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

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

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.15, §3.107

The Railroad Commission of Texas proposes amendments to §3.15, relating to Surface Equipment Removal Requirements and Inactive Wells, and §3.107, relating to Penalty Guidelines for Oil and Gas Violations, to implement House Bill 2663, 89th Texas Legislature (Regular Session, 2025). The bill amends Texas Natural Resources Code §89.029 to require an operator who is applying for a plugging extension for a well that has been inactive for at least 10 years to affirm to the Commission it has removed all equipment associated with providing electric power to the production site, unless the equipment is owned by a utility provider, as defined by Texas Utilities Code §31.002. The bill also requires the Commission to assess a penalty of up to $25,000 if an operator falsely files this affirmation.

The Commission proposes amendments in §3.15(f)(2)(A) to add a reference to Texas Natural Resources Code §89.029.

The Commission proposes amendments in §3.15(f)(2)(A)(ii) to add wording that an operator who is applying for a plugging extension for a well that has been inactive for at least 10 years to affirm that equipment associated with providing electric service has been removed. This new provision does not apply to equipment owned by an electric utility.

The Commission proposes amendments to the Figure in §3.107(j) to add the new penalty.

David Lindley, Assistant Director, Oil and Gas Division, has determined there will be no cost to the Commission as a result of the proposed amendments. Mr. Lindley has determined that for the first five years the amendments will be in effect, there will be no fiscal implications for local governments as a result of enforcing the amendments.

Mr. Lindley has also determined that the public benefit anticipated as a result of enforcing or administering the amendments will be the reduction of wildfire risks, improvements in well-site safety, proper decommissioning of inactive wells through a well operator's written affirmation regarding the removal of equipment associated with providing electric service to the well's production site, and penalties issued to operators that do not comply with the new provisions.

Mr. Lindley has determined that for each year of the first five years that the amendments will be in effect, there will be no additional economic costs for persons required to comply as a result of Commission adoption of the proposed amendments. A person who violates the rule may have an additional cost of paying the penalty.

In accordance with Texas Government Code, §2006.002, the Commission has determined there will be no adverse economic effect on rural communities, small businesses or micro-businesses resulting from the proposed amendments; therefore, the Commission has not prepared the economic impact statement or the regulatory flexibility analysis required under §2006.002.

The Commission has determined that the proposed rulemaking will not affect a local economy; therefore, pursuant to Texas Government Code, §2001.022, the Commission is not required to prepare a local employment impact statement for the proposed rule.

The Commission has determined that the proposed amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the rule would be in effect, the proposed amendments would not: create or eliminate a government program; create or eliminate any employee positions; require an increase or decrease in future legislative appropriations; increase fees paid to the agency; create a new regulation; increase or decrease the number of individuals subject to the rule's applicability; expand, limit, or repeal an existing regulation; or affect the state's economy.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 p.m., on Monday, October 6, 2025. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's web site more than two weeks prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Lindley at (512) 463-6217. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules. Once received, all comments are posted on the Commission's website at https://rrc.texas.gov/general-counsel/rules/proposed-rules/. If you submit a comment and do not see the comment posted at

this link within three business days of submittal, please call the Office of General Counsel at (512) 463-7149. The Commission has safeguards to prevent emailed comments from getting lost; however, your operating system's or email server's settings may delay or prevent receipt.

The Commission proposes the amendments under Texas Natural Resources Code, §81.051 and §81.052, which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under commission jurisdiction; Texas Natural Resources Code §§85.042, 85.202, 86.041 and 86.042, which require the Commission to adopt rules to control waste of oil and gas; and Texas Natural Resources Code, §89.023, which authorizes the Commission to adopt rules relating to the definition of active operation.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 85.042, 85.202, 86.041, 86.042, 89.023.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81, 85, 86, and 89.

§3.15. Surface Equipment Removal Requirements and Inactive Wells.

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

(1) Active operation--Regular and continuing activities related to the production of oil and gas for which the operator has all necessary permits. In the case of a well that has been inactive for 12 consecutive months or longer and that is not permitted as a disposal or injection well, the well remains inactive for purposes of this section, regardless of any minimal activity, until the well has reported production of at least five barrels of oil for oil wells or 50 Mcf of gas for gas wells each month for at least three consecutive months, or until the well has reported production of at least one barrel of oil for oil wells or at least one Mcf of gas for gas wells each month for 12 consecutive months.

(2) Cost calculation for plugging an inactive well--The cost, calculated by the Commission or its delegate, for each foot of well depth plugged based on average actual plugging costs for wells plugged by the Commission for the preceding state fiscal year for the Commission Oil and Gas Division district in which the inactive well is located.

(3) Delinquent inactive well--An inactive well for which, after notice and opportunity for a hearing, the Commission or its delegate has not extended the plugging deadline.

(4) Enhanced oil recovery (EOR) project--A project that does not include a water disposal project and is:

(A) a Commission-approved EOR project that uses any process for the displacement of oil or other hydrocarbons from a reservoir other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process;

(B) a certified project described by Texas Tax Code, §202.054; or

(C) any other project approved by the Commission or its delegate for EOR.

(5) Good faith claim--A factually supported claim based on a recognized legal theory to a continuing possessory right in a mineral estate, such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.

(6) Inactive well--An unplugged well that has been spudded or has been equipped with cemented casing and that has had no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months.

(7) Operator designation form--A certificate of compliance and transportation authority or an application to drill, recomplete, and reenter that has been approved by the Commission or its delegate.

(8) Physical termination of electric service to the well's production site--Disconnection of the electric service to an inactive well site at a point on the electric service lines most distant from the production site toward the main supply line in a manner that will not interfere with electrical supply to adjacent operations, including cathodic protection units.

(b) Plugging of inactive bay and offshore wells required.

(1) An operator of an existing inactive bay or offshore well as defined in §3.78 of this title (relating to Fees and Financial Security Requirements) must:

(A) restore the well to active operation as defined by Commission rule;

(B) plug the well in compliance with a Commission rule or order; or

(C) obtain the approval of the Commission or its delegate of an extension of the deadline for plugging an inactive bay or offshore well.

(2) The Commission or its delegate may not approve an extension of the deadline for plugging an inactive bay or offshore well if the plugging of the well is otherwise required by Commission rules or orders.

(c) Extension of deadline for plugging an inactive bay or offshore well. The Commission or its delegate may administratively grant an extension of the deadline for plugging an inactive bay or offshore well as defined by Commission rules if:

(1) the operator has a current organization report;

(2) the operator has, and on request provides, evidence of a good faith claim to a continuing right to operate the well;

(3) the well and associated facilities are otherwise in compliance with all Commission rules and orders; and

(4) for a well more than 25 years old, the operator successfully conducts and the Commission or its delegate approves a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil, and gas.

(d) Plugging of inactive land wells required.

(1) An operator that assumes responsibility for the physical operation and control of an existing inactive land well must maintain the well and all associated facilities in compliance with all applicable Commission rules and orders and within six months after the date the Commission or its delegate approves an operator designation form must either:

(A) restore the well to active operation as defined by Commission rule;

(B) plug the well in compliance with a Commission rule or order; or

(C) obtain approval of the Commission or its delegate of an extension of the deadline for plugging an inactive well.

(2) The Commission or its delegate may not approve an extension of the deadline for plugging an inactive land well if the plugging of the well is otherwise required by Commission rules or orders.

(3) Except for an operator designation form filed for the purpose of a name change, the Commission or its delegate may not approve an operator designation form for an inactive land well until the operator satisfies the requirements of paragraph (1)(C) of this subsection.

(4) If an operator fails to restore the well to active operation as defined by Commission rule, plug the well in compliance with a Commission rule or order, or obtain an extension of the deadline for plugging an inactive well within six months after acquiring an inactive well, the Commission or its delegate may, after notice and opportunity for hearing, revoke the operator's organization report.

(5) The Commission or its delegate may approve an organization report that is delinquent or has been revoked if the Commission or its delegate simultaneously approves extensions of the deadline for plugging the operator's inactive wells.

(e) Extension of deadline for plugging an inactive land well. The Commission or its delegate may administratively grant an extension of the deadline for plugging an inactive land well if:

(1) the Commission or its delegate approves the operator's Application for an Extension of Deadline for Plugging an Inactive Well (Commission Form W-3X);

(2) the operator has a current organization report;

(3) the operator has, and on request provides evidence of, a good faith claim to a continuing right to operate the well;

(4) the well and associated facilities are otherwise in compliance with all Commission rules and orders; and

(5) for a well more than 25 years old, the operator successfully conducts and the Commission or its delegate approves a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil, and gas.

(f) Application for an extension of deadline for plugging an inactive land well.

(1) This subsection does not apply to a bay well or an offshore well as those terms are defined in §3.78 of this title.

