consistency with terminology (i.e., "expires") and provides additional flexibility for the 180-day period to be extended.

Proposed §§24.239(v), 24.239(v)(1)(A)(i) and 24.243(j), §24.243(j)(1)(A)(i) - Expedited acquisition of voting stock or controlling interest and eligibility

Proposed §24.239(v) and §24.243(j) respectively authorize an eligible applicant to apply for the expedited acquisition of the assets or voting stock or controlling interest of a utility and, if applicable, the certificated service area of that utility in accordance with the requirements of the applicable subsection. Proposed §24.239(v)(1)(A)(i) and §24.243(j)(1)(A)(i) authorize a person appointed by the commission or TCEQ as a temporary manager to be eligible for an expedited transaction.

The commission revises both proposed §24.239(v)(1)(A)(i) and §24.243(j)(1)(A)(i) to include a supervisor appointed by the commission or TCEQ to be eligible for an expedited transaction under §24.239(v) or §24.243(j). The revisions to Texas Water Code §13.301(l) and the addition of Texas Water Code §13.3021 explicitly authorize a supervisor appointed by the commission or TCEQ under Texas Water Code §13.4131. The commission also makes conforming revisions in other provisions in §24.239 and §24.243 and to the Instructions and Part C of the Expedited STM to reflect the statutory eligibility requirements.

Proposed §§24.239(v)(1)(C), 24.239(v)(1)(C)(ii), 24.243(j)(1)(C), 24.243(j)(1)(C)(ii) - Sufficiency of financial, managerial, and technical capability for areas currently certificated to or served by the applicant

Proposed §24.239(v)(1)(C) and §24.243(j)(1)(C) establish that, for purposes of determining eligibility for an expedited transaction, an applicant's appointment as a temporary manager or receiver of the utility is sufficient to demonstrate adequate financial managerial and technical capability. Proposed §24.239(v)(1)(C)(ii) and §24.243(j)(1)(C)(ii) provide that such financial, managerial, and technical capability is sufficiently established for any areas currently certificated to the applicant or, as applicable, any areas being served by the applicant.

The commission moves proposed §24.239(v)(1)(C) and §24.243(j)(1)(C) into §24.239(v)(2) and §24.243(j)(2) as new §24.239(v)(2)(B) and new §24.243(j)(2)(B), respectively. Given that proposed §24.239(v)(1)(C) and §24.243(j)(1)(C) effectively waive the commission's review of financial, managerial, and technical capability, the provisions are more appropriately situated in §24.239(v)(2) and §24.243(j)(2), which primarily relate to aspects of the standard STM process that are waived for expedited transactions. The commission also makes minor revisions to §24.239(v)(2)(B) and §24.243(j)(2)(B) to ensure the provision applies to supervisors in accordance with the requirements of SB 740 and SB 1965 and to ensure that the applicant's demonstration of adequate financial, managerial, and technical capability for providing continuous and adequate service applies to both sub-provisions (§24.239(v)(2)(B)(i) and (ii) and §24.243(j)(2)(B)(i) and (ii)).

The commission also revises proposed §24.239(v)(1)(C)(ii) and §24.243(j)(1)(C)(ii) (now under new §24.239(v)(2)(B)(ii) and §24.243(j)(2)(B)(ii)) to state: "any areas currently certificated to the applicant, or as applicable to municipally owned utilities or districts, any areas being served by the applicant within its jurisdictional boundaries." Texas Water Code §13.301(l)(3)A) only provided that an eligible acquiring utility's financial, managerial, and technical capability is established for the service area to be acquired and any areas currently certificated to the applicant." The additional language regarding areas being served by the applicant is non-statutory, however was intended to address eligible utilities (i.e., municipally owned utilities and districts) that may provide service without a certificate. Retaining the proposed language as-is could potentially authorize an eligible applicant to automatically acquire areas outside of its certificated area on the sole basis that the applicant is providing service to such areas. The revised provision avoids this result except in circumstances where a municipally owned utility or district is lawfully providing service within its jurisdiction.

Question for Comment

In the event that a STM proceeding involves a nonfunctioning utility with temporary rates - when should the reconciliation of temporary rates occur? At the time the commission gives the order approving the transaction to proceed, final commission approval, or when the temporary rates expire or are terminated by the commission? The commission has previously established the following holdings in [Docket] 50085 (See Commission Order, Item #58, [Docket] 50085), which involved the acquisition of a system with temporary rates and the acquiring entity requested the temporary rates to be continued:

a. Temporary rates may be reconciled in the STM proceeding itself to assist the commission in reviewing the reasonableness of the approved temporary rates and the utility's financial health, which are factors that inform the commission's determination on the appropriate duration of the temporary rates post-acquisition.

b. If the underlying improvements justifying the nonfunctioning system's temporary rates have not been completed at the time of the STM proceeding, the reconciliation may be bifurcated. Specifically, the reconciliation held in the STM proceeding will be an "interim" reconciliation and that a "final" reconciliation for any applicable improvements that remain uncompleted must be performed in the utility's next comprehensive base rate proceeding.

c. Reconciliations or interim reconciliations should be conducted prior to the "interim" commission order approving the transaction to proceed.

d. When a nonfunctioning utility has temporary rates in place, in addition to making a determination of the duration of temporary rates the final order must set a deadline for the utility to file its next comprehensive base rate proceeding.

OPUC recommended that reconciliation of temporary rates should occur at the time the commission issues the order allowing a sale, transfer, or merger (STM) application to proceed if the commission has all necessary information and documentation to conduct a prudence review of the requested rates. OPUC stated that timing reconciliation with the STM application to proceed "ensures immediate rate alignment, avoids delays, and prevents intergenerational inequity."

TAWC recommended that reconciliation of temporary rates should not be required until either the temporary rates expire, or the temporary rates are otherwise terminated by the commission. TAWC noted that an earlier reconciliation, particularly in an expedited STM process, does not allow for sufficient time

for actual costs to be incurred by the acquiring entity for the temporarily managed system and is therefore premature.

OPUC further stated that reconciliation should be bifurcated to the extent that any underlying improvements justifying the nonfunctioning system's temporary rates have not been completed at the time of the STM proceeding. OPUC maintained that all investments for which the commission has sufficient information to conduct a prudence review should be reviewed and reconciled in the STM proceeding, and any investments for which there is insufficient information should be reviewed and reconciled in the utility's next comprehensive base rate proceeding. OPUC stated this approach "best aligns with the Commission's broader decision-making framework" and avoids issues associated with potential delays. OPUC commented that reconciling temporary rates in an STM proceeding helps ensure that rates "are immediately aligned with the utility's new management, providing a fair and accurate picture of incomplete and subsequent investments not yet included in temporary rates, and ongoing operations and maintenance expenses." OPUC further commented that, upon reconciliation, ratepayers are "shielded from intergenerational inequity" as they are no longer obliged to pay for a temporary manager that is no longer serving the system. OPUC stated that the temporary manager, acquiring utilities, and ratepayers benefit from the certainty this framework provides by eliminating the necessity for any future refunds, surcharges, or true ups.

OPUC emphasized the need for preserving the ratepayer protections and safeguards under Chapter 13 of the Texas Water Code in expedited STM transactions, particularly those that involve temporary rates. Specifically, OPUC maintained that temporary rates authorized under Texas Water Code §13.046 provide a utility cost recovery mechanism without exposing residents to sudden or excessive charges. OPUC also noted that, under Texas Water Code §13.043, ratepayers have the right to appeal temporary or adjusted rates and ensure their concerns are "formally considered and adjudicated by the Commission." OPUC further indicated that, under Texas Water Code §13.4132, the commission may impose conditions on utilities under supervision to ensure both the financial integrity of the utility and prevent the misuse of customer resources. OPUC stated that, read together, such customer protections prioritize ratepayer interests, including safe and reliable service, while a utility is under temporary management. OPUC maintained that such principles should be upheld to ensure rates are just and reasonable for residential and small commercial customers.

Commission response

The commission declines to implement any change in response to OPUC or TAWC's responses to the question for comment. However, the commission generally agrees with TAWC that "reconciliation of temporary rates should not be required until either the temporary rates expire, or the temporary rates are otherwise terminated by the commission." Consistent with the commission order issued in Docket 50085, the commission should retain flexibility on the timing of reconciliation of temporary rates. However, an acquiring utility needs time to reconcile any temporary rates after they are expired or terminated, which may potentially not occur until the conclusion of an STM proceeding or afterward.

In response to OPUC, the commission agrees that reconciliation and prudence review of temporary rates may be appropriate when the commission order issuing a STM application to proceed is issued if "the commission has all necessary information and documentation to conduct a prudence review of the requested rates." However, the appropriate reconciliation and prudence review could, if necessary, occur later in the STM proceeding or in a separate proceeding. Temporary rate reconciliation may be bifurcated where necessary if the underlying improvements justifying the nonfunctioning system's temporary rates have not been completed at the time of the STM proceeding. In general, the most appropriate time to reconcile temporary rates is when the temporary rates expire or are otherwise terminated by the commission. OPUC's concerns about ratepayer protections and safeguards are addressed elsewhere in this adoption order.

Proposed §24.101. Appeal of Rate-making Decision, Pursuant to the Texas Water Code §13.043.

Proposed §24.101(f) - Appeal by retail public utility of decision of a provider of water or sewer service

Proposed §24.101(f) authorizes a retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, to appeal to the commission a decision of the water or sewer service provider if that decision affects the amount paid for water or sewer service. The provision further states that such an appeal must be initiated by filing a petition within 90 days after the appellant receives notice of the service provider' decision. The provision does not apply to a decision of a municipality regarding wholesale water or sewer service to another municipality.

OPUC recommended §24.101(f) be revised to include language stating that ratepayers subject to an appeal decision under the subsection "retain the right to challenge rates, charges, or other service decisions before the Commission in accordance with TWC § 13.043(b) - (c), including the right to file complaints or intervene in proceedings that affect their bills or quality of service." OPUC emphasized that clarifying "between wholesale transactions and retail service" is necessary to ensure municipal ratepayers retain their rights to challenge rate decisions and prevent any undue limitation of appeals that are otherwise available to residential and small commercial customers. OPUC provided redlines consistent with its recommendation.

Commission response

The commission declines to implement the recommended change because it is unnecessary. The statutory right of a ratepayer to appeal rate decisions is codified under §24.101(b) and (c). The revision to §24.101(f) is to implement SB 740, Section 3, which added Texas Water Code §13.043(f-1). As a whole, §24.101(f) effectuates Texas Water Code §13.043 and does not concern ratepayers. The provision only addresses appeals from certain utility-type entities and providers of water or sewer service.

Proposed §24.239. Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental.

Proposed §24.239(g)-(h) - Financial, managerial, and technical capability of acquiring utility to provide continuous and adequate service and financial assurance

Proposed §24.239(g) requires a retail public utility or person that files an STM application under §24.239 to demonstrate adequate financial, managerial, and technical capability to provide continuous and adequate service to the requested area and the transferee's certificated service area as required by §24.227, relating to Criteria for Granting or Amending a Certificate of Convenience and Necessity. Proposed §24.239(h) authorizes the commission to require a transferee that cannot demonstrate adequate financial, managerial, and technical capability to provide finan-

cial assurance to ensure continuous and adequate retail water or sewer utility service is provided to both the requested area and any area already being served under the transferee's existing CCN. The provision also requires such financial assurance to meet the requirements of §24.11, relating to Financial Assurance, and specifies that an obligation to obtain financial assurance does not relieve the applicant from any requirements to obtain financial assurance to satisfy another state agency's rules.

TAWC recommended that proposed §24.239(g) and (h) be revised to clarify that "financial assurance" under §24.11, relating to Financial Assurance, is not required for every STM or CCN application. TAWC suggested that the commission should instead authorize the demonstration of the purchasing utilities' financial capability through other evidence. TAWC stated that, for CCN applications, developer financial info should not be required if "the utility receiving new certificated area is ultimately responsible for ensuring that all improvements needed for service are installed pursuant to contract or otherwise."

Commission response

The commission declines to implement the recommended change because it is out of scope. The scope of this rulemaking is to implement the expedited STM process associated with SB 740, which does not address financial assurance. Revisions to §24.11 will be taken up by the commission in a later rulemaking. The commission makes minor clerical revisions to §24.239(g). The commission notes that §24.239(g) (along with §24.239(f), which includes revisions to address redundancy with recent changes §24.238, relating to Fair Market Valuation) was inadvertently omitted by the commission in a previous rulemaking and have been reinstated. (Cf. the proposal for publication in Project 54046 with the adoption order in Project 54046).

Proposed §24.239(j) and §24.239(j)(5) - Commission authority to hold hearing for STM transaction and public interest factors

Proposed §24.239(j) authorizes the commission to determine whether to require a public hearing to determine if the transaction will serve the public interest. The provision establishes that the commission will notify the transferee, the transferor, all intervenors, and OPUC whether a hearing will be held. Proposed §24.239(j)(1)-(5) establish factors that the commission may consider when determining whether a hearing should be held on the STM transaction, including public interest factors under §24.239(j)(5)(A)-(I).

OPUC recommended that proposed §24.239(j)(5) be revised to include rate affordability, service quality, and cost reductions as factors the commission will consider when determining whether to hold a hearing for an STM transaction.

Commission response

The commission declines to implement the recommended change because it is out of scope. SB 740 neither specifies nor requires the commission to review the public interest criteria for holding a hearing on an STM proceeding. The scope of this rulemaking is to implement the expedited STM process associated with SB 740.

Proposed §24.239(p) - Commission issuance of order if no hearing is required on STM transaction

Proposed §24.239(p) authorizes the commission to issue an order approving the transaction to proceed if the commission does not require a hearing and the transaction is completed as proposed.

TAWC recommended the reference to the "order approving the transaction to proceed" to be revised to indicate it is actually the final order approving the STM application transaction. TAWC noted the phrase "to proceed" is incorrect as the order approving the transaction to proceed would have occurred prior to the transaction being completed as proposed. TAWC further recommended that the STM process should be made more concise with a single order approving the transaction to proceed and to be completed for simplicity and to provide regulatory certainty. TAWC acknowledged, however, that such a change would necessitate further revisions to §24.239.

Commission response

The commission agrees with TAWC and implements the recommended change. Specifically, the commission replaces "an order approving the transaction to proceed" with "the final order approving the transaction."

Proposed §24.239(u) - Special requirements for certain transactions

Proposed §24.239(u) specifies that, for a transaction that involves a nonfunctioning system for which a temporary manager has been appointed under §24.357, relating to Temporary Manager Appointment, Powers, and Duties, the temporary manager's appointment and the monthly temporary manager's fee must be terminated upon final commission approval of the transaction.

The commission revises the provision to refer only to "the temporary manager's fee" as the commission is not limited to setting monthly fees for a temporary manager (i.e., a fee may be weekly, bi-weekly, bi-monthly, etc.).

Proposed §24.239(v) - Expedited acquisition of assets

OPUC recommended proposed §24.239(v) should be revised such that the expedited transaction process should include language that would "provide clarity for ratepayers on how they might otherwise review the impact on their bills associated with the application."

Commission response

The commission declines to implement the recommended change because it is out of scope. SB 740 explicitly waives notice for expedited STM transactions. The utility acquiring the system in an expedited transaction is already known to customers as they are already serving as the temporary manager, receiver, or supervisor of the system. Moreover, the utility will have to declare itself after the transaction is completed to inform customers of how to pay their bills and to whom to remit payment. The new bill will effectively serve as notice of the expedited transaction.

Proposed §24.240(c) and §24.240(c)(5) - Initial rates and public interest determination

Proposed §24.240(c) establishes the requirements for initial rates for an STM applicant that requests authorized acquisition rates. Proposed §24.240(c)(5) establishes that the commission will consider, in determining whether to approve a STM transaction under §24.239, whether approving the transferee's request to charge authorized acquisition rates would change whether the proposed transaction would serve the public interest under §24.239(h)(5).

OPUC commented that the revision to §24.240(c)(5) effectively redefines initial acquisition rates to mean "those in effect upon fi-

nal Commission approval" and clarifies the scope of public interest review when "authorized rates are requested." OPUC noted that the revisions risk the commission adopting "authorized acquisition rates that exceed current rates to such a degree as to create rate shock" which would raise customers' bills without the protections of a full base rate proceeding. OPUC commented that its proposed revisions help ensure ratepayers are aware of the potential for increased rates where there is no immediate improvement in service. OPUC provided redlines consistent with its recommendation.

Commission response

The commission disagrees with OPUC and declines to implement the recommended change because it is unnecessary. The revision to §24.240(c)(5) was a clarifying edit to omit a potentially confining cross-reference to the criteria under §24.239(j)(5) (previously §24.239(h)(5)). Specifically, the revision was to reflect the general potential for the commission to render a public interest determination in each circumstance where authorized acquisition rates are imposed, which could be in a standard STM of assets or an expedited STM of assets under §24.239, a standard STM or an expedited STM of stock or controlling interest under §24.243, etc. Moreover, the public interest factors for a commission determination on authorized acquisition rates under §24.240 may not always be the same as the criteria the commission considers under §24.239(j)(5) in determining whether to hold a public hearing in an STM asset acquisition proceeding. The revision provides latitude for the commission to consider other factors, not just those under §24.239. It is unclear how the revision "risk[s] the commission adopting 'authorized acquisition rates that exceed current rates to such a degree as to create rate shock'" or would otherwise prevent the commission from requiring authorized acquisition rates to be implemented in a manner to mitigate negative impacts such as rate shock.

Proposed §24.243. Purchase of Voting Stock or Acquisition of a Controlling Interest in a Utility.

New §24.243(k) - Notice of expedited proceedings for customers (OPUC Proposal)

OPUC mirrored its recommendation for heightened customer protections in expedited proceedings in §24.239. Specifically, OPUC recommended that new §24.243(k) be added which would, in the same manner as §24.239, require utilities to provide notice to customers of the impacts of the expedited transaction on their bills due to the expedited STM transaction involving the acquisition of stock or a controlling interest. OPUC provided redlines consistent with its recommendation.

Commission response

The commission declines to implement the recommended change because it is out of scope and for the reasons previously stated. SB 740 explicitly waives notice for expedited STM transactions.

Proposed §24.357. Operation of a Utility by a Temporary Manager.

Proposed §24.357(f) - Return of inventory

Proposed §24.357(f) requires a temporary manager to return to the commission an inventory of all property received within 60 days after appointment.

The commission replaces the term "property received" with "utility property" for clarity.

Proposed §24.357(g) - Temporary manager compensation

Proposed §24.357(g) establishes that compensation for a temporary manager will come from utility revenues and will be set by the commission at the time of appointment. The provision also states that changes to the temporary manager compensation agreement may be approved by the commission.

OPUC recommended proposed §24.357(g) be revised to require commission review of temporary manager proposed compensation agreements, which would be filed confidentially or otherwise designated as highly sensitive filings. OPUC stated that requiring public transparency of such agreements, or at the least confidential disclosure to the commission, is necessary to protect customers from excessive costs attributable to temporary management. Specifically, OPUC recommended that compensation agreements should be reviewed for prudence before recovery is sought in a subsequent rate proceeding. OPUC provided redlines consistent with its recommendation.

Commission response

The commission declines to implement the recommended change because it is out of scope. SB 740 does not reference the commission review of temporary manager compensation agreements. Moreover, temporary manager compensation is established by the commission in the final order appointing the temporary manager, as indicated by §24.357(g). A temporary manager must apply with the commission and file documentation to support an increase to their compensation. The commission will review the application and the supporting documentation and then issue an order ruling on the application. Moreover, when a temporary manager's fee is charged to a customer, it is not technically part of a customer's rate base, so it is not reviewed for prudence. In lieu of that, temporary managers must file monthly reports which are reviewed by staff through the issuance of memos. The commission notes that temporary managers frequently operate at a deficit. If a temporary manager's fee becomes excessive, commission staff can recommend a fee decrease to the presiding officer. The Texas Commission on Environmental Quality also consults with the commission when appointing a temporary manager and establishing the temporary manager fee to ensure a temporary manager's compensation is just and reasonable. The commission also replaces the sentence "[c]hanges in the compensation agreement may be approved by the commission" with "[t]he commission may adjust the compensation for the temporary manager as it deems necessary" for clarity and consistency. The initial sentence does not refer to a compensation agreement, only the compensation of the temporary manager.

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

Proposed §§24.363(e), 24.363(e)(1), 24.363(e)(2) - Regulatory asset

Proposed §24.363(e) provides that, in an expedited STM proceeding under §24.239 or §24.243, if a temporary rate is established during the term of a person's temporary management, receivership, or supervision of a utility, the person's used and useful invested capital and just and reasonable operations and maintenance costs that are incurred in excess of the costs covered by the temporary rate are considered to be a regulatory asset. The provision also states that the regulatory asset is eligible for recovery in the person's next comprehensive rate proceeding or system improvement charge application. Proposed §24.363(e)(1) establishes that, if a temporary rate is adopted

during the term of a person's temporary management, receivership, or supervision of a utility, then the person's used and useful invested capital and just and reasonable operations and maintenance costs that are incurred by the person during the person's appointment as temporary manager, receiver, or supervisor that are in excess of the costs covered by the temporary rate are considered to be a regulatory asset. Proposed §24.363(e)(2) states that the regulatory assets eligible for recovery in the person's next comprehensive rate proceeding or system improvement charge application

OPUC recommended that §24.363(e) be revised to require prudence review of any regulatory asset established under the provision for a temporary rate adopted during the term of a temporary manager, receiver, or supervisor, regardless of whether the regulatory asset is recovered in a System Improvement Charge (SIC) proceeding or a base rate case. OPUC expressed concern that it would only have 30 days from the date a SIC application is filed to comment on the application given the 75-day timeline imposed by SB 740, reduced from 180 days. OPUC stated this provides only a "limited opportunity for parties to review the types of assets, investments and cost of the investments included in the SIC application." OPUC stated that this limited review concern is heightened given the addition of §24.363(e) "which treats expenditures above the level covered by temporary rates as regulatory assets to be recovered in a future proceeding." OPUC noted that this authorizes recovery through either a SIC or a comprehensive rate proceeding but does not require such costs to be subject to prudence review before recovery. OPUC stated that not requiring prudence review prior to recovery risks imprudent investments or costly activities by temporary managers to be included in rates "without a meaningful prudence evaluation." OPUC noted that a reasonableness standard is already applied to temporary rates under §24.363(d) and therefore, the same principle should apply when similar costs are later considered to be regulatory assets. OPUC stated that its proposed change would protect ratepayers from bearing the costs associated with "a temporary manager's imprudent actions, while still permitting timely recovery for prudent investments." OPUC provided redlines consistent with its recommendation.

Commission response

The commission implements OPUC's recommended language regarding prudence review of the temporary rate-related regulatory asset with revisions. However, the commission declines to implement OPUC's recommended revisions to §24.363(e)(1) and (e)(2)(A). Specifically, the commission revises §24.363(e)(2) to establish that the regulatory asset for temporary rates will be subject to prudence review only in a base rate proceeding. SB 740 only requires the regulatory asset to be recoverable in either a SIC proceeding or a base rate proceeding but is silent as to the timing of the prudence review of that regulatory asset. Given SB 740's reduced timeline of 60 to 75 days in a SIC proceeding, prudence review of any regulatory asset is therefore impractical. Therefore, the only appropriate proceeding to review the prudence of the regulatory asset is the utility's next comprehensive base rate proceeding. Given the implemented change to §24.363(e)(2) regarding prudence review, OPUC's proposed revision to §24.363(e)(1) regarding the same is redundant and therefore unnecessary. Additionally, OPUC's proposed revision to §24.363(e)(2)(A), regarding the recovery of a regulatory asset in a SIC proceeding, is out of scope as revisions to §24.76 to reflect changes made by SB 740, Section 4, will be undertaken in Project 58391. The commission also revises §24.363(e)(1) to specify that "[i]f a temporary rate is adopted during the term of a person's temporary management, receivership, or supervision of a utility, then the person's used and useful invested capital and just and reasonable operations and maintenance costs that are incurred by the person during the person's appointment as temporary manager, receiver, or supervisor that are in excess of the costs covered by the temporary rate are considered t be a regulatory asset." This revision conforms the rule more closely to §13.301(l)(3)(B).

CCN Obtain or Amend Form (Section 22)

Section 22 of the CCN Obtain or Amend Form requires an investor-owned utility applicant that is seeking to obtain a CCN for the first time under the original rate jurisdiction of the commission to attach a proposed tariff to the application. Section 22 also requires the applicant to file a rate filing package with the commission within 18 months from the date service begins to revise the utility's tariff to adjust the rates to a historic test year and true up the new tariff rates to the historic test year. Section 22 requires the applicant to provide, in any future rate proceeding, written evidence and support for the original cost and installation date of all facilities used and useful for providing utility service.

TAWC recommended Section 22 of the proposed CCN Obtain or Amend form be revised to account for the new test year definition under Texas Water Code §13.1831. Specifically, TAWC noted that a test year is no longer restricted to a "historic" test year, given the new definition [established by House Bill 2712 (89R)].

Commission response

The commission declines to implement TAWC's recommended change. Section 22 of the CCN Obtain or Amend Form applies to new utilities which must use a historic test year. The commission's implementation of HB 2712 will be undertaken in a separate, future rulemaking.

Application for STM of a Retail Public Utility Form (Part F)

TAWC recommended that Part F of the STM form be revised to be optional if the STM application does not include a request to change the boundaries of the applicant's CCN.

Commission response

The commission revises Part F to indicate that applicants may skip Questions 25 through Question 29 if no uncertificated area, dual certification, or decertification is being requested (i.e., no CCN boundary changes are being requested). It is otherwise necessary for an applicant utility to provide information about neighboring utilities and capital improvement plans, if any, for the requested area or the uncertificated area.

SUBCHAPTER D. RATE-MAKING APPEALS

16 TAC §24.101

Texas Water Code §13.041(a), which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by the Texas Water Code that is necessary and convenient to the exercise of that power and jurisdiction; Texas Water Code §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; Texas Water Code §13.043(f-1) which exempts municipal decisions regarding wholesale water or sewer service provided to another municipality that involve the amount paid for water or sewer service from the commission's appellate jurisdiction; Texas Water Code §13.301, which establishes the requirements and proce-

dures for STM proceedings and expedited STM proceedings before the commission; Texas Water Code §13.3021, which establishes the requirements and procedures for expedited STM proceedings before the commission for certain retail public utilities; Texas Water Code §13.412(g), which establishes the list of entities that may be appointed by a court of competent jurisdiction as a receiver and authorizes a receiver to seek both the acquisition of the utility under supervision and the transfer of the utility's certificate of convenience and necessity (CCN); and Texas Water Code §13.4132(a) and (a-1), which establish the list of entities that may be appointed by the commission or TCEQ as a temporary manager and expands the definition of "person" to incorporate that list of entities for purposes of that section which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Texas Water Code §§ 13.041(a) and (b), 13.043(f-1), 13.301, 13.3021, 13.412(g); §13.4132(a) and (a-1).

§24.101. Appeal of Rate-making Decision, Pursuant to the Texas Water Code §13.043.

(a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission. This subsection does not apply to a municipally owned utility, but does include privately owned utilities operating within the corporate limits of a municipality. An appeal under this subsection may be initiated by filing with the commission a petition signed by a responsible official of the party to the rate proceeding or its authorized representative and by serving a copy of the petition on all parties to the original proceeding. The petition should be filed in accordance with Chapter 22 of this title (relating to Procedural Rules). The appeal must be initiated within 90 days after the date of notice of the final decision of the governing body, or within 30 days if the appeal relates to the rates of a Class A utility, by filing a petition for review with the commission and by serving a copy of the petition on all parties to the original rate proceeding.

(b) An appeal under Texas Water Code (TWC) §13.043(b) must be initiated within 90 days after the effective date of the rate change or, if appealing under TWC §13.043(b)(2) or (5), within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. An appeal is initiated by filing a petition for review with the commission and by sending a copy of the petition to the entity providing service and with the governing body whose decision is being appealed if it is not the entity providing service. The petition must be signed by the lesser of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal under subsection (c) of this section.

(c) Retail ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water utility, sewer utility, or drainage rates to the commission:

(1) a nonprofit water supply or sewer service corporation created and operating under TWC, Chapter 67;

(2) a utility under the jurisdiction of a municipality inside the corporate limits of the municipality;

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality, including a decision of a governing body that results in an increase in rates when the municipally owned utility takes over the provision of service to ratepayers previously served by another retail public utility;

(A) A municipally owned utility must:

(i) disclose to any person, on request, the number of ratepayer(s) who reside outside the corporate limits of the municipality; and

(ii) subject to subparagraph (B) of this paragraph, provide to any person, on request, a list of the names and addresses of the ratepayers who reside outside the corporate limits of the municipality.

(B) If a ratepayer has requested that a municipally owned utility keep the ratepayer's personal information confidential under Tex. Util. Code §182.052, the municipally owned utility may not disclose the address of the ratepayer under subparagraph (A)(ii) of this paragraph to any person. A municipally owned utility must inform ratepayers of their right to request that their personal information be kept confidential under Tex. Util. Code §182.052 in any notice provided under the requirement of TWC§13.043(i).

(C) In complying with this subsection, the municipally owned utility:

(i) may not charge a fee for disclosing the information under subparagraph (A)(i) of this paragraph;

(ii) will provide information requested under subparagraph (A)(i) of this paragraph by telephone or in writing as preferred by the person making the request; and

(iii) may charge a reasonable fee for providing information under subparagraph (A)(ii) of this paragraph.

(D) Paragraph (3) of this subsection does not apply to a municipally owned utility that takes over the provision of service to ratepayers previously served by another retail public utility if the municipally owned utility:

(i) takes over the service at the request of the ratepayer;

(ii) takes over the service in the manner provided by TWC Chapter 13, Subchapter H; or

(iii) is required to take over the service by state law, an order of the Texas Commission on Environmental Quality, or an order of the commission.

(4) a district or authority created under Article III, §52, or Article XVI, §59 of the Texas Constitution, that provides water or sewer service to household users;

(5) a utility owned by an affected county, if the ratepayers' rates are actually or may be adversely affected. For the purposes of this subchapter, ratepayers who reside outside the boundaries of the district or authority will be considered a separate class from ratepayers who reside inside those boundaries; and

(6) in an appeal under this subsection, the retail public utility must provide written notice of hearing to all affected customers in a form prescribed by the commission.

(d) In an appeal under TWC §13.043(b), 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 petition for review is considered properly signed if signed by a person, or the spouse of the person, in whose name utility service is carried.

(e) The commission will hear an appeal under this section de novo and fix in its final order the rates the governing body should have fixed in the action from which the appeal was taken. The commission may:

(1) in an appeal under TWC §13.043(a), include reasonable expenses incurred in the appeal proceedings;

(2) in an appeal under TWC §13.043(b), include reasonable expenses incurred by the retail public utility in the appeal proceedings;

(3) establish the effective date;

(4) order refunds or allow surcharges to recover lost revenues;

(5) consider only the information that was available to the governing body at the time the governing body made its decision and evidence of reasonable expenses incurred in the appeal proceedings; or

(6) establish interim rates to be in effect until a final decision is made.

(f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the commission, a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after notice of the decision is received from the provider of the service by filing a petition by the retail public utility. This subsection does not apply to a decision of a municipality regarding wholesale water or sewer service provided to another municipality.

(g) An applicant requesting service from an affected county or a water supply or sewer service corporation may appeal to the commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. An appeal under TWC §13.043(g) must be initiated within 90 days after written notice of the amount to be paid to obtain service is provided to the service applicant or member of the decision of an affected county or water supply or sewer service corporation affecting the amount to be paid to obtain service as requested in the applicant's initial request for that service.

(1) If the commission finds the amount charged to be clearly unreasonable, it will establish the fee to be paid and will establish conditions for the applicant to pay any amount(s) due to the affected county or water supply or sewer service corporation. Unless otherwise ordered, any portion of the charges paid by the applicant that exceed the amount(s) determined in the commission's order must be refunded to the applicant within 30 days of the date the commission issues the order, at an interest rate determined by the commission.

(2) In an appeal brought under this subsection, the commission will affirm the decision of the water supply or sewer service corporation if the amount paid by the applicant or demanded by the water supply or sewer service corporation is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant, in addition to the factors specified under subsection (i) of this section.

(3) A determination made by the commission on an appeal from an applicant for service from a water supply or sewer service corporation under this subsection is binding on all similarly situated applicants for service, and the commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.

(h) The commission may, on a motion by the commission staff or by the appellant under subsection (a), (b), or (f) of this section, establish interim rates to be in effect until a final decision is made.

(i) In an appeal under this section, the commission will ensure that every appealed rate is just and reasonable. Rates must not be unreasonably preferential, prejudicial, or discriminatory but must be sufficient, equitable, and consistent in application to each class of customers. The commission will use a methodology that preserves the financial integrity of the retail public utility. To the extent of a conflict between this subsection and TWC §49.2122, TWC §49.2122 prevails.

(j) A customer of a water supply corporation may appeal to the commission a water conservation penalty. The customer must initiate an appeal under TWC §67.011(b) within 90 days after the customer receives written notice of the water conservation penalty amount from the water supply corporation per its tariff. The commission will approve the water supply corporation's water conservation penalty if:

(1) the penalty is clearly stated in the tariff;

(2) the penalty is reasonable and does not exceed six times the minimum monthly bill in the water supply corporation's current tariff; and

(3) the water supply corporation has deposited the penalty in a separate account dedicated to enhancing water supply for the benefit of all of the water supply corporation's customers.