(2) An operator must include the following in an application for an extension of the deadline for plugging an inactive well:

(A) an affirmation made by an individual with personal knowledge of the physical condition of the inactive well pursuant to the provisions of Texas Natural Resources Code, §89.029 and §91.143, stating the following: that the operator has physically terminated electric service to the well's production site; and either:

(i) if the operator does not own the surface of the land where the well is located and the well has been inactive for at least five years but for less than 10 years as of the date of renewal of the operator's organization report, that the operator has emptied or purged of production fluids all piping, tanks, vessels, and equipment associated with and exclusive to the well; or

(ii) if the operator does not own the surface of the land where the well is located, and the well has been inactive for at least 10 years as of the date of renewal of the operator's organization report, that the operator has removed:

(I) all surface equipment and related piping, tanks, tank batteries, pump jacks, headers, fences, and firewalls; has closed all open pits; and has removed all junk and trash, as defined by Commission rule, associated with and exclusive to the well; and

(II) all equipment associated with providing electric service to the well's equipment production site, except for equipment owned by an electric utility, as defined by Section 31.002, Utilities Code; and

(B) documentation that the operator has satisfied at least one of the following requirements:

(i) for all inactive land wells that an operator has operated for more than 12 months, the operator has plugged or restored to active operation, as defined by Commission rule, 10% of the number of inactive land wells operated at the time of the last annual renewal of the operator's organization report;

(ii) if the operator is a publicly traded entity, for all inactive land wells, the operator has filed with the Commission a copy of the operator's federal documents filed to comply with Financial Accounting Standards Board Statement No. 143, Accounting for Asset Retirement Obligations, and an original executed Uniform Commercial Code Form 1 Financing Statement, filed with the Secretary of State, that names the operator as the "debtor" and the Railroad Commission of Texas as the "secured creditor" and specifies the funds covered by the documents in the amount of the cost calculation for plugging all inactive wells;

(iii) the filing of a blanket bond on Commission Form P-5PB(2), Blanket Performance Bond, a letter of credit on Commission Form P-5LC, Irrevocable Documentary Blanket Letter of Credit, or a cash deposit, in the amount of either the lesser of the cost calculation for plugging all inactive wells or $2 million;

(iv) for each inactive land well identified in the application, the Commission has approved an abeyance of plugging report and the operator has paid the required filing fee;

(v) for each inactive land well identified in the application, the operator has filed a statement that the well is part of a Commission-approved EOR project;

(vi) for each inactive land well identified in the application that is not otherwise required by Commission rule or order to conduct a fluid level or hydraulic pressure test of the well, the operator has conducted a successful fluid level test or hydraulic pressure test of the well and the operator has paid the required filing fee;

(vii) for each inactive land well identified in the application, the operator has filed Commission Form W-3X and the Commission or its delegate has approved a supplemental bond, letter of credit, or cash deposit in an amount at least equal to the cost calculation for plugging an inactive land well for each well specified in the application; or

(viii) for each time an operator files an application for a plugging extension and for each inactive land well identified in the application, the operator has filed Commission Form W-3X and the Commission or its delegate has approved an escrow fund deposit in an amount at least equal to 10% of the total cost calculation for plugging an inactive land well.

(g) Commission action on application for plugging extension.

(1) The Commission or its delegate shall administratively grant all applications for plugging extensions that meet the requirements of Commission rules.

(2) The Commission or its delegate may administratively deny an application for a plugging extension for an inactive well if the Commission or its delegate determines that:

(A) the applicant does not have an active organization report at the time the plugging extension application is filed;

(B) the applicant has not submitted all required filing fees and financial assurance for the requested plugging extension and for renewal of its organization report; or

(C) the applicant has not submitted a signed organization report for the applied-for extension year that qualifies for approval regardless of whether the applicant has complied with the inactive well requirements of this section.

(3) Except as provided in paragraph (2) of this subsection, if the Commission or its delegate determines that an organization report should be denied renewal solely because it does not meet the inactive well requirements of this section, a Commission delegate shall, within a reasonable time of not more than 14 days after receipt of the applicant's administratively complete organization report renewal packet, including all statutorily required fees and financial assurance:

(A) notify the operator of the determination;

(B) provide the operator with a written statement of the reasons for the determination; and

(C) notify the operator that it has 90 days from the expiration of its most recently approved organization report to comply with the requirements of this section.

(4) If, after the expiration of the 90-day period specified in paragraph (3)(C) of this subsection, the Commission or its delegate determines that the operator remains out of compliance with the requirements of this section, the Commission delegate shall mail the operator a written notice of this determination. The operator may request a hearing. If the operator fails to timely file a request for hearing and the required hearing fee, the Commission shall enter an order denying the plugging extension request and denying renewal of the operator's organization report without further notice or opportunity for hearing.

(5) To request a hearing, the operator must file a written request for hearing and the hearing fee of $4,500 with the Hearings Division, no later than 30 days from the date the written notice was mailed to the operator. In the request for hearing, the operator must identify by its assigned American Petroleum Institute (API) number each inactive well for which the operator is seeking a hearing to contest the determination that the well remains out of compliance. At the time an operator files a request for hearing under this subsection, the operator shall provide a list of affected persons to be given notice of the hearing. Affected persons shall include the owners of the surface estate of each tract on which a well that is the subject of the hearing request is located, the director of the Commission's Enforcement Section, and the district director of each Commission district in which the wells are located. The applicant's failure to diligently prosecute a hearing requested under this subsection may result in the application being involuntarily dismissed for want of prosecution on the motion of any affected person or on the Commission's own motion.

(6) If an operator files a timely plugging extension application that is not properly administratively denied for the reasons specified in paragraph (2) of this subsection, then the operator's previously approved organization report shall remain in effect until the Commission approves its plugging extension application or enters a final order denying the application.

(h) Revocation of extension. The Commission or its delegate may revoke an extension of the deadline for plugging an inactive well if the Commission or its delegate determines, after notice and an opportunity for a hearing, that the applicant is ineligible for the extension under the Commission's rules or orders.

(i) Removal of surface equipment for land wells inactive more than 10 years. Requirements to remove surface equipment for land wells inactive more than 10 years do not excuse an operator from compliance with all other applicable Commission rules and orders including the requirements in Chapter 4 of this title (relating to Environmental Protection).

(1) An operator of an inactive land well must leave a clearly visible sign as required by §3.3 of this title (relating to Identification of Properties, Wells, and Tanks) at the wellhead of the well and must maintain wellhead control as required by §3.13 of this title (relating to Casing, Cementing, Drilling, and Completion Requirements).

(2) An operator may not store surface equipment removed from an inactive land well on an active lease.

(3) An operator may be eligible for a temporary extension of the deadline for plugging an inactive land well or a temporary exemption from the surface equipment removal requirements if the operator is unable to comply with the requirements of subsection (f)(2)(A) of this section because of safety concerns or required maintenance of the well site and the operator includes with the application a written affirmation of the facts regarding the safety concerns or maintenance.

(4) An operator may be eligible for an extension of the deadline for plugging a well without complying with the surface equipment removal requirements for inactive land wells if the well is located on a unit or lease or in a field associated with an EOR project and the operator includes a statement in the written affirmation that the well is part of such a project. The exemption provided by this subsection applies only to the equipment associated with current and future operations of the project.

(j) Abeyance of plugging report.

(1) An operator that files an abeyance of plugging report must:

(A) pay an annual fee of $100 for each inactive land well covered by the report;

(B) use Commission Form W-3X on which the operator must specify the field and the covered wells within that field; and

(C) for each well, include a certification signed and sealed by a person licensed by the Texas Board of Professional Engineers or the Texas Board of Professional Geoscientists stating that the well has:

(i) a reasonable expectation of economic value in excess of the cost of plugging the well for the duration of the period covered by the report, based on the cost calculation for plugging an inactive well;

(ii) a reasonable expectation of being restored to a beneficial use that will prevent waste of oil or gas resources that otherwise would not be produced if the well were plugged; and

(iii) documentation demonstrating the basis for the affirmation of the well's future utility.

(2) Except as provided in paragraph (3) of this subsection, the Commission or its delegate may not transfer an abeyance of plugging report to a new operator of an existing inactive land well. The new operator of an existing inactive land well must file a new abeyance of plugging report or otherwise comply with the requirements of this subchapter not later than six months after the date the Commission or its

delegate approves the new operator's request to be recognized as the operator of the well.

(3) The Commission or its delegate may transfer an abeyance of plugging report in the event of a change of name of an operator.

(k) Enhanced oil recovery (EOR) project.

(1) An inactive well is considered to be part of an EOR project if the well is located on a unit or lease or in a field associated with a Commission-approved EOR project.

(2) Except as provided in paragraph (3) of this subsection, the Commission and its delegate may not transfer a statement that an inactive well is part of an EOR project to a new operator of an existing inactive well. A new operator of an existing inactive well must file a new statement stating that the well is part of such an EOR project or otherwise comply with the provisions of this section not later than six months after the date the Commission or its delegate approves the new operator's request to be recognized as the operator of the well.

(3) The Commission or its delegate may transfer a statement that a well is part of an EOR project in the event of a change of name of an operator.

(l) Fluid level or hydraulic pressure test for inactive wells more than 25 years old.

(1) At least three days prior to the test, the operator must give the district office notice of the date and approximate time the operator intends to conduct a fluid level or hydraulic pressure test. The district office may require that a test be witnessed by a Commission employee. The district office may allow an operator to conduct a test even if notice of the test is provided to the district office fewer than three days prior to the test.

(2) No operator may conduct a test other than a fluid level or hydraulic pressure test without prior approval from the district director or the director's delegate.

(3) For each inactive well that is more than 25 years old and that has been inactive more than 10 years, the operator must perform either a fluid level test once every 12 months or a hydraulic pressure test once every five years and obtain the approval of the Commission or its delegate of the results of said tests.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, an operator may conduct a hydraulic pressure test without prior approval from the district director or the director's delegate, provided that the operator gives the district office written notice of the date and approximate time for the test at least three days prior to the time the test will be conducted; the production casing is tested to a depth of at least 250 feet below the base of usable quality water strata or 100 feet below the top of cement behind the production casing, whichever is deeper; and the minimum test pressure is greater than or equal to 250 psig for a period of at least 30 minutes.

(5) Using Commission Form H-15, each operator must file in the Commission's Austin office the results of a successful fluid level test within 30 days of the date the test was performed. The results, if approved, are valid for a period of one year from the date of the test. Upon request by the Commission or its delegate, the operator must file the actual test data.

(6) Using Commission Form H-5 or Form H-15, each operator must file in the district office the results of a successful hydraulic pressure test, including the original pressure recording chart or its electronic equivalent, within 30 days of the date the test was performed. The results, if approved, are valid for a period of five years from the date of the test, unless the Commission or its delegate requires the operator to perform testing more frequently to ensure that the well does not pose a threat of harm to natural resources.

(7) An operator of an inactive well that is more than 25 years old may not return that inactive well to active operation unless the operator performs either a successful fluid level test of the well within 12 months prior to the return to activity or a successful hydraulic pressure test of the well within five years prior to the return to activity.

(m) Fluid level or hydraulic pressure test for inactive land well less than 25 years old.

(1) At least three days prior to the test, each operator must give the district office notice of the date and approximate time the operator intends to conduct a fluid level or hydraulic pressure test. The district office may require that a test be witnessed by a Commission employee. The district office may allow an operator to conduct a test even if notice of the test is provided to the district office fewer than three days prior to the test.

(2) No operator may conduct a test other than a fluid level or hydraulic pressure test without prior approval from the district director or the director's delegate.

(3) Notwithstanding the provisions of paragraph (1) of this subsection, an operator may conduct a hydraulic pressure test without prior approval from the district director or the director's delegate, provided that the operator gives the district office written notice of the date and approximate time for the test at least three days prior to the time the test will be conducted; the production casing is tested to a depth of at least 250 feet below the base of usable quality water strata or 100 feet below the top of cement behind the production casing, whichever is deeper; and the minimum test pressure is greater than or equal to 250 psig for a period of at least 30 minutes.

(4) An operator that files documentation of a fluid level test or a hydraulic pressure test for an inactive land well less than 25 years old in order to obtain a plugging extension must pay an annual fee of $50 for each well covered by the documentation.

(5) Using Commission Form H-15, each operator must file in the Commission's Austin office the results of a successful fluid level test within 30 days of the date the test was performed. The results, if approved, are valid for a period of one year from the date of the test. Upon request by the Commission or its delegate, the operator must file the actual test data.

(6) Using Commission Form H-5 or Form H-15, each operator must file in the district office the results of a successful hydraulic pressure test, including the original pressure recording chart or its electronic equivalent, within 30 days of the date the test was performed. The results, if approved, are valid for a period of five years from the date of the test, unless the Commission or its delegate requires the operator to perform testing more frequently to ensure that the well does not pose a threat of harm to natural resources.

(7) The Commission or its delegate may transfer documentation of the results of a fluid level or hydraulic pressure test to a new operator of an existing inactive land well that is less than 25 years old.

(n) Supplemental financial assurance.

(1) A supplemental bond, letter of credit, or cash deposit filed as part of an application for an extension for an inactive land well is in addition to any other financial assurance otherwise required of the operator or for the well.

(2) The Commission or its delegate may not transfer a supplemental bond, letter of credit, or cash deposit to a new operator of an

existing inactive land well. A new operator of an existing inactive land well must file a new supplemental bond, letter of credit, or cash deposit or otherwise comply with the provisions of this section not later than six months after the date the Commission or its delegate approves an operator designation form.

(o) Escrow funds.

(1) An operator must deposit escrow funds with the Commission each time the operator files an application for an extension of the deadline for plugging an inactive well.

(2) The Commission or its delegate may release escrow funds deposited with the Commission only as prescribed by §3.78 of this title.

(p) Plugging more than 10% of inactive well inventory. If an operator plugs more than 10% of the number of inactive land wells during a 12-month organization report cycle, the Commission will count the number of plugged wells above 10% toward fulfillment of the 10% blanket option under subsection (f)(2)(B)(i) of this section during the next organization report cycle.

§3.107. Penalty Guidelines for Oil and Gas Violations.

(a) Policy. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging operators to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank oil- and natural gas-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

(b) Only guidelines. This section complies with the requirements of Texas Natural Resources Code, §81.0531 and §91.101, which provides the Commission with the authority to adopt rules, enforce rules, and issue permits relating to the prevention of pollution. The penalty amounts shown in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Texas Natural Resources Code, Title 3; Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; or the provisions of a rule adopted or order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29. This rule does not contemplate automatic enforcement. Violations can be corrected by operators before being referred to legal enforcement.

(c) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to cite violations and assess administrative penalties. The guideline minimum penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, Title 3; including Nat. Res. Code §91.101, which provides the Commission with the authority to adopt rules, enforce rules, and issue permits relating to the prevention of pollution; the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

(d) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(1) the person's history of previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health or safety of the public; and

(4) the demonstrated good faith of the person charged.

(e) Typical penalties. Regardless of the method by which the guideline typical penalty amount is calculated, the total penalty amount will be within the statutory limit.

(1) A guideline of typical penalties for violations of Texas Natural Resources Code, Title 3; the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29, are set forth in Table 1.

Figure: 16 TAC §3.107(e)(1) (No change.)

(2) Guideline penalties for violations of §3.73 of this title, relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance, include additional penalty amounts that are based on four components. In combination, these four components yield the factor by which an additional penalty amount of $1,000 is multiplied. The various combinations of the components are set forth in Table 1A.

(A) The first component is the length of the violation. A low rating means the violation has been in existence less than three months. A medium rating means the violation has been outstanding for more than three months and up to one year. A high rating means the violation has been outstanding for more than one year.

(B) The second component is production value. A low rating means the value of the production is less than $5,000. A medium rating means the value of the production is more than $5,000 and up to $100,000. A high rating means the value of the production is more than $100,000.

(C) The third component is the number of unresolved severances. A low rating means there are fewer than two unresolved severances. A medium rating means there are more than two and up to six unresolved severances. A high rating means there are more than six unresolved severances.

(D) The fourth component is the basis of the severance. The letter "N" indicates that the severance is not pollution related. The letter "Y" indicates that the severance is pollution related.

Figure: 16 TAC §3.107(e)(2)(D) (No change.)

(f) Penalty enhancements for certain violations. For violations that involve threatened or actual pollution; result in threatened or actual safety hazards; or result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the guideline penalty amount. The enhancement may be in any amount in the range shown for each type of violation as shown in Table 2.

Figure: 16 TAC §3.107(f) (No change.)

(g) Penalty enhancements for certain violators. For violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations

or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.
Figure 1: 16 TAC §3.107(g) (No change.)
Figure 2: 16 TAC §3.107(g) (No change.)

(h) Penalty reduction for accelerated settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the person charged agrees to an accelerated settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(i) Demonstrated good faith. In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.

(j) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the guideline minimum penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction.
Figure: 16 TAC §3.107(j)
[~~Figure: 16 TAC §3.107(j)~~]

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

Filed with the Office of the Secretary of State on August 19, 2025.

TRD-202502988
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Earliest possible date of adoption: October 5, 2025
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CHAPTER 9. LP-GAS SAFETY RULES
SUBCHAPTER A. GENERAL REQUIREMENTS

The Railroad Commission of Texas (Commission) proposes the repeal of §9.14, relating to Military Fee Exemption, and proposes new §9.14, relating to Military Licensing and Fee Exemption. The Commission also proposes conforming amendments to §§9.2, 9.10, 9.13, and 9.20 relating to Definitions, Rules Examination, General Installers and Repairman Exemption, and Dispenser Operations Certificate Exemption. The Commission proposes the repeal, new rule, and amendments pursuant to House Bill (HB) 5629 (89th Legislature, Regular Session, 2025) which amended Occupations Code §§55.004, 55.0041, 55.0042, 55.005, and 55.009 and Senate Bill 1818 (89th Legislature, Regular Session, 2025) which amended Occupations Code §§55.004 and 55.0041.

HB 5629 amends current law governing state agencies that issue occupational licenses to military service members, military veterans, and military spouses, establishing new and streamlined requirements. The legislation amends provisions in §55.004, Occupations Code, related to the issuance of alternative licenses, and in §55.0041, Occupations Code, related to the recognition of out-of-state licenses. Pursuant to HB 5629, a state agency must issue an alternative license to a military service member, military veteran, or military spouse if the applicant either (1) holds a current license issued by another state that is similar in scope of practice to the state agency's license and is in good standing with the out-of-state licensing authority, or (2) held a license with the state agency within the preceding five years. Similarly, HB 5629 requires a state agency to recognize an out-of-state license for a military service member or a military spouse who (1) holds a current out-of-state license that is similar in scope of practice to the state agency's license, (2) is in good standing with the out-of-state licensing authority, and (3) submits certain required information in an affidavit. The legislation also clarifies the definition of what qualifies as "good standing", decreases application processing timelines from 30 business days to 10 business days, and requires a state agency to maintain a record of each complaint made against a military service member, military veteran, or military spouse to whom the agency issued a license and to publish such information on its website. Lastly, HB 5629 requires a state agency issuing an occupational license to waive license application and examination fees for military service members, military veterans, and military spouses. The Commission already complies with the requirement to waive license application and examination fees but streamlines those requirements in response to the legislation.

The Commission's Alternative Fuels Safety Department (AFS) issues LP-gas licenses to applicants that meet the requirements of Chapter 9 to perform LP-gas activities in Texas. AFS also issues certifications to qualified individuals, known as certificate holders or certified individuals, allowing them to perform certain LP-gas activities in Texas. Certificate holders must be in compliance with all applicable continuing education and training requirements, renewal requirements, and must be employed by an LP-gas licensee in accordance with §9.8(a) of this title (relating to Requirements and Application for a New Certificate).

Section 55.001 of the Occupations Code defines "license" as "a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business." Accordingly, Chapter 55 and HB 5629 only apply to licenses, as defined by §55.001, that are issued to individuals. AFS typically issues LP-gas licenses to registered business entities, but on rare occasions may issue an LP-gas license to an individual operating as a sole proprietorship. Certifications, on the other hand, are issued only to individuals employed by an LP-gas licensee, provided they meet the applicable examination, continuing education, and renewal requirements in Chapter 9. Therefore, an LP-gas license issued to a sole proprietor and certifications issued under Chapter 9 are "licenses" under §55.001 and are subject to the provisions of HB 5629 and this rulemaking. Proposed subsection §9.14(a)(2) adopts the term "license" as defined in §55.001, Occupations Code, and therefore, usage of the word "license" in proposed §9.14 refers specifically to LP-gas licenses issued to individuals as sole proprietors and to certifications issued to individuals.

The Commission proposes amendments to §9.2(5)(F), the definition of "certificate holder", to clarify that an individual who holds an alternative license or the recognition of an out-of-state license pursuant to proposed §9.14 meets the definition of certificate holder.

Proposed new §9.14 includes retitling the rule to more accurately reflect its subject matter, reorganizing the rule for greater clarity in light of the changes to military fee exemption requirements under HB 5629, and incorporating new provisions related to alternative licensing and the recognition of out-of-state licenses as required by HB 5629.