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 §§24.239, 24.240, 24.243

Texas Water Code §13.041(a), which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by the Texas Water Code that is necessary and convenient to the exercise of that power and jurisdiction; Texas Water Code §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; Texas Water Code §13.043(f-1) which exempts municipal decisions regarding wholesale water or sewer service provided to another municipality that involve the amount paid for water or sewer service from the commission's appellate jurisdiction; Texas Water Code §13.301, which establishes the requirements and procedures for STM proceedings and expedited STM proceedings before the commission; Texas Water Code §13.3021, which establishes the requirements and procedures for expedited STM proceedings before the commission for certain retail public utilities; Texas Water Code §13.412(g), which establishes the list of entities that may be appointed by a court of competent jurisdiction as a receiver and authorizes a receiver to seek both the acqui-

sition of the utility under supervision and the transfer of the utility's certificate of convenience and necessity (CCN); and Texas Water Code §13.4132(a) and (a-1), which establish the list of entities that may be appointed by the commission or TCEQ as a temporary manager and expands the definition of "person" to incorporate that list of entities for purposes of that section which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Texas Water Code §§ 13.041(a) and (b), 13.043(f-1), 13.301, 13.3021, 13.412(g); §13.4132(a) and (a-1).

§24.239. Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental.

(a) Application. A water supply or sewer service corporation or a water and sewer utility owned by an entity required to possess a certificate of convenience and necessity (CCN) must comply with this section. A municipality, district, or political subdivision may, but is not required to, comply with this section.

(b) Notice and filing requirements for commission approval of the transaction to proceed. No later than 120 days before the effective date of any sale, transfer, merger, consolidation, acquisition, lease, or rental, an applicant must file an application with the commission and give public notice of the transaction in accordance with this section. Notice is considered given under this subsection on the later of:

(1) the last date the applicant mailed the required notice as stated in the applicant's affidavit of notice; or

(2) the last date of the publication of the notice in the newspaper as stated in the affidavit of publication, if required.

(c) Transaction involving a municipal utility system. A transaction involving the sale of a municipal utility system to an entity to which this section applies must comply with this subsection. For purposes of this subsection, a municipal utility system means one or more retail water or sewer utility systems that comprise all or part of the facilities used by a municipally owned utility to provide retail water or sewer utility service. If the municipal utility system being acquired does not include all of the facilities used by the municipally owned utility to provide retail water or sewer utility service, the applicant must provide sufficient detail in its application to identify the specific retail water or utility systems and facilities being acquired.

(1) A water supply or sewer service corporation or a water and sewer utility required to possess a CCN may purchase a municipal utility system if:

(A) the sale has been authorized by a majority vote of the qualified voters of the municipality in an election held by the governing body of the municipality in the manner provided for bond elections in the municipality including, if applicable, Tex. Gov't Code Title 9, Subtitle C, Chapter 1251; or

(B) the Texas Commission on Environmental Quality (TCEQ) has issued a notice of violation to the municipality for one or more of the retail water or sewer systems that comprise the municipal utility system, and the governing body of the municipality finds by official action that the municipality is either financially or technically unable to restore the retail water or sewer system or systems to compliance with the rules or statutes cited in the notice of violation. For purposes of this section, any official written notification from the TCEQ, such as a notice of violation letter, a notice of enforcement letter, or a field citation, that a retail water or sewer system is out of compliance with a rule or statute within the TCEQ's jurisdiction will be considered a notice of violation.

(2) For a sale authorized under paragraph (1)(A) of this subsection, the applicant must include with its application documentation that the sale was authorized by a majority vote in compliance with the requirements of this section.

(3) For a sale authorized under paragraph (1)(B) of this subsection, the applicant must provide notice to the TCEQ of the transaction in writing. For a sale authorized under paragraph (1)(B) of this subsection, the applicant must also include the following information to the commission as a part of its application:

(A) a copy of the notice of violation issued by the TCEQ involving the municipal utility system;

(B) a copy of the written notice provided to the TCEQ as required by this paragraph; and

(C) documentation of the official action taken by the governing body of the municipality finding the municipality is financially or technically unable to restore the municipal utility system to compliance with the rules or statutes cited in the notice of violation.

(d) Intervention period. The intervention period for an application filed under this section must not be less than 30 days. The presiding officer may order a shorter intervention period for good cause shown.

(e) Notice.

(1) Unless notice is waived by the commission, proper notice must be given to affected customers and to other affected parties as required by the commission on the form prescribed by the commission. The notice must include the following:

(A) the name and business address of the utility currently holding the CCN (transferor) and the retail public utility or person that will acquire the facilities or CCN (transferee);

(B) a description of the requested area;

(C) the following statement: "Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas at 1-800-735-2989. The deadline for intervention in the proceeding is (date 30 days from the mailing or publication of notice, whichever occurs later, unless otherwise provided by the presiding officer). If you wish to intervene, the commission must receive your letter requesting intervention or motion to intervene by that date; and

(D) if the transferor is a nonfunctioning utility with a temporary rate in effect and the transferee is requesting that the temporary rate remain in effect under TWC §13.046(d), the following information:

(i) the temporary rates currently in effect for the nonfunctioning utility; and

(ii) the duration of time for which the transferee is requesting that the temporary rates remain in effect.

(E) if the transferor is a municipality, the notice must also provide the following information as an attachment, as applicable:

(i) If subsection (c)(1)(A) of this section applies, a statement describing the details of the authorizing election, including the date and outcome of the election and the text of the applicable ballot provision.

(ii) If subsection (c)(1)(B) of this section applies, a statement:

(I) indicating that the TCEQ has issued a notice of violation for one or more systems within the municipal utility system and that the governing board of the municipality has found that it is either financially or technically unable to restore the system to compliance with the applicable rules or statutes;

(II) providing a basic description of the violations cited in the notice of violation, including the systems involved, the nature of the violations, and the rules or statutes cited in the notice of violation; and

(III) describing the details of the official action of the governing board including the date and forum in which the official action was taken and how to locate a transcript or recording of the official action, if available.

(2) The transferee must mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within two miles from the outer boundary of the requested area, and any city with an extraterritorial jurisdiction that overlaps the requested area.

(3) The commission may require the transferee to publish notice once each week for two consecutive weeks in a newspaper of general circulation in each county in which the retail public utility being transferred is located. The commission may allow published notice in lieu of individual notice as required by paragraph (2) of this subsection.

(4) The commission may waive published notice if the requested area does not include unserved area, or for good cause shown.

(f) Fair market valuation. An application filed under this section for approval of a transaction that includes a fair market valuation of the transferee or the transferee's facilities must follow the process established in §24.238 of this title (relating to Fair Market Valuation).

(g) A retail public utility or person that files an application under this section to purchase, transfer, merge, acquire, lease, rent, or consolidate a utility or system must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any area already being lawfully served by the transferee, including the area in the transferee's certificated service area, as required by §24.227(a) of this chapter (relating to Criteria for Granting or Amending a Certificate of Convenience and Necessity).

(h) If the transferee cannot demonstrate adequate financial capability, the commission may require that the transferee provide financial assurance to ensure continuous and adequate retail water or sewer utility service is provided to both the requested area and any area already being served under the transferee's existing CCN. The commission will set the amount of financial assurance. The form of the financial assurance must meet the requirements of §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this title does not relieve an applicant from any requirements to obtain financial assurance to satisfy another state agency's rules.

(i) The commission will, with or without a public hearing, investigate the sale, transfer, merger, consolidation, acquisition, lease, or rental to determine whether the transaction will serve the public interest. If the commission decides to hold a hearing, or if the transferee fails either to file the application as required or, except for an expedited application under subsection (u) of this section, to provide public notice, the transaction proposed in the application may not be completed unless the commission determines that the proposed transaction serves the public interest.

(j) Before the expiration of the 120-day period described in subsection (b) of this section, the commission will determine whether to require a public hearing to determine if the transaction will serve the public interest. The commission will notify the transferee, the transferor, all intervenors, and the Office of Public Utility Counsel whether a hearing will be held. The commission may consider the following factors when determining whether a hearing is required:

(1) the application filed with the commission or the public notice was improper;

(2) the transferee has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any area already being served under the transferee's existing CCN;

(3) the transferee has a history of:

(A) noncompliance with the requirements of the TCEQ, the commission, or the Texas Department of State Health Services; or

(B) continuing mismanagement or misuse of revenues as a utility service provider;

(4) the transferee cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the requested area; or

(5) there are concerns that the transaction does not serve the public interest based on consideration of the following factors:

(A) the adequacy of service currently provided to the requested area;

(B) the need for additional service in the requested area;

(C) the effect of approving the transaction on the transferee, the transferor, and any retail public utility of the same kind already serving the area within two miles of the boundary of the requested area;

(D) the ability of the transferee to provide adequate service;

(E) the feasibility of obtaining service from an adjacent retail public utility;

(F) the financial stability of the transferee, including, if applicable, the adequacy of the debt-equity ratio of the transferee if the transaction is approved;

(G) environmental integrity;

(H) the probable improvement of service or lowering of cost to consumers in the requested area resulting from approving the transaction; and

(I) whether the transferor or the transferee has failed to comply with any commission or TCEQ order. The commission may refuse to approve a sale, transfer, merger, consolidation, acquisition, lease, or rental if conditions of a judicial decree, compliance agreement, or other enforcement order have not been substantially met.

(k) If the commission does not require a public hearing, the sale, transfer, merger, consolidation, acquisition, lease, or rental may be completed as proposed:

(1) at the end of the 120-day period described in subsection (a) of this section; or

(2) at any time after the transferee receives notice from the commission that a hearing will not be required.

(l) Within 30 days of the commission order that approves the sale, transfer, merger, consolidation, acquisition, lease, or rental to proceed as proposed, the transferee must provide a written update on the status of the transaction, and every 30 days thereafter, until the transaction is complete. The transferee must inform the commission of any material changes in its financial, managerial, and technical capability to provide continuous and adequate service to the requested area and the transferee's service area.

(m) If there are outstanding customer deposits, within 30 days of the actual effective date of the transaction, the transferor and the transferee must file with the commission, the following information supported by a notarized affidavit:

(1) the names and addresses of all customers who have a deposit on record with the transferor;

(2) the date such deposit was made;

(3) the amount of the deposit; and

(4) the unpaid interest on the deposit. All such deposits must be refunded to the customer or transferred to the transferee, along with all accrued interest.

(n) Within 30 days after the actual effective date of the transaction, the transferee and the transferor must file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has closed as proposed. The signed contract, bill of sale, or other documents, must be signed by both the transferor and the transferee. If there were outstanding customer deposits, the transferor and the transferee must also file documentation that customer deposits have been transferred or refunded to the customers with interest as required by this section.

(o) Except as otherwise provided by this section, the commission order granting approval for the transaction to proceed expires 180 days after the date the order is issued. If the transaction has not been completed within the 180-day period, the commission's approval to proceed with the transaction will expire by operation of law unless, prior to the expiration of the 180-day period, the commission in writing extends the period.

(p) If the commission does not require a hearing, and the transaction is completed as proposed, the commission may issue the final order approving the transaction.

(q) A sale, transfer, merger, consolidation, acquisition, lease, or rental of any water or sewer system or retail public utility required by law to possess a CCN, or transfer of customers or service area, owned by an entity required by law to possess a CCN that is not completed in accordance with the provisions of TWC §13.301 is void.

(r) The requirements of TWC §13.301 do not apply to:

(1) the purchase of replacement property;

(2) a transaction under TWC §13.255; or

(3) foreclosure on the physical assets of a utility.

(s) This subsection applies if a utility's facility or system is sold and the utility's facility or system was partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues required for normal operating expenses and return. This subsection does not apply to a utility facility or system sold as part of a transaction where the transferor and transferee elected to use the fair market valuation process set forth in §24.238 of this title (relating to Fair Market Valuation).

(1) The utility may not sell or transfer any of its assets, its CCN, or a controlling interest in an incorporated utility, unless the utility provides a written disclosure relating to the contributions to both the transferee and the commission before the date of the sale or transfer.

(2) The disclosure must contain, at a minimum, the total dollar amount of the contributions and a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate-making proceedings.

(t) For any transaction subject to this section, the retail public utility that proposes to sell, transfer, merge, acquire, lease, rent, or consolidate its facilities, customers, service area, or controlling interest must provide the other party to the transaction a copy of this section before signing an agreement to sell, transfer, merge, acquire, lease, rent, or consolidate its facilities, customers, service area, or controlling interest.

(u) Special requirements for certain transactions. For a transaction under this section that involves a nonfunctioning system to which a temporary manager has been appointed under §24.357 of this title (relating to Temporary Manager Appointment, Powers, and Duties), upon final commission approval of the transaction, the temporary manager's appointment and temporary manager's fee must be terminated.

(v) Expedited acquisition of assets. An eligible applicant may apply for the expedited acquisition of the assets and, if applicable, the certificated service area of a utility in accordance with this subsection.

(1) Eligibility. To be eligible for expedited acquisition under this subsection, an applicant must meet the criteria in subparagraphs (A) and (B) of this paragraph.

(A) Prior to filing an application for expedited acquisition, an applicant must, for the utility being acquired, be either:

(i) a person appointed by the commission or TCEQ as a temporary manager or supervisor; or

(ii) appointed as a receiver at the request of the commission or TCEQ.

(B) In addition to meeting one of the criteria under subparagraph (A) of this paragraph, an applicant must also be either:

(i) a Class A utility;

(ii) a Class B utility;

(iii) a municipally owned utility;

(iv) a county;

(v) a water supply or sewer service corporation;

(vi) a public utility agency; or

(vii) a district or river authority.

(2) Application.

(A) An application filed by an eligible applicant under paragraph (1) of this subsection must comply with the requirements of this section, except that the following are waived:

(i) any public notice requirements required by this chapter, regardless of whether the person elects to charge initial rates in accordance with §24.240 of this title or use a voluntary valuation determined under §24.238 of this title; and

(ii) as applicable, any requirements of this chapter that do not apply to an entity over which the utility commission does not have original rate jurisdiction.

(B) An applicant's appointment as a temporary manager, supervisor, or receiver of the utility subject to the application is sufficient to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to:

(i) the service area to be acquired; and

(ii) any areas currently certificated to the applicant or, as applicable to municipally owned utilities or districts, any areas being served by the applicant within jurisdictional boundaries.

(3) Commission approval and effects of approval.

(A) The commission will approve an application under this subsection if the commission considers the transaction to be in the public interest in accordance with the processes specified under Texas Water Code §13.246 and §13.301, and subsections (i) and (j) of this section. In determining whether the transaction is in the public interest, the commission may also consider whether the applicant is currently in compliance with commission rules, orders, and other applicable laws.

(B) The commission will approve an application under this subsection without the signature of the owner of the utility being acquired that is required by other law if the utility owner has abandoned operation of the facilities that are the subject of the transaction and cannot be located, or does not respond to an application filed under this subsection.

(C) Unless otherwise specified by §24.363 of this title (relating to Temporary Rates for Services Provided for a Nonfunctioning System), the applicant acquiring the utility may seek recovery of all used and useful invested capital and just and reasonable operations and maintenance costs incurred during the applicant's appointment term as a regulatory asset in the applicant's next comprehensive rate proceeding under §24.41 of this title (relating to Cost of Service) or system improvement charge application under §24.76 of this title (relating to System Improvement Charge).

§24.240. Water and Sewer Utility Rates After Acquisition.

(a) Applicability. This section applies to a person who files an application with the commission under Texas Water Code (TWC) §13.301(a) and a request for authorized acquisition rates under TWC §13.3011. For purposes of this section, the term "transaction" is used to align with its usage in the procedural provisions of §24.239 of this title (relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental).

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

(1) Authorized acquisition rates--Initial rates that are in force and shown in a tariff filed with a regulatory authority for the transferee for another water or sewer system owned by the transferee on the date an application is filed for the acquisition of a water or sewer system under §24.239 of this title.

(2) Existing rates--Rates a transferor charged its customers under a tariff filed with a regulatory authority prior to the water system or sewer system being acquired.

(3) Initial rates--Rates charged by a transferee to the customers of an acquired water or sewer system upon final commission approval of the transaction. An initial rate may be an existing rate, an authorized acquisition rate, or a rate authorized by other applicable law.

(c) Initial Rates.

(1) A transferee must use existing rates as initial rates unless the commission authorizes, under this section or other applicable law, the use of different initial rates.

(2) A transferee may request commission approval to charge authorized acquisition rates to the customers of the water or sewer system for which the transferee seeks approval to acquire as part of an application filed in accordance with §24.239 of this title.

(3) If the transferee has in-force tariffs filed with multiple regulatory authorities, there is a rebuttable presumption that authorized acquisition rates should be based upon an in-force tariff that was approved by the same regulatory authority that has original jurisdiction over the rates charged to the acquired customers.

(4) Phased-in rates. If the in-force tariff contains rates that are phased in over time, the provisions of this paragraph apply.

(A) Unless determined otherwise by the commission, the schedule in the tariff for the effective period of each phase will be applied to the customers of the acquired water or sewer system. To moderate the effects of a rate increase on customers, the commission may approve authorized acquisition rates that start customers of the acquired water or sewer system on an earlier phase than is in place for the customers to which the tariff already applies or establish a different schedule for the effective period of each phase.

(B) The transferee's application must include financial projections, rate schedules, and billing comparisons, consistent with the requirements of subsection (d) of this section, for each phase in the in-force tariff.

(C) The commission's review of whether the authorized acquisition rates are just and reasonable under subsection (f) of this section will include an evaluation of whether the final phase of the requested rates are just and reasonable.

(5) Public interest determination. If a transaction includes a request by the transferee to charge authorized acquisition rates, the commission will consider whether approving such rates would serve the public interest.

(d) Application. In addition to other applicable requirements, a request for authorized acquisition rates in a §24.239 proceeding must include the following:

(1) a rate schedule showing the existing rates and the requested authorized acquisition rates;

(2) financial projections including a comparison of expected revenues under the acquired water or sewer system's existing rates and the requested authorized acquisition rates;

(3) a billing comparison for usage of 5,000 and 10,000 gallons at existing rates and the requested authorized acquisition rates;

(4) documentation from the most recent base rate case in which the rates that the transferee is requesting to use as authorized acquisition rates were approved; this documentation must be sufficient to allow the commission to evaluate what was included in the revenue requirement for the requested rates and, if available online, may consist solely of a web address where the documentation can be located and the applicable docket number or any other information required to locate the documentation;

(5) a disclosure of whether the transferor and transferee are or have been affiliates in the five-year period before the proposed acquisition, and the nature of each applicable affiliate relationship;

(6) additional explanation, including any applicable documentation, supporting the request to charge authorized acquisition rates, including:

(A) that the requested authorized acquisition rates would be just and reasonable rates for the customers of the acquired system and for the transferee;

(B) how approving the requested rates would change how the commission should evaluate whether the proposed transaction would serve the public interest;

(C) if the transferee has multiple eligible in-force tariffs or rate schedules, a list of eligible tariffs or rate schedules and an explanation for the tariff or rate schedules the transferee proposes to use for authorized acquisition rates;

(D) if the transferor and transferee are affiliates or have been affiliates in the five-year period before the proposed acquisition, the application must also include an explanation for why the transferee is requesting to charge authorized acquisition rates instead of using other available ratemaking proceedings.

(e) Notice requirements. Unless the commission waives notice in accordance with other applicable law, a transferee requesting approval to charge authorized acquisition rates under this section must, as part of the notice provided under §24.239 of this title, also provide notice of the information outlined in this subsection. Commission staff must incorporate this information into the notice provided to the transferee for distribution after the application is determined to be administratively complete.

(1) How intervention differs from protesting a rate increase.

(2) A rate schedule showing the existing rates and the authorized acquisition rates.

(3) A billing comparison for usage of 5,000 and 10,000 gallons at existing rates and authorized acquisition rates.

(f) Commission review. The commission will, with or without a public hearing, investigate the request for authorized acquisition rates to determine whether the requested rates are just and reasonable for the acquired customers and the transferee. That a regulatory authority has determined that the requested rates are just and reasonable for a water or sewer system to which the rates already apply is not, in itself, sufficient to conclude that the requested rates are just and reasonable for the acquired water or sewer system.

(1) Public hearing. As part of its determination on whether to require a public hearing on the proposed transaction under §24.239 of this title, the commission will also consider whether a hearing is required to determine if the requested authorized acquisition rates are just and reasonable.

(A) If the commission requires a public hearing under this section or §24.239 of this title, the request to charge authorized acquisition rates will not be approved unless the commission determines that the requested rates are just and reasonable.

(B) If the commission does not require a public hearing under this section or §24.239 of this title, and the transferee has complied with the notice provisions of this section, the request to charge authorized acquisition rates will be approved in the commission's order approving the transaction. This subparagraph does not apply if the commission does not approve the transaction.

(2) Scope of rate review. The commission will determine whether the requested rates are just and reasonable based on the relevant facts and circumstances, subject to the limitations of subparagraph (A) of this paragraph.

(A) The transferee is not required to support its request for authorized acquisition rates by initiating a rate proceeding, establishing the cost of service for the acquired water or sewer system, or establishing substantial similarity between the acquired water or sewer system and the water or sewer system to which the requested rates already apply. The transferee is also not required to defend the reasonableness of the requested rates, or any individual component of those rates, with respect to any water or sewer system to which the rates already apply.

(B) The commission may consider whether any charges or significant components of the requested authorized acquisition rates (e.g., local or system-specific charges, pass throughs, etc.) would be unjust or unreasonable if applied to the acquired water or sewer system. The commission may also consider evidence of whether the customers of the acquired water or sewer system are currently receiving continuous and adequate service. The commission may also consider evidence of whether the requested rates are generally consistent with the rates charged to similar water or sewer systems. The commission's review is not limited to the factors enumerated in this subparagraph.

§24.243. Purchase of Voting Stock or Acquisition of a Controlling Interest in a Utility.

(a) A utility may not purchase voting stock, and a person may not acquire a controlling interest, in a utility doing business in this state unless the utility or person files a written application with the commission no later than the 61st day before the date on which the transaction is to occur. A controlling interest is defined as:

(1) a person or a combination of a person and the person's family members that possess at least 50% of a utility's voting stock; or

(2) a person that controls at least 30% of a utility's voting stock and is the largest stockholder.

(b) A person acquiring a controlling interest in a utility is required to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and to the person's certificated service area, if any.

(c) If the person acquiring a controlling interest cannot demonstrate adequate financial capability, the commission may require the person to provide financial assurance to ensure continuous and adequate utility service is provided to the service area. The commission will set the amount of financial assurance. The form of the financial assurance must 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.

(d) The commission may require a public hearing on the transaction if a criterion prescribed by §24.239 of this title relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental applies.

(e) Unless the commission requires that a public hearing be held, the purchase or acquisition may be completed as proposed:

(1) at the end of the 60-day period; or

(2) at any time after the commission notifies the person or utility that a hearing will not be required.

(f) If a hearing is required or if the person or utility fails to make the application to the commission as required, the purchase of

voting stock or acquisition of a controlling interest may not be completed unless the commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.

(g) The utility or person must notify the commission within 30 days after the date that the transaction is completed.

(h) Within 30 days of the commission order that allows a utility's purchase of voting stock or a person's acquisition of a controlling interest to proceed as proposed, the utility purchasing voting stock or the person acquiring a controlling interest must file a written update on the status of the transaction. A written update must also be filed every 30 days thereafter, until the transaction has been completed.

(i) Except as otherwise provided by this section, the commission order granting approval for the transaction to proceed expires 180 days after the date the order is issued. If the transaction has not been completed within the 180-day period, the commission's approval to proceed with the transaction will expire by operation of law unless, prior to the expiration of the 180-day period, the commission in writing extends the period.

(j) Expedited acquisition of voting stock or controlling interest. An eligible applicant may apply for the expedited acquisition of the voting stock or controlling interest and, if applicable, the certificated service area of a utility in accordance with this subsection.

(1) Eligibility. To be eligible for expedited acquisition under this subsection, an applicant must meet the criteria in subparagraphs (A) and (B) of this paragraph.

(A) Prior to filing an application for expedited acquisition, an applicant must, for the utility being acquired, be either:

(i) a person appointed by the commission or TCEQ as a temporary manager or supervisor; or

(ii) appointed as a receiver at the request of the commission or TCEQ.

(B) In addition to meeting one of the criteria under subparagraph (A) of this paragraph, an applicant must also be either:

(i) a Class A utility;

(ii) a Class B utility;

(iii) a municipally owned utility;

(iv) a county;

(v) a water supply or sewer service corporation;

(vi) a public utility agency; or

(vii) a district or river authority.

(2) Application.

(A) An application filed by an eligible applicant under paragraph (1) of this subsection must comply with the requirements of this section, except that the following are waived:

(i) any public notice requirements required by this chapter, regardless of whether the person elects to charge initial rates in accordance with §24.240 of this title (relating to Water and Sewer Utility Rates After Acquisition) or use a voluntary valuation determined under §24.238 of this title (relating to Fair Market Valuation); and

(ii) as applicable, any requirements of this chapter that do not apply to an entity over which the commission does not have original rate jurisdiction.

(B) An applicant's appointment as a temporary manager, supervisor, or receiver of the utility subject to the application is sufficient to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to:

(i) the service area to be acquired; and

(ii) any areas currently certificated to the applicant or, as applicable to municipally owned utilities or districts, any areas being served by the applicant.

(3) Commission approval and effects of approval.

(A) The commission will approve an application under this subsection if the commission considers the transaction to be in the public interest in accordance with the processes specified under Texas Water Code §13.246 and §13.301. In determining whether the transaction is in the public interest, the commission may also consider whether the applicant is currently in compliance with commission rules, orders, and other applicable law.

(B) The commission will approve an application under this subsection without the signature of the owner of the utility being acquired that is required by other law if the utility owner has abandoned operation of the facilities that are the subject of the transaction and cannot be located, or does not respond to an application filed under this subsection.

(C) Unless otherwise specified by §24.363 of this title (relating to Temporary Rates for Services Provided for a Nonfunctioning System), the applicant acquiring the utility may seek recovery of all used and useful invested capital and just and reasonable operations and maintenance costs incurred during the applicant's appointment term as a regulatory asset in the applicant's next comprehensive rate proceeding under §24.41 of this title (relating to Cost of Service) or system improvement charge application under §24.76 of this title (relating to System Improvement Charge).

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 §24.357, §24.363

Texas Water Code §13.041(a), which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by the Texas Water Code that is necessary and convenient to the exercise of that power and jurisdiction; Texas Water Code §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; Texas Water

Code §13.043(f-1) which exempts municipal decisions regarding wholesale water or sewer service provided to another municipality that involve the amount paid for water or sewer service from the commission's appellate jurisdiction; Texas Water Code §13.301, which establishes the requirements and procedures for STM proceedings and expedited STM proceedings before the commission; Texas Water Code §13.3021, which establishes the requirements and procedures for expedited STM proceedings before the commission for certain retail public utilities; Texas Water Code §13.412(g), which establishes the list of entities that may be appointed by a court of competent jurisdiction as a receiver and authorizes a receiver to seek both the acquisition of the utility under supervision and the transfer of the utility's certificate of convenience and necessity (CCN); and Texas Water Code §13.4132(a) and (a-1), which establish the list of entities that may be appointed by the commission or TCEQ as a temporary manager and expands the definition of "person" to incorporate that list of entities for purposes of that section which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Texas Water Code §§ 13.041(a) and (b), 13.043(f-1), 13.301, 13.3021, 13.412(g); §13.4132(a) and (a-1).

§24.357. Operation of a Utility by a Temporary Manager.

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

(1) Person--a natural person, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, a water supply or sewer service corporation, a corporation, a municipally owned utility, a county, a public utility agency, or a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(2) Temporary manager--a willing person appointed by the commission or the Texas Commission on Environmental Quality to temporarily manage and operate a utility.

(b) The commission may appoint a willing person to temporarily manage and operate a utility that has discontinued or abandoned operations or the provision of service, or which has been or is being referred to the attorney general for the appointment of a receiver under TWC §13.412.

(c) A person appointed under this section has the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate service to customers, including the power and duty to:

(1) read meters;

(2) bill for utility services;

(3) collect revenues;

(4) disburse funds;

(5) request rate increases if needed;

(6) access all system components;

(7) conduct required sampling;

(8) make necessary repairs; and

(9) perform other acts necessary to assure continuous and adequate utility service as authorized by the commission.

(d) Upon appointment by the commission, the temporary manager will post financial assurance with the commission in an amount and type acceptable to the commission. The temporary manager or the executive director may request waiver of the financial assurance requirements or may request substitution of some other form of collateral as a means of ensuring the continued performance of the temporary manager.

(e) The temporary manager must serve a term of 180 days, unless:

(1) specified otherwise by the commission;

(2) an extension is requested by the commission staff or the temporary manager and granted by the commission;

(3) the temporary manager is discharged from his responsibilities by the commission; or,

(4) a superseding action is taken by an appropriate court on the appointment of a receiver at the request of the attorney general.

(f) Within 60 days after appointment, a temporary manager must return to the commission an inventory of all utility property.

(g) Compensation for the temporary manager will come from utility revenues and will be set by the commission at the time of appointment. The commission may adjust the compensation for the temporary manager as it deems necessary.

(h) The temporary manager must collect the assets and carry on the business of the utility and shall use the revenues and assets of the utility in the best interests of the customers to ensure that continuous and adequate utility service is provided. The temporary manager must give priority to expenses incurred in normal utility operations and for repairs and improvements made since being appointed temporary manager.

(i) The temporary manager shall report to the commission on a monthly basis. This report shall include:

(1) an income statement for the reporting period;

(2) a summary of utility activities such as improvements or major repairs made, number of connections added, and amount of water produced or treated; and

(3) any other information required by the commission.

(j) During the period in which the utility is managed by the temporary manager, the certificate of convenience and necessity shall remain in the name of the utility owner; however, the temporary manager assumes the obligations for operating within all legal requirements.

§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.

(e) Regulatory asset. This section applies only to an expedited sale, transfer, or merger application under §24.239 of this title (relating to Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental) or §24.243 of this title (relating to Purchase of Voting Stock or Acquisition of a Controlling Interest in a Utility).

(1) If a temporary rate is adopted during the term of a person's temporary management, receivership, or supervision of a utility, then the person's used and useful invested capital and just and reasonable operations and maintenance costs that are incurred by the person during the person's appointment as temporary manager, receiver, or supervisor that are in excess of the costs covered by the temporary rate are considered to be a regulatory asset.

(2) This regulatory asset is eligible for recovery in the person's next comprehensive rate proceeding or system improvement charge application and will be reviewed for prudence in the utility's next comprehensive base rate proceeding.

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 amended 16 Texas Administrative Code (TAC) §25.5, relating to Definitions, §25.181, relating to Energy Efficiency Goal, and §25.182, relating to Energy Efficiency Cost Recovery Factor. The commission adopts these rules with changes to the proposed text as published in the September 5, 2025 issue of the *Texas Register* (50 TexReg 5833). Adopted amendments to §25.181 change ERCOT's calculations of the avoided cost of energy and the deadline by which ERCOT files these calculations with the commission. The amendments also clarify the distinction between a targeted low-income program and a program for hard-to-reach customers. Adopted amendments to §25.182 reduce the maximum utility incentive a utility can receive. Other amendments to these rules include changes to definitions in both §25.5 and §25.181 and minor and conforming changes. The rules will be republished.

The commission received comments on the proposed rule from AEP Texas Inc. (AEP Texas), the American Council for an Energy-Efficient Economy (ACEEE), CenterPoint Energy Houston Electric, LLC (CenterPoint), the City of Houston (Houston), El Paso Electric Company, Entergy Texas, Inc., Southwestern Electric Power Company, and Southwestern Public Service Company (collectively, Joint Utilities), the Lone Star Chapter of the Sierra Club (Sierra Club), the Office of Public Utility Counsel (OPUC), Oncor Electric Delivery Company, LLC (Oncor), the South-Central Partnership for Energy Efficiency as a Resource (SPEER), the Steering Committee of Cities Served by Oncor (OCSC), Texas-New Mexico Power Company (TNMP), and Vistra Corporate Service Company, LLC (Vistra).

General Comments

Sierra Club filed general comments urging the commission to undertake a more comprehensive rulemaking. Several hundred Sierra Club members signed this petition. In addition, approximately 250 Sierra Club members submitted individual comments in connection with this petition. The individual commenters raised concerns about energy costs, climate change, and electric utilities in general, and supported use of renewable sources of electricity and protect the environment.

Commission Response

Comments requesting that the commission undertake a comprehensive rulemaking are beyond the scope of the current rulemaking. The current rulemaking's scope is limited to consideration of the proposed rule amendments, additional modifications to the rules that are reasonably related to the proposed changes, and other minor and nonsubstantive amendments. However, the commission will begin a comprehensive rulemaking process after these amendments are adopted.

In addition, comments concerning energy costs, climate change, electric utilities in general, renewable sources of electricity, and environmental protection are beyond the scope of the rules included in this rulemaking.

Changes in commission's approach to low-income and hard-to-reach customers

Proposed §§25.181(c)(17) and 25.181(e)(3)(F)- Definition of "hard-to-reach" and demand reduction requirement for hard-to-reach customers

Proposed §25.181(c)(17) defines "hard-to-reach" as a customer that either has a primary residence in an area with fewer than 2,000 housing units or a total population of 5,000 or less; or has a primary residence or owns a small business in an area where the utility is unable to effectively administer an energy efficiency program due to energy efficiency market barriers. Proposed §25.181(e)(3)(F) requires a utility to achieve at least five percent of its demand reduction goal through savings achieved through programs for hard-to-reach customers; in addition, a utility that operates in an area in which customer choice is not offered may achieve this requirement through a program designed for low-income customers.

OPUC, Sierra Club, SPEER, ACEEE, and OCSC supported the proposed definition, and AEP Texas, CenterPoint, Oncor, TNMP, and Joint Utilities commented that low-income customers should continue to be included in the definition of "hard-to-reach." Specifically, the utilities commented that they have based their hard-to-reach programs on serving low-income customers since the inception of the hard-to-reach concept in the commission's energy efficiency rule, and that a policy shift such as the one in the proposed rule will have a drastic negative effect on their ability to achieve their hard-to-reach goals.