Proposed §9.14(a)(1)-(2) clarifies that proposed §9.14 applies to licenses, military service members, military veterans, or military spouses as those terms are defined in §55.001, Occupations Code. Proposed §9.14(a)(3), in accordance with HB 5629, states that an individual is considered to be in good standing with another state's licensing authority if the individual holds a license that is current and has not been suspended, revoked, or voluntarily surrendered during an investigation for unprofessional conduct; has not been disciplined with the other state's licensing authority; and is not currently under investigation by the other state's licensing authority for unprofessional conduct. AFS will conduct reviews of each application submitted under new §9.14 to determine whether the applicant is in good standing with the other state's licensing authority. Additionally, proposed §9.14(a)(4) states that the Commission shall maintain a record of complaints made against a military service member, military veteran, or military spouse to whom AFS issues an alternative license or out-of-state recognition of a license and shall publish at least quarterly the complaint information on its website.

The Commission will need to set up a page on its website listing the complaints against the military service members that hold an alternative license or an out-of-state license recognized by the Commission. The website will need to be updated quarterly. The Commission will also need to create a new Form 16V for applications for an alternative license and a new Form 16M for applications for recognition of an out-of-state license.

Proposed subsection §9.14(b) contains the provisions for alternative licensing pursuant to HB 5629. Military service members, military veterans, and military spouses may apply for an alternative license by submitting a completed Form 16V to AFS. There are two avenues by which an applicant may receive an alternative license from AFS. First, an applicant may receive an alternative license from the Commission if the applicant holds a current license issued by another state's licensing authority that is similar in scope of practice to the requested LP-gas license issued by AFS and the applicant is in good standing with the other state's licensing authority. The applicant must submit a completed Form 16V, which includes as an attachment a copy of the current LP-gas license issued in the other state, a copy of military documentation reflecting the applicant's status as a military service member or military veteran, and any other documentation that may be requested by AFS. If the applicant is a military spouse, a copy of the marriage license must also be attached. Upon receipt of a completed Form 16V with all required attachments, AFS will conduct a review of the application to ensure the form and attachments are completed as required, will determine whether the other state's license is similar in scope of practice to the requested alternative license to be issued by AFS, and conduct due diligence to determine whether the applicant is in good standing with the other state's licensing authority.

Second, an applicant may receive an alternative license from the Commission if the applicant held an LP-gas license from the Commission within the five years preceding the application date. Those applicants are still required to complete Form 16V and must attach military documentation and a marriage license, if applicable. Regardless of which avenue an applicant uses to pursue an alternative license under proposed §9.14, AFS will issue the alternative license within 10 business days of the application date if the application meets the requirements of proposed §9.14 and HB 5629.

Proposed subsection §9.14(c) contains the provisions for the recognition of an out-of-state license pursuant to HB 5629. Military service members and military spouses are eligible to apply for the recognition of an out-of-state license by submitting a complete Form 16M to AFS. An applicant may receive the recognition of an out-of-state license from the Commission if the applicant holds a current license issued by another state's licensing authority that is similar in scope of practice to the requested LP-gas license issued by AFS. The applicant must submit a completed Form 16M, which includes as an attachment a copy of the current LP-gas license issued in the other state, a copy of military orders showing relocation to Texas, and any other documentation that may be requested by AFS. If the applicant is a military spouse, a copy of the marriage license must also be attached. Finally, the affidavit included in Form 16M must be signed and notarized by the applicant, affirming under penalty of perjury that: (1) the applicant is the person described and identified in the application; (2) all statements in the application are true, correct, and complete; (3) the applicant understands the scope of practice for the applicable license in this state and will not perform outside of that scope of practice; and (4) the applicant is in good standing in the state in which the applicant holds or has held an applicable license. Upon receipt of a completed Form 16V with all required attachments, AFS will conduct a review of the application to ensure the form, attachments, and affidavit are completed as required and will determine whether the other state's license is similar in scope of practice to the requested alternative license to be issued by AFS. AFS will recognize the out-of-state license within 10 business days of the application date if the application meets the requirements of proposed §9.14 and HB 5629.

Proposed §9.14(d) contains provisions for the exemption of license application and examination fees for military service members, military veterans, and military spouses. A service member may apply for exemption from a license application fee or examination fee by filing a completed Form 35 with AFS, including a copy of applicable military records and a copy of the applicant's driver's license or state-issued identification card. If the exemption is granted by AFS, the applicant should attach the exemption to the application for a license or examination to serve as notice of payment.

Proposed §9.14(e) contains provisions related to renewals of licenses. Alternative licenses and out-of-state recognitions are still required to submit renewals pursuant to Chapter 9 and are required to pay renewal fees. However, a military service member who fails to renew a license because the individual was on active duty is exempt from any increased fee or penalty imposed by AFS. Additionally, a military service member who holds a license is entitled to two years of additional time to complete continuing education requirements or any other requirement related to the renewal of the license.

The Commission proposes amendments to §§9.10(c)(4)(E), 9.13(g) and 9.20(8) to rename the title of §9.14 and to remove

language related to military licensing fee exemptions as all rule language related to fee exemptions will be covered by proposed changes to proposed §9.14(d).

Karley Rudynski, Director, Alternative Fuels Safety Department, has determined that during the first year of the first five years the proposed repeal, new rule, and amendments would be in effect, there will be a programming cost to the Commission to make small changes to its Alternative Fuels Online System (AFOS) to accommodate applications, exemptions, and delayed expiration dates for active duty military members. There will be no other additional cost to state government as a result of enforcing and administering the repeal, new rule, and amendments as proposed. Any additional time to review and process license applications under proposed §9.14 will be subsumed by current staff. There is no fiscal effect on local government.

Ms. Rudynski has determined that for each year of the first five years that the proposed repeal, new rule, and amendments will be in effect, the primary public benefit resulting from implementing HB 5629 will be a streamlined application process for military members, military veterans, and military spouses in good standing with a licensing authority of another state meeting certain requirements to receive an alternative license from AFS, and a streamlined application process for military members and military spouses in good standing with a licensing authority of another state meeting certain requirements to receive the recognition of an out-of-state license from AFS.

Ms. Rudynski has determined that for each year of the first five years the proposed repeal, new rule, and amendments are in effect, there will be no increase in economic cost to the LP-gas industry.

In accordance with Texas Government Code, §2006.002, the Commission has determined there will be no adverse economic effect on rural communities, small businesses or micro-businesses resulting from the proposed repeal, new rule, and amendments. The proposed repeal, new rule, and amendments do not apply to rural communities and streamline and make efficient licensing requirements for individuals that may meet the definition of a small business or micro-business in §2006.001. Therefore, the Commission has not prepared the economic impact statement or regulatory flexibility analysis required under §2006.002(c).

The Commission has also determined that the proposed repeal, new rule, and amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the proposed repeal, new rule, and amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the repeal, new rule, and amendments would be in effect, the proposed repeal, new rule, and amendments would not: create or eliminate a government program; create new employee positions or eliminate any existing employee positions; increase or decrease future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; increase or decrease the number of individuals subject to the rule's applicability; or affect the state's economy. The proposed repeal, new rule, and amendments would create a new regulation in that it complies with HB 5629's requirements to issue alternative licenses or recognize out-of-state licenses if certain requirements are met. The proposed repeal, new rule, and amendments would also repeal current §9.14 relating to fee exemptions and re-adopt language to comply with HB 5629.

The Commission reviewed the proposed repeal, new rule, and amendments and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(4), nor would they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(3). Therefore, the proposed repeal, new rule, and amendments are not subject to the Texas Coastal Management Program.

Comments on the proposed repeal, new rule, and amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 p.m. on Monday, October 6, 2025. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Karley Rudynski, Director, Alternative Fuels Safety Department, at (512) 463-6828. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules.

16 TAC §§9.2, 9.10, 9.13, 9.14, 9.20

The Commission proposes the new rule and amendments under Texas Occupations Code, Chapter 55, which authorizes the Commission to promulgate rules pertaining to the issuance of occupational licenses to military service members, military veterans, and military spouses.

Statutory authority: Texas Occupations Code, Chapter 55, and Texas Natural Resources Code, §113.051.

Cross reference to statute: Texas Occupations Code, Chapter 55, and Texas Natural Resources Code, Chapter 113.

§9.2. Definitions.

In addition to the definitions in any adopted NFPA pamphlets, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

(5) Certificate holder--An individual:

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

(D) who holds a current examination exemption certificate pursuant to §9.13 of this title (relating to General Installers and Repairman Exemption); [~~or~~]

(E) who holds a current Dispenser Operations certificate exemption pursuant to §9.20 of this title (relating to Dispenser Operations Certificate Exemption); or

(F) who holds an alternative license or a recognition by AFS of an out-of-state license pursuant to §9.14 of this title (relating to Military Licensing and Fee Exemption) and is in compliance with

renewal requirements in §9.9 of this chapter (relating to Requirements for Certificate Holder Renewal).

(6) - (52) (No change.)

§9.10. Rules Examination.

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

(c) An individual who files LPG Form 16 and pays the applicable nonrefundable examination fee may take the rules examination

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

(4) Exam fees.

(A) - (D) (No change.)

(E) A military service member, military veteran, or military spouse shall be exempt from the examination fee pursuant to the requirements in §9.14 of this title (relating to Military Licensing and Fee Exemption). [~~An individual who receives a military fee exemption is not exempt from renewal, training, or continuing education fees specified in §9.9 of this title (relating to Requirements for Certificate Holder Renewal, §9.51 of this title, and §9.52 of this title (relating to Training and Continuing Education.~~]

(F) (No change.)

(5) - (6) (No change.)

(d) - (h) (No change.)

§9.13. General Installers and Repairman Exemption.

(a) - (f) (No change.)

(g) A military service member, military veteran, or military spouse shall be exempt from the original registration fee pursuant to the requirements in §9.14 of this title (relating to Military Licensing and Fee Exemption). [~~An individual who receives a military fee exemption is not exempt from renewal fees specified in §9.9 of this title.~~]

§9.14. Military Licensing and Fee Exemption.

(a) General Provisions.

(1) Applicability. This section applies to military service members, military veterans, or military spouses, as specified in this section and as those terms are defined in Texas Occupations Code, Chapter 55.

(2) License. For purposes of this section, a "license" means a license, certificate, registration, permit, or other form of authorization required by this chapter that must be obtained by an individual to engage in a particular business.

(3) Determination of Good Standing. For purposes of this section, an individual is in good standing with another state's licensing authority if the individual:

(A) holds a license that is current, has not been suspended or revoked, and has not been voluntarily surrendered during an investigation for unprofessional conduct;

(B) has not been disciplined by the licensing authority with respect to the license or individual's practice of the occupation for which the license is issued; and

(C) is not currently under investigation by the licensing authority for unprofessional conduct related to the individual's license or profession.

(4) Complaints and Reporting. The Commission shall maintain a record of each complaint made against a military service member, military veteran, or military spouse to whom AFS issues a license or who holds an out-of-state license the Commission recognizes. The Commission shall publish at least quarterly on its website the complaint information, including a general description of the disposition of each complaint.

(b) Alternative Licensing.

(1) A military service member, military veteran, or military spouse may apply to be issued an LP-gas license by the Commission if the military service member, military veteran, or military spouse:

(A) holds a current license issued by the licensing authority of another state that is similar in scope of practice to an LP-gas license issued by the Commission and is in good standing with the other state's licensing authority; or

(B) within the five years preceding the application date held an LP-gas license issued by the Commission.

(2) An application for an alternative license shall be made by submitting a completed Form 16V to AFS. The applicant must attach the following to Form 16V:

(A) a copy of the applicant's current LP-gas license issued by the licensing authority of another state, if applicable;

(B) a copy of military documentation showing the applicant's military status as a military service member or military veteran;

(C) if the applicant is a military spouse, a copy of the military spouse's marriage license; and

(D) any other information that may be required by AFS.

(3) Upon receipt of a completed Form 16V with required attachments, AFS shall:

(A) confirm with the other state that the military service member, military veteran, or military spouse is currently licensed and in good standing for the relevant business or occupation; and

(B) conduct a comparison of the other state's licensing requirements, statutes, and rules with AFS's licensing requirements to determine if the requirements are similar in scope of practice.

(4) AFS shall issue the alternative LP-gas license not later than the 10th business day after the date AFS receives an application for an alternative license in compliance with this subsection and section 55.004, Occupations Code (relating to Alternative Licensing for Military Service Members, Military Veterans, and Military Spouses).

(c) Recognition of Out-of-State Licensing.

(1) A military service member or military spouse may apply to engage in an LP-gas activity for which an LP-gas license is required by the Commission if the military service member or military spouse holds a current license issued by the licensing authority of another state that is similar in scope of practice to an LP-gas license issued by the Commission. A military service member or military spouse must receive a written recognition from AFS pursuant to this subsection before engaging in an LP-gas activity.

(2) An application for the recognition of an out-of-state LP-gas license shall be made by submitting a completed Form 16M to AFS. The applicant must be in good standing with the other state's licensing authority for Form 16M to be approved. The applicant must attach the following to a Form 16M:

(A) a copy of the applicant's current LP-gas license issued by the licensing authority of another state;

(B) a copy of military documentation showing the applicant's status as a military service member or a military spouse;

(C) a copy of the applicant's military orders showing relocation to this state;

(D) if the applicant is a military spouse, a copy of the military spouse's marriage license; and

(E) any other information that may be required by AFS.

(3) Form 16M includes an affidavit that must be notarized by the applicant affirming under penalty of perjury that:

(A) the applicant is the person described and identified in the application;

(B) all statements in the application are true, correct, and complete;

(C) the applicant understands the scope of practice for the applicable license in this state and will not perform outside of that scope of practice; and

(D) the applicant is in good standing in the state in which the applicant holds an applicable license.

(4) Upon receipt of a completed Form 16M with required attachments, AFS shall conduct a comparison of the other state's license requirements, statutes, and rules with AFS's licensing requirements to determine if the requirements are similar in scope of practice.

(5) Not later than the 10th business day after AFS receives a completed Form 16M with required attachments, AFS will notify the applicant that:

(A) AFS recognizes the applicant's out-of-state license and will provide a written recognition document;

(B) the application is incomplete, noting the area of deficiency; or

(C) AFS is unable to recognize the applicant's out-of-state license because the Commission does not issue a license similar in scope of practice to the applicant's out-of-state license.

(6) If a military service member or military spouse is granted the written recognition of an out-of-state LP-gas license by the Commission, the following conditions apply:

(A) The military service member or military spouse shall comply with all other laws and regulations applicable to the LP-gas license in this state;

(B) The military service member or military spouse may only engage in the LP-gas activity authorized by the written recognition for the period during which the military service member is stationed at a military installation in Texas, or, with respect to a military spouse, the military service member to whom the spouse is married is stationed at a military installation in Texas; and

(C) In the event of a divorce or similar event that affects a person's status as a military spouse, the former spouse may continue to engage in the business or occupation under the authority of this section until the third anniversary of the date the spouse submitted the Form 16M.

(d) Fee Exemptions.

(1) The Commission shall waive the license application and examination fees for a military service member, military veteran, or military spouse. To receive a military fee exemption, an applicant for a fee exemption shall file with the Commission a Form 35 and any documentation required by this subsection.

(2) A military service member, military veteran, or military spouse shall submit the following documentation with Form 35:

(A) a copy of any military records showing the applicant's dates of service; and

(B) a copy of the applicant's driver's license or state-issued identification card.

(3) AFS shall review Form 35 and required documentation to determine if the requirements for the fee exemption have been met and shall notify the applicant of the determination in writing within 10 days.

(A) If all requirements have been met, the applicant may submit the application for license or examination and attach a copy of the written notice granting military fee exemption with the application to serve as notice of payment.

(B) If AFS has notified the applicant that the application is incomplete, the applicant shall provide any requested information or documentation within 10 days of the date of the notice.

(e) Renewals.

(1) A military service member, military veteran, or military spouse who receives an alternative license or recognition by AFS of an out-of-state license remains subject to all other renewal requirements in this chapter, including all applicable fees and training or continuing education courses.

(2) A service member who fails to timely renew a license because the individual was on active duty is exempt from any increased fee or penalty imposed by AFS.

(3) A military service member who holds a license is entitled to two years of additional time to complete:

(A) any continuing education requirements; and

(B) any other requirement related to the renewal of the military service member's license.

§9.20. Dispenser Operations Certificate Exemption.

An individual may perform work and directly supervise LP-gas activities requiring contact with LP-gas if the individual is granted the Dispenser Operations Certificate Exemption. The exemption may be obtained by completing the Dispensing Propane Safely course, including examination, and complying with paragraph (1) of this section or by completing a PERC-based training course and examination in accordance with paragraph (2) of this section.

(1) - (7) (No change.)

(8) A military service member, military veteran, or military spouse shall be exempt from the original registration fee pursuant to the requirements in §9.14 of this title (relating to Military Licensing and Fee Exemption). [~~An individual who receives a military fee exemption is not exempt from renewal fees specified in §9.9 of this title. fees.~~]

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

Filed with the Office of the Secretary of State on August 19, 2025.

TRD-202502991
Natalie Dubiel
Assistant General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 475-1295

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16 TAC §9.14

The Commission proposes the repeal under Texas Occupations Code, Chapter 55, which authorizes the Commission to promulgate rules pertaining to the issuance of occupational licenses to military service members, military veterans, and military spouses.

Statutory authority: Texas Occupations Code, Chapter 55, and Texas Natural Resources Code, §113.051.

Cross reference to statute: Texas Occupations Code, Chapter 55, and Texas Natural Resources Code, Chapter 113.

§9.14. Military Fee Exemption.

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

Filed with the Office of the Secretary of State on August 19, 2025.

TRD-202502992
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Railroad Commission of Texas
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 475-1295

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CHAPTER 13. REGULATIONS FOR COMPRESSED NATURAL GAS (CNG)
SUBCHAPTER C. CLASSIFICATION, REGISTRATION, AND EXAMINATION

The Railroad Commission of Texas (Commission) proposes the repeal of §13.76, relating to Military Fee Exemption, and proposes new §13.76, relating to Military Licensing and Fee Exemption. The Commission also proposes conforming amendments to §§13.61 and 13.70, relating to License Categories, Container Manufacturer Registration, Fees, and Application for Licenses, Manufacturer Registrations, and Renewals; and Examination and Exempt Registration Requirements and Renewals. The Commission proposes the repeal, new rule, and amendments pursuant to House Bill (HB) 5629 (89th Legislature, Regular Session, 2025) which amended Occupations Code §§55.004, 55.0041, 55.0042, 55.005, and 55.009 and Senate Bill 1818 (89th Legislature, Regular Session, 2025) which amended Occupations Code §§55.004 and 55.0041.

HB 5629 amends current law governing state agencies that issue occupational licenses to military service members, military veterans, and military spouses, establishing new and streamlined requirements. The legislation amends provisions in §55.004, Occupations Code, related to the issuance of alternative licenses, and in §55.0041, Occupations Code, related to the recognition of out-of-state licenses. Pursuant to HB 5629, a state agency must issue an alternative license to a military service member, military veteran, or military spouse if the applicant either (1) holds a current license issued by another state that is similar in scope of practice to the state agency's license and is in good standing with the out-of-state licensing authority, or (2) held a license with the state agency within the preceding five years. Similarly, HB 5629 requires a state agency to recognize an out-of-state license for a military service member or a military spouse who (1) holds a current out-of-state license that is similar in scope of practice to the state agency's license, (2) is in good standing with the out-of-state licensing authority, and (3) submits certain required information in an affidavit. The legislation also clarifies the definition of what qualifies as "good standing", decreases application processing timelines from 30 business days to 10 business days, and requires a state agency to maintain a record of each complaint made against a military service member, military veteran, or military spouse to whom the agency issued a license and to publish such information on its website. Lastly, HB 5629 requires a state agency issuing an occupational license to waive license application and examination fees for military service members, military veterans, and military spouses. The Commission already complies with the requirement to waive license application and examination fees but streamlines those requirements in response to the legislation.