AEP Texas suggested that the commission clarify the term "area" because this term is vague. Vistra commented that "limited access to an energy efficiency contractor or energy efficiency service provider" in §25.181(c)(17)(B) is too vague, subjective, and challenging to verify and recommended deleting the entire subparagraph. OCSC also noted that "area" and "effectively administer an energy efficiency program" are ambiguous and would be difficult for utilities and commission staff to verify and recommended that the proposed rule be modified to require a utility to provide evidence in its energy efficiency cost recovery factor (EECRF) application as to why an area is hard to reach.

Vistra argued that the change from an income-based definition to a definition based on demographic restrictions or limited access to a service provider could include unintended customers. Specifically, Vistra argued that the amended definition will likely include a large, rural landowner who, under the existing definition, would have been excluded from eligibility as a hard-to-reach customer.

Oncor suggested that if the commission adopts the proposed revision, it should phase in the change over time to allow utilities sufficient time to design new programs, identify new program delivery channels, and implement this change.

The utilities provided redlines consistent with their comments.

Commission Response

The commission agrees that low-income customers, who have historically been served by hard-to-reach programs, should continue to be included as potential hard-to-reach customers. Therefore, the commission modifies the definition of "hard-to-reach" in adopted §25.181(c)(17) to include low-income as a category of hard-to-reach. However, the adopted rule also maintains the expanded proposed definition of "hard-to-reach" so that utilities can expand their programs beyond the traditionally served low-income customers to those that may not have been served historically. Under the modified definition, a large, rural landowner could be a hard-to-reach customer, and this outcome is intended.

The commission also agrees with comments regarding the clarity of the term "area" in the proposed definition and modifies the definition to describe a "county, city, or unincorporated area." For clarity, the commission further modifies the definition to describe a hard-to-reach customer as one that the utility has been unable to serve in at least one of the past five years due to lack of available energy efficiency contractors or energy efficiency service providers.

Lastly, the commission modifies the definition to replace the term "small business" with "a commercial customer with a peak load less than 50 kW that is not a government entity and not a subsidiary of a corporation." Section 25.181 defines "commercial customer" as "a non-residential customer taking service at a point of delivery at a distribution voltage under an electric utility's tariff during the prior program year or a non-profit customer or government entity, including an educational institution." The modified definition of "hard-to-reach" limits the hard-to-reach commercial customer to non-government entities. In addition, the commission agrees with commenters that recommended that a small business be identified by its peak load. However, the adopted rule limits a hard-to-reach commercial customer to a peak load less than 50 kW because under §25.181, 50 kW is the minimum load for a commercial customer to be its own energy efficiency service provider.

With these modifications to the proposed definition, a phase-in period for the changes to take effect is unnecessary.

Proposed §25.181(c)(25)- Definition of "low-income"

Proposed §25.181(c)(25) defines "low-income" as describing a customer that either meets the criteria for low-income based on a calculation of 80% of the area median income, or resides in a household in which at least one person receives economic assistance through a program listed in the Texas technical reference manual (TRM) for the applicable program year. Existing §25.5 also includes a definition for "low-income customer" that is based on whether the customer qualifies for the Supplemental Nutrition Assistance Program or medical assistance from a state agency.

OPUC, Sierra Club, and SPEER supported the proposal. OCSC and Vistra commented that there should be consistency between the definitions in §25.5 and §25.181. TNMP commented that the proposed definition is overly restrictive and suggested that the definition be more inclusive of different types of low-income households. AEP Texas, Joint Utilities and Oncor were unopposed to changing from a low-income standard set by the United States Department of Health and Human Services (HHS)--200% of the federal poverty level--to the low-income standard set by the United States Department of Housing and Urban Development (HUD)--80% of area median income. However, AEP Texas and Joint Utilities suggested that the commission retain the ability for a utility to identify a low-income customer through a geographic indicator, such as location in a HUD-qualifying low-income census tract or block. This geographic qualifier already exists in the TRM as a way to identify a low-income customer. CenterPoint recommended that the commission provide a 12-month transition period to allow utilities to update program design, tracking, and reporting systems.

ACEEE recommended that the definition provide categorical eligibility to customers who qualify as low income through assistance programs, such as the Low-Income Home Energy Assistance Program, Supplemental Nutrition Assistance Program, Supplemental Security Income, and others.

AEP Texas, Joint Utilities, Oncor, and TNMP provided redlines consistent with their comments.

Commission Response

The commission agrees that the adopted rules should clearly delineate the difference between the two similar, though not identical, terms. The term "low-income customer," defined in §25.5, is used exclusively in §25.45, relating to Low-Income List Administrator. The customers qualified for programs under §25.45 are a subset of the customers qualified for programs described in §25.181. The definition of "low-income" in §25.181 is intentionally more expansive than the definition of a "low-income customer" in §25.5, so that a utility can reach more customers through a targeted low-income energy efficiency program or a

hard-to-reach program. Therefore, the commission declines to modify the proposed definition for consistency between the two sections. In addition, the commission declines to modify the rule to adopt ACEEE's suggestion because the adopted rule refers to programs mentioned by ACEEE in paragraph (B).

However, the commission agrees that the rule should allow a low-income customer to be identified through residence in a HUD-qualifying low-income census tract or block and modifies the definition accordingly.

With these modifications to the proposed definition, a phase-in period for the changes to take effect is unnecessary.

Proposed §25.181(p)--Targeted low-income energy efficiency program

Proposed §25.181(p) describes the requirements for a targeted low-income energy efficiency program. Existing §25.181 requires an ERCOT utility, and allows a non-ERCOT utility, to provide a targeted low-income energy efficiency program. Annual expenditures for the targeted low-income energy efficiency program must be at least 10% of a utility's energy efficiency budget for the program year.

In conjunction with edits to the definitions of a low-income customer and a hard-to-reach customer in §25.181(c), the commission modifies this subsection to clarify requirements for a targeted low-income energy efficiency program. First, paragraph (1) and its subparagraphs apply to all utilities that offer a targeted low-income energy efficiency program. Paragraph (2) and its subparagraphs apply only to ERCOT utilities, and requirements from PURA §39.905 are described in this paragraph. Second, the commission clarifies in paragraph (1)(C) that, although a utility may shift funds from a targeted low-income energy efficiency program to a hard-to-reach program after July of a program year, such funds may not be used to satisfy the requirement for a utility to spend 10% of its budget on a targeted low-income energy efficiency program. Third, the commission adds paragraph (1)(D) to clarify that demand reduction achieved through a targeted low-income energy efficiency program may not be used to satisfy the hard-to-reach demand reduction requirement in §25.181(e)(3)(F).

Definitions

Existing §25.181(c)(17) and §25.5(46)- Definition of "energy efficiency service provider"

The proposed rule strikes existing §25.181(c)(17), the definition of "energy efficiency service provider (EESP)," because this term is already defined at §25.5(46). However, the definitions in the two sections differ; specifically, in §25.181, the struck definition states that a commercial customer that serves as an energy efficiency service provider must have a peak load equal to or greater than 50 kW, and that an energy efficiency service provider may also be a governmental entity or a non-profit organization, but may not be an electric utility.

TNMP, Oncor, Joint Utilities, and AEP Texas suggested that the commission retain the definition of EESP because it is frequently used throughout §25.181 and for clarity and ease of reference. Specifically, Oncor noted that §25.181(s) indicates that a commercial customer with a peak load exceeding 50 kW can itself be an energy efficiency provider, a provision that is also included in the definition of EESP. However, Oncor stated that having this provision in a definition, rather than in §25.181(s), would be helpful, and that the current definition also includes other categories of entities. OCSC commented that EESP is also defined in §25.5, but that the differences between the two definitions are significant enough that the parts that had been included in §25.181 should be retained, either in §25.5 or in §25.181.

Commission Response

The commission agrees that the definition of "energy efficiency service provider" in existing §25.181 is necessary and helpful and modifies §25.181(c) to restore this definition. In addition, the commission removes the same definition from §25.5 because it is superfluous.

Proposed §25.5(124)- Definition of "small business"

Proposed §25.5(124) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that: (A) is formed for the purpose of making a profit; (B) is independently owned and operated; and (C) has fewer than 100 employees or less than $6 million in annual gross receipts.

AEP Texas, CenterPoint, and Joint Utilities suggested striking proposed §25.5(124)(A) and (B) because they asserted that this information would be difficult for a utility, program implementer, or program participant to verify. Similarly, TNMP suggested striking (A), (B), and (C) of the proposed definition. On the other hand, Oncor suggested connecting proposed (A), (B), and (C) with "or" instead of "and." Each utility also suggested adding a new paragraph defining a small business based on average monthly demand. AEP Texas, CenterPoint, Joint Utilities and Oncor recommended 100 kW as the maximum average monthly demand, and TNMP recommended 200 kW as the maximum.

TNMP also suggested that the commission not limit the definition of small business to for-profit companies.

Commission Response

The commission has modified the definition of "hard-to-reach" to eliminate the use of the term "small business." For this reason, the term "small business" does not need to be defined and is removed.

Proposed §25.5(78)- Definition of "new on-site generation"

Proposed §25.5(78) includes a reference to the Texas Natural Resource Conservation Commission (TNRCC).

Sierra Club included a clerical edit to change TNRCC to the Texas Commission on Environmental Quality because that is the current name of the commission that fulfills the function in this definition.

Commission Response

The commission agrees and modifies the rule accordingly.

Proposed §25.181(c)(32)- Definition of "peak demand"

Proposed §25.181(c)(32) strikes the following sentence from the definition of "peak demand": "Peak demand refers to Texas retail peak demand and, therefore, does not include demand of retail customers in other states or wholesale customers."

Joint Utilities and OCSC recommended that the definition continue to include the struck sentence. Joint Utilities cited clarity for this edit, and OCSC cited certainty.

Commission Response

The commission disagrees that the sentence should be reinstated for clarity. The limitation is already addressed in §25.181(e)(3)(A).

Proposed §25.181(c)(33)- Definition of "peak period"

Proposed §25.181(c)(33) strikes the exclusion of weekends and Federal holidays in the definition of "peak period."

TNMP, Oncor, Joint Utilities, and AEP Texas opposed this proposed revision. TNMP stated that the change could have a wide-ranging impact on calculation of savings and require costly recalculations for evaluation, measurement, and verification (EM&V) and suggested that this change be considered at length. Oncor, Joint Utilities, and AEP Texas stated that the proposed revision directly conflicts with the Texas Technical Reference Manual (TRM)'s calculation method for demand savings--Oncor specifically cited Volume 1, Section 4 of the TRM. Joint Utilities also stated that the proposed revision is contrary to known industry standard practice.

Commission Response

The commission declines to modify the proposed rule. However, the schedule for implementation of this amendment will account for necessary changes to the TRM in 2026. The commission modifies subsection (o)(6)(F) of the proposed rule to state that for program year (PY) 2026, a utility must use the peak period calculation method outlined in the TRM adopted in 2025. The commission also modifies the same provision to state that, starting with PY2027, a utility must use the peak period calculation method outlined in the most recently adopted TRM.

Existing §25.181(c)(35)- Definition of "load control"

The proposed rule strikes existing §25.181(c)(35), the definition of "load control," because the only place in the rule where the term appears is in the definition of "load management."

OCSC opposed removal of this definition because load control is a type of load management, and utilities may still include load control programs in their energy efficiency plans.

Commission Response

The commission declines to modify the proposed rule. The adopted rule does not preclude a utility from including a load control program in its energy efficiency plan.

Proposed §25.181(c)(35)- Definition of "projected savings"

Proposed §25.181(c)(35) defines "projected savings" as the "estimated program or portfolio savings reported by an electric utility for planning purposes."

OCSC recommended adding "energy or demand" before "savings" because, it asserted, the term "savings" is too broad and could mean a multitude of things.

Commission Response

The commission agrees and adds "demand reduction or energy" to modify "savings" in the definition.

Proposed §25.181(c)(7)- Definition of "deemed savings value"

Proposed §25.181(c)(7) uses the phrase "energy or demand savings" in the first sentence and "energy and peak demand savings" in the second sentence.

OCSC suggested a clerical edit to change "and" to "or" in the second sentence for consistency with the first sentence and with the definition of "deemed savings calculation."

Commission Response

The commission agrees and modifies the rule accordingly.

Proposed §25.181(c)(24)- Definition of "load management"

Proposed §25.181(c)(24) defines "load management" as "Activities that result in a reduction in peak demand, or a shifting of energy usage from a peak to an off-peak period or from high-price periods to lower price periods."

OCSC recommended adding "temporary" to the definition, so that the definition would read, "Activities that result in a temporary reduction in peak demand. . . ." OCSC reasoned that reductions in peak demand from load management are temporary, not a permanent reduction, and that the definition should reflect the temporary result.

Commission Response

Although the commission agrees that adding "temporary" to the definition would reflect reality, this provision was not substantively edited in the proposal, and substantive modifications, such as OCSC's suggestion, are beyond the scope of the proposal.

Proposed §25.181(d)(2)- Avoided cost of capacity

Proposed §25.181(d)(2) requires the avoided cost of capacity to be established as described in the subparagraphs and clauses within (d)(2) of the proposed rule.

Vistra commented that the avoided cost of capacity should be removed from the rule as part of the cost-effectiveness standard because customers who save energy through demand reduction and other energy efficiency activities avoid energy costs but not capacity costs, and this is because the current ERCOT market design does not ascribe value to generation capacity.

Commission Response

The commission declines to adopt the recommended modification because it is beyond the scope of this rulemaking.

Proposed §25.181(d)(2)(A)- Filing date of avoided cost of capacity

Proposed §25.181(d)(2)(A) requires the avoided cost of capacity to be filed by November 1 of each year.

Joint Utilities suggested that the avoided cost of capacity be filed at the same time of year that the proposed rule requires that the avoided cost of energy be filed, April 1.

Commission Response

The commission declines to adopt the recommended modification because it is beyond the scope of this rulemaking.

Proposed §25.181(d)(3)(A)- Avoided cost of energy

Proposed §25.181(d)(3)(A) requires ERCOT to file its calculation of the avoided cost of energy for the upcoming calendar year by April 1 of each year. Subsection (d)(3)(A) of the proposed rule also requires ERCOT to use seven years of data in its calculation.

Filing date

ACEEE, Sierra Club, SPEER, and Houston supported the proposed revision to the filing date. CenterPoint, Joint Utilities, TNMP, and Oncor suggested moving the effective date of the avoided cost of energy rather than the filing date. Those parties recommended making the avoided cost of energy effective the January 1 that falls 14 months after its filing date.

Commission Response

The commission agrees that additional time between the filing date and effective date for avoided cost of energy would be beneficial. An additional seven months is sufficient to realize this

benefit. Commenters were not persuasive that extending what is currently a two-month process to fourteen months is reasonable. The commission therefore declines to modify the proposed rule.

Avoided cost of energy calculations

CenterPoint, OPUC, Sierra Club, SPEER, and Houston, and OCSC supported the proposed revision to use seven years of data, although OCSC recommended explicitly excluding data from Winter Storm Uri. Joint Utilities did not oppose the proposed revision but recommended using five years of data instead. AEP Texas and TNMP also recommended using five years of data. Commenters recommending five years reasoned that the avoided cost of energy calculation should align with the five-year requirement in §25.181(e)(3)(A) for calculation of the demand reduction goal.

Commission Response

The commission declines to modify the proposed rule to require ERCOT to use five years of data to calculate the avoided cost of energy.

The concept of avoided cost of energy differs from the concept of estimating load growth that occurred strictly in the past. The avoided cost of energy is calculated as a lookback on what the utility, or the customer, might have spent on energy costs but for the energy efficiency programs that the utility offers to its customers. However, the benefits to the customer do not end with the purchase or installation of an energy efficiency measure. The benefits extend to the estimated useful life of the measure, which in some cases is ten or 15 years into the future. Because ERCOT's data retention is only seven years in the past, it can only approximate the avoided cost to the customer, but it is the best approximation the commission has access to at this time. Furthermore, the more years that are used to calculate the avoided cost of energy, the less it will fluctuate from year to year, providing more certainty for the year-over-year cost-benefit ratio calculations and for a utility planning its programs for the year ahead.

The commission also agrees with OCSC that any data associated with Winter Storm Uri should be excluded from the calculation of the avoided cost of energy. The commission found in Docket Number 52871, Commission Staff's Petition for a Good Cause Exception to 16 Texas Administrative Code §25.181(d)(3)(A) and to Set the Avoided Cost of Energy under §25.181(d)(3)(A) for 2022 Electric Utility Energy Efficiency Programs, that the unique circumstances caused by Winter Storm Uri constituted good cause to reduce the avoided cost of energy for the 2022 program year. Consistent with that finding, the commission modifies the proposed rule language.

Proposed §25.181(e)(3)(F)- Hard-to-reach goal and non-ERCOT utilities

Proposed §25.181(e)(3)(F) allows a utility that operates in an area in which customer choice is not offered to achieve the hard-to-reach goal through a program designed for low-income customers.

Sierra Club stated that it supported giving flexibility to utilities that operate in the ERCOT competitive market.

Commission Response

Proposed §25.181(e)(3)(F) does not apply to utilities that operate in the ERCOT market.

However, because the commission modifies the definition of "hard-to-reach" in adopted §25.181(c)(17) to include a low-income customer, the commission strikes the provision in (e)(3)(F) of the proposed rule that would allow a non-ERCOT utility to achieve its hard-to-reach requirement through a program designed for low-income customers.

Proposed §§25.181(e)(3)(F) and 25.181(p)(1)- Hard-to-reach and low-income goals

Proposed §25.181(e)(3)(F) requires a utility to achieve at least 5.0% of its total demand reduction goal through savings achieved through programs for hard-to-reach customers. Proposed §25.181(p)(1) requires a utility to spend at least 10% of its annual budget on a targeted low-income energy efficiency program.

Sierra Club recommended increasing the low-income budget requirement from 10% to 20% of a utility's annual budget.

Commission Response

The commission declines to adopt the recommended modification because it is beyond the scope of this rulemaking.

Proposed §25.181(l)- Commission-prescribed Excel form

Proposed §25.181(l) requires a utility's energy efficiency plan and report (EEPR) to include a completed attachment based on the commission-prescribed Excel template in addition to the EEPR content already required by the rule.

Joint Utilities and TNMP filed an Excel template for all EEPR tables that they recommended the commission adopt in place of the proposed summary Excel tables, and AEP Texas supported the adoption of this Excel template. CenterPoint and Sierra Club supported the proposed template and filing requirements.

Commission Response

The commission declines to adopt the recommended template. Development of a full EEPR template is outside the scope of this rulemaking. The Excel template in the adopted rule is an additional summary of the information in the annual EEPR filings, not a replacement of what the existing rule requires.

Proposed §25.182(d)- Cost effectiveness at the program or portfolio level

Proposed §25.182(d) requires a utility to provide a portfolio of cost-effective energy efficiency programs.

TNMP stated that the commission should require a utility to provide a cost-effective portfolio of energy efficiency programs, not a portfolio of cost-effective energy efficiency programs.

Commission Response

The commission declines to adopt the suggested modification because it is a substantive change that is not reasonably related to the proposed changes.

Proposed §25.182(d)(7)- Historical cost caps

The proposed rule strikes §25.182(d)(7)(A), which was the residential cost cap for program year 2018, and (d)(7)(B), which was the commercial cost cap for program year 2018.

TNMP and Oncor recommended that the commission maintain §25.182(d)(7)(A) and (B) for historical lookback purposes.

Commission Response

The commission agrees that the historical cost caps should be maintained and modifies the rule accordingly.

Proposed §§25.181 and 25.182- Shareholder bonus or utility incentive

Throughout proposed §§25.181 and 25.182, the proposal replaces the term "shareholder bonus" with the term "utility incentive."

TNMP recommended that the commission maintain the term "shareholder bonus" where it appears in the existing rule because "shareholder bonus" is consistent with PURA §39.905(b)(4).

Commission Response

The commission disagrees with the recommendation. The term "shareholder bonus" appears in PURA §39.905(b)(4); however, PURA §39.905(b)(2) requires the commission to "adopt rules and procedures to ensure that the utilities can achieve the goal of this section, including establishing an incentive . . . to reward utilities . . . that exceed the minimum goals established by this section" (emphasis added). The commission finds the term "utility incentive" to be better aligned with the statute's mandate to the commission.

In addition, the commission modifies §25.181(u) to correct one instance where "shareholder bonus" appears in the proposal.

Proposed §25.182(e)(3)- Utility incentive

Proposed §25.182(e)(3) states that a utility that exceeds 100% of its demand and energy reduction goals may receive a utility incentive, reduces the maximum utility incentive a utility may receive to 5% of net benefits, rather than 10%, and allows the commission to further limit the maximum utility incentive a utility may receive for good cause.

Amendment of "shall" to "may"

AEP Texas, CenterPoint, Joint Utilities, TNMP, and Oncor opposed changing "shall" to "may" in the proposed rule. The utilities reasoned that PURA §39.905(b)(2) requires the commission "to establish an incentive . . . to reward utilities administering programs under this section that exceed the minimum goals established by this section," and that this language gives the commission no discretion whether to award an incentive to a utility that has earned one.

ACEEE supported the proposed rule language.

Commission Response

The intent of that proposed revision was concision and clarity, not to change the meaning of the rule. Therefore, the commission modifies the provision to state that if a utility exceeds its demand reduction goal, it will receive a utility incentive.

Reduction of maximum utility incentive from 10% to 5% of net benefits

AEP Texas, CenterPoint, Joint Utilities, TNMP, and Oncor opposed reducing the maximum utility incentive to 5% of net benefits, preferring instead to maintain the existing 10% maximum. Generally, the utilities were concerned that a change from 10% to 5% is an unreasonable and drastic cut that reduces the incentive's effectiveness as a policy tool. AEP Texas stated that the proposed change would decrease a utility's motivation to exceed its minimum goals and reduce the financial justification for investing in additional measures, technologies, and partnerships that drive performance beyond compliance. Oncor, Joint Utilities, and AEP Texas believed that the change in the number of years of data included in the avoided cost of energy calculation in proposed §25.181(d)(3)(A) would reduce the maximum utility incentive a utility can collect by an amount significant enough that the reduction from 10% to 5% of net benefits would not be needed. TNMP and Oncor stated that a reduction to 8% would be acceptable; Oncor noted that, under the proposed revision, a utility's incentive would be reduced by more than it would have under commission staff's proposal in Docket Number 57172. Oncor additionally argued that such a significant reduction to the maximum utility incentive would be more appropriately addressed in a future rulemaking, in which a fact-based and policy-based discussion can be held.

Joint Utilities specifically argued that the incentive serves as a "mechanism for utilities to recover lost revenue resulting from energy efficiency programs." In addition, it argued that "because the incentive cap is already structured as a ˜share of the net benefits,' customers will inherently receive net benefits stemming from the utility's energy efficiency achievements," and that "the incentive is never a net cost to customers."

OPUC, SPEER, OCSC, and Houston supported the reduction in the maximum utility incentive to 5% of net benefits. Sierra Club proposed an alternative cap of 20% of total spending, with a 20% secondary cap. Sierra Club reasoned that utility incentives for energy efficiency programs have been extremely high, especially this year, given the high avoided cost of energy, and that this is an unstable and unfair outcome for ratepayers. Sierra Club was concerned that the proposed limitation could disincentivize utilities to perform beyond minimum requirements. Houston noted that incentive payments are a tool to drive changes in behavior or participation in programs that may not be performing at targeted levels, and that energy efficiency programs have historically performed well above targeted levels and therefore do not need incentivizing. Houston pointed out that utilities routinely exceed their demand and energy reduction goals in Texas, and that this has led to total EECRF expenses being driven by the performance bonus.

Commission Response

PURA §39.905 gives the commission discretion in setting the utility incentive amount, and the proposed reduction is an exercise of the commission's discretion in the public interest. The commission disagrees with Sierra Club's proposed alternative incentive structure because there is a more direct connection between net benefits and a utility incentive than between total program spending and a utility incentive. The commission disagrees with the characterization of the utility incentive as a mechanism to recover lost revenue.

The commission also disagrees that the incentive is never a net cost to customers. Cost recovery and the utility incentive are imposed on all customers in a utility's rate classes, other than industrial customers that opt out under §25.181(u), regardless of whether those customers directly benefit from an energy efficiency program.

Good cause limitation

AEP Texas, CenterPoint, TNMP, and Oncor opposed the proposed amendment that would allow the commission to further limit a utility's utility incentive for good cause. Oncor argued that the amendment would frustrate a utility's expectations for an earned incentive and introduce unpredictability into whether a utility would receive an incentive or how much the incentive would be. TNMP stated that the commission not only did not pro-

pose any language to determine what circumstances may give rise to good cause, but also did not propose any language to quantify by what percentage it may reduce an incentive.

Joint Utilities stated that the commission should add language to clarify the proposed revision. It argued that the purpose of a good cause exception is to recognize circumstances beyond a party's reasonable control or justified deviations from standard expectations, and that penalizing performance in these situations would undermine the intent of the good cause exception and discourage transparency and accountability. CenterPoint argued that the amendment introduced unnecessary ambiguity and conflicted with PURA §39.905(g), which, it asserted, only allows the commission to relieve utilities from penalties or sanctions for factors beyond their control, not to reduce earned incentives.

Commission Response

The commission agrees that regulatory certainty is needed in the administration of the utility incentive under §25.182 and removes the proposed amendment. The adjustment to the avoided cost of energy calculation in §25.181(d)(3)(A) and the amended utility incentive calculation in this subparagraph provide sufficient certainty to a utility in the calculation and amount of its utility incentive.

Proposed §25.182(e)(2)- Inclusion of utility incentive in net benefits

Proposed §25.182(e)(2) describes the calculation of net benefits and includes the utility incentive in program costs.

ACEEE, SPEER, and TNMP suggested that the utility incentive not be included in program costs.

Commission Response

The commission declines to adopt the recommended modification because it is a substantive change that is not reasonably related to the proposed changes.

Proposed §25.182(e)(1) and (3)- Basis for utility incentive calculation

Proposed §25.182(e)(1) states that a utility may receive a share of the net benefits realized in exceeding its demand reduction goal. The provision does not base the utility incentive on the amount by which a utility exceeds its energy savings goal. Proposed §25.182(e)(3) calculates the utility incentive using only the demand reduction goal, not the energy savings goal.

Sierra Club filed redlines recommending that the commission base the utility incentive on the amount by which a utility exceeds its demand reduction goal and its energy savings goal.

Commission Response

The commission declines to adopt Sierra Club's recommendation. The energy savings goal is not based in statute, and moreover, the recommended modification is beyond the scope of the proposal.

Proposed §§25.181 and 25.182- Effective date of rules

The proposed rules do not include any language related to the date that the changes take effect.

AEP Texas recommended that the proposed rule changes not take effect until program year PY2027. It asserted that the proposed rule changes will disrupt planning for PY2026, which is already well underway, and undermine program effectiveness.

Commission Response

The commission opened the instant rulemaking with the express goal of effectuating the contemplated amendments as quickly as practicable and therefore declines to defer the effective date. For a utility's EEPR filing in April 2026, the utility must submit the additional EEPR summary tables. The utility's EECRF application filed in May or June 2026 must meet all requirements as set out in adopted §§25.181 and 25.182, including appropriate categorization of low-income and hard-to-reach customers, and the utility incentive for PY2025 will be calculated as set forth in adopted §25.182. The avoided cost of energy that ERCOT filed in November 2025 will be applicable to PY2026, and the avoided cost of energy that ERCOT will file in April 2026 will be applicable to PY2027. However, the commission modifies subsection (o)(6)(F) of the proposed rule as discussed above to state that, for PY2026, a utility must use the peak period calculation method outlined in the TRM adopted in 2025, and starting with PY2027, a utility must use the peak period calculation method outlined in the most recently adopted TRM.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §25.5

The amended rules are adopted under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; and §14.002, which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §36.204, which authorizes the commission to establish rates for an electric utility that allow timely recovery of the reasonable costs for conservation and load management, including additional incentives for conservation and load management; and §39.905, which requires the commission to establish an incentive to reward utilities administering energy efficiency programs that exceed the minimum goals established by PURA §39.905.

Cross reference to statutes: Public Utility Regulatory Act §§14.001 and 14.002, §36.204, and §39.905.

§25.5. Definitions.

In this chapter, the following definitions apply unless the context 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 (PURA) §11.006.

(4) Affiliated electric utility--The electric utility from which an affiliated retail electric provider was unbundled in accordance with PURA §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 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 under §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 PURA.

(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 savings and demand reduction attributable to an energy efficiency measure in a particular type of application that a utility may use instead of energy savings and demand reduction 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 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) Electric generation equipment lessor or operator--A person who rents to, or operates for compensation on behalf of, a third party electric generation equipment that:

(A) is used on a site of the third party until the third party is able to obtain sufficient electricity service;

(B) produces electricity on site to be consumed by the third party and not resold; and

(C) does not interconnect with the electric transmission or distribution system.

(38) 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.

(39) 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.

(40) 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.

(41) Electric service identifier (ESI ID)--The basic identifier assigned to each point of delivery used in the registration system and settlement system managed by ERCOT or another independent organization.

(42) 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 PURA §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;

(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;

(iv) is an electric generation equipment lessor or operator; or

(v) owns or operates in this state equipment used solely to provide electricity charging service for consumption by an alternatively fueled vehicle, as defined by section 502.004 of the Transportation Code.

(43) Energy efficiency--Programs that are aimed at reducing the rate at which electric energy is used by equipment 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.

(44) 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.

(45) 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.

(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.

(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 electricity, other than an essential interconnecting transmission facility necessary to effect a sale of electric energy at wholesale.

(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 PURA §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, or 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, or 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 that 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) Licensing--The commission process for granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(63) 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.

(64) Low-income customer--An electric customer who receives assistance under the 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.

(65) 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.

(66) 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 PURA §39.154.

(67) 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 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.

(68) Master meter--A meter used to measure, for billing purposes, all electric usage of an apartment house or mobile home park, including common areas, common facilities, and dwelling units.

(69) Municipality--A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.

(70) 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.

(71) Nameplate rating--The full-load continuous rating of a generator under specified conditions as designated by the manufacturer.

(72) 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.

(73) Natural gas energy credit (NGEC)--A tradable instrument representing each megawatt of new generating capacity fueled by natural gas, as authorized by PURA §39.9044 and implemented under §25.172 of this title (relating to Goal for Natural Gas).

(74) Net book value--The original cost of an asset less accumulated depreciation.

(75) Net dependable capability--The maximum load in megawatts, net of station use, that 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.

(76) Net-to-gross--A factor that is applied to convert gross program impacts into net program impacts. The factor is calculated by dividing net program savings by gross program savings and may account for variables that create differences between gross and net savings, such as free riders and spillover.

(77) New on-site generation--Electric generation with 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 Commission on Environmental Quality (TCEQ) 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.

(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 certificated service area, although its affiliated electric utility or transmission and distribution utility may have a certificated 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 and does not have a certificated service area.

(84) Power region--A contiguous geographical area that 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 com-

pleted 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 under PURA §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, including adopting, amending, or repealing a rule or setting a rate. The term includes a denial of relief or dismissal of a complaint.

(89) Proprietary customer information--Any information obtained by a retail electric provider, an electric utility, or a transmission and distribution business unit as defined in §25.275(c)(16) of this title, 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 PURA §51.002.

(93) Public Utility Regulatory Act (PURA)--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 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- As defined by 16 U.S.C. §796(18)(C). A qualifying cogenerator that provides electricity to the purchaser of the cogenerator's thermal output is not 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- As defined 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 PURA §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. The term does not include a person not otherwise a retail electric provider who owns or operates equipment used solely to provide electricity charging service for consumption by an alternatively fueled vehicle, as defined by Section 502.004, Transportation Code.

(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 under 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) Savings-to-investment ratio (SIR)--The ratio of the present value of a customer's estimated lifetime electricity cost savings from energy efficiency measures to the present value of the installation costs of those energy efficiency measures, which include the cost of any incidental repairs.

(121) 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.

(122) 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 PURA 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.

(123) Spanish-speaking person--A person who speaks any dialect of the Spanish language exclusively or as their primary language.

(124) 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.

(125) 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 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.

(126) Submetering--Metering of electricity consumption on the customer side of the point at which the electric utility measures electricity consumption for billing purposes.

(127) 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.

(128) Supply-side resource--A resource, including a storage device, that provides electricity from fuels or renewable resources.

(129) 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.

(130) 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.

(131) 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.

(132) 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.

(133) 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.

(134) 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.

(135) 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.

(136) 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.

(137) 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 PURA §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.

(138) 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 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.

(139) Transmission line--A power line that is operated at 60 kilovolts (kV) or above, when measured phase-to-phase.

(140) 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 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.

(141) 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.

(142) Transmission service provider (TSP)--An electric utility, municipally-owned utility, or electric cooperative that owns or operates facilities used for the transmission of electricity.

(143) 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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Rules Coordinator
Public Utility Commission of Texas
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SUBCHAPTER H. ELECTRICAL PLANNING
DIVISION 2. ENERGY EFFICIENCY AND CUSTOMER-OWNED RESOURCES

16 TAC §25.181, §25.182

The amended rules are adopted under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; and §14.002, which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §36.204, which authorizes the commission to establish rates for an electric utility that allow timely recovery of the reasonable costs for conservation and load management, including additional incentives for conservation and load management; and §39.905, which requires the commission to establish an incentive to reward utilities administering energy efficiency programs that exceed the minimum goals established by PURA §39.905.

Cross reference to statutes: Public Utility Regulatory Act §§14.001 and 14.002, §36.204, and §39.905.

§25.181. Energy Efficiency Goal.

(a) Purpose. The purpose of this section is to ensure that:

(1) electric utilities administer energy efficiency incentive programs in a market-neutral, nondiscriminatory manner and do not offer competitive services, except as permitted in §25.343 of this title (relating to Competitive Energy Services) or this section;

(2) all customers, in all eligible customer classes and all areas of an electric utility's service area, have a choice of and access to the utility's portfolio of energy efficiency programs that allow each customer to reduce energy consumption, summer and winter peak demand, or energy costs; and

(3) each electric utility annually provides, through market-based standard offer programs, targeted market-transformation programs, or utility self-delivered programs, program incentive payments sufficient for residential and commercial customers, retail electric providers, and energy efficiency service providers to acquire additional cost-effective energy efficiency, subject to EECRF caps established in §25.182(d)(7) of this title (relating to Energy Efficiency Cost Recovery Factor), for the utility to achieve the goals in subsection (e) of this section.