The Commission's Alternative Fuels Safety Department (AFS) issues CNG licenses to applicants that meet the requirements of Chapter 13 to perform CNG activities in Texas. AFS also issues certifications to qualified individuals, known as certificate holders or certified individuals, allowing them to perform certain CNG activities in Texas. Certificate holders must be in compliance with all applicable continuing education and training requirements, renewal requirements, and must be employed by a CNG licensee in accordance with §13.70(a).

Section 55.001 of the Occupations Code defines "license" as "a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business." Accordingly, Chapter 55 and HB 5629 only apply to licenses, as defined by §55.001, that are issued to individuals. AFS typically issues CNG licenses to registered business entities, but on rare occasions may issue a CNG license to an individual operating as a sole proprietorship. Certifications, on the other hand, are issued only to individuals employed by a CNG licensee, provided they meet the applicable examination, continuing education, and renewal requirements in Chapter 13. Therefore, a CNG license issued to a sole proprietor and certifications issued under Chapter 13 are "licenses" under §55.001 and are subject to the provisions of HB 5629 and this rulemaking. Proposed §13.76(a)(2) adopts the term "license" as defined in §55.001, Occupations Code, and therefore, usage of the word "license" in proposed §13.76 refers specifically to CNG licenses issued to individuals as sole proprietors and to certifications issued to individuals.

Proposed new §13.76 includes retitling the rule to more accurately reflect its subject matter, reorganizing the rule for greater clarity in light of the changes to military fee exemption requirements under HB 5629, and incorporating new provisions related to alternative licensing and the recognition of out-of-state licenses as required by HB 5629.

Proposed §13.76(a)(1) - (2) clarifies that proposed §13.76 applies to licenses, military service members, military veterans, or military spouses as those terms are defined in §55.001, Occupations Code. Proposed §13.76(a)(3), in accordance with HB 5629, states that an individual is considered to be in good standing with another state's licensing authority if the individual holds a license that is current and has not been suspended, revoked, or voluntarily surrendered during an investigation for unprofessional conduct; has not been disciplined with the other state's licensing authority; and is not currently under investigation by the other state's licensing authority for unprofessional conduct. AFS will conduct reviews of each application submitted under new

§13.76 to determine whether the applicant is in good standing with the other state's licensing authority. Additionally, proposed §13.76(a)(4) states that the Commission shall maintain a record of complaints made against a military service member, military veteran, or military spouse to whom AFS issues an alternative license or out-of-state recognition of a license and shall publish at least quarterly the complaint information on its website.

The Commission will need to set up a page on its website listing the complaints against the military service members that hold an alternative license or an out-of-state license recognized by the Commission. The website will need to be updated quarterly. The Commission will also need to create a new Form 16V for applications for an alternative license and a new Form 16M for applications for recognition of an out-of-state license.

Proposed §13.76(b) contains the provisions for alternative licensing pursuant to HB 5629. Military service members, military veterans, and military spouses may apply for an alternative license by submitting a completed Form 16V to AFS. There are two avenues by which an applicant may receive an alternative license from AFS. First, an applicant may receive an alternative license from the Commission if the applicant holds a current license issued by another state's licensing authority that is similar in scope of practice to the requested CNG license issued by AFS and the applicant is in good standing with the other state's licensing authority. The applicant must submit a completed Form 16V which includes as an attachment a copy of the current CNG license issued in the other state, a copy of military documentation reflecting the applicant's status as a military service member or military veteran, and any other documentation that may be requested by AFS. If the applicant is a military spouse, a copy of the marriage license must also be attached. Upon receipt of a completed Form 16V with all required attachments, AFS will conduct a review of the application to ensure the form and attachments are completed as required, will determine whether the other state's license is similar in scope of practice to the requested alternative license to be issued by AFS, and conduct due diligence to determine whether the applicant is in good standing with the other state's licensing authority.

Second, an applicant may receive an alternative license from the Commission if the applicant held a CNG license from the Commission within the five years preceding the application date. Those applicants are still required to complete Form 16V and must attach military documentation and a marriage license, if applicable. Regardless of which avenue an applicant uses to pursue an alternative license under proposed §13.76, AFS will issue the alternative license within 10 business days of the application date if the application meets the requirements of proposed §13.76 and HB 5629.

Proposed §13.76(c) contains the provisions for the recognition of an out-of-state license pursuant to HB 5629. Military service members and military spouses are eligible to apply for the recognition of an out-of-state license by submitting a complete Form 16M to AFS. An applicant may receive the recognition of an out-of-state license from the Commission if the applicant holds a current license issued by another state's licensing authority that is similar in scope of practice to the requested CNG license issued by AFS. The applicant must submit a completed Form 16M which includes as an attachment a copy of the current CNG license issued in the other state, a copy of military orders showing relocation to Texas, and any other documentation that may be requested by AFS. If the applicant is a military spouse, a copy of the marriage license must also be attached. Finally, the affidavit included in Form 16M must be signed and notarized by the applicant, affirming under penalty of perjury that: (1) the applicant is the person described and identified in the application; (2) all statements in the application are true, correct, and complete; (3) the applicant understands the scope of practice for the applicable license in this state and will not perform outside of that scope of practice; and (4) the applicant is in good standing in the state in which the applicant holds or has held an applicable license. Upon receipt of a completed Form 16V with all required attachments, AFS will conduct a review of the application to ensure the form, attachments, and affidavit are completed as required and will determine whether the other state's license is similar in scope of practice to the requested alternative license to be issued by AFS. AFS will recognize the out-of-state license within 10 business days of the application date if the application meets the requirements of proposed §13.76 and HB 5629.

Proposed §13.76(d) contains provisions for the exemption of license application and examination fees for military service members, military veterans, and military spouses. A service member may apply for exemption from a license application fee or examination fee by filing a completed Form 35 with AFS, including a copy of applicable military records and a copy of the applicant's driver's license or state-issued identification card. If the exemption is granted by AFS, the applicant should attach the exemption to the application for a license or examination to serve as notice of payment.

Proposed §13.76(e) contains provisions related to renewals of licenses. Alternative licenses and out-of-state recognitions are still required to submit renewals pursuant to Chapter 13 and are required to pay renewal fees. However, a military service member who fails to renew a license because the individual was on active duty is exempt from any increased fee or penalty imposed by AFS. Additionally, a military service member who holds a license is entitled to two years of additional time to complete continuing education requirements or any other requirement related to the renewal of the license.

The Commission proposes amendments to §§13.61(d), 13.70(b)(3)(iv), and 13.70(g)(8) to rename the title of §13.76 and to remove language related to military licensing fee exemptions as all rule language related to fee exemptions will be covered by proposed changes to proposed §13.76(d).

Karley Rudynski, Director, Alternative Fuels Safety Department, has determined that during the first year of the first five years the proposed repeal, new rule, and amendments would be in effect, there will be a programming cost to the Commission to make small changes to its Alternative Fuels Online System (AFOS) to accommodate applications, exemptions, and delayed expiration dates for active duty military members. There will be no other additional cost to state government as a result of enforcing and administering the repeal, new rule, and amendments as proposed. Any additional time to review and process license applications under proposed §13.76 will be subsumed by current staff. There is no fiscal effect on local government.

Ms. Rudynski has determined that for each year of the first five years that the proposed repeal, new rule, and amendments will be in effect, the primary public benefit resulting from implementing HB 5629 will be a streamlined application process for military members, military veterans, and military spouses in good standing with a licensing authority of another state meeting certain requirements to receive an alternative license from AFS, and a streamlined application process for military members and military spouses in good standing with a licensing authority of an-

other state meeting certain requirements to receive the recognition of an out-of-state license from AFS.

Ms. Rudynski has determined that for each year of the first five years the proposed repeal, new rule, and amendments are in effect, there will be no increase in economic cost to the CNG industry.

In accordance with Texas Government Code, §2006.002, the Commission has determined there will be no adverse economic effect on rural communities, small businesses or micro-businesses resulting from the proposed repeal, new rule, and amendments. The proposed repeal, new rule, and amendments do not apply to rural communities and streamline and make efficient licensing requirements for individuals that may meet the definition of a small business or micro-business in §2006.001. Therefore, the Commission has not prepared the economic impact statement or regulatory flexibility analysis required under §2006.002(c).

The Commission has also determined that the proposed repeal, new rule, and amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the proposed repeal, new rule, and amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the repeal, new rule, and amendments would be in effect, the proposed repeal, new rule, and amendments would not: create or eliminate a government program; create new employee positions or eliminate any existing employee positions; increase or decrease future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; increase or decrease the number of individuals subject to the rule's applicability; or affect the state's economy. The proposed repeal, new rule, and amendments would create a new regulation in that it complies with HB 5629's requirements to issue alternative licenses or recognize out-of-state licenses if certain requirements are met. The proposed repeal, new rule, and amendments would also repeal current §13.76 relating to fee exemptions and re-adopt language to comply with HB 5629.

The Commission reviewed the proposed repeal, new rule, and amendments and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(4), nor would they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(3). Therefore, the proposed repeal, new rule, and amendments are not subject to the Texas Coastal Management Program.

Comments on the proposed repeal, new rule, and amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 p.m. on Monday, October 6, 2025. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Karley Rudynski, Director, Alternative Fuels Safety Department, at (512) 463-6828. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules.

16 TAC §§13.61, 13.70, 13.76

The Commission proposes the new rule and amendments under Texas Occupations Code, Chapter 55, which authorizes the Commission to promulgate rules pertaining to the issuance of occupational licenses to military service members, military veterans, and military spouses.

Statutory authority: Texas Occupations Code, Chapter 55, and Texas Natural Resources Code, §§116.012.

Cross reference to statute: Texas Occupations Code, Chapter 55, and Texas Natural Resources Code, Chapter 116.

§13.61. License Categories, Container Manufacturer Registration, Fees, and Application for Licenses, Manufacturer Registrations, and Renewals.

(a) - (c) (No change.)

(d) A military service member, military veteran, or military spouse shall be exempt from the original license fee specified in subsection (b) of this section pursuant to the requirements in §13.76 of this title (relating to Military Licensing and Fee Exemption). [~~An individual who receives a military fee exemption is not exempt from the renewal or transport registration fees specified in subsection (p) of this section and §13.69 of this title (relating to Registration and Transfer of CNG Cargo Tanks or Delivery Units).~~]

(e) - (r) (No change.)