(b) Application. This section applies to electric utilities and the Electric Reliability Council of Texas, Inc. (ERCOT).

(c) Definitions. The following terms, when used in this section and in §25.182 of this title, have the following meanings unless the context indicates otherwise:

(1) Affiliate --

(A) A person who directly or indirectly owns or holds at least 5.0% of the voting securities of an energy efficiency service provider;

(B) A person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider;

(C) A corporation that has at least 5.0% of its voting securities owned or controlled, directly or indirectly, by an energy efficiency service provider;

(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 an energy efficiency service provider; or

(ii) a person in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider; or

(E) A person who is an officer or director of an energy efficiency service provider or of a corporation in a chain of successive ownership of at least 5.0% of the voting securities of an energy efficiency service provider;

(F) A person who actually exercises substantial influence or control over the policies and actions of an energy efficiency service provider;

(G) A person over which the energy efficiency service provider exercises the control described in subparagraph (F) of this paragraph;

(H) A person who exercises common control over an energy efficiency service provider, where "exercising common control over an energy efficiency service provider" means having the power, either directly or indirectly, to direct or cause the direction of the management or policies of an energy efficiency service provider, without regard to whether that power is established through ownership or voting of securities or any other direct or indirect means; or

(I) A person who, together with one or more persons with whom the person is related by ownership, marriage or blood relationship, or by action in concert, actually exercises substantial influence over the policies and actions of an energy efficiency service provider even though neither person may qualify as an affiliate individually.

(2) Baseline--A relevant condition that would have existed in the absence of the energy efficiency project or program being implemented, including energy consumption that would have occurred. Baselines are used to calculate program-related demand and energy savings. Baselines can be defined as either project-specific baselines or performance standard baselines (e.g., building codes).

(3) Claimed savings--Values reported by an electric utility after the energy efficiency activities have been completed, but prior to the time an independent, third-party evaluation of the savings is performed. As with projected savings estimates, these values may utilize results of prior evaluations or values in technical reference manuals. However, they are adjusted from projected savings estimates by correcting for any known data errors and actual installation rates and may also be adjusted with revised values for factors such as per-unit savings values, operating hours, and savings persistence rates. Can be indicated as first year, annual demand or energy savings, or lifetime energy or demand savings values. Can be indicated as gross savings or net savings values.

(4) Commercial customer--A non-residential customer taking service at a point of delivery at a distribution voltage under an electric utility's tariff during the prior program year or a non-profit customer or government entity, including an educational institution. For purposes of this section, each point of delivery must be considered a separate customer.

(5) Conservation load factor--The ratio of the annual energy savings goal, in kilowatt hours (kWh), to the peak demand goal for the year, measured in kilowatts (kW) and multiplied by the number of hours in the year.

(6) Deemed savings calculation--An industry-wide engineering algorithm used to calculate energy or demand savings of the installed energy efficiency measure that has been developed from common practice that is widely considered acceptable for the measure and purpose, and is applicable to the situation being evaluated. May include stipulated assumptions for one or more parameters in the algorithm, but typically requires some data associated with actual installed measure. An electric utility may use the calculation with documented measure-specific assumptions, instead of energy and peak demand savings determined through measurement and verification activities or the use of deemed savings.

(7) Deemed savings value--An estimate of energy or demand savings for a single unit of an installed energy efficiency measure that has been developed from data sources and analytical methods that are widely considered acceptable for the measure and purpose, and is applicable to the situation being evaluated. An electric utility may use deemed savings values instead of energy or peak demand savings determined through measurement and verification activities.

(8) Eligible customers--Residential and commercial customers. In addition, to the extent that they meet the criteria for participation in load management standard offer programs developed for industrial customers and implemented prior to May 1, 2007, industrial customers are eligible customers solely for the purpose of participating in such programs.

(9) Energy efficiency program--The aggregate of the energy efficiency activities carried out by an electric utility under this section or a set of energy efficiency projects carried out by an electric utility under the same name and operating rules.

(10) Energy efficiency service provider- A person or other entity that installs energy efficiency measures or performs other energy efficiency services under this section. An energy efficiency service provider may be a retail electric provider or commercial customer, provided that the commercial customer has a peak load equal to or greater than 50 kW. An energy efficiency service provider may also be a governmental entity or a non-profit organization, but may not be an electric utility.

(11) Estimated useful life (EUL)--The number of years until 50% of installed measures are still operable and providing savings, and is used interchangeably with the term "measure life". The EUL determines the period of time over which the benefits of the energy efficiency measure are expected to accrue.

(12) Evaluated savings--Savings estimates reported by the evaluation, measurement and verification (EM&V) contractor after the energy efficiency activities and an impact evaluation have been completed. Differs from claimed savings in that the EM&V contractor has conducted some of the evaluation or verification activities. These values may rely on claimed savings for factors such as installation rates and the Technical Reference Manual for values such as per unit sav-

ings values and operating hours. These savings estimates may also include adjustments to claimed savings for data errors, per unit savings values, operating hours, installation rates, savings persistence rates, or other considerations. Can be indicated as first year, annual demand or energy savings, or lifetime energy or demand savings values. Can be indicated as gross savings or net savings values.

(13) Evaluation--The conduct of any of a wide range of assessment studies and other activities aimed at determining the effects of a program; or aimed at understanding or documenting program performance, program or program-related markets and market operations, program-induced changes in energy efficiency markets, levels of demand or energy savings, or program cost-effectiveness. Market assessment, monitoring, and evaluation, and measurement and verification (M&V) are aspects of evaluation.

(14) Free driver--Customers who do not directly participate in an energy efficiency program, but who undertake energy efficiency actions in response to program activity.

(15) Free rider--A program participant who would have implemented the program measure or practice in the absence of the program. Free riders can be total, in which the participant's activity would have completely replicated the program measure; partial, in which the participant's activity would have partially replicated the program measure; or deferred, in which the participant's activity would have completely replicated the program measure, but at a time after the time the program measure was implemented.

(16) Growth in demand--The annual increase in demand in the Texas portion of an electric utility's service area at time of peak demand, as measured in accordance with this section.

(17) Gross savings--The change in energy consumption or demand that results directly from program-related actions taken by participants in an efficiency program, regardless of why they participated.

(18) Hard-to-reach- A customer that meets one of the following criteria:

(A) is located in a county, city, or unincorporated area with fewer than 2,000 housing units or a total population of 5,000 or less; or

(B) is a residential or commercial customer that the utility has been unable to serve in at least one of the past five years due to lack of available energy efficiency contractors or energy efficiency service providers--the commercial customer must have a peak load less than 50 kW, not be a government entity, and not be a subsidiary of a corporation; or

(C) has a low income as defined in (25) of this subsection.

(19) Impact evaluation--An evaluation of the program-specific, directly induced changes (e.g., energy or demand reduction) attributable to an energy efficiency program.

(20) Industrial customer--A for-profit entity engaged in an industrial process taking electric service at transmission voltage, or a for-profit entity engaged in an industrial process taking electric service at distribution voltage that qualifies for a tax exemption under Tax Code §151.317 and has submitted an identification notice under subsection (u) of this section.

(21) Inspection--Examination of a project to verify that an energy efficiency measure has been installed, is capable of performing its intended function, and is producing an energy savings or demand reduction equivalent to the energy savings or demand reduction reported towards meeting the energy efficiency goals of this section.

(22) Installation rate--The percentage of measures that receive a program incentive payment under an energy efficiency program that are actually installed in a defined period of time. The installation rate is calculated by dividing the number of measures installed by the number of measures that receive a program incentive payment under an efficiency program in a defined period of time.

(23) Lifetime energy (demand) savings--The energy (demand) savings over the lifetime of an installed measure, project, or program. May include consideration of measure estimated useful life, technical degradation, and other factors. Can be gross or net savings.

(24) Load management--Activities that result in a reduction in peak demand, or a shifting of energy usage from a peak to an off-peak period or from high-price periods to lower price periods.

(25) Low-income--A customer who:

(A) meets the criteria for "low-income" as determined by the United States Department of Housing and Urban Development (HUD) or the United States Department of Health and Human Services (HHS) (i.e., resides in a household with an income level at or under 80% of the area median income based on family size, as calculated by HUD, or resides in a household with an income at or under 200% of the federal poverty guidelines based on family size, as calculated by HHS); or

(B) resides in a household in which at least one person receives economic assistance through a program listed in the Texas technical reference manual for the applicable program year; or

(C) resides in a HUD-designated low-income housing qualifying census tract or census block.

(26) Market transformation program--Strategic programs intended to induce lasting structural or behavioral changes in the market that result in increased adoption of energy efficient technologies, services, and practices, as described in this section.

(27) Measurement and verification (M&V)--A subset of program impact evaluation that is associated with the documentation of energy or demand savings at individual sites or projects using one or more methods that can involve measurements, engineering calculations, statistical analyses, or computer simulation modeling. M&V approaches are defined in the International Performance Measurement and Verification Protocol.

(28) Net savings--The total change in load that is attributable to an energy efficiency program. This change in energy or demand use must include, implicitly or explicitly, consideration of appropriate factors. These factors may include free ridership, participant and non-participant spillover, induced market effects, changes in the level of energy service, or other non-program causes of changes in energy use or demand.

(29) Non-participant spillover--Energy savings that occur when a program non-participant installs energy efficiency measures or applies energy savings practices as a result of a program's influence.

(30) Off-peak period--Period during which the demand on an electric utility system is not at or near its maximum. For the purpose of this section, the off-peak period includes all hours that are not in the peak period.

(31) Participant spillover--The additional energy savings that occur when a program participant independently installs incremental energy efficiency measures or applies energy savings practices after having participated in the efficiency program as a result of the program's influence.

(32) Peak demand--A distribution utility's highest annual retail demand at the source, used to determine the utility's annual energy efficiency goal.

(33) Peak period--For the purpose of this section, the peak period consists of the hours from one p.m. to seven p.m. during the months of June, July, August, and September, and the hours of six a.m. to ten a.m. and six p.m. to ten p.m. during the months of December, January, and February.

(34) Program incentive payment--Payment made by a utility to an energy efficiency service provider, an end-use customer, or third-party contractor to implement or attract customers to energy efficiency programs, including standard offer, market transformation and self-delivered programs.

(35) Program year--A year in which an energy efficiency incentive program is implemented, beginning January 1 and ending December 31.

(36) Projected savings--Estimated program demand reduction or energy savings reported by an electric utility for planning purposes.

(37) Self-delivered program--A program developed by a utility in an area in which customer choice is not offered that provides incentives directly to customers. The utility may use internal or external resources to design and administer the program.

(38) Spillover--Reductions in energy consumption or demand caused by the presence of an energy efficiency program, beyond the program-related gross savings of the participants and without financial or technical assistance from the program. There can be participant or non-participant spillover.

(39) Spillover rate--Estimate of energy savings attributable to spillover expressed as a percent of savings installed by participants through an energy efficiency program.

(40) Standard offer contract--A contract between an energy efficiency service provider and a participating utility or between a participating utility and a commercial customer specifying standard payments based upon the amount of energy and peak demand savings achieved through energy efficiency measures, the measurement and verification protocols, and other terms and conditions, consistent with this section.

(41) Standard offer program--A program under which a utility administers standard offer contracts between the utility and energy efficiency service providers.

(42) Technical reference manual (TRM)--A resource document compiled by the commission's EM&V contractor that includes information used in program planning and reporting of energy efficiency programs. It can include savings values for measures, engineering algorithms to calculate savings, impact factors to be applied to calculated savings (e.g., net-to-gross values), protocols, source documentation, specified assumptions, and other relevant material to support the calculation of measure and program savings.

(43) Verification--An independent assessment that a program has been implemented in accordance with the program design. The objectives of measure installation verification are to confirm the installation rate, that the installation meets reasonable quality standards, and that the measures are operating correctly and have the potential to generate the predicted savings. Verification activities are generally conducted during on-site surveys of a sample of projects. Project site inspections, participant phone and mail surveys or implementer and participant documentation review are typical activities associated with verification. Verification is also a subset of evaluation.

(d) Cost-effectiveness standard. An energy efficiency program is deemed to be cost-effective if the cost of the program to the utility is less than or equal to the benefits of the program. Utilities are encouraged to achieve demand reduction and energy savings through a portfolio of cost-effective programs that exceed each utility's energy efficiency goals while staying within the cost caps established in §25.182(d)(7) of this title.

(1) The cost of a program includes the cost of program incentive payments, EM&V contractor costs, utility incentive, and actual or allocated research and development and administrative costs. The benefits of the program consist of the value of the demand reductions and energy savings, measured in accordance with the avoided costs prescribed in this subsection. The present value of the program benefits must be calculated over the projected life of the measures installed or implemented under the program.

(2) The avoided cost of capacity must be established in accordance with this paragraph.

(A) By November 1 of each year, commission staff must file the avoided cost of capacity for the upcoming year, including supporting data, in the commission's central records under the control number for the energy efficiency implementation project.

(i) Staff must calculate the avoided cost of capacity from the base overnight cost using the lower of a new conventional combustion turbine or a new advanced combustion turbine, as reported by the United States Department of Energy's Energy Information Administration's (EIA) Cost and Performance Characteristics of New Central Station Electricity Generating Technologies associated with EIA's Annual Energy Outlook. If EIA cost data that reflects current conditions in the industry does not exist, staff may establish an avoided cost of capacity using another data source.

(ii) If the EIA base overnight cost of a new conventional or an advanced combustion turbine, whichever is lower, is less than $700 per kW, the avoided cost of capacity will be $80 per kW-year. If the base overnight cost of a new conventional or advanced combustion turbine, whichever is lower, is at or between $700 and $1,000 per kW, the avoided cost of capacity will be $100 per kW-year. If the base overnight cost of a new conventional or advanced combustion turbine, whichever is lower, is greater than $1,000 per kW, the avoided cost of capacity will be $120 per kW-year.

(iii) The avoided cost of capacity calculated by staff may be challenged only by the filing of a petition within 45 days of the date the avoided cost of capacity is filed in the commission's central records under the control number for the energy efficiency implementation project described by paragraph (2)(A) of this subsection. The petition must clearly describe the reasons commission's staff's avoided cost calculation is incorrect, include supporting data and calculations, and state the relief sought.

(B) A utility in an area in which customer choice is not offered may petition the commission for authorization to use an avoided cost of capacity different from the avoided cost determined according to subparagraph (A) of this paragraph by filing a petition no later than 45 days after the date the avoided cost of capacity calculated by staff is filed in the commission's central records under the control number for the energy efficiency implementation project described by paragraph (2)(A) of this subsection. The petition must clearly describe the reasons a different avoided cost should be used, include supporting data and calculations, and state the relief sought. The avoided cost of capacity proposed by the utility must be based on a generating resource or purchase in the utility's resource acquisition plan and the terms of the purchase or the cost of the resource must be disclosed in the filing.

(3) The avoided cost of energy must be established in accordance with this paragraph.

(A) By April 1 of each year, ERCOT must file its calculation of the avoided cost of energy for the upcoming calendar year for the ERCOT region under the control number for the energy efficiency implementation project. ERCOT must calculate the avoided cost of energy by determining the load-weighted average of the competitive load zone settlement point prices for the peak periods covering the seven previous winter and summer peaks, except for the winter peak period from December 2020 through February 2021. The avoided cost of energy calculated by ERCOT may be challenged only by the filing of a petition within 45 days of the date the avoided cost of capacity is filed by ERCOT in the commission's central records under the control number for the energy efficiency implementation project described by paragraph (2)(A) of this subsection. The petition must clearly describe the reasons ERCOT's avoided cost of energy calculation is incorrect, include supporting data and calculations, and state the relief sought.

(B) A utility in an area in which customer choice is not offered may petition the commission for authorization to use an avoided cost of energy other than that otherwise determined according to this paragraph. The avoided cost of energy may be based on peak period energy prices in an energy market operated by a regional transmission organization if the utility participates in that market and the prices are reported publicly. If the utility does not participate in such a market, the avoided cost of energy may be based on the expected heat rate of the gas-turbine generating technology specified in this subsection, multiplied by a publicly reported cost of natural gas.

(e) Annual energy efficiency goals.

(1) An electric utility must administer a portfolio of energy efficiency programs to acquire, at a minimum, the following:

(A) Until the trigger described in subparagraph (B) of this paragraph is reached, the utility must acquire a 30% reduction of its annual growth in demand of residential and commercial customers.

(B) If the demand reduction goal to be acquired by a utility under subparagraph (A) of this paragraph is equivalent to at least four-tenths of 1% of its summer weather-adjusted peak demand for the combined residential and commercial customers for the previous program year, the utility must meet the energy efficiency goal described in subparagraph (C) of this paragraph for each subsequent program year.

(C) Once the trigger described in subparagraph (B) of this paragraph is reached, the utility must acquire four-tenths of 1% of its summer weather-adjusted peak demand for the combined residential and commercial customers for the previous program year.

(D) Except as adjusted in accordance with subsection (u) of this section, a utility's demand reduction goal in any year must not be lower than its goal for the prior year, unless the commission establishes a goal for a utility under paragraph (2) of this subsection.

(2) The commission may establish for a utility a lower goal than the goal specified in paragraph (1) of this subsection, a higher administrative spending cap than the cap specified under subsection (g) of this section, or an EECRF greater than the cap specified in §25.182(d)(7) of this title if the utility demonstrates that compliance with that goal, administrative spending cap, or EECRF cost cap is not reasonably possible and that good cause supports the lower goal, higher administrative spending cap, or higher EECRF cost cap. To be eligible for a lower goal, higher administrative spending cap, or a higher EECRF cost cap, the utility must request a good cause exception as part of its EECRF application under §25.182 of this title. If approved, the good cause exception is limited to the program year associated with the EECRF application.

(3) Each utility's demand-reduction goal must be calculated as follows:

(A) Each year's historical demand for residential and commercial customers must be adjusted for weather fluctuations, using weather data for the most recent ten years. The utility's growth in residential and commercial demand is based on the average growth in retail load in the Texas portion of the utility's service area, measured at the utility's annual system peak. The utility must calculate the average growth rate for the prior five years.

(B) The demand goal for energy-efficiency savings for a year under paragraph (1)(A) of this subsection is calculated by applying the percentage goal to the average growth in peak demand, calculated in accordance with subparagraph (A) of this paragraph. The annual demand goal for energy efficiency savings under paragraph (1)(C) of this subsection is calculated by applying the percentage goal to the utility's summer weather-adjusted five-year average peak demand for the combined residential and commercial customers. This annual peak demand goal at the source is then converted to an equivalent goal at the meter by applying reasonable line loss factors.

(C) A utility may submit for commission approval an alternative method to calculate its growth in demand, for good cause.

(D) If a utility's prior five-year average load growth, calculated under subparagraph (A) of this paragraph, is negative, the utility must use the demand reduction goal calculated using the alternative method approved by the commission beginning with the 2013 program year or, if the commission has not approved an alternative method, the utility must use the previous year's demand reduction goal.

(E) A utility must not claim savings obtained from energy efficiency measures funded through settlement orders or count towards the utility incentive any savings obtained from grant funds that have been awarded directly to the utility for energy efficiency programs.

(F) Demand reduction achieved through programs for hard-to-reach customers must be no less than 5.0% of the utility's total demand reduction goal.

(G) Utilities may apply demand reduction and energy savings on a per project basis to summer or winter peak, but not to both summer and winter peaks.

(4) An electric utility must administer a portfolio of energy efficiency programs designed to meet an energy savings goal calculated from its demand savings goal, using a 20% conservation load factor.

(5) Electric utilities must administer a portfolio of energy efficiency programs to effectively and efficiently achieve the goals set out in this section.

(A) Program incentive payments may be made under standard offer contracts, market transformation contracts, or as part of a self-delivered program for energy savings and demand reductions. Each electric utility must establish standard program incentive payments to achieve the objectives of this section.

(B) Projects or measures under a standard offer, market transformation, or self-delivered program are not eligible for program incentive payments or compensation if:

(i) A project would achieve demand or energy reduction by eliminating an existing function, shutting down a facility or operation, or would result in building vacancies or the re-location of existing operations to a location outside of the area served by the util-

ity conducting the program, except for an appliance recycling program consistent with this section.

(ii) A measure would be adopted even in the absence of the energy efficiency service provider's proposed energy efficiency project, except in special cases, such as hard-to-reach and weatherization programs, or where free riders are accounted for using a net to gross adjustment of the avoided costs, or another method that achieves the same result.

(iii) A project results in negative environmental or health effects, including effects that result from improper disposal of equipment and materials.

(C) Ineligibility under subparagraph (B) of this paragraph does not apply to standard offer, market transformation, and self-delivered programs aimed at energy code adoption, implementation, compliance, and enforcement under subsection (k) of this section, nor does it preclude standard offer, market transformation, or self-delivered programs promoting energy efficiency measures also required by energy codes to the degree such codes do not achieve full compliance rates.

(D) A utility in an area in which customer choice is not offered may achieve the goals of paragraphs (1) and (2) of this subsection by:

(i) providing a rebate or program incentive payment directly to eligible residential and commercial customers for programs implemented under this section; or

(ii) developing, subject to commission approval, new programs other than standard offer programs and market transformation programs, to the extent that the new programs satisfy the same cost-effectiveness standard as standard offer programs and market transformation programs using the process outlined in subsection (q) of this section.

(E) For a utility in an area in which customer choice is offered, the utility may achieve the goal of this section in rural areas by providing a rebate or program incentive payment directly to customers after demonstrating to the commission in a contested case hearing that the goal requirement cannot be met through the implementation of programs by retail electric providers or energy efficiency service providers in the rural areas.

(f) Program incentive payments. The program incentive payments for each customer class must not exceed 100% of avoided cost, as determined in accordance with this section. The program incentive payments must be set by each utility with the objective of achieving its energy and demand savings goals at the lowest reasonable cost per program. Different program incentive levels may be established for areas that have historically been underserved by the utility's energy efficiency programs or for other appropriate reasons. Utilities may adjust program incentive payments during the program year, but such adjustments must be clearly publicized in the materials used by the utility to set out the program rules and describe the programs to participating energy efficiency service providers.

(g) Utility administration. The cost of administration in a program year must not exceed 15% of a utility's total program costs for that program year. The cost of research and development in a program year must not exceed 10% of a utility's total program costs for that program year. The cumulative cost of administration and research and development must not exceed 20% of a utility's total program costs, unless a good cause exception filed under subsection (e)(2) of this section is granted. Any portion of these costs that is not directly assignable to a specific program must be allocated among the programs in proportion to the program incentive costs. Any utility incentive awarded by the commission must not be included in program costs for the purpose of applying these limits.

(1) Administrative costs include all reasonable and necessary costs incurred by a utility in carrying out its responsibilities under this section, including:

(A) conducting informational activities designed to explain the standard offer programs and market transformation programs to energy efficiency service providers, retail electric providers, and vendors;

(B) for a utility offering self-delivered programs, internal utility costs to conduct outreach activities to customers and energy efficiency service providers will be considered administration;

(C) providing informational programs to improve customer awareness of energy efficiency programs and measures;

(D) reviewing and selecting energy efficiency programs in accordance with this section;

(E) providing regular and special reports to the commission, including reports of energy and demand savings;

(F) a utility's costs for an EECRF proceeding conducted under §25.182(d) of this title;

(G) the costs paid by a utility pursuant to PURA §33.023(b) for an EECRF proceeding conducted under §25.182(d) of this title; however, these costs are not included in the administrative caps applied in this paragraph; and

(H) any other activities that are necessary and appropriate for successful program implementation.

(2) A utility must adopt measures to foster competition among energy efficiency service providers for standard offer, market transformation, and self-delivered programs, such as limiting the number of projects or level of program incentive payments that a single energy efficiency service provider and its affiliates is eligible for and establishing funding set-asides for small projects.

(3) A utility may establish funding set-asides or other program rules to foster participation in energy efficiency programs by municipalities and other governmental entities.

(4) Electric utilities offering standard offer, market transformation, and self-delivered programs must use standardized forms, procedures, and program templates. The electric utility must file any standardized materials, or any change to it, with the commission at least 60 days prior to its use. In filing such materials, the utility must provide an explanation of changes from the version of the materials that was previously used. For standard offer, market transformation, and self-delivered programs, the utility must provide relevant documents to retail electric providers and energy efficiency service providers and work collaboratively with them when it changes program documents, to the extent that such changes are not considered in the energy efficiency implementation project described in subsection (q) of this section.

(5) Each electric utility in an area in which customer choice is offered must conduct programs to encourage and facilitate the participation of retail electric providers and energy efficiency service providers in the delivery of efficiency and demand response programs, including:

(A) Coordinating program rules, contracts, and program incentive payments to facilitate the statewide marketing and delivery of the same or similar programs by retail electric providers;

(B) Setting aside amounts for programs to be delivered to customers by retail electric providers and establishing program rules and schedules that will give retail electric providers sufficient time to plan, advertise, and conduct energy efficiency programs, while preserving the utility's ability to meet the goals in this section; and

(C) Working with retail electric providers and energy efficiency service providers to evaluate the demand reductions and energy savings resulting from time-of-use prices; home-area network devices, such as in-home displays; and other programs facilitated by advanced meters to determine the demand and energy savings from such programs.

(h) Standard offer programs. A utility's standard offer program must be implemented through program rules and standard offer contracts that are consistent with this section. Standard offer contracts will be available to any energy efficiency service provider that satisfies the contract requirements prescribed by the utility under this section and demonstrates that it is capable of managing energy efficiency projects under an electric utility's energy efficiency program.

(i) Market transformation programs. Market transformation programs are strategic efforts, including, but not limited to, program incentive payments and education designed to reduce market barriers for energy efficient technologies and practices. Market transformation programs may be designed to obtain energy savings or peak demand reductions beyond savings that are reasonably expected to be achieved as a result of current compliance levels with existing building codes applicable to new buildings and equipment efficiency standards or standard offer programs. Market transformation programs may also be specifically designed to express support for early adoption, implementation, and enforcement of the most recent version of the International Energy Conservation Code for residential or commercial buildings by local jurisdictions, express support for more effective implementation and enforcement of the state energy code and compliance with the state energy code, and encourage utilization of the types of building components, products, and services required to comply with such energy codes. The existence of federal, state, or local governmental funding for, or encouragement to utilize, the types of building components, products, and services required to comply with such energy codes does not prevent utilities from offering programs to supplement governmental spending and encouragement. Utilities should cooperate with the retail electric providers, and, where possible, leverage existing industry-recognized programs that have the potential to reduce demand and energy consumption in Texas and consider statewide administration where appropriate. Market transformation programs may operate over a period of more than one year and may demonstrate cost-effectiveness over a period longer than one year.

(j) Self-delivered programs. A utility may use internal or external resources to design, administer, and deliver self-delivered programs. The programs must be tailored to the unique characteristics of the utility's service area in order to attract customer and energy efficiency service provider participation. The programs must meet the same cost effectiveness requirements as standard offer and market transformation programs.

(k) Requirements for standard offer, market transformation, and self-delivered programs. A utility's standard offer, market transformation, and self-delivered programs must meet the requirements of this subsection. A utility may conduct information and advertising campaigns to foster participation in standard offer, market transformation, and self-delivered programs.

(1) Standard offer, market transformation, and self-delivered programs:

(A) must describe the eligible customer classes and allocate funding among the classes on an equitable basis;

(B) may offer standard program incentive payments and specify a schedule of payments that are sufficient to meet the goals of the program, which must be consistent with this section, or any revised payment formula adopted by the commission. The program incentive payments may include both payments for energy and demand savings, as appropriate;

(C) must not permit the provision of any product, service, pricing benefit, or alternative terms or conditions to be conditioned upon the purchase of any other good or service from the utility, except that only customers taking transmission and distribution services from a utility can participate in its energy efficiency programs;

(D) must provide for a complaint process that allows:

(i) an energy efficiency service provider to file a complaint with the commission against a utility; and

(ii) a customer to file a complaint with the utility against an energy efficiency service provider;

(E) may permit the use of distributed renewable generation, geothermal, heat pump, solar water heater and combined heat and power technologies, involving installations of ten megawatts or less;

(F) may factor in the estimated level of enforcement and compliance with existing energy codes in determining energy and peak demand savings; and

(G) may require energy efficiency service providers to provide the following:

(i) a description of how the value of any program incentive payment will be passed on to customers;

(ii) evidence of experience and good credit rating;

(iii) a list of references;

(iv) all applicable licenses required under state law and local building codes;

(v) evidence of all building permits required by governing jurisdictions; and

(vi) evidence of all necessary insurance.

(2) Standard offer and self-delivered programs:

(A) must require energy efficiency service providers to identify peak demand and energy savings for each project in the proposals they submit to the utility;

(B) must be neutral with respect to specific technologies, equipment, or fuels. Energy efficiency projects may lead to switching from electricity to another energy source, provided that the energy efficiency project results in overall lower energy costs, lower energy consumption, and the installation of high efficiency equipment. Utilities may not issue program incentive payments for a customer to switch from gas appliances to electric appliances except in connection with the installation of high efficiency combined heating and air conditioning systems;

(C) must require that all projects result in a reduction in purchased energy consumption, or peak demand, or a reduction in energy costs for the end-use customer;

(D) must encourage comprehensive projects incorporating more than one energy efficiency measure;

(E) must be limited to projects that result in consistent and predictable energy or peak demand savings over an appropriate period of time based on the life of the measure; and

(F) may permit a utility to use poor performance, including customer complaints, as a criterion to limit or disqualify an energy efficiency service provider or its affiliate from participating in a program.

(3) A market transformation program must identify:

(A) program goals;

(B) market barriers the program is designed to overcome;

(C) key intervention strategies for overcoming those barriers;

(D) estimated costs and projected energy and capacity savings;

(E) a baseline study that is appropriate in time and geographic region. In establishing a baseline, the study must consider the level of regional implementation and enforcement of any applicable energy code;

(F) program implementation timeline and milestones;

(G) a description of how the program will achieve the transition from extensive market intervention activities toward a largely self-sustaining market;

(H) a method for measuring and verifying savings; and

(I) the period over which savings must be considered to accrue, including a projected date by which the market will be sufficiently transformed so that the program should be discontinued.

(4) A market transformation program must be designed to achieve energy or peak demand savings, or both, and lasting changes in the way energy efficient goods or services are distributed, purchased, installed, or used over a defined period of time. A utility must use fair competitive procedures to select energy efficiency service providers to conduct a market transformation program, and must include in its annual report the justification for the selection of an energy efficiency service provider to conduct a market transformation program on a sole-source basis.

(5) A load-control standard-offer program must not permit an energy efficiency service provider to receive program incentive payments under the program for the same demand reduction benefit for which it is compensated under a capacity-based demand response program conducted by an independent organization, independent system operator, or regional transmission operator. The qualified scheduling entity representing an energy efficiency service provider is not prohibited from receiving revenues from energy sold in ERCOT markets in addition to any program incentive payment for demand reduction offered under a utility load-control standard offer program.

(6) Utilities offering load management programs must work with ERCOT and energy efficiency service providers to identify eligible loads and must integrate such loads into the ERCOT markets to the extent feasible. Such integration must not preclude the continued operation of utility load management programs that cannot be feasibly integrated into the ERCOT markets or that continue to provide separate and distinct benefits.

(l) Energy efficiency plans and reports (EEPR). Each electric utility must file by April 1 of each year an energy efficiency plan and report in a project annually designated for this purpose, as described in this subsection and §25.183(d) of this title. The plan and report must be filed as a searchable pdf document and in Excel format for all included tables, with formulas intact, according to the commission's file format standards in §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission). The utility's plan and report must include a completed attachment based on the commission-prescribed Excel template.

(1) Each electric utility's energy efficiency plan and report must describe how the utility intends to achieve the goals set forth in this section and comply with the other requirements of this section. The plan and report must be based on program years. The plan and report must propose an annual budget sufficient to reach the goals specified in this section.

(2) Each electric utility's plan and report must include:

(A) the utility's total actual and weather-adjusted peak demand and actual and weather-adjusted peak demand for residential and commercial customers for the previous five years, measured at the source;

(B) the demand goal calculated in accordance with this section for the current year and the following year, including documentation of the demand, weather adjustments, and the calculation of the goal;

(C) the utility's customers' total actual and weather-adjusted energy consumption and actual and weather-adjusted energy consumption for residential and commercial customers for the previous five years;

(D) the energy goal calculated in accordance with this section, including documentation of the energy consumption, weather adjustments, and the calculation of the goal;

(E) a description of existing energy efficiency programs and an explanation of the extent to which these programs will be used to meet the utility's energy efficiency goals;

(F) a description of each of the utility's energy efficiency programs that were not included in the previous year's plan, including measurement and verification plans if appropriate, and any baseline studies and research reports or analyses supporting the value of the new programs;

(G) an estimate of the energy and peak demand savings to be obtained through each separate energy efficiency program;

(H) a description of the customer classes targeted by the utility's energy efficiency programs, specifying the size of the hard-to-reach, residential, and commercial classes, and the methodology used for estimating the size of each customer class;

(I) the proposed annual budget required to implement the utility's energy efficiency programs, broken out by program for each customer class, including hard-to-reach customers, and any set-asides or budget restrictions adopted or proposed in accordance with this section. The proposed budget must detail the program incentive payments and utility administrative costs, including specific items for research and information and outreach to energy efficiency service providers, and other major administrative costs, and the basis for estimating the proposed expenditures;

(J) a discussion of the types of informational activities the utility plans to use to encourage participation by customers, energy efficiency service providers, and retail electric providers to participate in energy efficiency programs, including the manner in which the utility will provide notice of energy efficiency programs, and any other facts that may be considered when evaluating a program;

(K) the utility's performance in achieving its energy goal and demand goal for the prior five years, as reported in annual energy efficiency reports filed in accordance with this section;

(L) a comparison of projected savings (energy and demand), reported savings, and verified savings for each of the utility's energy efficiency programs for the prior two years;

(M) a description of the results of any market transformation program, including a comparison of the baseline and actual results and any adjustments to the milestones for a market transformation program;

(N) a description of self-delivered programs;

(O) expenditures for the prior five years for energy and demand program incentive payments and program administration, by program and customer class;

(P) funds that were committed but not spent during the prior year, by program;

(Q) a comparison of actual and budgeted program costs, including an explanation of any increase or decreases of more than 10% in the cost of a program;

(R) information relating to energy and demand savings achieved and the number of customers served by each program by customer class;

(S) the utility's most recent EECRF, the revenue collected through the EECRF, the utility's forecasted annual energy efficiency program expenditures in excess of the actual energy efficiency revenues collected from base rates as described in §25.182(d)(2) of this title, and the control number under which the most recent EECRF was established;

(T) the amount of any over- or under-recovery of energy efficiency program costs whether collected through base rates or the EECRF;

(U) a list of any counties that in the prior year were under-served by the energy efficiency program;

(V) a description of new or discontinued programs, including pilot programs that are planned to be continued as full programs. For programs that are to be introduced or pilot programs that are to be continued as full programs, the description must include the budget and projected demand and energy savings;

(W) a link to the program manuals for the current program year; and

(X) the calculations supporting the adjustments to restate the demand goal from the source to the meter and to restate the energy efficiency savings from the meter to the source.