§13.70. Examination and Exempt Registration Requirements and Renewals.

(a) Requirements and application for a new certificate.

(1) In addition to NFPA 52 §§1.4.3 and 4.2, and NFPA 55 §4.7, no person shall perform work, directly supervise CNG activities, or be employed in any capacity requiring contact with CNG, unless that individual is employed by a licensee and:

(A) is a certificate holder who is in compliance with renewal requirements in subsection (h) of this section;

(B) is a trainee who complies with subsection (f) of section; [~~or~~]

(C) holds a current examination exemption pursuant to subsection (g) of this section; or[~~.~~]

(D) has an alternative license or a recognition by AFS of an out-of-state license pursuant to §13.76 of this chapter (relating to Military Licensing and Fee Exemption) and is in compliance with renewal requirements in subsection (h) of this section.

(b) Rules examination.

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

(3) An individual who files CNG Form 2016 and pays the applicable nonrefundable examination fee may take the rules examination.

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

(C) Exam fees.

(i) - (iii) (No change.)

(iv) A military service member, military veteran, or military spouse shall be exempt from the examination fee pursuant to the requirements in §13.76 of this title (relating to Military Licensing and Fee Exemption). [~~An individual who receives a military fee exemption is not exempt from renewal fees specified in subsection (h) of this section.~~]

(v) (No change.)

(D) - (E) (No change.)

(c) - (f) (No change.)

(g) General installers and repairmen exemption.

(1) - (7) (No change.)

(8) A military service member, military veteran, or military spouse shall be exempt from the original registration fee pursuant to the requirements in §13.76 of this title. [~~An individual who receives a military fee exemption is not exempt from renewal fees specified in subsection (h) of this section.~~]

(h) (No change.)

§13.76. Military Licensing and Fee Exemption.

(a) General Provisions.

(1) Applicability. This section applies to military service members, military veterans, or military spouses, as specified in this section and as those terms are defined in Texas Occupations Code, Chapter 55.

(2) License. For purposes of this section, a "license" means a license, certificate, registration, permit, or other form of authorization required by this chapter that must be obtained by an individual to engage in a particular business.

(3) Determination of Good Standing. For purposes of this section, an individual is in good standing with another state's licensing authority if the individual:

(A) holds a license that is current, has not been suspended or revoked, and has not been voluntarily surrendered during an investigation for unprofessional conduct;

(B) has not been disciplined by the licensing authority with respect to the license or individual's practice of the occupation for which the license is issued; and

(C) is not currently under investigation by the licensing authority for unprofessional conduct related to the individual's license or profession.

(4) Complaints and Reporting. The Commission shall maintain a record of each complaint made against a military service member, military veteran, or military spouse to whom AFS issues a license or who holds an out-of-state license the Commission recognizes. The Commission shall publish at least quarterly on its website the complaint information, including a general description of the disposition of each complaint.

(b) Alternative Licensing.

(1) A military service member, military veteran, or military spouse may apply to be issued a CNG license by the Commission if the military service member, military veteran, or military spouse:

(A) holds a current license issued by the licensing authority of another state that is similar in scope of practice to a CNG license issued by the Commission and is in good standing with the other state's licensing authority; or

(B) within the five years preceding the application date held a CNG license issued by the Commission.

(2) An application for an alternative license shall be made by submitting a completed Form 16V to AFS. The applicant must attach the following to Form 16V:

(A) a copy of the applicant's current CNG license issued by the licensing authority of another state, if applicable;

(B) a copy of military documentation showing the applicant's military status as a military service member or military veteran;

(C) if the applicant is a military spouse, a copy of the military spouse's marriage license; and

(D) any other information that may be required by AFS.

(3) Upon receipt of a completed Form 16V with required attachments, AFS shall:

(A) confirm with the other state that the military service member, military veteran, or military spouse is currently licensed and in good standing for the relevant business or occupation; and

(B) conduct a comparison of the other state's licensing requirements, statutes, and rules with AFS's licensing requirements to determine if the requirements are similar in scope of practice.

(4) AFS shall issue the alternative CNG license not later than the 10th business day after the date AFS receives an application for an alternative license in compliance with this subsection and section 55.004, Occupations Code (relating to Alternative Licensing for Military Service Members, Military Veterans, and Military Spouses).

(c) Recognition of Out-of-State Licensing.

(1) A military service member or military spouse may apply to engage in a CNG activity for which a CNG license is required by the Commission if the military service member or military spouse holds a current license issued by the licensing authority of another state that is similar in scope of practice to a CNG license issued by the Commission. A military service member or military spouse must receive a written recognition from AFS pursuant to this subsection before engaging in a CNG activity.

(2) An application for the recognition of an out-of-state CNG license shall be made by submitting a completed Form 16M to AFS. The applicant must be in good standing with the other state's licensing authority for Form 16M to be approved. The applicant must attach the following to a Form 16M:

(A) a copy of the applicant's current CNG license issued by the licensing authority of another state;

(B) a copy of military documentation showing the applicant's status as a military service member or a military spouse;

(C) a copy of the applicant's military orders showing relocation to this state;

(D) if the applicant is a military spouse, a copy of the military spouse's marriage license; and

(E) any other information that may be required by AFS.

(3) Form 16M includes an affidavit that must be notarized by the applicant affirming under penalty of perjury that:

(A) the applicant is the person described and identified in the application;

(B) all statements in the application are true, correct, and complete;

(C) the applicant understands the scope of practice for the applicable license in this state and will not perform outside of that scope of practice; and

(D) the applicant is in good standing in the state in which the applicant holds an applicable license.

(4) Upon receipt of a completed Form 16M with required attachments, AFS shall conduct a comparison of the other state's license requirements, statutes, and rules with AFS's licensing requirements to determine if the requirements are similar in scope of practice.

(5) Not later than the 10th business day after AFS receives a completed Form 16M with required attachments, AFS will notify the applicant that:

(A) AFS recognizes the applicant's out-of-state license and will provide a written recognition document;

(B) the application is incomplete, noting the area of deficiency; or

(C) AFS is unable to recognize the applicant's out-of-state license because the Commission does not issue a license similar in scope of practice to the applicant's out-of-state license.

(6) If a military service member or military spouse is granted the written recognition of an out-of-state CNG license by the Commission, the following conditions apply:

(A) The military service member or military spouse shall comply with all other laws and regulations applicable to the CNG license in this state;

(B) The military service member or military spouse may only engage in the CNG activity authorized by the written recognition for the period during which the military service member is stationed at a military installation in Texas, or, with respect to a military spouse, the military service member to whom the spouse is married is stationed at a military installation in Texas; and

(C) In the event of a divorce or similar event that affects a person's status as a military spouse, the former spouse may continue to engage in the business or occupation under the authority of this section until the third anniversary of the date the spouse submitted the Form 16M.

(d) Fee Exemptions.

(1) The Commission shall waive the license application and examination fees for a military service member, military veteran, or military spouse. To receive a military fee exemption, an applicant for a fee exemption shall file with the Commission a Form 35 and any documentation required by this subsection.

(2) A military service member, military veteran, or military spouse shall submit the following documentation with Form 35:

(A) a copy of any military records showing the applicant's dates of service; and

(B) a copy of the applicant's driver's license or state-issued identification card.

(3) AFS shall review Form 35 and required documentation to determine if the requirements for the fee exemption have been met and shall notify the applicant of the determination in writing within 10 days.

(A) If all requirements have been met, the applicant may submit the application for license or examination and attach a copy of the written notice granting military fee exemption with the application to serve as notice of payment.

(B) If AFS has notified the applicant that the application is incomplete, the applicant shall provide any requested information or documentation within 10 days of the date of the notice.

(e) Renewals.

(1) A military service member, military veteran, or military spouse who receives an alternative license or recognition by AFS of an out of state license remains subject to all other renewal requirements in this chapter, including all applicable fees and training or continuing education courses.

(2) A service member who fails to timely renew a license because the individual was on active duty is exempt from any increased fee or penalty imposed by AFS.

(3) A military service member who holds a license is entitled to two years of additional time to complete:

(A) any continuing education requirements; and

(B) any other requirement related to the renewal of the military service member's license.

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

Filed with the Office of the Secretary of State on August 19, 2025.

TRD-202502994
Natalie Dubiel
Assistant General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 475-1295

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16 TAC §13.76

The Commission proposes the repeal under Texas Occupations Code, Chapter 55, which authorizes the Commission to promulgate rules pertaining to the issuance of occupational licenses to military service members, military veterans, and military spouses.

Statutory authority: Texas Occupations Code, Chapter 55, and Texas Natural Resources Code, §§116.012.

Cross reference to statute: Texas Occupations Code, Chapter 55, and Texas Natural Resources Code, Chapter 116.

§13.76. Military Fee Exemption.

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

Filed with the Office of the Secretary of State on August 19, 2025.

TRD-202502993
Natalie Dubiel
Assistant General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 475-1295

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CHAPTER 14. REGULATIONS FOR LIQUEFIED NATURAL GAS (LNG)

SUBCHAPTER A. GENERAL APPLICABILITY AND REQUIREMENTS

The Railroad Commission of Texas (Commission) proposes the repeal of §14.2015, relating to Military Fee Exemption, and proposes new §14.2015, relating to Military Licensing and Fee Exemption. The Commission also proposes conforming amendments to §§14.2013 and 14.2019, relating to License Categories, Container Manufacturer Registration, Fees, and Application for Licenses, Manufacturer Registrations, and Renewals; and Examination and Requirements and Renewals. The Commission proposes the repeal, new rule, and amendments pursuant to House Bill (HB) 5629 (89th Legislature, Regular Session, 2025) which amended Occupations Code §§55.004, 55.0041, 55.0042, 55.005, and 55.009 and Senate Bill 1818 (89th Legislature, Regular Session, 2025) which amended Occupations Code §§55.004 and 55.0041.