(m) Review of programs. Commission staff may initiate a proceeding to review a utility's energy efficiency programs. In addition, an interested entity may request that the commission initiate a proceeding to review a utility's energy efficiency programs.

(n) Inspection, measurement and verification. Each standard offer, market transformation, and self-delivered program must include use of an industry-accepted evaluation or measurement and verification protocol, such as the International Performance Measurement and Verification Protocol or a protocol approved by the commission, to document and verify energy and peak demand savings to ensure that the goals of this section are achieved. A utility must not provide an energy efficiency service provider final compensation until the provider establishes that the work is complete and evaluation or measurement and verification in accordance with the protocol verifies that the savings will be achieved. However, a utility may provide an energy efficiency service provider that offers behavioral programs incremental compensation as work is performed. If inspection of one or more measures is a part of the protocol, a utility must not provide an energy efficiency service provider final compensation until the utility has conducted its inspection on at least a sample of measures and the inspections confirm that the work has been done. A utility must provide inspection reports to commission staff within 20 days of staff's request.

(1) The energy efficiency service provider, or for self-delivered programs, the utility, is responsible for the determination and documentation of energy and peak demand savings using the approved evaluation and/or measurement and verification protocol, and may utilize the services of an independent third party for such purposes.

(2) Commission-approved deemed energy and peak demand savings may be used in lieu of the energy efficiency service provider's measurement and verification, where applicable. The deemed savings approved by the commission before December 31, 2007 are continued in effect, unless superseded by commission action.

(3) Where installed measures are employed, an energy efficiency service provider must verify that the measures contracted for were installed before final payment is made to the energy efficiency service provider, by obtaining the customer's signature certifying that the measures were installed, or by other reasonably reliable means approved by the utility.

(4) For projects involving over 30 installations, a statistically significant sample of installations will be subject to on-site inspection in accordance with the protocol for the project to verify that measures are installed and capable of performing their intended function. Inspection must occur within 30 days of notification of measure installation.

(5) Projects of less than 30 installations may be aggregated and a statistically significant sample of the aggregate installations will be subject to on-site inspection in accordance with the protocol for the projects to ensure that measures are installed and capable of performing their intended function. Inspection must occur within 30 days of notification of measure installation.

(6) Where installed measures are employed, the sample size for on-site inspections may be adjusted for an energy efficiency service provider under a particular contract, based on the results of prior inspections.

(o) Evaluation, measurement, and verification (EM&V). The following defines the evaluation, measurement, and verification (EM&V) framework. The goal of this framework is to ensure that the programs are evaluated, measured, and verified using a consistent process that allows for accurate estimation of energy and demand impacts.

(1) EM&V objectives include:

(A) Documenting the impacts of the utilities' individual energy efficiency and load management portfolios, comparing their performance with established goals, and determining cost-effectiveness;

(B) Providing feedback for the commission, commission staff, utilities, and other stakeholders on program portfolio performance; and

(C) Providing input into the utilities' and ERCOT's planning activities.

(2) The principles that guide the EM&V activities in meeting the primary EM&V objectives are:

(A) Evaluators follow ethical guidelines.

(B) Important and relevant assumptions used by program planners and administrators are reviewed as part of the EM&V efforts.

(C) All important and relevant EM&V assumptions and calculations are documented and the reliability of results is indicated in evaluation reports.

(D) The majority of evaluation expenditures and efforts are in areas of greatest importance or uncertainty.

(3) The commission must select an entity to act as the commission's EM&V contractor and conduct evaluation activities. The EM&V contractor must operate under the commission's supervision and oversight, and the EM&V contractor must offer independent analysis to the commission in order to assist in making decisions in the public interest.

(A) Under the oversight of the commission staff and with the assistance of utilities and other parties, the EM&V contractor will evaluate specific programs and the portfolio of programs for each utility.

(B) The EM&V contractor must have the authority to request data it considers necessary to fulfill its evaluation, measurements, and verification responsibilities from the utilities. A utility must make good faith efforts to provide complete, accurate, and timely responses to all EM&V contractor requests for documents, data, information and other materials. The commission may on its own volition or upon recommendation by staff require that a utility provide the EM&V contractor with specific information.

(4) Evaluation activities will be conducted by the EM&V contractor to meet the evaluation objectives defined in this section. Activities must include, but are not limited to:

(A) Providing appropriate planning documents.

(B) Impact evaluations to determine and document appropriate metrics for each utility's individual evaluated programs and portfolio of all programs, annual portfolio evaluation reports, and additional reports and services as defined by commission staff to meet the EM&V objectives.

(C) Preparation of a statewide technical reference manual (TRM), including updates to such manual as defined in this subsection.

(5) The impact evaluation activities may include the use of one or more evaluation approaches. Evaluation activities may also include, or just include, verification activities on a census or sample of projects implemented by the utilities. Evaluations may also include the use of due-diligence on utility-provided documentation as well as surveys of program participants, non-participants, contractors, vendors, and other market actors.

(6) The following apply to the development of a statewide TRM by the EM&V contractor.

(A) The EM&V contractor must use existing Texas, or other state, deemed savings manual(s), protocols, and the work papers used to develop the values in the manual(s), as a foundation for developing the TRM. The TRM must include applicability requirements for each deemed savings value or deemed savings calculation. The TRM may also include standardized EM&V protocols for determining or verifying energy and demand savings for particular measures or programs. Utilities may apply TRM deemed savings values or deemed savings calculations to a measure or program if the applicability criteria are met.

(B) The TRM must be reviewed by the EM&V contractor at least annually, under a schedule determined by commission staff, with the intention of preparing an updated TRM, if needed. In addition, any utility or other stakeholder may request additions to or modifications to the TRM at any time with the provision of documentation for the basis of such an addition or modification. At the discretion of commission staff, the EM&V contractor may review such documentation to prepare a recommendation with respect to the addition or modification.

(C) Commission staff must approve any updated TRMs through the energy efficiency implementation project. The approval process for any TRM additions or modifications, not made during the regular review schedule determined by commission staff, must include a review by commission staff to determine if an addition or modification is appropriate before an annual update. TRM changes approved by staff may be challenged only by the filing of a petition within 45 days of the date that staff's approval is filed in the commission's central records under the control number for the energy efficiency implementation project described by subsection (d)(2)(A) of this section. The petition must clearly describe the reasons commission staff should not have approved the TRM changes, include supporting data and calculations, and state the relief sought.

(D) Any changes to the TRM must be applied prospectively to programs offered in the appropriate program year.

(E) The TRM must be publicly available.

(F) Utilities must utilize the values contained in the TRM, unless the commission indicates otherwise.

(i) For program year 2026, a utility must estimate a peak period using the calculation method contained in the TRM adopted in November 2025.

(ii) Starting with program year 2027, a utility must estimate a peak period using the calculation method contained in the most recently adopted TRM.

(7) The utilities must prepare projected savings estimates and claimed savings estimates. The utilities must conduct their own EM&V activities for purposes such as confirming any program incentive payments to customers or contractors and preparing documentation for internal and external reporting, including providing documentation to the EM&V contractor. The EM&V contractor must prepare evaluated savings for preparation of its evaluation reports and a realization rate comparing evaluated savings with projected savings estimates or claimed savings estimates.

(8) Baselines for preparation of TRM deemed savings values or deemed savings calculations or for other evaluation activities must be defined by the EM&V contractor and commission staff must review and approve them. When common practice baselines are defined for determining gross energy or demand savings for a measure or program, common practice may be documented by market studies. Baselines must be defined by measure category as follows (deviations from these specifications may be made with justification and approval of commission staff):

(A) Baseline is existing conditions for the estimated remaining lifetime of existing equipment for early replacement of functional equipment still within its current useful life. Baseline is applicable code, standard or common practice for remaining lifetime of the measure past the estimated remaining lifetime of existing equipment;

(B) Baseline is applicable code, standard or common practice for replacement of functional equipment beyond its current useful life;

(C) Baseline is applicable code, standard or common practice for unplanned replacements of failed equipment; and

(D) Baseline is applicable code, standard or common practice for new construction or major tenant improvements.

(9) Relevant recommendations of the EM&V contractor related to program design and reporting should be addressed in the Energy Efficiency Implementation Project (EEIP) and considered for implementation in future program years. The commission may require a utility to implement the EM&V contractor's recommendations in a future program year.

(10) The utilities must be assigned the EM&V costs in proportion to their annual program costs and must pay the invoices approved by the commission. The commission must at least biennially review the EM&V contractor's costs and establish a budget for its services sufficient to pay for those services that it determines are economic and beneficial to be performed.

(A) The funding of the EM&V contractor must be sufficient to ensure the selection of an EM&V contractor in accordance with the scope of EM&V activities outlined in this subsection.

(B) EM&V costs must be itemized in the utilities' annual reports to the commission as a separate line item. The EM&V costs must not count against the utility's cost caps or administration spending caps.

(11) For the purpose of analysis, the utility must grant the EM&V contractor access to data maintained in the utilities' data tracking systems, including, but not limited to, the following proprietary customer information: customer identifying information, individual customer contracts, and load and usage data in accordance with §25.272(g)(1)(A) of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates). Such information must be treated as confidential information.

(A) The utility must maintain records for three years that include the date, time, and nature of proprietary customer information released to the EM&V contractor.

(B) The EM&V contractor must aggregate data in such a way as to protect customer, retail electric provider, and energy efficiency service provider proprietary information in any non-confidential reports or filings the EM&V contractor prepares.

(C) The EM&V contractor must not utilize data provided or received under commission authority for any purposes outside the authorized scope of work the EM&V contractor performs for the commission.

(D) The EM&V contractor providing services under this section must not release any information it receives related to the work performed unless directed to do so by the commission.

(p) Targeted low-income energy efficiency program.

(1) Each unbundled transmission and distribution utility must include at least one targeted low-income energy efficiency program in its energy efficiency plan, and a utility in an area in which customer choice is not offered may include a targeted low-income energy efficiency program in its energy efficiency plan.

(A) Savings achieved by the program must count toward the utility's energy efficiency goal.

(B) A utility's targeted low-income program must incorporate a whole-house assessment that will evaluate all applicable energy efficiency measures for which there are commission-approved deemed savings. The cost-effectiveness of measures eligible to be installed and the overall program must be evaluated using the Savings-to-Investment ratio.

(C) Any funds that are not obligated after July of a program year may be made available for use in a hard-to-reach program. However, such funds may not be used to satisfy the expenditure requirement under paragraph (2)(A) of this subsection.

(D) Demand reduction achieved through a targeted low-income energy efficiency program may not be used to satisfy the hard-to-reach demand reduction requirement under subsection (e)(3)(F) of this section.

(2) Elements of the targeted low-income energy efficiency program required only for unbundled transmission and distribution utilities.

(A) Annual expenditures for a targeted low-income energy efficiency program must be at least 10% of the utility's energy efficiency budget for the program year.

(B) The targeted low-income energy efficiency program must comply with requirements listed in PURA §39.905(f):

(i) a targeted low-income energy efficiency program must comply with the same audit requirements that apply to federal weatherization subrecipients;

(ii) the Texas Department of Housing and Community Affairs must participate in an energy efficiency cost recovery factor proceeding related to expenditures under this subsection to ensure that a targeted low-income energy efficiency program is consistent with federal weatherization programs and adequately funded; and

(ii) in an energy efficiency cost recovery factor proceeding related to expenditures under this subsection, the commission will make findings of fact regarding whether the utility meets requirements as described in this subsection.

(q) Energy Efficiency Implementation Project - EEIP. The commission will use the EEIP to develop best practices in standard offer market transformation, self-directed, pilot, or other programs, modifications to programs, standardized forms and procedures, protocols, deemed savings estimates, program templates, and the overall direction of the energy efficiency program established by this section. Utilities must provide timely responses to questions posed by other participants relevant to the tasks of the EEIP. Any recommendations from the EEIP process must relate to future years as described in this subsection.

(1) The following functions may also be undertaken in the EEIP:

(A) development, discussion, and review of new statewide standard offer programs;

(B) identification, discussion, design, and review of new market transformation programs;

(C) determination of measures for which deemed savings are appropriate and participation in the development of deemed savings estimates for those measures;

(D) review of and recommendations on the commission EM&V contractor's reports;

(E) review of and recommendations on program incentive payment levels and their adequacy to induce the desired level of participation by energy efficiency service providers and customers;

(F) review of and recommendations on a utility's annual energy efficiency plans and reports;

(G) utility program portfolios and proposed energy efficiency spending levels for future program years;

(H) periodic reviews of the cost-effectiveness methodology; and

(I) other activities as identified by commission staff.

(2) The EEIP projects must be conducted by commission staff. The commission's EM&V contractor's reports must be filed in the project at a date determined by commission staff.

(3) A utility that intends to launch a program that is substantially different from other programs previously implemented by any utility affected by this section must file a program template and must provide notice of such to EEIP participants. Notice to EEIP participants need not be provided if a program description or program template for the new program is provided through the utility's annual energy efficiency report. Following the first year in which a program was implemented, the utility must include the program results in the utility's annual energy efficiency report.

(4) Participants in the EEIP may submit comments and reply comments in the EEIP on dates established by commission staff.

(5) Any new programs or program redesigns must be submitted to the commission in a petition in a separate proceeding. The approved changes must be available for use in the utilities' next EEPR and EECRF filings. If the changes are not approved by the commission by November 1 in a particular year, the first time that the changes must be available for use is the second EEPR and EECRF filings made after commission approval.

(6) Any interested entity that participates in the EEIP may file a petition to the commission for consideration regarding changes to programs.

(r) Retail providers. Each utility in an area in which customer choice is offered must conduct outreach and information programs and otherwise use its best efforts to encourage and facilitate the involvement of retail electric providers as energy efficiency service companies in the delivery of efficiency and demand response programs.

(s) Customer protection. Each energy efficiency service provider that provides energy efficiency services to end-use customers under this section must provide the disclosures and include the contractual provisions required by this subsection, except for commercial customers with a peak load exceeding 50 kW. Paragraph (1) of this subsection does not apply to behavioral energy efficiency programs that do not require a contract with a customer.

(1) Clear disclosure to the customer must be made of the following:

(A) the customer's right to a cooling-off period of three business days, in which the contract may be canceled, if applicable under law;

(B) the name, telephone number, and street address of the energy efficiency service provider and any subcontractor that will be performing services at the customer's home or business;

(C) the fact that program incentive payments are made to the energy efficiency services provider through a program funded by utility customers, manufacturers or other entities and the amount of any program incentives provided by the utility;

(D) the amount of any program incentive payment that will be provided to the customer;

(E) notice of provisions that will be included in the customer's contract, including warranties;

(F) the fact that the energy efficiency service provider must measure and report to the utility the energy and peak demand savings from installed energy efficiency measures;

(G) the liability insurance to cover property damage carried by the energy efficiency service provider and any subcontractor;

(H) the financial arrangement between the energy efficiency service provider and customer, including an explanation of the total customer payments, the total expected interest charged, all possible penalties for non-payment, and whether the customer's installment sales agreement may be sold;

(I) the fact that the energy efficiency service provider is not part of or endorsed by the commission or the utility; and

(J) a description of the complaint procedure established by the utility under this section, and toll-free numbers for the Consumer Protection Division of the Public Utility Commission of Texas, and the Office of Attorney General's Consumer Protection Hotline.

(2) The energy efficiency service provider's contract with the customer, where such a contract is employed, must include:

(A) work activities, completion dates, and the terms and conditions that protect residential customers in the event of non-performance by the energy efficiency service provider;

(B) provisions prohibiting the waiver of consumer protection statutes, performance warranties, false claims of energy savings and reductions in energy costs;

(C) a disclosure notifying the customer that consumption data may be disclosed to the EM&V contractor for evaluation purposes; and

(D) a complaint procedure to address performance issues by the energy efficiency service provider or a subcontractor.

(3) When an energy efficiency service provider completes the installation of measures for a customer, it must provide the customer an "All Bills Paid" affidavit to protect against claims of subcontractors.

(t) Grandfathered programs. An electric utility that offered a load management standard offer program for industrial customers prior to May 1, 2007 must continue to make the program available, at 2007 funding and participation levels, and may include additional customers in the program to maintain these funding and participation levels.

(u) Industrial customer opt-out. An industrial customer taking electric service at distribution voltage may submit a notice identifying the distribution accounts for which it qualifies under subsection (c)(20) of this section. The identification notice must be submitted directly to the customer's utility. An identification notice submitted under this section must be renewed every three years. Each identification notice must include the name of the industrial customer, a copy of the customer's Texas Sales and Use Tax Exemption Certification (under Tax Code §151.317), a description of the industrial process taking place at the consuming facilities, and the customer's applicable account number or ESID number. The identification notice is limited solely to the metered point of delivery of the industrial process taking place at the consuming facilities. The account number or ESID number identified by the industrial customer under this section must not be charged for any costs associated with programs provided under this section, including any utility incentive awarded; nor must the identified facilities be eligible to participate in utility-administered energy efficiency programs during the term. Notices must be submitted not later than February 1 to be effective for the following program year. A utility's demand re-

duction goal must be adjusted to remove any load that is lost as a result of this subsection.

(v) Administrative penalty. The commission may impose an administrative penalty or other sanction if the utility fails to meet a goal for energy efficiency under this section. Factors, to the extent they are outside of the utility's control, that may be considered in determining whether to impose a sanction for the utility's failure to meet the goal include:

(1) the level of demand by retail electric providers and energy efficiency service providers for program incentive payments made by the utility through its programs;

(2) changes in building energy codes; and

(3) changes in government-imposed appliance or equipment efficiency standards.

§25.182. Energy Efficiency Cost Recovery Factor.

(a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §39.905 and establish:

(1) an energy efficiency cost recovery factor (EECRF) that enables an electric utility to timely recover the reasonable costs of providing a portfolio of cost-effective energy efficiency programs that complies with this section and §25.181 of this title (relating to Energy Efficiency Goal).

(2) a utility incentive to reward an electric utility that exceeds its demand and energy reduction goals under the requirements of §25.181 of this title at a cost that does not exceed the cost caps established in subsection (d)(7) of this section.

(b) Application. This section applies to electric utilities.

(c) Definitions. The definitions provided in §25.181(c) of this title also apply in this section. The following terms, when used in this section, have the following meaning unless the context indicates otherwise:

(1) Billing determinants--The measures of energy consumption or load used to calculate a customer's bill or to determine the aggregate revenue from rates from all customers.

(2) Rate class--For the purpose of calculating EECRF rates, a utility's rate classes are those retail rate classes approved in the utility's most recent base-rate proceeding, excluding non-eligible customers.

(d) Cost recovery. A utility must establish an EECRF that complies with this subsection to timely recover the reasonable costs of providing a portfolio of cost-effective energy efficiency programs under §25.181 of this title. Each utility must file its application according to the commission's file format standards in §22.72 of this title (relating to Formal Requisites of Pleadings and Documents to be Filed with the Commission).

(1) The EECRF must be calculated based on the following:

(A) The utility's forecasted annual energy efficiency program expenditures, the preceding year's over- or under-recovery including interest and municipal and utility EECRF proceeding expenses, any utility incentive earned under subsection (e) of this section, and evaluation, measurement, and verification (EM&V) contractor costs allocated to the utility by the commission for the preceding year under §25.181 of this title.

(B) For a utility that collects any amount of energy efficiency costs in its base rates, the amounts described in subparagraph (A) of this paragraph in excess of the actual energy efficiency revenues collected from base rates as described in paragraph (2) of this subsection.

(2) The commission may approve an EECRF for each eligible rate class. The costs must be directly assigned to each rate class that received services under the programs to the maximum extent reasonably possible. In its EECRF proceeding, a utility may request a good cause exception to combine one or more rate classes, each containing fewer than 20 customers, with a similar rate class that received services under the same energy efficiency programs in the preceding year. For each rate class, the under- or over-recovery of the energy efficiency costs must be the difference between actual EECRF revenues and actual costs for that class that comply with paragraph (12) of this subsection, including interest applied on such over- or under-recovery calculated by rate class and compounded on an annual basis for a two-year period using the annual interest rates authorized by the commission for over- and under-billing for the year in which the over- or under-recovery occurred and the immediately subsequent year. Where a utility collects energy efficiency costs in its base rates, actual energy efficiency revenues collected from base rates consist of the amount of energy efficiency costs expressly included in base rates, adjusted to account for changes in billing determinants from the test year billing determinants used to set rates in the last base rate proceeding.

(3) A proceeding conducted under this subsection is a ratemaking proceeding for purposes of PURA §33.023 and §36.061. EECRF proceeding expenses must be included in the EECRF calculated under paragraph (1) of this subsection as follows:

(A) For a utility's EECRF proceeding expenses, the utility may include only its expenses for the immediately previous EECRF proceeding conducted under this subsection.

(B) For municipalities' EECRF proceeding expenses, the utility may include only expenses paid or owed for the immediately previous EECRF proceeding conducted under this subsection for services reimbursable under PURA §33.023(b).

(4) Base rates must not be set to recover energy efficiency costs.

(5) If a utility recovers energy efficiency costs through base rates, the EECRF may be changed in a general rate proceeding. If a utility is not recovering energy efficiency costs through base rates, the EECRF may be adjusted only in an EECRF proceeding under this subsection.

(6) For residential customers and for non-residential rate classes whose base rates do not provide for demand charges, the EECRF rates must be designed to provide only for energy charges. For non-residential rate classes whose base rates provide for demand charges, the EECRF rates must provide for energy charges or demand charges, but not both. Any EECRF demand charge must not be billed using a demand ratchet mechanism.

(7) The total EECRF costs outlined in paragraph (1) of this subsection, excluding EM&V costs, excluding municipal EECRF proceeding expenses, and excluding any interest amounts applied to over- or under-recoveries, must not exceed the amounts prescribed in this paragraph unless a good cause exception filed under §25.181(e)(2) of this title is granted.

(A) For residential customers for program year 2018, $0.001263 per kWh increased or decreased by a rate equal to the 2016 calendar year's percentage change in the South urban consumer price index (CPI), as determined by the Federal Bureau of Labor Statistics; and

(B) For commercial customers for program year 2018, rates designed to recover revenues equal to $0.000790 per kWh increased or decreased by a rate equal to the 2016 calendar year's percentage change in the South urban CPI, as determined by the Federal

Bureau of Labor Statistics times the aggregate of all eligible commercial customers' kWh consumption.

(C) For the 2019 program year and thereafter, the residential and commercial cost caps must be calculated to be the prior period's cost caps increased or decreased by a rate equal to the most recently available calendar year's percentage change in the South urban CPI, as determined by the Federal Bureau of Labor Statistics.

(8) Not later than May 1 of each year, a utility in an area in which customer choice is not offered must apply to adjust its EECRF effective January 1 of the following year. Not later than June 1 of each year, a utility in an area in which customer choice is offered must apply to adjust its EECRF effective March 1 of the following year. If a utility is in an area in which customer choice is offered in some but not all parts of its service area and files one energy efficiency plan and report covering all of its service area, the utility must apply to adjust the EECRF not later than May 1 of each year, with the EECRF effective January 1 in the parts of its service area in which customer choice is not offered and March 1 in the parts of its service area in which customer choice is offered.

(9) Upon a utility's filing of an application to establish a new EECRF or adjust an EECRF, the presiding officer must set a procedural schedule that will enable the commission to issue a final order in the proceeding required by subparagraphs (A), (B), and (C) of this paragraph as follows:

(A) For a utility in an area in which customer choice is not offered, the presiding officer must set a procedural schedule that will enable the commission to issue a final order in the proceeding prior to the January 1 effective date of the new or adjusted EECRF, except where good cause supports a different procedural schedule.

(B) For a utility in an area in which customer choice is offered, the effective date of a new or adjusted EECRF must be March 1. The presiding officer must set a procedural schedule that will enable the utility to file an EECRF compliance tariff consistent with the final order within ten days of the date of the final order. The procedural schedule must also provide that the compliance filing date will be at least 45 days before the effective date of March 1. The effective date of any new or adjusted EECRF must occur at least 45 days after the utility files a compliance tariff consistent with a final order approving the new or adjusted EECRF. The utility must serve notice of the approved rates and the effective date of the approved rates by the working day after the utility files a compliance tariff consistent with the final order approving the new or adjusted EECRF to retail electric providers that are authorized by the registration agent to provide service in the utility's service area. Notice under this subparagraph may be served by email. The procedural schedule may be extended for good cause, but the effective date of any new or adjusted EECRF must occur at least 45 days after the utility files a compliance tariff consistent with a final order approving the new or adjusted EECRF. The utility may not serve notice of the approved rates and the effective date of the approved rates to retail electric providers that are authorized by the registration agent to provide service in the utility's service area more than one working day after the utility files the compliance tariff.

(C) For a utility in an area in which customer choice is offered in some but not all parts of its service area and that files one energy efficiency plan and report covering all of its service area, the presiding officer must set a procedural schedule that will enable the commission to issue a final order in the proceeding prior to the January 1 effective date of the new or adjusted EECRF for the areas in which customer choice is not offered, except where good cause supports a different schedule. For areas in which customer choice is offered, the effective date of the new or adjusted EECRF must be March 1. The presiding officer must set a procedural schedule that will enable the utility to file an EECRF compliance tariff consistent with the final order within ten days of the date of the final order. The procedural schedule must also provide that the compliance filing date will be at least 45 days before the effective date of March 1. The effective date of any new or adjusted EECRF must occur at least 45 days after the utility files a compliance tariff consistent with a final order approving the new or adjusted EECRF. The utility must serve notice of the approved rates and the effective date of the approved rates by the working day after the utility files a compliance tariff consistent with the final order approving the new or adjusted EECRF to retail electric providers that are authorized by the registration agent to provide service in the utility's service area. Notice under this subparagraph of this paragraph may be served by email. The procedural schedule may be extended for good cause, but the effective date of any new or adjusted EECRF must occur at least 45 days after the utility files a compliance tariff consistent with a final order approving the new or adjusted EECRF. The utility may not serve notice of the approved rates and the effective date of the approved rates to retail electric providers that are authorized by the registration agent to provide service in the utility's service area more than one working day after the utility files the compliance tariff.

(D) If no hearing is requested within 30 days of the filing of the application, the presiding officer must set a procedural schedule that will enable the commission to issue a final order in the proceeding within 90 days after a sufficient application was filed; or

(E) If a hearing is requested within 30 days of the filing of the application, the presiding officer must set a procedural schedule that will enable the commission to issue a final order in the proceeding within 180 days after a sufficient application was filed. If a hearing is requested, the hearing will be held no earlier than the first working day after the 45th day after a sufficient application is filed.

(10) A utility's application to establish or adjust an EECRF must include the utility's most recent energy efficiency plan and report, consistent with §25.181(l) and §25.183(d) of this title, as well as testimony and schedules, in Excel format with formulas intact, showing the following, by rate class, for the prior program year and the program year for which the proposed EECRF will be collected as appropriate:

(A) the utility's forecasted energy efficiency costs;

(B) the actual base rate recovery of energy efficiency costs, adjusted for changes in load and usage subsequent to the last base rate proceeding, with supporting calculations;

(C) a calculation showing whether the utility qualifies for a utility incentive and the amount that it calculates to have earned for the prior year;

(D) any adjustment for past over- or under-recovery of energy efficiency revenues, including interest;

(E) information concerning the calculation of billing determinants for the preceding year and for the year in which the EECRF is expected to be in effect;

(F) the direct assignment and allocation of energy efficiency costs to the utility's eligible rate classes, including any portion of energy efficiency costs included in base rates, provided that the utility's actual EECRF expenditures by rate class may deviate from the projected expenditures by rate class, to the extent doing so does not exceed the cost caps in paragraph (7) of this subsection;

(G) information concerning calculations related to the requirements of paragraph (7) of this subsection;

(H) the program incentive payments by the utility, by program, including a list of each energy efficiency administrator or ser-

vice provider receiving more than 5% of the utility's overall program incentive payments and the percentage of the utility's program incentive payments received by those providers. Such information may be treated as confidential;

(I) the utility's administrative costs, including any affiliate costs and EECRF proceeding expenses and an explanation of both;

(J) the actual EECRF revenues by rate class for any period for which the utility calculates an under- or over-recovery of EECRF costs;

(K) the utility's bidding and engagement process for contracting with energy efficiency service providers, including a list of all energy efficiency service providers that participated in the utility programs and contractors paid with funds collected through the EECRF. Such information may be treated as confidential;

(L) the estimated useful life used for each measure in each program, or a link to the information if publicly available; and

(M) any other information that supports the determination of the EECRF.

(11) The following factors must be included in the application, as applicable, to support the recovery of energy efficiency costs under this subsection.

(A) the costs are less than or equal to the benefits of the programs, as calculated in §25.181(d) of this title;

(B) the program portfolio was implemented in accordance with recommendations made by the commission's EM&V contractor and approved by the commission and the EM&V contractor has found no material deficiencies in the utility's administration of its portfolio of energy efficiency programs under §25.181 of this title. This subparagraph does not preclude parties from examining and challenging the reasonableness of a utility's energy efficiency program expenses nor does it limit the commission's ability to address the reasonableness of a utility's energy efficiency program expenses;

(C) if a utility is in an area in which customer choice is offered and is subject to the requirements of PURA §39.905(f), the utility met its targeted low-income energy efficiency requirements under §25.181 of this title;

(D) existing market conditions in the utility's service territory affected its ability to implement one or more of its energy efficiency programs or affected its costs;

(E) the utility's costs incurred and achievements accomplished in the previous year or estimated for the year the requested EECRF will be in effect are consistent with the utility's energy efficiency program costs and achievements in previous years notwithstanding any recommendations or comments by the EM&V contractor;

(F) changed circumstances in the utility's service area since the commission approved the utility's budget for the implementation year that affect the ability of the utility to implement any of its energy efficiency programs or its energy efficiency costs;

(G) the number of energy efficiency service providers operating in the utility's service territory affects the ability of the utility to implement any of its energy efficiency programs or its energy efficiency costs;

(H) customer participation in the utility's prior years' energy efficiency programs affects customer participation in the utility's energy efficiency programs in previous years or its proposed programs underlying its EECRF request and the extent to which program costs were expended to generate more participation or transform the market for the utility's programs;

(I) the utility's energy efficiency costs for the previous year or estimated for the year the requested EECRF will be in effect are comparable to costs in other markets with similar conditions; and

(J) the utility has set its program incentive payments with the objective of achieving its energy and demand goals under §25.181 of this title at the lowest reasonable cost per program.

(12) The scope of an EECRF proceeding includes the extent to which the costs recovered through the EECRF complied with PURA §39.905, this section, and §25.181 of this title; the extent to which the costs recovered were reasonable and necessary to reduce demand and energy growth; and a determination of whether the costs to be recovered through an EECRF are reasonable estimates of the costs necessary to provide energy efficiency programs and to meet or exceed the utility's energy efficiency goals. The proceeding will not include a review of program design to the extent that the programs complied with the energy efficiency implementation project (EEIP) process defined in §25.181(q) of this title. The commission will not allow recovery of expenses that are designated as non-recoverable under §25.231(b)(2) of this title (relating to Cost of Service).

(13) Notice of a utility's filing of an EECRF application is reasonable if the utility provides in writing a general description of the application and the docket number assigned to the application within seven days of the application filing date to:

(A) All parties in the utility's most recent completed EECRF docket;

(B) All retail electric providers that are authorized by the registration agent to provide service in the utility's service area at the time the EECRF application is filed;

(C) All parties in the utility's most recent completed base-rate proceeding; and

(D) The state agency that administers the federal weatherization program.

(14) The utility must file an affidavit attesting to the completion of notice within 14 days after the application is filed.

(15) The commission may approve a utility's request to establish an EECRF revenue requirement or EECRF rates that are lower than the amounts otherwise determined under this section.

(e) Utility incentive. To receive a utility incentive, a utility must exceed its demand and energy reduction goals established in §25.181 of this title at a cost that does not exceed the cost caps established in subsection (d)(7) of this section. The utility incentive must be based on the utility's energy efficiency achievements for the previous program year. The utility incentive calculation must not include demand or energy savings that result from programs other than programs implemented under §25.181 of this title.

(1) The utility incentive allows a utility to receive a share of the net benefits realized in exceeding its demand reduction goal established according to §25.181 of this title.

(2) Net benefits are calculated as the sum of total avoided cost associated with the eligible programs administered by the utility minus the sum of all program costs. Program costs include the cost of program incentive payments, incurred EM&V contractor costs, any utility incentive awarded to the utility, and actual or allocated research and development and administrative costs, but do not include any interest amounts applied to over- or under-recoveries. Total avoided costs

and program costs must be calculated in accordance with this section and §25.181 of this title.

(3) If a utility exceeds 100% of its demand and energy reduction goals, it will receive a utility incentive. The utility incentive is calculated as 1% of the applicable program year's net benefits for every 2% that the demand reduction goal has been exceeded, with a maximum of 5% of the utility's total net benefits.

(4) The commission may reduce the utility incentive otherwise permitted under this subsection for a utility with a lower goal, higher administrative spending cap, or higher EECRF cost cap established by the commission under §25.181(e)(2) of this title. The utility incentive will be considered in the EECRF proceeding in which the utility incentive is requested.

(5) In calculating net benefits to determine a utility incentive, a discount rate equal to the utility's weighted average cost of capital of the utility and an escalation rate of 2% must be used. The utility must provide documentation for the net benefits calculation, including, but not limited to, the weighted average cost of capital, useful life of equipment or measure, and quantity of each measure implemented.

(6) The utility incentive must be allocated in proportion to the program costs associated with meeting the demand and energy goals under §25.181 of this title and allocated to eligible customers on a rate class basis.

(7) A utility incentive earned under this section must not be included in the utility's revenues or net income for the purpose of establishing a utility's rates or commission assessment of its earnings.

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 December 12, 2025.

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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

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SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §25.53

The Public Utility Commission of Texas (commission) adopted amendments to 16 Texas Administrative Code (TAC) §25.53, relating to Electric Service Emergency Operations Plans with changes to the proposed text as published in the September 5, 2025 issue of the *Texas Register* (50 TexReg 5849). The amended rule requires each entity that submits an Emergency Operations Plan (EOPs) to comply with an executive summary template, include a comprehensive list of generation assets in its executive summaries, file flood annexes for transmission and distribution facilities and generation resources, file annexes in their entirety, and comprehensively re-file its EOP every three years. The amended rule additionally clarifies how an EOP should be made available to commission staff and makes other minor changes. The rule will be republished.

The commission received comments about this project from AEP Texas Inc., Electric Transmission Texas, LLC, and Southwestern Electric Power Company (AEP Companies), CenterPoint Energy Houston Electric (CenterPoint), City of Houston (Houston), El Paso Electric (EPE), Entergy Texas, Inc. (Entergy), Lower Colorado River Authority and LCRA Transmission Services Corporation (LCRA), Oncor Electric Delivery Company LLC (Oncor), Southwestern Public Service Company (SPS), Texas Competitive Power Advocates (TCPA), Texas Energy Association for Marketers (TEAM), Texas Electric Cooperatives, Inc. (TEC), and Texas Public Power Association (TPPA). The commission adopts the rule with changes to the proposal.

The commission invited interested persons to address one question related to the proposed rule.

Question One

To further assist the commission in implementing the provisions of House Bill. 145 (89th Legislature, Regular Session), the commission requested comments on the following issue:

1. What, if any, changes should the commission make to align this rule with proposed §25.60, Transmission and Distribution Wildfire Mitigation Plans, currently under consideration in Project No. 56789.

SPS recommended allowing wildfire mitigation plans (WMPs) to be included as an annex to an EOP after the WMP has been approved under §25.60. Oncor similarly commented that if a wildfire mitigation plan is approved by the commission under §25.60, then the entity should be able to comply with §25.53(e)(1)(D) by filing the wildfire mitigation plan as an annex.

LCRA recommended removing the requirement to file a wildfire annex from the EOP rule and instead recommended allowing an entity to cross reference its WMP in its EOP filing. TEC also recommended the commission allow cross reference in filing WMPs and EOPs.

TPPA suggested that providing duplicative information in WMP, EOP, and other filings may cause confusion for utility personnel and instead recommended that the commission review information from one filing that refers to discreet information on both WMP and EOP. It also recommended making the language between the two rules similar so that the executive director or the designee may request after-action reports.

AEP recommended making changes to maintain consistency between §25.53 and §25.60, including reducing duplication through cross-referencing, coordinating filing timelines, standardizing key definitions, harmonizing emergency protocols, and safeguarding confidential information.

CenterPoint recommended no changes to the rule as proposed and emphasized that mitigation plans and emergency operation plans should be kept separate, as they serve two different purposes.

Houston recommended that the commission specifically address the prudency of achieving cost savings without materially reducing the necessary effectiveness of these operational plans.

Commission Response

The commission agrees with SPS and Oncor that a wildfire mitigation plan approved by the commission under §25.60 complies with §25.53(e)(1)(D). The commission disagrees with LCRA and TEC that cross references to the WMP would be a sufficient alternative, as staff would then have to access alternative dockets

as it conducts its biennial review of EOPs required under Tex. Util. Code §186.007. Though the commission agrees that standardizing terms is best practice across agency rules, there are times when different rules must have different terms to clarify which parties are intended to be captured in a particular rule. In this case, the EOP rules apply to more types of entities than do the requirements under §25.60, such as generators, for example. The commission declines to include the factors laid out by Houston as these are outside the scope of the rulemaking project.

Proposed §25.53(c)(1)(A)

Proposed §25.53(c)(1)(A) requires entities to file an executive summary containing specific information and a complete copy of the EOP.

TEC recommended allowing for flexibility in the application of the PUC executive summary template because a standardized template may not account for corporate or governing differences that may exist between filing entities.

LCRA recommended deleting or modifying the language to allow for the optional use of the executive summary template.

Commission Response

The commission disagrees with TEC that a standardized template will not account for difference between filing entities. The commission establishes the template to rectify recurring inconsistencies and other common issues commission staff faced in the review of EOP filings. Accordingly, the commission declines to modify the template and referenced rule language. The commission disagrees with LCRA's recommendation to delete the executive summary template or modify the language to make it optional. The template is necessary for consistency of document review across multiple entities.

Proposed §25.53(c)(1)(A)(i)(III) & (c)(3)(A)(i)(III)

Proposed §25.53(c)(1)(A)(i)(III) requires an entity to include in the filed executive summary a comprehensive list of affiliated assets and facilities for power generation companies (PGCs) that are included in the EOP, and proposed §25.53(c)(3)(A)(i)(III) requires the same in the instance of a material change.

TCPA opposed the rule requirement to provide a comprehensive list of affiliated assets and facilities for PGCs. TCPA recommended limiting the list to generating units or facilities.

Commission Response

The commission agrees with TCPA and modifies §25.53 (c)(1)(A)(i)(III) and (c)(3)(A)(i)(III) so that only generating units must be listed.

Proposed §25.53(c)(1)(A)(VI)

Proposed §25.53(c)(1)(A)(VI) requires and entity to include a record of distribution and in accordance with §25.53(c)(4)(A), the entity must file this record in a formatted table.

LCRA recommended deleting §25.53(c)(4)(A) in its entirety as it does not allow parties the ability to customize the chart. Specifically, LCRA expressed the table template was overly prescriptive does not align with LCRA's practices in terms of tracking recipients of the EOP. In the alternative, Table 4 in the Executive Summary Template should be deleted or discretionary.

Commission Response

The commission declines in deleting §25.53(c)(1)(A)(VI), the template is necessary for the purposes of providing our contractor with consistent documents for ease of review.

Proposed §25.53(c)(1)(D)

Proposed §25.53(c)(1)(D) requires an entity to make its unredacted EOP available in its entirety to commission staff on request through an encrypted electronic method designated by commission staff.

EPE, SPS and TEAM recommended that §25.53(c)(1)(D) remain unchanged, which requires that EOPs be made available to staff at a physical location. Should the commission approve the amendment to §25.53(c)(1)(D), EPE requested that the rule detail the chosen encrypted electronic method.

Entergy recommended removing the requirement to upload the entire unredacted EOP through an encrypted electronic method.

Oncor recommended clarifying that existing encryption practices, such as Oncor's provision of materials to ERCOT through secure electronic means using password-protection, are sufficient for compliance.

AEP recommended adding a confidentiality requirement for commission staff.

Commission Response

The commission disagrees with commenters who recommended deletion of the requirement to make an EOP available to commission staff through an encrypted electronic process. The commission must review roughly 700 EOPs to ensure compliance with statutes and regulations and to provide a report to the Legislature related to the preparedness of the industry. Additionally, each emergency operations plan amounts to thousands of pages per document. Currently, the outside of ERCOT region entities present the EOP documents physically, but commission staff and its contractor have only one day to review the thousands of pages. Coordinating between multiple filing entities, commission staff, and the commission's contractors accrues unnecessary costs and wastes time when the same information can be delivered by secure file sharing.

The commission declines to remove the encryption language from §25.53(c)(1)(D), but will clarify that an entity may coordinate with staff to set up a secure file sharing method for document transfer. Further, the commission agrees with Oncor that the practice of sending materials to ERCOT through secure electronic means using password-protection is sufficient for compliance. However, the commission declines to modify the proposed rule language as it is unnecessary.

The commission declines to include a confidentially requirement exclusively for commission staff because it is unnecessary. Commission staff is required to follow the same confidentially rules as any other party under §22.71 of this Title.

Proposed §25.53(c)(3)

Proposed §25.53(c)(3) requires an entity to continuously maintain its EOP between the required three-year filing period.

AEP recommended eliminating the proposed three-year refiling requirement; instead, require full EOP refiling only when material changes occur or when the commission determines the existing plan is inadequate under Tex. Util. Code §186.007(b).

TEAM recommended that for a retail electric provider (REP) the requirement to file a complete EOP every three years should be

extended to no more than once every five years. LCRA similarly requested changing the rule to require a renewing the EOP every five years.

TPPA opposed the three-year refiling requirement because it is redundant and administratively burdensome. TEC requested removing the requirements to file annual updates and three-year full re-filings.

Commission Response

The commission declines to extend the refiling deadline to every five years to remain consistent with the reporting cadence of the WMP rule. Actively maintaining, reviewing, and revising an EOP is a necessary industry best practice. It mitigates against the usage of and reliance on old documents and plans for several years. Therefore, the commission declines to remove the language requiring the continuous maintenance of EOP documents.

Proposed §25.53(c)(3)(E)

Proposed §25.53(c)(3)(E) requires an entity make a revised unredacted EOP available in its entirety to commission staff on request through an encrypted electronic method designated by commission staff.

SPS recommended removing the requirement to upload an entire unredacted EOP through an encrypted electronic method and recommended making it available at a location instead.

Oncor recommended clarifying that existing encryption practices, such as Oncor's provision of materials to ERCOT through secure electronic means using password-protection, are sufficient for compliance.

AEP requested adding a confidentiality requirement for commission staff.

Commission Response

The commission disagrees with commenters who recommended deletion of the requirement to make an EOP available to commission staff through an encrypted electronic process. The commission must review roughly 700 EOPs to ensure compliance with statutes and regulations and to provide a report to the Legislature related to the preparedness of the industry. Additionally, each emergency operations plan amounts to thousands of pages per document. Currently, the outside of ERCOT region entities present the EOP documents physically, but commission staff and its contractor have only one day to review the thousands of pages. Coordinating between multiple filing entities, commission staff, and the commission's contractors accrues unnecessary costs and wastes time when the same information can be delivered by secure file sharing.

The commission declines to remove the encryption language from 25.53(c)(3)(E), but will clarify that an entity may coordinate with staff to set up a secure file sharing method for document transfer. Further, the commission agrees with Oncor that the practice of sending materials to ERCOT through secure electronic means using password-protection is sufficient for compliance. However, the commission declines to modify the proposed rule language as it is unnecessary.

The commission declines to include a confidentially requirement exclusively for commission staff because it is unnecessary. Commission staff is required to follow the same confidentially rules as any other party under §22.71 of this Title.

Proposed §25.53(c)(4)(C)

Proposed §25.53(c)(4)(C) requires an entity to file an affidavit from the entity's highest-ranking representative, official, or officer with binding authority over the entity attesting to various provisions relating to the entity's training, review processes, and management of the EOP.

TPPA recommended that the commission specify that the affidavit be signed by an officer with operational responsibility over the entity.

TEAM recommended amending 16 TAC §25.53(c)(4)(C) to state: "relevant operating personnel have received a copy of the EOP, are familiar with the EOP, and have received training on the applicable contents and execution of the EOP."

Commission Response

The commission declines to implement TPPA's and TEAM's requests as the recommended changes fall outside the scope of the modifications noticed in the proposal for publication.

Proposed §25.53(d)(6)

Proposed §25.53(d)(6) requires an entity to present each relevant annex in its full and comprehensive version.

TCPA opposed language in §25.53(d)(6) requiring presenting each annex in its full and comprehensive version because it could add thousands of pages to an entity's EOP, some information of which may be sensitive security or business information. TCPA opined that commission staff can already review any of the annexes on request, making the proposed requirement redundant.

LCRA recommended the commission allow for cross-references to previously filed plans in lieu of comprehensive re-filings of the same material.

AEP requested replacing the "full and comprehensive annex" requirement with language that ensures sufficient operational detail while allowing sensitive information to be submitted confidentially to the Commission.

SPS recommended that authorization to redact confidential information in this section be provided to preserve the security of the system.

Commission Response

The commission disagrees with TCPA's recommendation to remove the language requiring annexes to be included in their entirety and with LCRA's suggestion that cross references to the WMP would be a sufficient alternative, as staff would then have to access myriad alternative dockets, which would be administratively inefficient in its review of roughly 700 EOPs. The commission disagrees with AEP that an annex with "sufficient operational detail" would suffice in providing the commission with the comprehensive understanding about industry preparedness across the grid. Because filing entities are allowed to file information they deem confidential as a confidential filing, the commission declines to modify the proposed rule as suggested by SPS.

Proposed §25.53(e)(1)(D)

Proposed §25.53(e)(1)(D) requires an entity to file its wildfire annex as part of its EOP.

Houston recommended clarifying that an entity may reference its WMP in its EOP in lieu of including the full content of the WMP, provided the WMP is readily available, and the document

location is referenced in a manner that allows for direct access by authorized agents to the document.

Commission Response

The commission disagrees with Houston that a cross reference to the WMP filed under §25.60 of this chapter would be a sufficient alternative to the requirement proposed in this rule, as this would be administratively inefficient for staff for the reasons stated above in its response to the question for comment issued in the proposal for publication.

Proposed §25.53(e)(3)(H)

Proposed §25.53(e)(3)(H) requires a PGC or an electric cooperative, an electric utility, or a municipally owned utility that operates a generation resource in Texas to include a flood annex for its generation resources.

TCPA recommended that such an annex only be required for generation resources that are in identified flood plains or high-risk flood areas.

Commission Response

The commission declines to modify §25.53(e)(3)(H) as proposed by TCPA because it is unnecessary. Subsection (d) of this section enables an entity to provide an explanation as to why a provision of the rule should not apply. Therefore, if an entity believes a flood annex should not apply to one of its generation resources, the entity must provide an explanation for the commission to review.

Statutory Authority

The amendment is adopted under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction The rule is also adopted under Tex. Util. Code §186.007, which requires the commission to analyze the EOPs developed by electric utilities, power generation companies, municipally owned utilities, and electric cooperatives that operate generation facilities in this state, and retail electric providers; prepare a weather emergency preparedness report; and require entities to submit updated EOPs if the EOP on file does not contain adequate information to determine whether the entity can provide adequate electric services.

Cross Reference to Statute: Public Utility Regulatory Act §14.001 and §14.002; Tex. Util. Code §186.007.

§25.53. Electric Service Emergency Operations Plans.

(a) Application. This section applies to an electric utility, transmission and distribution utility, power generation company (PGC), municipally owned utility, electric cooperative, and retail electric provider (REP), and to the Electric Reliability Council of Texas (ERCOT).

(b) Definitions.

(1) Annex--a section of an emergency operations plan that addresses how an entity plans to respond in an emergency involving a specified type of hazard or threat.

(2) Drill--an operations-based exercise that is a coordinated, supervised activity employed to test an entity's EOP or a portion of an entity's EOP. A drill may be used to develop or test new policies or procedures or to practice and maintain current skills.

(3) Emergency--a situation in which the known, potential consequences of a hazard or threat are sufficiently imminent and severe that an entity should take prompt action to prepare for and reduce the impact of harm that may result from the hazard or threat. The term includes an emergency declared by local, state, or federal government, or ERCOT or another reliability coordinator designated by the North American Electric Reliability Corporation and that is applicable to the entity.

(4) Entity--an electric utility, transmission and distribution utility, PGC, municipally owned utility, electric cooperative, REP, or ERCOT.

(5) Hazard--a natural, technological, or human-caused condition that is potentially dangerous or harmful to life, information, operations, the environment, or property, including a condition that is potentially harmful to the continuity of electric service.

(6) Threat--the intention and capability of an individual or organization to harm life, information, operations, the environment, or property, including harm to the continuity of electric service.

(c) Filing requirements.

(1) Except as provided by paragraph (3) of this subsection, an entity must file an emergency operations plan (EOP) and executive summary under this section by March 15 of every calendar year. Each individual entity is responsible for compliance with the requirements of this section. An entity filing a joint EOP or other joint document under this section on behalf of one or more entities over which it has control is jointly responsible for each entity's compliance with the requirements of this section.

(A) An entity must file with the commission:

(i) an executive summary that:

(I) describes the contents and policies contained in the EOP;

(II) includes a reference to specific sections and page numbers of the entity's EOP that correspond with the requirements of this rule;

(III) includes a comprehensive list of affiliated generation assets and facilities for PGCs that are included in the EOP including changes in facilities from the previous year such as sale of assets, relinquishments, and name changes;

(IV) includes the record of distribution required under paragraph (4)(A) of this subsection;

(V) contains the affidavit required under paragraph (4)(C) of this subsection; and

(VI) follows the executive summary template posted on PUCT website.

(ii) a complete copy of the EOP with all confidential portions removed.

(B) For an entity with operations within the ERCOT region, the entity must submit its unredacted EOP in its entirety to ERCOT.

(C) ERCOT must designate an unredacted EOP submitted by an entity as Protected Information under the ERCOT Protocols.

(D) An entity must make its unredacted EOP available in its entirety to commission staff on request through an encrypted elec-

tronic method designated by commission staff, such as a secure file sharing method selected by an entity in consultation with commission staff.

(E) An entity may file a joint EOP on behalf of itself and one or more other entities over which it has control provided that:

(i) the executive summary required under subparagraph (A)(i) of this paragraph identifies which sections of the joint EOP apply to each entity; and

(ii) the joint EOP satisfies the requirements of this section for each entity as if each entity had filed a separate EOP.

(F) An entity filing a joint EOP under subparagraph (E) of this paragraph may also jointly file one or more of the documents required under paragraph (4) of this subsection provided that each joint document satisfies the requirements for each entity to which the document applies.

(G) An entity that is required to file similar annexes for different facility types under subsection (e) of this section, such as a pandemic annex for both generation facilities and transmission and distribution facilities, may file a single combined annex addressing the requirement for multiple facility types. The combined annex must conspicuously identify the facilities to which it applies.

(2) A person seeking registration as a PGC or certification as a REP must meet the filing requirements under paragraph (1)(A) of this subsection at the time it applies for registration or certification with the commission and must submit the EOP to ERCOT if it will operate in the ERCOT region, no later than ten days after the commission approves the person's registration or certification.

(3) An entity must continuously maintain its EOP in between the annual updates required under this paragraph. No later than March 15 of each calendar year, an entity that has previously filed an EOP must submit an update in accordance with the provisions of this paragraph, except that an entity must file its EOP in full in accordance with paragraph (1) of this subsection at least once every three calendar years.

(A) An entity that in the previous calendar year made a change to its EOP that materially affects how the entity would respond to an emergency must:

(i) file with the commission an executive summary that:

(I) describes the changes to the contents or policies contained in the EOP;

(II) includes an updated reference to specific sections and page numbers of the entity's EOP that correspond with the requirements of this rule;

(III) includes a comprehensive list of affiliated generation assets and facilities for PGCs that are included in the EOP including changes in facilities from the previous year such as sale of assets, relinquishments, and name changes;

(IV) includes the record of distribution required under paragraph (4)(A) of this subsection;

(V) contains the affidavit required under paragraph (4)(C) of this section; and

(VI) follows the executive summary template posted on PUCT website.

(ii) file with the commission a complete, revised copy of the EOP with all confidential portions removed; and

(iii) submit to ERCOT its revised unredacted EOP in its entirety if the entity operates within the ERCOT region.

(B) An entity that in the previous calendar year did not make a change to its EOP that materially affects how the entity would respond to an emergency must file with the commission:

(i) a pleading that documents any changes to the list of emergency contacts as provided under paragraph (4)(B) of this subsection;

(ii) an attestation from the entity's highest-ranking representative, official, or officer with binding authority over the entity stating the entity did not make a change to its EOP that materially affects how the entity would respond to an emergency; and

(iii) the affidavit described under paragraph (4)(C) of this subsection.

(C) An entity must update its EOP or other documents required under this section if commission staff determines that the entity's EOP or other documents do not contain sufficient information to determine whether the entity can provide adequate electric service through an emergency. If directed by commission staff, the entity must file its revised EOP or other documentation, or a portion thereof, with the commission and, for entities with operations in the ERCOT region, with ERCOT.

(D) ERCOT must designate any revised unredacted EOP submitted by an entity as Protected Information under the ERCOT Protocols.

(E) An entity must make a revised unredacted EOP available in its entirety to commission staff on request through an encrypted electronic method designated by commission staff, such as a secure file sharing method selected by an entity in consultation with commission staff.

(F) The requirements for joint and combined filings under paragraph (1) of this subsection apply to revised joint and revised combined filings under this paragraph.

(4) In accordance with the deadlines prescribed by paragraphs (1) and (3) of this subsection, an entity must also file with the commission the following documents:

(A) A record of distribution that contains the following information in table format:

(i) titles and names of persons in the entity's organization receiving access to and training on the EOP; and

(ii) dates of access to or training on the EOP, as appropriate.

(B) A list of primary and, if possible, backup emergency contacts for the entity, including identification of specific individuals who can immediately address urgent requests and questions from the commission during an emergency.

(C) An affidavit from the entity's highest-ranking representative, official, or officer with binding authority over the entity affirming the following:

(i) relevant operating personnel are familiar with and have received training on the applicable contents and execution of the EOP, and such personnel are instructed to follow the applicable portions of the EOP except to the extent deviations are appropriate as a result of specific circumstances during the course of an emergency;

(ii) the EOP has been reviewed and approved by the appropriate executives;

(iii) drills have been conducted to the extent required by subsection (f) of this section;

(iv) the EOP or an appropriate summary has been distributed to local jurisdictions as needed;

(v) the entity maintains a business continuity plan that addresses returning to normal operations after disruptions caused by an incident; and

(vi) the entity's emergency management personnel who are designated to interact with local, state, and federal emergency management officials during emergency events have received the latest IS-100, IS-200, IS-700, and IS-800 National Incident Management System training.

(5) Notwithstanding the other requirements of this subsection, ERCOT must maintain its own current EOP in its entirety, consistent with the requirements of this section and available for review by commission staff.

(d) Information to be included in the emergency operations plan. An entity's EOP must address both common operational functions that are relevant across emergency types and annexes that outline the entity's response to specific types of emergencies, including those listed in subsection (e) of this section. An EOP may consist of one or multiple documents. Each entity's EOP must include the information identified below, as applicable. If a provision in this section does not apply to an entity, the entity must include in its EOP an explanation of why the provision does not apply.

(1) An approval and implementation section that:

(A) introduces the EOP and outlines its applicability;

(B) lists the individuals responsible for maintaining and implementing the EOP, and those who can change the EOP;

(C) provides a revision control summary that lists the dates of each change made to the EOP since the initial EOP filing pursuant to paragraph (1) of this subsection;

(D) provides a dated statement that the current EOP supersedes previous EOPs; and

(E) states the date the EOP was most recently approved by the entity.

(2) A communication plan.

(A) An entity with transmission or distribution service operations must describe the procedures during an emergency for handling complaints and for communicating with the public; the media; customers; the commission; the Office of Public Utility Counsel (OPUC); local and state governmental entities, officials, and emergency operations centers, as appropriate in the circumstances for the entity; the reliability coordinator for its power region; and critical load customers directly served by the entity.

(B) An entity with generation operations must describe the procedures during an emergency for communicating with the media; the commission; OPUC; fuel suppliers; local and state governmental entities, officials, and emergency operations centers, as appropriate in the circumstances for the entity; and the applicable reliability coordinator.

(C) A REP must describe the procedures for communicating during an emergency with the public, media, customers, the commission, and OPUC, and the procedures for handling complaints during an emergency.

(D) ERCOT must describe the procedures for communicating, in advance of and during an emergency, with the public, the media, the commission, OPUC, governmental entities and officials, the state emergency operations center, and market participants.

(3) A plan to maintain pre-identified supplies for emergency response.

(4) A plan that addresses staffing during emergency response.

(5) A plan that addresses how an entity identifies weather-related hazards, including tornadoes, hurricanes, extreme cold weather, extreme hot weather, drought, and flooding, and the process the entity follows to activate the EOP.

(6) Each relevant annex presented in its full and comprehensive version, as detailed in subsection (e) of this section and other annexes applicable to an entity.

(e) Annexes to be included in the emergency operations plan.

(1) An electric utility, a transmission and distribution utility, a municipally owned utility, and an electric cooperative must include in its EOP for its transmission and distribution facilities the following annexes:

(A) A weather emergency annex that includes:

(i) operational plans for responding to a cold or hot weather emergency, distinct from the weather preparations required under §25.55 of this title (relating to Weather Emergency Preparedness); and

(ii) a checklist for transmission or distribution facility personnel to use during cold or hot weather emergency response that includes lessons learned from past weather emergencies to ensure necessary supplies and personnel are available through the weather emergency;

(B) A load shed annex that must include:

(i) procedures for controlled shedding of load;

(ii) priorities for restoring shed load to service; and

(iii) a procedure for maintaining an accurate registry of critical load customers, as defined under 16 TAC §25.5(22) of this title (relating to Definitions), §25.52(c)(1) and (2) of this title (relating to Reliability and Continuity of Service) and §25.497 of this title (relating to Critical Load Industrial Customers, Critical Load Public Safety Customers, Critical Care Residential Customers, and Chronic Condition Residential Customers), and TWC §13.1396 (relating to Coordination of Emergency Operations), directly served, if maintained by the entity. The registry must be updated as necessary but, at a minimum, annually. The procedure must include the processes for providing assistance to critical load customers in the event of an unplanned outage, for communicating with critical load customers during an emergency, coordinating with government and service agencies as necessary during an emergency, and for training staff with respect to serving critical load customers;

(C) A pandemic and epidemic annex;

(D) A wildfire annex;

(E) A hurricane annex that includes evacuation and re-entry procedures if facilities are located within a hurricane evacuation zone, as defined by the Texas Division of Emergency Management (TDEM);

(F) A cyber security annex;

(G) A physical security incident annex;

(H) A flood annex; and

(I) Any additional annexes as needed or appropriate to the entity's particular circumstances.

(2) A transmission and distribution utility that leases or operates facilities under PURA §39.918(b)(1) or procures, owns, and operates facilities under PURA §39.918(b)(2) must include an annex that details its plan for the use of those facilities.

(3) A PGC or an electric cooperative, an electric utility, or a municipally owned utility that operates a generation resource in Texas must include the following annexes for its generation resources:

(A) A weather emergency annex that includes:

(i) operational plans for responding to a cold or hot weather emergency, distinct from the weather preparations required under §25.55 of this title;

(ii) verification of the adequacy and operability of fuel switching equipment, if installed; and

(iii) a checklist for generation resource personnel to use during a cold or hot weather emergency response that includes lessons learned from past weather emergencies to ensure necessary supplies and personnel are available through the weather emergency;

(B) A water shortage annex that addresses supply shortages of water used in the generation of electricity;

(C) A restoration of service annex that identifies plans intended to restore to service a generation resource that failed to start or that tripped offline due to a hazard or threat;

(D) A pandemic and epidemic annex;

(E) A hurricane annex that includes evacuation and re-entry procedures if facilities are located within a hurricane evacuation zone, as defined by TDEM;

(F) A cyber security annex;

(G) A physical security incident annex;

(H) A flood annex; and

(I) Any additional annexes as needed or appropriate to the entity's particular circumstances.

(4) A REP must include in its EOP the following annexes:

(A) A pandemic and epidemic annex;

(B) A hurricane annex that includes evacuation and re-entry procedures if facilities are located within a hurricane evacuation zone, as defined by TDEM;

(C) A cyber security annex;

(D) A physical security incident annex; and

(E) Any additional annexes as needed or appropriate to the entity's particular circumstances.

(5) ERCOT must include the following annexes:

(A) A pandemic and epidemic annex;

(B) A weather emergency annex that addresses ERCOT's plans to ensure continuous market and grid management operations during weather emergencies, such as tornadoes, wildfires, extreme cold weather, extreme hot weather, and flooding;

(C) A hurricane annex that includes evacuation and re-entry procedures if facilities are located within a hurricane evacuation zone, as defined by TDEM;

(D) A cyber security annex;

(E) A physical security incident annex; and

(F) Any additional annexes as needed or appropriate to ERCOT's particular circumstances.

(f) Drills. An entity must conduct or participate in at least one drill each calendar year to test its EOP. Following an annual drill the entity must assess the effectiveness of its emergency response and revise its EOP as needed. If the entity operates in a hurricane evacuation zone as defined by TDEM, at least one of the annual drills must include a test of its hurricane annex. An entity conducting an annual drill must, at least 30 days prior to the date of at least one drill each calendar year, notify commission staff, using the method and form prescribed by commission staff on the commission's website, and the appropriate TDEM District Coordinators, by email or other written form, of the date, time, and location of the drill. An entity that has activated its EOP in response to an emergency is not required, under this subsection, to conduct or participate in a drill in the calendar year in which the EOP was activated.

(g) Reporting requirements. Upon request by commission staff during an activation of the State Operations Center by TDEM, an affected entity must provide updates on the status of operations, outages, and restoration efforts. Updates must continue until all incident-related outages of customers able to take service are restored or unless otherwise notified by commission staff. After an emergency, commission staff may require an affected entity to provide an after action or lessons learned report and file it with the commission by a date specified by commission staff.

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 December 12, 2025.

TRD-202504607
Seaver Myers
Rules Coordinator
Public Utility Commission of Texas
Effective date: January 1, 2026
Proposal publication date: September 5, 2025
For further information, please call: (512) 936-7433

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TITLE 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 365. LICENSING AND REGISTRATION

22 TAC §365.22

The Texas State Board of Plumbing Examiners (Board) adopts the amendment to 22 Texas Administrative Code (TAC), Chapter 365, §365.22 which implements how state agencies process occupational licenses for military service members, veterans, and

their spouses as instructed by H.B. 5629, 89th Legislature, Regular Session (2025).

The rule is adopted without changes to the proposed text published in the October 10th, 2025, issue of the *Texas Register* (50 TexReg 6637) The rule will not be republished.

REASONED JUSTIFICATION FOR THE RULE

The rule is necessary to implement H.B. 5629, 89th Legislature, Regular Session (2025). H.B. 5629 amended the Texas Occupations Code, specifically §§ 55.004 and 55.0041, to reform how state agencies process occupational licenses for military service members, veterans, and their spouses, with the goal of easing license portability and speeding up application timelines.

The bill requires Texas state agencies to recognize out-of-state licenses held by military service members, veterans, and spouses, provided the license is in good standing and is similar in scope of practice to the corresponding Texas license.

Applicants must provide documentation such as proof of good standing, relocation orders, or marriage licenses, but do not have to prove Texas residency. The agency must process license applications within 10 days.

SECTION-BY-SECTION SUMMARY

Section 365.22(b)--The rule amends the existing rule by recognizing that a military service member, military veteran, or military spouse who holds a current license in good standing, issued in another jurisdiction that is similar in scope of practice may be issued the same license type. The applicant will be notified not later than 10 business days that TSBPE recognizes the out-of-state license, the application is incomplete, or the agency is unable to recognize the applicant's out-of-state license because the agency does not issue a license similar in scope of practice to the applicant's out-of-state license.

A person is in good standing with another state's licensing authority if they hold a license that is current, has not been suspended or revoked, and has not been voluntarily surrendered during an investigation for unprofessional conduct. A person is in good standing if they have not been disciplined by the licensing authority with respect to the license or person's practice of the occupation for which the license is issued. Lastly, a person is in good standing if they are not currently under investigation by the licensing authority for unprofessional conduct related to the person 's license or profession.

Section 365.22(c)--The rule is amended to show that the agency has the sole discretion in determining whether an applicant's out-of-state license is similar in scope to a license issued by TSBPE.

Section 365.22(e)--The rule is amended to show that the agency shall process and issue, if qualified, an application submitted by a military service member, military veteran, or military spouse not later than the 10th business day after it is received.

Section 365.22(g)--The rule is amended to show that military spouses may have their out-of-state licenses recognized by providing a copy of their marriage license and out-of-state license in good standing with their application.

Section 365.22(h)--The rule is amended to eliminate the presumption of intent to practice in Texas.

Section 365.22(i)--The rule is amended to eliminate the three year maximum allowance for practice under an out-of-state license recognition.

Section 365.22(h)--The rule is amended to show that a person whose out-of-state license is recognized must comply with Chapter 1301 of the Texas Occupations Code and all other applicable laws and regulations.

Section 365.22(j)--The rule is amended to show that an applicant under this section must pass a criminal history background check. The agency may deny an application if the applicant has a disqualifying criminal history.

Section 365.22(l)--The rule is amended to eliminate the provision that military service members and military veterans who do not hold a current out-of-state license or who have not held a Texas license in the five (5) years preceding their application must not have a restricted license in another jurisdiction or an unacceptable criminal history to be eligible to sit for an examination for licensure.

SUMMARY OF COMMENT

No comment was received on the published rule amendment.

BOARD ACTION

At its meeting on December 3, 2025, the Board adopted the rule as published in the *Texas Register*.

STATUTORY AUTHORITY

The rule is adopted under the authority of House Bill 5629, 89th Texas Legislature, Regular Session, 2025 which amended the Texas Occupations Code, specifically §§ 55.004 and 55.0041, to reform how state agencies process occupational licenses for military service members, veterans, and their spouses, with the goal of easing license portability and speeding up application timelines and §1301.251(2) of the Occupations Code, which requires the Board to adopt and enforce rules necessary to administer and enforce the Plumbing License Law.

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 December 11, 2025.

TRD-202504520
Patricia Latombe
General Counsel
Texas State Board of Plumbing Examiners
Effective date: December 31, 2025
Proposal publication date: October 10, 2025
For further information, please call: (512) 936-5216

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER V. COORDINATION OF BENEFITS

28 TAC §3.3520

The commissioner of insurance adopts new 28 TAC §3.3520, concerning Uniform Coordination of Benefits Questionnaire. The new section is adopted without changes to the proposed text published in the October 24, 2025 issue of the *Texas Register* (50 TexReg 6976). The section will not be republished.

REASONED JUSTIFICATION. New §3.3520 is necessary to implement House Bill 388, 89th Legislature, 2025. HB 388 requires the Texas Department of Insurance (TDI) to adopt a uniform coordination of benefits (COB) questionnaire. Thirty days after the effective date, health benefit plan issuers that include COB provisions in their forms are required to use the adopted uniform COB questionnaire and make the questionnaire available to health care providers, as appropriate.

New §3.3520 adopts by reference two versions of a uniform COB questionnaire. Health plans must use and accept the Patient Health Plan Coverage Form (LHL138) in connection with a requirement for a health care provider to maintain information on coordination of benefits. Health plans must use and accept the Enrollee's Other Health Plan Coverage Form (LHL139) when requiring an enrollee to provide information on other health coverage.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal for a period that ended on November 24, 2025, and at a public rule hearing held on November 18, 2025.

Commenters: TDI received comments from two commenters. No commenters spoke at the public hearing. A commenter in support of the proposal was Community Health Choice, and a commenter in support with changes was the Texas Health and Human Services Commission.

Comment on §3.3520

Comment. One commenter requests a minor change to Section 2 of both versions of the COB questionnaire form to clarify that the respondent should report any Medicaid or CHIP coverage when reporting other health plan information.

Agency Response. TDI agrees and has changed the form language as suggested.

Comment. One commenter asks whether plans are required to use both forms, or whether plans may choose the form that best fits their products and population. The commenter also asks whether plans have autonomy to determine when and how the forms are distributed to members and providers.

Agency Response. The rule specifies when each form should be used. If a plan requires a health care provider to maintain information on coordination of benefits, it must use LHL138. If a plan requires an enrollee to provide information on other health coverage, it must use LHL139. Plans do have autonomy to determine when and how the forms are distributed to members and providers, as those issues are not addressed by the rule.

STATUTORY AUTHORITY. The commissioner adopts new §3.3520 under Insurance Code §1203.152 and §36.001.

Insurance Code §1203.152 requires the adoption of rules establishing a uniform coordination of benefits questionnaire to be used by all health benefit plan issuers in this state.

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

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 December 12, 2025.

TRD-202504631
Jessica Barta
General Counsel
Texas Department of Insurance
Effective date: January 1, 2026
Proposal publication date: October 24, 2025
For further information, please call: (512) 676-6555

SUBCHAPTER RR. VALUATION MANUAL

28 TAC §3.9901

The commissioner of insurance adopts amendments to 28 TAC §3.9901, concerning the adoption of a valuation manual for reserving and related requirements. The amendments are adopted without changes to the proposed text published in the October 10, 2025, issue of the *Texas Register* (50 TexReg 6653). The section will not be republished.

REASONED JUSTIFICATION. The amended section is necessary to comply with Insurance Code §425.073, which requires the commissioner to adopt by rule a valuation manual that is substantially similar to the National Association of Insurance Commissioners (NAIC) Valuation Manual.

Under Insurance Code §425.073(c), when the NAIC adopts changes to its valuation manual, the commissioner must adopt substantially similar changes. This subsection also requires the commissioner to determine that NAIC's changes were approved by an affirmative vote representing at least three-fourths of the voting NAIC members but not less than a majority of the total membership. In addition, the NAIC members voting in favor of amending the valuation manual must represent jurisdictions totaling greater than 75% of the direct written premiums as reported in the most recently available life, accident, and health/fraternal annual statements and health annual statements.

TDI originally adopted the valuation manual in §3.9901 on December 29, 2016, in compliance with Insurance Code §425.073. On August 13, 2025, the NAIC voted to adopt changes to the valuation manual. Forty-nine jurisdictions, representing jurisdictions totaling 94.67% of the relevant direct written premiums, voted in favor of adopting the amendments to the valuation manual. The votes adopting changes to the NAIC Valuation Manual meet the requirements of Insurance Code §425.073(c).

This proposal includes provisions related to NAIC rules, regulations, directives, or standards. Under Insurance Code §36.004, TDI must consider whether authority exists to enforce or adopt the NAIC's changes. In addition, under Insurance Code §36.007, the commissioner cannot adopt or enforce a rule implementing an interstate, national, or international agreement that infringes on the authority of this state to regulate the business of insurance in this state, unless the agreement is approved by the Texas Legislature. TDI has determined that neither §36.004 nor §36.007 prohibit this proposal because Insurance Code §425.073 requires the commissioner to adopt

a valuation manual that is substantially similar to the valuation manual approved by the NAIC, and §425.073(c) expressly requires the commissioner to adopt changes to the valuation manual that are substantially similar to changes adopted by the NAIC.

In addition to clarifying existing provisions, the 2026 NAIC Valuation Manual includes changes that:

- update the Valuation Manual economic scenario generator references for the adoption of the Conning-maintained prescribed economic scenario generator; and

- introduce a new principle-based reserving framework for non-variable annuities, located in Section VM-22 of the Valuation Manual.

The NAIC's adopted changes to the valuation manual can be viewed at https://content.naic.org/sites/default/files/pbr_data_valuation_manual_future_edition_redline.pdf.

SUMMARY OF COMMENTS. TDI provided an opportunity for public comment on the rule proposal for a period that ended on November 10, 2025. TDI did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The commissioner adopts amendments to 28 TAC §3.9901 under Insurance Code §425.073 and §36.001.

Insurance Code §425.073 requires the commissioner to adopt by rule changes to the valuation manual previously adopted by the commissioner that are substantially similar to any changes adopted by NAIC to its valuation manual. Insurance Code §425.073 also requires that after a valuation manual has been adopted by rule, any changes to the valuation manual must also be adopted by rule.

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

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 December 10, 2025.

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Jessica Barta
General Counsel
Texas Department of Insurance
Effective date: December 30, 2025
Proposal publication date: October 10, 2025
For further information, please call: (512) 676-6555

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CHAPTER 9. TITLE INSURANCE

SUBCHAPTER C. TEXAS TITLE INSURANCE STATISTICAL PLAN

28 TAC §9.402

The commissioner of insurance adopts new 28 TAC §9.402, concerning annual submission of title insurance statistical reports. Section 9.402 implements Insurance Code §2703.153. The new section is adopted with changes to the proposed text published in the August 15, 2025 issue of the *Texas Register* (50 TexReg 5308). Section 9.402 was revised in response to public comments. The section will be republished.

REASONED JUSTIFICATION. TDI is required by Insurance Code §2703.153 to promulgate title insurance rates based on data submitted annually from title insurance agents and companies. Insurance Code §2703.153 also requires title insurance agents and companies to report that data to TDI annually. TDI then publishes a compilation report about the data following its collection and review.

The new section is necessary to increase the efficiency of data collection by creating fixed annual reporting due dates for the industry with corresponding due dates for the Texas Department of Insurance (TDI) to publish instructions for the data collection and to publish compilation reports. This will make the annual data collection consistent and efficient without issuing a data call bulletin, aiding both TDI and the industry.

In response to stakeholder comments, TDI changed the data reporting requirements to a later time in the year and added an additional month for TDI to compile the data received from the industry. Additionally, TDI added "reporting forms" to subparagraph (a) of the rule in response to a comment.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. TDI provided an opportunity for public comment on the rule proposal for a period that ended on September 15, 2025. A commenter requested a hearing, and TDI extended the comment period to the close of business on October 7, 2025, following the conclusion of the hearing.

Commenters: TDI received written comments from 13 commenters and heard from six commenters at a public hearing held on October 7, 2025. Commenters in support of the proposal were the Office of Public Insurance Counsel and Texans for Free Enterprise. Commenters in support of the proposal with changes were Fidelity National Financial, First American Title Insurance Co., Stewart Title, WFG National Title Insurance, Texas Land Title Association, First National Title Insurance, Aaron Day in his official capacity for TLTA, and four individual commenters.

Comments on §9.402

Comment. Most commenters support the rule but suggest that the proposed deadlines for industry data reporting are too early in the year and would be unduly burdensome. The deadlines would align with several other competing deadlines for audits, tax filings, financial reporting, and other regulatory filings that occur at or near the same time as TDI's proposed dates. The commenters assert that having the statistical plan data reporting coincide with these other reporting obligations would overwhelm title agents' and companies' accounting resources--the volume required at the same time would be too much.

Most of these commenters request that TDI change the reporting dates for title insurance agents from March 1 to May 1, and for title companies from April 1 to June 1. Others suggested the compliance dates be changed to May 15 and June 15. And two commenters suggested that TDI adopt the rule without changes to the dates.

Agency Response. TDI appreciates the commenters' input and agrees to change the deadlines dates to May 1 for title agents and June 1 for title companies.

Comment. One of the commenters suggests that TDI amend subsection (a) to add "and fillable report forms" in addition to the sentence stating that TDI will make available instructions for submitting reports. The commenter also suggests that TDI make a single date of "on or before February 1" for both the agent and company instructions instead of staggering the instructions and forms on February 1 for agents and March 1 for companies.

Agency Response. TDI agrees to add "and reporting forms" for additional clarity of the industry's expectation of what instructions and resources TDI will provide for data reporting. Instead of using "fillable report forms," TDI will call them "reporting forms." This will allow the department to not be limited if a superior format becomes available. TDI declines to combine issuing instructions and reporting forms for agents and companies on the same date to be consistent with how the data calls were issued in the past. Since the rule text allows for instructions and forms for agents and companies to be available at the same time, when possible, TDI declines to change that portion of the rule.

Comment. One of the commenters suggests that TDI amend subsection (d) to have both compilation reports published on the same day instead of staggering them a month apart.

Agency Response. TDI disagrees with having the agent and company compilation reports published on the same day, since the data received for both of those reports are staggered. TDI will change the dates of the compilation report deadlines to harmonize with the deadline changes for subsections (b) and (c).

Comment. One of the commenters suggests that TDI amend subsections (b) and (c) to move the reporting deadlines to June 15 for title agents and July 15 for title companies.

Agency Response. TDI disagrees with those deadlines because it is counter to the goal of having more current data available for ratemaking. Changing those reporting deadlines would push the compilation reports past the end of the same year. In response to other comments, TDI has changed the reporting dates to May 1 and June 1.

STATUTORY AUTHORITY. The commissioner adopts new §9.402 under Insurance Code §§2551.003(a)(3), 2703.153(a) and (b), and 36.001.

Insurance Code §2551.003(a)(3) authorizes the commissioner to adopt rules the commissioner finds necessary to implement the purpose of Insurance Code Title 11.

Insurance Code §2703.153(a) requires that each title insurance company and title insurance agent engaged in the business of title insurance in this state annually report data to TDI for the purpose of assisting with the promulgation of premium rates. Insurance Code §2703.153(b) authorizes TDI to establish the form in which title insurance data is submitted to TDI.

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

§9.402. Annual Submission of Title Insurance Statistical Reports.

(a) Each title insurance company and title insurance agent must submit its statistical report required by Insurance Code §2703.153, concerning Collection of Data for Fixing Premium Rates; Annual Statistical Report, in the form and manner TDI prescribes. Instructions for submission and reporting forms will be available on TDI's website by:

(1) March 1 for title agents, and

(2) April 1 for title companies.

(b) Title agents must submit their statistical report by May 1 of each year.

(c) Title companies must submit their statistical report by June 1 of each year.

(d) TDI will publish on its website compilation reports summarizing the submitted statistical reports by:

(1) October 1 of each year for title agents; and

(2) November 1 of each year for title companies.

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 December 11, 2025.

TRD-202504570
Jessica Barta
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6555

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION

SUBCHAPTER G. GIFT ACCEPTANCE

34 TAC §1.400

The Comptroller of Public Accounts adopts new §1.400 concerning gift acceptance policy and procedures, without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5591). The rule will not be republished.

The new section will be located in Chapter 1, new Subchapter G, titled "Gift Acceptance".

Subsection (a) outlines certain definitions regarding gift acceptance.

Subsection (b) describes the authority of the agency to solicit or accept gifts.

Subsection (c) outlines the criteria the agency will use to determine whether to refuse a gift. The agency will refuse gifts to the agency from any person who is: currently a party in a contested case with the agency until at least 30 days have passed since the date of the final order; currently a party in litigation with the agency until at least 30 days have passed since the date of the final order; currently indebted to the state or owes delinquent taxes to the state based on the records of the agency; currently under investigation by the agency's Criminal Investigations Division; currently in default on a guaranteed student loan based on the records of the agency; currently indebted to the state for past due child support based on Attorney General records pro-

vided to the agency; a foreign (non-U.S.) business entity that is not licensed to do business in Texas; or a foreign adversary.

Subsection (d) outlines a procedure in which prospective donors may provide advance notice to the agency of their intent to make a gift, so that the prospective donor can be screened for potential conflicts of interest.

Subsection (e) describes the review procedures the agency will use to determine if the gift is consistent with applicable law, agency policies, and the agency's gift acceptance rule.

Subsection (f) sets forth gift acceptance procedures.

Subsection (g) outlines steps the agency will take if the agency refuses to accept a gift.

Subsection (h) allows the agency to deposit a donation of money into a suspense account, pending completion of the review.

Subsection (i) prescribes the process and notice requirements for using a refused gift to offset certain indebtedness owed to the state by the donor.

Subsection (j) specifies that for gifts valued at $500 or more, the agency will keep certain records regarding the gift and the donor.

Subsection (k) specifies that gifts will be used for public purposes, will not be used for the monetary enrichment of any agency employee, and donors may not direct the use or investment of the gift.

Subsection (l) addresses the donation of services to the agency.

Subsection (m) provides that this section does not address acceptance of gifts by individual employees. Gift acceptance by individual employees and the restrictions on such acceptance, are governed by Government Code, Chapter, 572 (Standards of Conduct); Penal Code, Chapter 36 (Prohibited Gifts); Penal Code, Chapter 39 (Misuse of State Resources); and the agency's ethics policies.

The comptroller did not receive any comments regarding adoption of the amendment.

The new section is adopted under Government Code, §403.011(b), which authorizes the comptroller to solicit, accept or refuse gifts to the state; Government Code, Chapter 575, which governs acceptance of gifts by state agencies; and Government Code, §2255.001, which requires a state agency to adopt rules regarding the relationship between private donors and the agency and its employees.

The new section implements the Government Code, §403.011(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 December 10, 2025.

TRD-202504502
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Effective date: December 30, 2025
Proposal publication date: August 29, 2025
For further information, please call: (512) 475-2220

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CHAPTER 6. INVESTMENT MANAGEMENT
SUBCHAPTER B. STANDARDS FOR MEMBERS OF THE COMPTROLLER'S INVESTMENT ADVISORY BOARD

34 TAC §§6.10 - 6.18

The Comptroller of Public Accounts adopts new §6.10, concerning definitions; §6.11, concerning advisory capacity; §6.12, concerning advisory board member duties; §6.13, concerning advisory board composition; §6.14, concerning compensation and expenses; §6.15, concerning disclosures and annual affirmation of compliance; §6.16, concerning term of office; and §6.17, concerning charter and policies; and §6.18, concerning removal of advisory board members, without changes to the proposed text as published in the August 22, 2025, issue of the *Texas Register* (50 TexReg 5429). The rules will not be republished. The new rules will be located in Texas Administrative Code, Title 34, Part 1, Chapter 6 (Investment Management), new Subchapter B (Standards for Members of the Comptroller's Investment Advisory Board).

These new sections address the standards for the members of the Comptroller's Investment Advisory Board, including disclosure requirements applicable to advisory board members.

Section 6.10 provides definitions.

Section 6.11 acknowledges the advisory nature of the role of the members of the advisory board.

Section 6.12 lists the advisory board member duties and responsibilities.

Section 6.13 provides the advisory board composition.

Section 6.14 addresses compensation and expense reimbursement for advisory board members.

Section 6.15 provides the advisory board member ethics disclosure requirements and related annual affirmation requirements.

Section 6.16 sets the term of office for advisory board members.

Section 6.17 provides the requirement for the trust company to create an advisory board charter and related policies and to provide such information to the advisory board members.

Section 6.18 provides standards for the removal of advisory board members for cause.

The comptroller received no comments on the proposed rules.

The new sections are adopted under Government Code, §404.028(c), which authorizes the comptroller to adopt rules governing members of the comptroller's investment advisory board.

The new sections implement Government Code, §404.028 concerning the comptroller's investment advisory board.

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-202504503

Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
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For further information, please call: (512) 475-2220

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PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 25. MEMBERSHIP CREDIT
SUBCHAPTER B. COMPENSATION

34 TAC §25.21

The Teacher Retirement System of Texas (TRS) adopts amendments to §25.21, relating to Compensation Subject to Deposit and Credit, under Subchapter B (relating to Compensation) of Chapter 25 in Part 3 of Title 34 of the Texas Administrative Code without changes to the text as proposed in the October 24, 2025 issue of the *Texas Register* (50 TexReg 6994). The rule will not be republished.

REASONED JUSTIFICATION

TRS amends §25.21 in order to conform with legislation passed during the regular session of the 89th Legislature. Specifically, House Bill 2 (HB 2) amended Government Code §822.201 to provide that any increased compensation paid to an employee by a school district using funds received by the district from the teacher retention allotment (TRA) or support staff retention allotment (SSRA) is creditable compensation. HB 2 added these allotments to the Education Code to provide compensation increases for classroom teachers and other employees. In addition, HB 2 amended Section 822.201 to ensure that regardless of how these increases are distributed to teachers and other employees, the increases would qualify as creditable compensation for the purpose of TRS reporting. Based on these changes, TRS amends §25.21 to similarly provide that any compensation paid by a school district to an employee from the TRA or SSRA is creditable compensation.

COMMENTS

No comments on the proposed adoption of the amendments were received.

STATUTORY AUTHORITY

Amended §25.21 is adopted under the authority of Section 1.09 of House Bill 2, 89th Legislature, Regular Session; Government Code § 822.201, which provides that increased compensation paid to an employe by a school district using funds received by the district under the teacher retention allotment under Section 48.158, Education Code or support staff retention allotment under Section 48.1581, Education Code qualifies as "salary and wages" for TRS purposes and is, therefore, subject to deposit and credit by TRS; and Government Code §825.102, which authorizes the board of trustees to adopt rules for administration of the funds of the retirement system and eligibility for membership.

CROSS-REFERENCE TO STATUTE

Amended §25.21 affects the following statutes: Government Code §822.201, relating to member compensation.

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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Don Green
Chief Financial Officer
Teacher Retirement System of Texas
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For further information, please call: (512) 542-6506

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CHAPTER 27. TERMINATION OF MEMBERSHIP AND REFUNDS

34 TAC §27.6

The Teacher Retirement System of Texas (TRS) adopts amendments to §27.6 (relating to Reinstatement of an Account) of Chapter 27 in Part 3 of Title 34 of the Texas Administrative Code without changes to the text as proposed in the October 17, 2025 issue of the *Texas Register* (50 TexReg 6860). The rule will not be republished.

REASONED JUSTIFICATION

In TRS' adopted four-year rule review published in the August 12, 2022 issue of the *Texas Register* (47 TexReg 4859), TRS identified §27.6 as a rule for future amendment. Based on that review, TRS adopts amendments to this rule.

The amendments to §27.6 remove reference to purchasing withdrawn service at the previous reinstatement fee rate of 6% per year since the member's service was withdrawn. The opportunity to purchase at this fee rate expired in 2013.

COMMENTS

TRS did not receive comments on the proposed adoption of the amendments.

STATUTORY AUTHORITY

The amended rule is adopted under the authority of Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board and Government Code §823.501, which establishes fees and requirements for a member to reinstate withdrawn service credit.

CROSS-REFERENCE TO STATUTE

The amended rule implements the following statutes: Government Code §823.501, establishes fees and requirements for a member to reinstate withdrawn service credit.

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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Don Green
Chief Financial Officer
Teacher Retirement System of Texas
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CHAPTER 29. BENEFITS

The Teacher Retirement System of Texas (TRS) adopts amendments to §29.9 (relating to Survivor Benefits) of Chapter 29, Subchapter A, in Title 34, Part 3, of the Texas Administrative Code and §29.56 (relating to Minimum Distribution Requirements) of Chapter 29, Subchapter D, in Title 34, Part 3, of the Texas Administrative Code without changes to the text as proposed in the October 17, 2025 issue of the *Texas Register* (50 TexReg 6861). The rules will not be republished.

REASONED JUSTIFICATION

In TRS' adopted four-year rule review published in the August 12, 2022 issue of the *Texas Register* (47 TexReg 4859), TRS identified §29.9 and §29.56 as rules for future amendment. Based on that review, TRS now amends these rules.

The adopted amendments to §29.9 simply clarify that the beneficiary designated to receive survivor benefits by a retiree is the beneficiary eligible to receive benefits payable under Government Code §824.501.

The adopted amendments to §29.56 update the rule to conform with federal law, primarily the changes made in the Secure Act and Secure Act 2.0 that were passed by Congress in 2019 and 2022, respectfully. The primary change from both pieces of legislation that is being implemented here was to increase the age that retired participants must begin receiving required minimum distributions. Under the Secure Act, the age increases from age 70 1/2 to age 72 for participants born after Jan. 1, 1949 and before Jan. 1, 1951. Secure Act 2.0 increases the age from 72 to age 73 for participants that were born after Jan. 1, 1951 and before Jan. 1, 1960 and increases from 73 to 75 for plan participants that were born on or after Jan. 1, 1960. The amendments to §29.56 also include other minor updates and nonsubstantive changes to terminology and citations in the rule.

COMMENTS

TRS did not receive comments on the proposed adoption of the amendments.

SUBCHAPTER A. RETIREMENT

34 TAC §29.9

STATUTORY AUTHORITY

The amendments to §29.9 are adopted under the authority of Government Code §825.102 which authorizes the TRS Board of Trustees to adopt rules for the eligibility for membership, the administration of the funds of the retirement system, and the transaction of business of the board; and Government Code §824.101, which provides requirements relating to the designation of beneficiaries in the TRS retirement system and provides that TRS may adopt rules to administer that section.

CROSS-REFERENCE TO STATUTE

The amendments to §29.9 implement Subchapter B (concerning Beneficiaries) of Chapter 824 of the Government Code.

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

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Don Green
Chief Financial Officer
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For further information, please call: (512) 542-6506

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SUBCHAPTER D. PLAN LIMITATIONS

34 TAC §29.56

STATUTORY AUTHORITY

The amendments are adopted under the authority of Government Code §825.102 which authorizes the TRS Board of Trustees to adopt rules for the eligibility for membership, the administration of the funds of the retirement system, and the transaction of business of the board, and Government Code §825.506, which provides that TRS' pension plan shall be administered as a qualified plan under §401(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401); that TRS shall administer the plan in a manner that satisfies the required minimum distribution provisions of Section 401(a)(9), Internal Revenue Code of 1986; and that TRS may adopt rules to administer these requirements.

CROSS-REFERENCE TO STATUTE

The amendments implement §825.506, Texas Government Code (relating to Plan Qualification).

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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Chief Financial Officer
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For further information, please call: (512) 542-6506

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CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

34 TAC §31.3

The Teacher Retirement System of Texas (TRS) adopts amendments to §31.3 (relating to Return-to-Work Employer Pension Surcharge) under Subchapter A (relating to General Provisions and Procedures) of Chapter 31 in Part 3 of Title 34 of the Texas Administrative Code without changes to the text as proposed in the October 24, 2025 issue of the *Texas Register* (50 TexReg 6997). The rule will not be republished.

REASONED JUSTIFICATION

TRS amends §31.3 to conform with legislation passed during the regular session of the 89th Legislature. Specifically, House Bill 2 (HB 2) repealed Government Code §825.4092(f). This subsection was originally added in 2021 by Senate Bill 202 (SB 202). Subsection 825.4092(f), as added by SB 202, prohibited TRS employers from directly or indirectly passing on the cost of pension or health care surcharges to TRS retirees they employ. To implement SB 202, TRS added this "pass-through prohibition" to §31.3 and §41.4 (relating to Employer Health Benefit Surcharge), which is also amended elsewhere in this issue of the *Texas Register*. Because HB 2 repealed Subsection 824.4092(f), TRS amends §31.3 to remove this provision from §31.3(e) as well.

COMMENTS

TRS received no comments on the proposed adoption of these amendments.

STATUTORY AUTHORITY

The amended rule is adopted under the authority of Section 2.20(c) of House Bill 2, 89th Legislature, Regular Session; Government Code §824.604, which provides that board of trustees may adopt rules to administer laws under Subchapter G of Chapter 824 of the Government Code; Government Code §825.4092, which relates to employer contributions for employed retirees; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

The amended rule affects the following statute: Government Code §825.4092, which relates to employer contributions for employed retirees.

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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Chief Financial Officer
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CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §41.4

The Teacher Retirement System of Texas (TRS) adopts amendments to §41.4, relating to Employer Health Benefit Surcharge, under Subchapter A (relating to Retiree Health Care Benefits (TRS-CARE)) of Chapter 41 in Part 3 of Title 34 of the Texas Administrative Code without changes to the text proposed in the October 24, 2025 issue of the *Texas Register* (50 TexReg 6998). The rule will not be republished.

REASONED JUSTIFICATION

TRS amends §41.4 to conform with legislation passed during the regular session of the 89th Legislature. Specifically, House Bill 2 (HB 2) repealed Government Code §825.4092(f). This subsection was originally added in 2021 by Senate Bill 202 (SB 202). Subsection 825.4092(f), as added by SB 202, prohibited TRS employers from directly or indirectly passing on the cost of pension or health care surcharges to TRS retirees they employ. To implement SB 202, TRS added this "pass-through prohibition" to §41.4 and to §31.3 (relating to Return-to-Work Employer Pension Surcharge), which is also amended elsewhere in this issue of the *Texas Register*. Because HB 2 repealed Subsection 824.4092(f), TRS amends §41.4 to remove this provision from §41.4(i) as well.

COMMENTS

TRS did not receive comments on the proposed adoption of the amendments.

STATUTORY AUTHORITY

Amended §41.4 is adopted under the authority of Section 2.20(c) of House Bill 2, 89th Legislature, Regular Session; Government Code §824.604, which provides that board of trustees may adopt rules to administer laws under Subchapter G of Chapter 824 of the Government Code; Government Code §825.4092, which relates to employer contributions for employed retirees; and Government Code §825.102, which authorizes the board of trustees to adopt rules for the transaction of the business of the board.

CROSS-REFERENCE TO STATUTE

Amended §41.4 affects the following statutes: Government Code §825.4092, relating to employer contributions for employed retirees.

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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Don Green
Chief Financial Officer
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 6. LICENSE TO CARRY HANDGUNS

SUBCHAPTER B. ELIGIBILITY AND APPLICATION PROCEDURES FOR A LICENSE TO CARRY A HANDGUN

37 TAC §6.14, §6.19

The Texas Department of Public Safety (the department) adopts amendments to §6.14 and adopts new §6.19, concerning Eligibility And Application Procedures For A License To Carry A Handgun. These rules are adopted without changes to the proposed text as published in the October 24, 2025, issue of the *Texas Register* (50 TexReg 7000) and will not be republished.

Amendments to §6.14 clarify that applicants for a license to carry who are tactical medical professionals must submit their certificate of training in accordance with new §6.19, which provides that the certificate of training is valid for one year. New §6.19 establishes the training, continuing education course, and certification requirements for tactical medical professionals with a license to carry in compliance with House Bill 4995, 89th Leg. R.S. (2025).

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.1884 which requires the director to adopt rules establishing minimum standards for an initial training course and an annual continuing education course for tactical medical professionals who hold licenses to carry; and House Bill 4995, 89th Leg., R.S. (2025).

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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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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SUBCHAPTER G. TACTICAL MEDICAL PROFESSIONAL INSTRUCTOR CERTIFICATION

37 TAC §6.111, §6.112

The Texas Department of Public Safety (the department) adopts new §6.111 and §6.112, concerning Tactical Medical Professional Instructor Certification. These rules are adopted without changes to the proposed text as published in the October 24, 2025, issue of the *Texas Register* (50 TexReg 7001) and will not be republished.

These new rules are necessary to implement House Bill 4995, 89th Leg. R.S. (2025), which requires the department to establish by rule minimum standards for a training course to be completed by tactical medical professionals who also hold a license to carry. New §6.111 and §6.112 provide the application procedures and training requirements to enable qualified license to carry handgun instructors to obtain the training and certification required to offer the tactical medical professional training course to tactical medical professionals who hold a license to carry.

No comments were received regarding the adoption of these rules.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.1884 which requires the director to adopt rules establishing minimum standards for an initial training course and an annual continuing education course for tactical medical professionals who hold licenses to carry; and House Bill 4995, 89th Leg., R.S. (2025).

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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D. Phillip Adkins
General Counsel
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CHAPTER 10. IGNITION INTERLOCK DEVICE

SUBCHAPTER C. MILITARY SERVICE MEMBERS, VETERANS, AND SPOUSES - SPECIAL CONDITIONS FOR VENDOR AUTHORIZATIONS

37 TAC §10.24, §10.25

The Texas Department of Public Safety (the department) adopts an amendment to §10.24 and new §10.25, concerning Military Service Members, Veterans, And Spouses - Special Conditions For Vendor Authorizations. These rules are adopted without changes to the proposed text as published in the October 24, 2025, issue of the *Texas Register* (50 TexReg 7002) and will not be republished.

The amendment and new rule implement House Bill 5629, 89th Leg., R.S. (2025) by clarifying the alternative vendor authoriza-

tion or licensing process and by establishing new rules for recognizing another state's license similar in scope of practice to the vendor authorization in this state for the Ignition Interlock Device Program.

The department accepted comments on the proposals through November 24, 2025. The substantive comments received and the department's responses are summarized below.

COMMENT:

Written comments relating to §10.25 were submitted by Edward Timmons, on behalf of Archbridge Institute recommending replacing the proposed language from "comparing the other state's license requirements" to "comparing the other state's scope of practice".

RESPONSE: The department disagrees with this comment. It is necessary for the department to review the licensing requirements of other states, along with their statutes, rules, and application review processes. Conducting this review is essential to ensure that an applicant's prior authorization in another state corresponds with the lawful scope of regulated activities in Texas. No changes were made to the proposal based on this comment.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §521.247, which authorizes the department to adopt rules for the approval of ignition interlock devices; §521.2476, which authorizes the department to establish by rule minimum standards for vendors of ignition interlock devices who conduct business in this state and procedures to ensure compliance with those standards; and House Bill 5629, 89th Leg., R.S. (2025).

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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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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CHAPTER 23. VEHICLE INSPECTION
SUBCHAPTER C. VEHICLE INSPECTION STATION OPERATION

37 TAC §23.25

The Texas Department of Public Safety (the department) adopts an amendment to §23.25, concerning Vehicle Inspection Fees. This rule is adopted without changes to the proposed text as published in the October 24, 2025, issue of the *Texas Register* (50 TexReg 7004) and will not be republished.

The amendment removes subsection (e) to implement Senate Bill 1729, 89th Leg., R.S. (2025), which repeals the department's authority to establish the three-year inspection fee for certain rental vehicles.

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce this chapter; and Senate Bill 1729, 89th Leg., R.S. (2025).

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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D. Phillip Adkins
General Counsel
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SUBCHAPTER I. MILITARY SERVICE MEMBERS, VETERANS, AND SPOUSES--SPECIAL CONDITIONS

37 TAC §23.93, §23.95

The Texas Department of Public Safety (the department) adopts an amendment to §23.93 and new §23.95, concerning Military Service Members, Veterans, and Spouses--Special Conditions. These rules are adopted without changes to the proposed text as published in the October 24, 2025, issue of the *Texas Register* (50 TexReg 7005) and will not be republished.

The amendment and new rule implement House Bill 5629, 89th Leg., R.S. (2025) by clarifying the alternative certificate or licensing process and by establishing new rules for recognizing another state's license similar in scope of practice to the certificate in this state for the Vehicle Inspection Program.

The department accepted comments on the proposals through November 24, 2025. The substantive comments received and the department's responses are summarized below.

COMMENT:

Written comments relating to §23.95 were submitted by Edward Timmons, on behalf of Archbridge Institute recommending replacing the proposed language from "comparing the other state's license requirements" to "comparing the other state's scope of practice".

RESPONSE: The department disagrees with this comment. It is necessary for the department to review the licensing requirements of other states, along with their statutes, rules, and application review processes. Conducting this review is essential to ensure that an applicant's prior authorization in another state corresponds with the lawful scope of regulated activities in Texas. No changes were made to the proposal based on this comment.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce this chapter; and House Bill 5629, 89th Leg., R.S. (2025).

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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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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CHAPTER 35. PRIVATE SECURITY
SUBCHAPTER O. MILITARY SERVICE MEMBERS, MILITARY VETERANS, AND MILITARY SPOUSES - SPECIAL CONDITIONS

37 TAC §35.183, §35.186

The Texas Department of Public Safety (the department) adopts an amendment to §35.183 and new §35.186, concerning Military Service Members, Military Veterans, And Military Spouses - Special Conditions. These rules are adopted without changes to the proposed text as published in the October 24, 2025, issue of the *Texas Register* (50 TexReg 7006) and will not be republished.

The amendment and new rule implement House Bill 5629, 89th Leg., R.S. (2025) by clarifying the alternative licensing process and by establishing new rules for recognizing another state's license similar in scope of practice to the license in this state for the Private Security Program.

The department accepted comments on the proposals through November 24, 2025. The substantive comments received and the department's responses are summarized below.

COMMENT:

Written comments relating to §35.183 were submitted by Edward Timmons, on behalf of Archbridge Institute recommending replacing the proposed language from "comparing the other state's license requirements" to "comparing the other state's scope of practice".

RESPONSE: The department disagrees with this comment. It is necessary for the department to review the licensing requirements of other states, along with their statutes, rules, and application review processes. Conducting this review is essential to ensure that an applicant's prior authorization in another state corresponds with the lawful scope of regulated activities in Texas. No changes were made to the proposal based on this comment.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Occupations Code, §1702.061(a), which authorizes the Public Safety Commission to adopt rules and general policies to guide the department in the administration of this chapter; and House Bill 5629, 89th Leg., R.S. (2025).

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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D. Phillip Adkins
General Counsel
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CHAPTER 36. METALS RECYCLING ENTITIES
SUBCHAPTER C. PRACTICE BY CERTIFICATE HOLDERS AND REPORTING REQUIREMENTS

37 TAC §36.33, §36.39

The Texas Department of Public Safety (the department) adopts an amendment to §36.33 and new §36.39, concerning Practice By Certificate Holders And Reporting Requirements. Section 36.39 is adopted with a change to the proposed text as published in the October 24, 2025, issue of the *Texas Register* (50 TexReg 7007) and will be republished. Section 36.33 is adopted without changes and will not be republished.

The amendment and new rule are necessary to implement Senate Bill 1646, 89th Leg., R.S. (2025). The amendment to §36.33 outlines the documentation a seller who sells insulated communications wire must provide to a metal recycling entity to establish that the wire was salvaged from a fire, and proposed new §36.39 establishes the method by which a metal recycling entity is required to document the type of seller from which the entity purchased or acquired copper or brass material.

The department accepted comments on the proposals through November 24, 2025. The substantive comments received and the department's responses are summarized below.

COMMENT:

Written comments relating to §36.39(a) were submitted by Trey LaMair on behalf of AT&T and recommended modifying the second sentence of §36.39(a) from "… a metal recycling entity purchased or acquired copper or brass material as defined in §1956.133" to "…a metal recycling entity purchased or acquired copper or brass material as defined in §1956.131".

RESPONSE: The department agrees with this comment and is modifying the second sentence in §36.39(a) to refer to §1956.131 of the Texas Occupations Code.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to

adopt rules considered necessary for carrying out the department's work; Texas Occupations Code, §1956.013, which authorizes the Public Safety Commission to adopt rules to administer this chapter; §1956.0134(e), which authorizes the Public Safety Commission to adopt rules establishing the method by which a metal recycling entity is required to document in a record the type of seller from which the entity purchased or acquired copper or brass material; §1956.0134(f), which authorizes the Public Safety Commission to establish the type of documentation that a person selling insulated communications wire must provide to a metal recycling entity to establish that the wire was salvaged from a fire; and Senate Bill 1646, 89th Leg., R.S. (2025).

§36.39. Documentation of Seller Type for Certain Copper or Brass Material.

(a) A metal recycling entity shall keep an accurate electronic record or an accurate and legible written record of each purchase of copper or brass material made in the course of the entity's business. The record must clearly identify the type of seller listed in §1956.133 of the Act, from which a metal recycling entity purchased or acquired copper or brass material as defined in §1956.131 of the Act.

(b) The record indicating the type of seller must be in a retrievable format and available for inspection as part of the records requirements pursuant to §1956.134 of the Act.

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

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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SUBCHAPTER D. MILITARY EXEMPTIONS

37 TAC §36.43, §36.45

The Texas Department of Public Safety (the department) adopts an amendment to §36.43 and new §36.45, concerning Military Exemptions. These rules are adopted without changes to the proposed text as published in the October 24, 2025, issue of the *Texas Register* (50 TexReg 7008) and will not be republished.

The amendment and new rule implement House Bill 5629, 89th Leg., R.S. (2025) by clarifying the alternative certificate or licensing process and by establishing a new rule for recognizing another state's license similar in scope of practice to the certificate of registration in this state for the Metals Recycling Entities Program.

The department accepted comments on the proposals through November 24, 2025. The substantive comments received and the department's responses are summarized below.

COMMENT:

Written comments relating to §36.45 were submitted by Edward Timmons, on behalf of Archbridge Institute recommending replacing the proposed language from "comparing the other state's license requirements" to "comparing the other state's scope of practice".

RESPONSE: The department disagrees with this comment. It is necessary for the department to review the licensing requirements of other states, along with their statutes, rules, and application review processes. Conducting this review is essential to ensure that an applicant's prior authorization in another state corresponds with the lawful scope of regulated activities in Texas. No changes were made to the proposal based on this comment.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Occupations Code, §1956.013, which authorizes the Public Safety Commission to adopt rules to administer this chapter; and House Bill 5629, 89th Leg., R.S. (2025).

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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D. Phillip Adkins
General Counsel
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SUBCHAPTER E. DISCIPLINARY PROCEDURES AND ADMINISTRATIVE PROCEDURES

37 TAC §36.60

The Texas Department of Public Safety (the department) adopts amendments to §36.60, concerning Administrative Penalties. This rule is adopted without changes to the proposed text as published in the October 24, 2025, issue of the *Texas Register* (50 TexReg 7009) and will not be republished.

The amendments modify the penalty schedule and add penalties for violation of proposed changes to §36.33, concerning Documentation of Fire-Salvaged Insulated Communications Wire and §36.39, concerning Documentation of Seller Type for Certain Copper or Brass Material. These changes are necessary to implement Senate Bill 1646, 89th Leg., R.S. (2025).

No comments were received regarding the adoption of this rule.

This rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Occupations Code, §1956.013, which authorizes the Public Safety Commission to adopt rules to administer this chapter; and Senate Bill 1646, 89th Leg., R.S. (2025).

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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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: January 1, 2026
Proposal publication date: October 24, 2025
For further information, please call: (512) 424-5848

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CHAPTER 39. AUTOMATED MOTOR VEHICLES

37 TAC §§39.1 - 39.3

The Texas Department of Public Safety (the department) adopts new §§39.1 - 39.3, concerning Automated Motor Vehicles. These rules are adopted without changes to the proposed text as published in the October 24, 2025, issue of the *Texas Register* (50 TexReg 7010) and will not be republished.

The new rules are necessary to implement Senate Bill 2807, 89th Leg., R.S. (2025), regarding an authorization for a person to operate one or more automated motor vehicles to transport property or passengers in furtherance of a commercial enterprise on highways and streets in this state without a human driver. The department is required to adopt rules related to the form and manner in which a person seeking an authorization must submit a plan to the department specifying how a person who provides firefighting, law enforcement, ambulance, medical, or other emergency services should interact with an automated motor vehicle during the provision of those services.

New §39.1, provides the purpose and scope of new Chapter 39; new §39.2, provides definitions and a cross reference to the definitions in Transportation Code, Chapter 545, Subchapter J; and new §39.3, prescribes the form and manner by which a person must submit a first responder interaction plan to the department.

Section 12(b) of Senate Bill 2807 provides that a person is not required to comply with Subchapter J, Chapter 545 of the Transportation Code until the 90th day after the effective date of rules adopted by the department and the Texas Department of Motor Vehicles. The effective date of these rules is January 1, 2026. The effective date of the Texas Department of Motor Vehicles rules is February 27, 2026, as published in the October 3, 2025, issue of the *Texas Register* (50 TexReg 6520). Therefore, a person is required to comply with Subchapter J of Chapter 545 on May 28, 2026.

The department accepted comments on the proposals through November 24, 2025. The substantive comments received and the department's responses are summarized below.

COMMENT:

Written comments relating to §39.3(c)(1) were submitted by Volvo Autonomous Solutions and the Autonomous Vehicle Industry Association generally in support of the rules with the following recommendations. The commenters recommend operators be permitted to provide first responder contact information through either a telephone number or a QR code, the QR code be linked to trained support specialists instead of the First Responder Interaction Plan (FRIP), and removal of the word "prominently."

RESPONSE: The department disagrees with these comments. First responders require quick and immediate access to a fleet support specialist that is most efficiently provided through an easily identified telephone number prominently displayed on the vehicle. Furthermore, the display of a telephone number is not uncommon and is consistent with other typical commercial vehicle operations and passenger carrying commercial vehicle operations across the country. A QR code which links to the First Responder Interaction Plan provides an additional layer of access if a fleet support specialist is not immediately available through a telephone number. In addition, separate requirements for a telephone number and QR code provides redundancy in maximizing the chances a first responder will access support in the event either the telephone number or QR code is not visible due to extenuating circumstances, such as damage resulting from a collision. No changes were made to the proposal based on these comments.

COMMENT:

Written comments relating to §39.3(c)(1) were submitted by Waymo LLC and Tesla with the following recommendations. The commenters recommend the removal of the mandatory display on the vehicle of a telephone number and QR code linked to the FRIP.

RESPONSE: The department disagrees with these comments. First responders require quick and immediate access to a fleet support specialist that is most efficiently provided through an easily identified telephone number prominently displayed on the vehicle. Furthermore, the display of a telephone number is not uncommon and is consistent with other typical commercial vehicle operations and passenger carrying commercial vehicle operations across the country. A QR code which links to the First Responder Interaction Plan provides an additional layer of access if a fleet support specialist is not immediately available through a telephone number. In addition, separate requirements for a telephone number and QR code provides redundancy in maximizing the chances a first responder will access support in the event either the telephone number or QR code is not visible due to extenuating circumstances, such as damage resulting from a collision. No changes were made to the proposal based on these comments.

COMMENT:

Written comments relating to §39.3(c)(1) were submitted by Zoox with the following recommendation. The commenter recommends that the department clarify that phone numbers and QR codes are not required to be displayed on "drivered" test fleet autonomous vehicles with human operators in the vehicle.

RESPONSE: The department disagrees with this comment. Subchapter J of Chapter 545 of the Transportation Code defines an "automated driving system, an "automated motor vehicle," and a "human driver." Section 545.455(c) of the Transportation Code applies to an automated motor vehicle without a human driver operated to transport property or passengers in furtherance of a commercial enterprise on a highway or street in this state. Any fact scenario beyond the statutory definitions is outside the scope of the department's rulemaking authority. No changes were made to the proposal based on this comment.

COMMENT:

Written comments relating to §39.3(c)(5) and §39.3(d) were submitted by Tesla, Inc. with the following recommendations. Relating to §39.3(c)(5), the commenter recommends that instead

of requiring the disclosure of the name, title, and contact details of the individual authorized and responsible for enforcement actions, the department instead require a dedicated email address or telephone number. Relating to §39.3(d), the commenter recommends the department clarify what constitutes a "material change."

RESPONSE: The department disagrees with these comments. A specific contact is required to ensure that the department has a single point of contact that is responsible for the preparation of the first responder interaction plan, including an individual authorized and responsible for enforcement actions; however, a person may choose to provide an additional dedicated email address and telephone number in addition to a specific contact. A material change is sufficiently described as any material change related to how to communicate with a fleet support specialist who is available during the period in which the automated motor vehicle is in operation, how to safely remove the automated motor vehicle from the roadway and safely tow the vehicle, how to recognize whether the automated motor vehicle is being operated with the automated driving system engaged, and any additional information the authorization holder, the manufacturer of the automated motor vehicle, or the manufacturer of the automated driving system considers necessary regarding hazardous conditions or public safety risks associated with the operation of the vehicle. No changes were made to the proposal based on these comments.

COMMENT:

Written comments relating to §39.1, §39.2, and §39.3 were submitted by the City of Austin, with the following comments and recommendations.

Relating to §39.1, the commenter recommends clarifying whether the FRIPs will be accessible to or required to be shared with local first responder agencies in the jurisdictions where automated motor vehicles operate.

Relating to §39.2, the commenter recommends that the department clarify what the FRIP must include so that all operators submit comparable, useful information for first responders, including the automated motor vehicle's cut points to safely access the vehicle as well as procedures for law enforcement stops, crash response, fire suppression, emergency extrication, and hazardous materials incidents.

Relating to §39.3, the commenter recommends: (a) clarifying whether and how local first responder agencies will be able to access plans submitted through the department's designated system and, if direct access is not provided, requiring operators to certify that their plans have been shared with affected local agencies; (b) including a required 24-hour emergency contact field; and (c) developing a secure portal or access mechanism to allow authorized first responders to view filed plans when responding to incidents.

Relating to §39.3, the commenter recommends that the plan include how to identify the vehicle per SAE J0911, First Responder Interactions with Fleet Managed Automated Driving System Dedicated Vehicles.

Relating to §39.3, the commenter recommends that the first responder plan should be clear about how to contact the "support specialist" and where on the vehicle the QR code and telephone number may be found by first responders.

Relating to §39.3, the commenter recommends that the first responder plan be explicit about what personally protective equipment is recommended when interacting with the vehicle in various emergencies.

Relating to §39.3(c)(2), the commenter recommends that the first responder plan have instructions on how to disable the automated driver feature to ensure the vehicle will not move unexpectedly.

Relating to §39.3(c)(2), the commenter recommends that the first responder interaction plan should include clear instructions for safely moving the vehicle during an emergency- either through manual operations, if possible, or by specifying the procedure for relocating the vehicle when manual control is not available.

Relating to §39.3(c)(2), the commenter recommends including an Operational Design Domain or a map of the service area.

Relating to §39.3(c)(3), the commenter recommends including "fleet operator" in the list of who can provide an updated first responder plan for compliance with SAE definitions for automated vehicles.

RESPONSE: The department disagrees with these comments. The recommendations are outside the scope of the department's rulemaking authority. No changes were made to the proposal based on these comments.

These rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Transportation Code, §545.455(c)(2), which authorizes the department to adopt rules for a plan specifying how a person who provides firefighting, law enforcement, ambulance, medical, or other emergency services should interact with the automated motor vehicle during the provision of those services; and Senate Bill 2807, 89th Leg., R.S. (2025).

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 December 12, 2025.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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PART 9. TEXAS COMMISSION ON JAIL STANDARDS

CHAPTER 263. LIFE SAFETY RULES
SUBCHAPTER D. PLANS AND DRILLS FOR EMERGENCIES

37 TAC §263.40

The Texas Commission on Jail Standards (TCJS) adopts amendments to §263.40 (relating to life safety in county jails) under Chapter 263 Part 9 of Title 37 of the Texas Administrative Code without changes to the text as proposed in the September

5, 2025, issue of the *Texas Register* (50 TexReg 5885). The rule will not be republished.

The adoption of this rule corrects grammar in the administrative code.

No comments were received during the public comment period.

Statutory authority to adopt this rule comes from Texas Government Code 511.009.

No further article, statute, or code is affected by this adoption.

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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Brandon Wood
Executive Director
Texas Commission on Jail Standards
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For further information, please call: (512) 850-9668

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SUBCHAPTER E. LIFE SAFETY AND EMERGENCY EQUIPMENT

37 TAC §263.53

The Texas Commission on Jail Standards (TCJS) adopts amendments to §263.53 (relating to life safety in county jails) under Chapter 263 Part 9 of Title 37 of the Texas Administrative Code without changes to the text as proposed in the September 5, 2025, issue of the *Texas Register* (50 TexReg 5886). The rule will not be republished.

The adoption of this rule clarifies citations made in this rule.

No comments were received during the public comment period.

Statutory authority to adopt this rule comes from Texas Government Code 511.009.

No further article, statute, or code is affected by this adoption.

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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Brandon Wood
Executive Director
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For further information, please call: (512) 850-9668

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37 TAC §263.54

The Texas Commission on Jail Standards (TCJS) adopts amendments to §263.54 (relating to life safety in county jails) under Chapter 263 Part 9 of Title 37 of the Texas Administrative Code without changes to the text as proposed in the September 5, 2025, issue of the *Texas Register* (50 TexReg 5886). The rule will not be republished.

The adoption of this rule corrects grammar in the administrative code.

No comments were received during the public comment period.

Statutory authority to adopt this rule comes from Texas Government Code 511.009.

No further article, statute, or code is affected by this adoption.

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 265. ADMISSION

37 TAC §265.13

The Texas Commission on Jail Standards (TCJS) adopts amendments to §265.13 (relating to verification of inmate veteran status) under Chapter 265 Part 9 of Title 37 of the Texas Administrative Code without changes to the text as proposed in the September 5, 2025, issue of the *Texas Register* (50 TexReg 5887). The rule will not be republished.

The adoption of this rule requires county jails to conduct inmate veteran status verification within the standard intake procedure.

No comments were received during the public comment period.

Statutory authority to adopt this rule comes from Texas Government Code 511.009.

No further article, statute, or code is affected by this adoption.

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 291. SERVICES AND ACTIVITIES

37 TAC §291.4

The Texas Commission on Jail Standards (TCJS) adopts amendments to §291.4 (relating to visitation plans in county jails) under Chapter 291 Part 9 of Title 37 of the Texas Administrative Code without changes to the text as proposed in the September 5, 2025, issue of the *Texas Register* (50 TexReg 5885). The rule will not be republished.

The adoption of this rule requires county jails to amend their visitation plans to allow certain visitation to veterans.

No comments were received during the public comment period.

Statutory authority to adopt this rule comes from Texas Government Code 511.009.

No further article, statute, or code is affected by this adoption.

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

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) Chapter 217, Vehicle Titles and Registration. The department adopts the simultaneous repeal of Subchapter A, Motor Vehicle Titles; §217.10, relating to Appeal to the County, and addition of new Subchapter A, Motor Vehicle Titles; §217.10, relating to Department Decisions on Titles and Appeals to the County. The department additionally adopts amendments to Subchapter B, Motor Vehicle Registration; §217.41, relating to Disabled Person License Plates and Disabled Parking Placards. The department further adopts new Subchapter D, Nonrepairable and Salvage Motor Vehicles; §217.87, relating to Requirements for Certain Vehicles Acquired by a Used Automotive Parts Recycler Without a Title. The amendments, new sections, and repeal are necessary to implement legislation, to clarify existing statutory requirements, and to make nonsubstantive grammatical changes to improve readability.

The department adopts §217.10 and §217.41 without changes to the proposed text as published in the October 3, 2025, issue of the *Texas Register* (50 TexReg 6469) and they will not be republished. The department adopts §217.87 with revisions to the proposed text as published in the October 3, 2025, issue of the *Texas Register* (50 TexReg 6469) and it will be republished. In conjunction with this adoption, the department is adopting the repeal of §217.10, which is also published in this issue of the *Texas Register*.

REASONED JUSTIFICATION. The repeal of §217.10, relating to Appeal to the County, is adopted because the current language in the section is duplicative of the statutory requirements in Transportation Code, §501.052, and is therefore unnecessary as rule text. To replace the repealed section, the department adopts new §217.10, relating to Department Decisions on Titles and Appeals to the County. Adopted new §217.10(a) clarifies what constitutes evidence of a title refusal or revocation by the department under Transportation Code, §501.051, for purposes of determining eligibility for a hearing by a tax accessor-collector under Transportation Code, §501.052. The adopted language in new §217.10(a) specifies that for purposes of determining whether a person is eligible for a tax accessor-collector hearing under Transportation Code §501.052, the official record of the department's refusal to issue a title is a written notice of determination from the department. Adopted new §217.10(a) also clarifies that the official record of a revoked title is a revocation remark on the motor vehicle record in the department's Registration and Title System. These adopted new provisions clarify and prevent confusion about the official records of department action that demonstrate eligibility for an appeal hearing under Transportation Code, §501.052.

Adopted new §217.10(b) clarifies that a department decision that an applicant is ineligible to obtain a bonded title under Transportation Code §501.053 is a not a refusal to issue title under Transportation Code, §501.051, and therefore is not subject to a tax accessor-collector hearing under Transportation Code, §501.052. This adopted new language addresses confusion by some tax accessor-collectors, who have incorrectly treated the department's ineligibility determinations under Transportation Code, §501.053 as refusals to title under Transportation Code, §501.051. Adopted new §217.10(b) also aligns the department's rules with recent court rulings, which held that a notice from the department that a vehicle is ineligible for bonded title is not a refusal by the department to issue title under Transportation Code, §501.051.

Adopted amendments to §217.41, relating to Disabled Person License Plates and Disabled Parking Placards, implement Senate Bill (SB) 2001, 89th Legislature, Regular Session (2025), which created Transportation Code, §504.2025, relating to Peace Officers with Disabilities. Section 504.2025 established the right of a qualifying peace officer to obtain disabled peace officer license plates and disabled parking placards. Adopted amendments to §217.41(b)(1), (b)(2)(A), and (b)(3)(A) add statutory references to Transportation Code, §504.2025, to include qualifying disabled peace officers as "disabled persons" for purposes of the eligibility for and issuance of disabled person license plates and disabled parking placards under §217.41. Adopted new §217.41(b)(2)(D) clarifies Transportation Code, §504.202(h) and §504.2025(h) by explaining that qualifying disabled veterans and disabled peace officers have the option to obtain general issue license plates at no expense, in lieu of disabled veteran or peace officer license plates. An adopted amendment to §217.41(b)(1) also adds a reference to the Transportation Code to the citation to §504.202(b-1). An adopted amendment to §217.41(b)(2)(B) adds the titles to §217.43 and §217.45 for ease of reference

to these sections. An adopted amendment to §217.41(c) adds the title to §217.28 for ease of reference. Adopted amendments throughout §217.41 correct punctuation to statutory citations by inserting commas between the Texas code and section number.

Adopted new §217.87, relating to Requirements for Certain Vehicles Acquired by a Used Automotive Parts Recycler Without a Title, implements House Bill (HB) 5436, 89th Legislature, Regular Session (2025). Transportation Code, §501.098, relating to Exception to Title Requirement for Certain Vehicles, provides a process for a used automotive parts recycler (recycler) to acquire motor vehicles without titles for the purpose of dismantling, scraping and parting them, without incurring the cost and delay of going through the bonded title process. Adopted new §217.87(a)(1) informs a recycler of their obligation to determine if a motor vehicle acquired without a title under Transportation Code, §501.098(a) has been reported stolen or is subject to a recorded lien or security interest by submitting a form to the department within the time prescribed by Transportation Code, §501.098(c) and §501.098(g). Adopted new §217.87(a)(2) requires the recycler to separately report this information to the National Motor Vehicle Title Information System (NMVTIS), to comply with Transportation Code, §501.098(c) and to clarify that the department will not be reporting information to NMVTIS on the recycler's behalf. Adopted new §217.87(b) describes the information that the recycler must submit on a department form to ascertain whether a vehicle was reported stolen or is subject to any recorded liens, consistent with the information specified under 28 C.F.R. §25.56, to implement the requirements provided in Transportation Code, §501.098(c) and §501.098(g). Adopted new §217.87(b)(5) requires recyclers to attest that the vehicle meets the requirements of Transportation Code, §501.098(a)(1) and (2), in order to ensure that the vehicle is eligible for a recycler to purchase without obtaining title, so that the department can avoid wasting resources by processing forms for ineligible vehicles. At adoption and in response to a public comment, the proposed language for new §217.87(c) was modified to add "or electronically following the procedures set out on the department's website," to allow for an electronic method of delivering the form to the department. This is an optional, but likely faster and more efficient alternative to delivering the form in person to one of the department's 18 regional service centers. The language added to new §217.87(c) at adoption will also allow the department flexibility on the specific method of electronic delivery, so that the department can use monitored email or electronic forms until it has an opportunity to develop and deploy a more sophisticated electronic system for handling the submission of the forms.

Adopted new §217.87(d) describes the actions the department will take in response to receiving the recycler's form under subsection (b) of this section. Adopted new §217.87(d)(1)(A) requires the department to provide the recycler with notice of whether the motor vehicle has been reported stolen either in person or by email, to assure that the department meets the 48-hour deadline for issuing the notice in accordance with Transportation Code, §501.098(d). Adopted new §217.87(d)(1)(B) describes the department's method of informing the recycler in person or by email if the vehicle is subject to a recorded lien or security interest in the department's Registration and Title System, to expedite the notice required under Transportation Code, §501.098(g). Adopted new §217.87(d)(1)(B) also informs the recycler of the process of obtaining from the department the contact information for a recorded lien holder, which is information that Transportation Code, §501.098(h)(2) requires the recycler provide to the county tax accessor-collector. Adopted new §217.87(d)(2) clarifies that if there is a motor vehicle record for the vehicle in the department's Registration and Title System, the department will make a notation in the motor vehicle record that the motor vehicle has been dismantled, scrapped or destroyed, and cancel the title issued by the department for the motor vehicle, in accordance with Transportation Code, §501.098(f).

Adopted new §217.87(e) describes the process for a lienholder or last registered owner of a motor vehicle acquired by a recycler under Transportation Code, §501.098 to request that the department reinstate the title and remove a notation in the department's records for the motor vehicle made under Transportation Code, §501.098(f)(1) and adopted new §217.87(d)(2), indicating that the vehicle had been dismantled, scrapped or destroyed. Adopted new §217.87(e) describes the process of making the request to the department by presenting valid proof of identification and submitting a receipt received from the recycler transferring the motor vehicle back to the lienholder or last registered owner. The adopted new provisions for §217.87(e) implement and administer Transportation Code, §501.098(j), which provides a lienholder or last registered owner the right to retrieve the motor vehicle acquired by the recycler under Transportation Code, §501.098. Additionally, adopted new §217.87(e) avoids subjecting the lienholder or last registered owner to any additional costs, such as the bonded title process would require.

Adopted new §217.87(f) describes the form and format for the records a recycler is required to compile under Transportation Code, §501.098(b) and have available for inspection by law enforcement or department personnel under Transportation Code, §501.098(m). Adopted new §217.87(f)(1) requires a recycler to collect and record the information specified under Transportation Code, §501.098(b)(1)-(9) on a department form made available on the department's website, and to maintain that form together with the identification documents under Transportation Code, §501.098(b)(10) and the department's response under adopted new §217.87(d). Adopted new §217.87(f)(2) allows a recycler the option to maintain records in an electronic format. The adopted new §217.87(f) implements Transportation Code, §501.098(b), to clarify the manner in which a recycler is to compile and maintain the information specified in Transportation Code, §501.098(b) and (c), for inspection under Transportation Code, §501.098(m).

SUMMARY OF COMMENTS.

The department received one written comment on the proposal from the Texas Automotive Recyclers Association (TARA).

Comment: TARA commented that while they understood the department is currently developing an electronic system to receive and process forms submitted by recyclers, they requested the department revise §217.87(c) to provide an option for recyclers to deliver the forms to the department by electronic means as a more efficient alternative to an in-person visit to a department regional service center. TARA further commented that the department could offer an interim hybrid system allowing recyclers to submit a department form via email or in person.

Response. The department agrees. The department modified the proposed language in §217.87(c) at adoption to address this concern by adding "or electronically following the procedures set out on the department's website" that allows for an electronic submission of the form by recyclers.

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §217.10

STATUTORY AUTHORITY. The department adopts the repeal of §217.10 under Transportation Code, §501.0041, which gives the department authority to adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act; Transportation Code, §501.051, which gives the department authority to refuse, cancel, suspend or revoke a title; Transportation Code, §501.052, which provides an interested person aggrieved by a refusal, rescission, cancellation, suspension, or revocation under Transportation Code, §501.051, the right to apply for hearing to the county assessor-collector; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. The adopted repeal would implement Transportation Code, Chapters 501 and 1002.

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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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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43 TAC §217.10

STATUTORY AUTHORITY. The department adopts new §217.10 under Transportation Code, §501.0041, which gives the department authority to adopt rules to administer Transportation Code, Chapter 501; Transportation Code, §501.051, which gives the department authority to refuse, cancel, suspend or revoke a title; Transportation Code, §501.053, which gives the department authority to determine the eligibility for a bonded title; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and the statutory authority referenced throughout the preamble and in the rule text.

CROSS REFERENCE TO STATUTE. The adopted new section would implement Transportation Code, Chapters 501 and 1002.

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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Laura Moriaty
General Counsel
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SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §217.41

STATUTORY AUTHORITY. The department adopts amendments to §217.41 under Transportation Code, §504.0011, which gives the board authority to adopt rules to implement and administer Transportation Code, Chapter 504, License Plates; Transportation Code, §504.010, which authorizes the board to adopt rules governing the placement of license plates on motor vehicles; Transportation Code, §504.202, entitling a qualifying disabled veteran to elect for license plates issued under Transportation Code, Chapter 502 in lieu of disabled veteran license plates; Transportation Code, §504.2025, as created by Senate Bill 2001, 89th Legislature, Regular Session (2025), providing a qualifying peace officer with the option to obtain disabled peace officer license plates and disabled parking placards; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and the statutory authority referenced throughout the preamble and in the rule text.

CROSS REFERENCE TO STATUTE. The adopted amendments would implement Transportation Code, Chapters 504 and 1002.

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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Laura Moriaty
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SUBCHAPTER D. NONREPAIRABLE AND SALVAGE MOTOR VEHICLES

43 TAC §217.87

STATUTORY AUTHORITY. The department adopts new §217.87 under Transportation Code, §501.0041, which gives the department authority to adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act; Transportation Code, §501.098, as created by House Bill 5436, 89th Legislature, Regular Session (2025), which gives the department authority to prescribe the manner in which a used automotive parts recycler compiles the information required under Transportation

Code, §501.098(b) on motor vehicles purchased without title for purposes of dismantling, scrapping or parting, the authority to prescribe the manner in which a used automotive parts recycler submits to the department any information necessary to satisfy any applicable requirement for reporting information to the National Motor Vehicle Title Information System, and the authority to inspect records under Transportation Code, §501.098(m); and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and the statutory authority referenced throughout the preamble and in the rule text.

CROSS REFERENCE TO STATUTE. The adopted new section would implement Transportation Code, Chapters 501 and 1002.

§217.87. Requirements for Certain Vehicles Acquired by a Used Automotive Parts Recycler Without a Title.

(a) Reporting requirements.

(1) A used automotive parts recycler (recycler), as defined in Occupations Code §2309.002, that purchases a motor vehicle without a title, in accordance with Transportation Code, §501.098(a), shall determine if the motor vehicle is reported stolen and if the motor vehicle is the subject of any recorded security interests or liens by completing and submitting the form described in subsection (b) of this section to the department within the time provided under Transportation Code, §501.098(c) and §501.098(g).

(2) A recycler must separately report the information specified under Transportation Code, §501.098(c) to the National Motor Vehicle Title Information System.

(b) Information on form. A recycler shall submit a form containing the following information:

(1) name, mailing address, email address and phone number of the recycler;

(2) the vehicle identification number for the motor vehicle;

(3) the date the motor vehicle was obtained;

(4) the name of the individual or entity from whom the motor vehicle was obtained;

(5) A statement that the vehicle:

(A) is at least 13 years old,

(B) is purchased solely for parts, dismantling, or scrap, and

(C) has not been registered for at least seven years; and

(6) the signature of the recycler or the recycler's authorized agent.

(c) Submittal of form. The form shall be submitted to the department in person at one of the department's regional offices or electronically following the procedures set out on the department's website.

(d) Department response.

(1) Upon receipt of a completed and signed form under subsection (b) of this section, the department shall:

(A) notify the recycler, in person or via the email address specified on the form, within the time specified under Transportation Code, §501.098(d), whether the motor vehicle has been reported stolen; and

(B) notify the recycler, in person or via the email address specified on the form, whether the motor vehicle is the subject of a recorded security interest or lien in the department's Registration and Title System. If the vehicle has a recorded lien or security interest, the recycler may obtain the contact information of the holder of that recorded lien or security interest from the department by submitting a request in accordance with §217.123 of this title (relating to Access to Motor Vehicle Records).

(2) If the motor vehicle has a motor vehicle record in the department's Registration and Title System, the department shall:

(A) add a notation to the motor vehicle record that the motor vehicle has been dismantled, scrapped, or destroyed; and

(B) cancel the title issued by the department for the motor vehicle.

(e) Vehicles retrieved from recycler. The department shall reinstate the title and remove the notation in the department's records specified under subsection (d)(2) of this section and Transportation Code, §501.098(f)(1) at the request of a lienholder or last registered owner of a vehicle that is retrieved from a recycler under Transportation Code, §501.098(j). The request must include:

(1) a receipt from the recycler transferring the vehicle to the lienholder or last registered owner that includes the vehicle identification number, year and make; and

(2) valid proof of identification as provided in §217.7 of this title (relating to Replacement of Title).

(f) Records.

(1) A recycler shall collect and record the information specified in Transportation Code, §501.098(b)(1)-(9) on a form available on the department's website and maintain that form with the identification documents under Transportation Code, §501.098(b)(10) and the department's response under subsection (d) of this section.

(2) The records may be maintained in an electronic format.

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 December 12, 2025.

TRD-202504583
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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Proposal publication date: October 3, 2025
For further information, please call: (512) 465-4160

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PART 18. MONTGOMERY COUNTY TAX ASSESSOR-COLLECTOR

CHAPTER 445. MOTOR VEHICLE TITLE SERVICES

43 TAC §§445.1 - 445.17

The Montgomery County Tax Assessor-Collector adopts new 43 TAC §§445.1 - 445.17, concerning the regulation of motor vehicle title services, without changes to the proposed text as pub-

lished in the October 17, 2025, issue of the *Texas Register* (50 TexReg 6868). The rules will not be republished.

There were no comments on the proposed new sections submitted to Tammy McRae, Montgomery County Tax Assessor-Collector, or to the office in general.

Statutory Authority. The Montgomery County Tax Assessor-Collector adopts the new sections pursuant to Transportation Code, Chapter 520, Subchapter E, which provides the county tax assessor-collector the authority to adopt rules regarding motor vehicle title services.

This adoption does not affect any other statutes, articles or codes.

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 December 9, 2025.

TRD-202504482
Tammy J. McRae
Montgomery County Tax Assessor-Collector
Montgomery County Tax Assessor-Collector
Effective date: December 29, 2025
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For further information, please call: (936) 538-8124