HB 5629 amends current law governing state agencies that issue occupational licenses to military service members, military veterans, and military spouses, establishing new and streamlined requirements. The legislation amends provisions in §55.004, Occupations Code, related to the issuance of alternative licenses, and in §55.0041, Occupations Code, related to the recognition of out-of-state licenses. Pursuant to HB 5629, a state agency must issue an alternative license to a military service member, military veteran, or military spouse if the applicant either (1) holds a current license issued by another state that is similar in scope of practice to the state agency's license and is in good standing with the out-of-state licensing authority, or (2) held a license with the state agency within the preceding five years. Similarly, HB 5629 requires a state agency to recognize an out-of-state license for a military service member or a military spouse who (1) holds a current out-of-state license that is similar in scope of practice to the state agency's license, (2) is in good standing with the out-of-state licensing authority, and (3) submits certain required information in an affidavit. The legislation also clarifies the definition of what qualifies as "good standing", decreases application processing timelines from 30 business days to 10 business days, and requires a state agency to maintain a record of each complaint made against a military service member, military veteran, or military spouse to whom the agency issued a license and to publish such information on its website. Lastly, HB 5629 requires a state agency issuing an occupational license to waive license application and examination fees for military service members, military veterans, and military spouses. The Commission already complies with the requirement to waive license application and examination fees but streamlines those requirements in response to the legislation.

The Commission's Alternative Fuels Safety Department (AFS) issues LNG licenses to applicants that meet the requirements of Chapter 14 to perform LNG activities in Texas. AFS also issues certifications to qualified individuals, known as certificate holders or certified individuals, allowing them to perform certain LNG activities in Texas. Certificate holders must be in compliance with all applicable continuing education and training requirements, renewal requirements, must be employed by an LNG licensee in accordance with §14.2019(a).

Section 55.001 of the Occupations Code defines "license" as "a license, certificate, registration, permit, or other form of authorization required by law or a state agency rule that must be obtained by an individual to engage in a particular business." Accordingly, Chapter 55 and HB 5629 only apply to licenses, as defined by §55.001, that are issued to individuals. AFS typically issues LNG licenses to registered business entities, but on rare occasions may issue an LNG license to an individual operating as a sole proprietorship. Certifications, on the other hand, are issued only to individuals employed by an LNG licensee, provided they meet the applicable examination, continuing education, and renewal requirements in Chapter 14. Therefore, an LNG license issued to a sole proprietor and certifications issued under Chapter 14 are "licenses" under §55.001 and are subject to the provisions of HB 5629 and this rulemaking. Proposed subsection §14.2015(a)(2) adopts the term "license" as defined in §55.001, Occupations Code, and therefore, usage of the word "license" in proposed §14.2015 refers specifically to LNG licenses issued to individuals as sole proprietors and to certifications issued to individuals.

Proposed new §14.2015 includes retitling the rule to more accurately reflect its subject matter, reorganizing the rule for greater clarity in light of the changes to military fee exemption requirements under HB 5629, and incorporating new provisions related to alternative licensing and the recognition of out-of-state licenses as required by HB 5629.

Proposed §14.2015(a)(1)-(2) clarifies that proposed §14.2015 applies to licenses, military service members, military veterans, or military spouses as those terms are defined in §55.001, Occupations Code. Proposed §14.2015(a)(3), in accordance with HB 5629, states that an individual is considered to be in good standing with another state's licensing authority if the individual holds a license that is current and has not been suspended, revoked, or voluntarily surrendered during an investigation for unprofessional conduct; has not been disciplined with the other state's licensing authority; and is not currently under investigation by the other state's licensing authority for unprofessional conduct. AFS will conduct reviews of each application submitted under new §14.2015 to determine whether the applicant is in good standing with the other state's licensing authority. Additionally, proposed §14.2015(a)(4) states that the Commission shall maintain a record of complaints made against a military service member, military veteran, or military spouse to whom AFS issues an alternative license or out-of-state recognition of a license and shall publish at least quarterly the complaint information on its website.

The Commission will need to set up a page on its website listing the complaints against the military service members that hold an alternative license or an out-of-state license recognized by the Commission. The website will need to be updated quarterly. The Commission will also need to create a new Form 16V for applications for an alternative license and a new Form 16M for applications for recognition of an out-of-state license.

Proposed §14.2015(b) contains the provisions for alternative licensing pursuant to HB 5629. Military service members, military veterans, and military spouses may apply for an alternative license by submitting a completed Form 16V to AFS. There are two avenues by which an applicant may receive an alternative license from AFS. First, an applicant may receive an alternative license from the Commission if the applicant holds a current license issued by another state's licensing authority that is similar in scope of practice to the requested LNG license is-

sued by AFS and the applicant is in good standing with the other state's licensing authority. The applicant must submit a completed Form 16V which includes as an attachment a copy of the current LNG license issued in the other state, a copy of military documentation reflecting the applicant's status as a military service member or military veteran, and any other documentation that may be requested by AFS. If the applicant is a military spouse, a copy of the marriage license must also be attached. Upon receipt of a completed Form 16V with all required attachments, AFS will conduct a review of the application to ensure the form and attachments are completed as required, will determine whether the other state's license is similar in scope of practice to the requested alternative license to be issued by AFS, and conduct due diligence to determine whether the applicant is in good standing with the other state's licensing authority.

Second, an applicant may receive an alternative license from the Commission if the applicant held an LNG license from the Commission within the five years preceding the application date. Those applicants are still required to complete Form 16V and must attach military documentation and a marriage license, if applicable. Regardless of which avenue an applicant uses to pursue an alternative license under proposed §14.2015, AFS will issue the alternative license within 10 business days of the application date if the application meets the requirements of proposed §14.2015 and HB 5629.

Proposed §14.2015(c) contains the provisions for the recognition of an out-of-state license pursuant to HB 5629. Military service members and military spouses are eligible to apply for the recognition of an out-of-state license by submitting a complete Form 16M to AFS. An applicant may receive the recognition of an out-of-state license from the Commission if the applicant holds a current license issued by another state's licensing authority that is similar in scope of practice to the requested LNG license issued by AFS. The applicant must submit a completed Form 16M which includes as an attachment a copy of the current LNG license issued in the other state, a copy of military orders showing relocation to Texas, and any other documentation that may be requested by AFS. If the applicant is a military spouse, a copy of the marriage license must also be attached. Finally, the affidavit included in Form 16M must be signed and notarized by the applicant, affirming under penalty of perjury that: (1) the applicant is the person described and identified in the application; (2) all statements in the application are true, correct, and complete; (3) the applicant understands the scope of practice for the applicable license in this state and will not perform outside of that scope of practice; and (4) the applicant is in good standing in the state in which the applicant holds or has held an applicable license. Upon receipt of a completed Form 16V with all required attachments, AFS will conduct a review of the application to ensure the form, attachments, and affidavit are completed as required and will determine whether the other state's license is similar in scope of practice to the requested alternative license to be issued by AFS. AFS will recognize the out-of-state license within 10 business days of the application date if the application meets the requirements of proposed §14.2015 and HB 5629.

Proposed §14.2015(d) contains provisions for the exemption of license application and examination fees for military service members, military veterans, and military spouses. A service member may apply for exemption from a license application fee or examination fee by filing a completed Form 35 with AFS, including a copy of applicable military records and a copy of the applicant's driver's license or state-issued identification card. If the exemption is granted by AFS, the applicant should attach the exemption to the application for a license or examination to serve as notice of payment.

Proposed §14.2015(e) contains provisions related to renewals of licenses. Alternative licenses and out-of-state recognitions are still required to submit renewals pursuant to Chapter 14 and are required to pay renewal fees. However, a military service member who fails to renew a license because the individual was on active duty is exempt from any increased fee or penalty imposed by AFS. Additionally, a military service member who holds a license is entitled to two years of additional time to complete continuing education requirements or any other requirement related to the renewal of the license.

The Commission proposes amendments to §§14.2013(c) and 14.2019(b)(3)(C)(iv) to rename the title of §14.2015 and to remove language related to military licensing fee exemptions as all rule language related to fee exemptions will be covered by proposed changes to proposed §14.2015(d).

Karley Rudynski, Director, Alternative Fuels Safety Department, has determined that during the first year of the first five years the proposed repeal, new rule, and amendments would be in effect, there will be a programming cost to the Commission to make small changes to its Alternative Fuels Online System (AFOS) to accommodate applications, exemptions, and delayed expiration dates for active duty military members. There will be no other additional cost to state government as a result of enforcing and administering the repeal, new rule, and amendments as proposed. Any additional time to review and process license applications under proposed §14.2015 will be subsumed by current staff. There is no fiscal effect on local government.

Ms. Rudynski has determined that for each year of the first five years that the proposed repeal, new rule, and amendments will be in effect, the primary public benefit resulting from implementing HB 5629 will be a streamlined application process for military members, military veterans, and military spouses in good standing with a licensing authority of another state meeting certain requirements to receive an alternative license from AFS, and a streamlined application process for military members and military spouses in good standing with a licensing authority of another state meeting certain requirements to receive the recognition of an out-of-state license from AFS.

Ms. Rudynski has determined that for each year of the first five years the proposed repeal, new rule, and amendments are in effect, there will be no increase in economic cost to the LNG industry.

In accordance with Texas Government Code, §2006.002, the Commission has determined there will be no adverse economic effect on rural communities, small businesses or micro-businesses resulting from the proposed repeal, new rule, and amendments. The proposed repeal, new rule, and amendments do not apply to rural communities and streamline and make efficient licensing requirements for individuals that may meet the definition of a small business or micro-business in §2006.001. Therefore, the Commission has not prepared the economic impact statement or regulatory flexibility analysis required under §2006.002(c).

The Commission has also determined that the proposed repeal, new rule, and amendments will not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

The Commission has determined that the proposed repeal, new rule, and amendments do not meet the statutory definition of a major environmental rule as set forth in Texas Government Code §2001.0225(a); therefore, a regulatory analysis conducted pursuant to that section is not required.

During the first five years that the repeal, new rule, and amendments would be in effect, the proposed repeal, new rule, and amendments would not: create or eliminate a government program; create new employee positions or eliminate any existing employee positions; increase or decrease future legislative appropriations to the agency; require an increase or decrease in fees paid to the agency; increase or decrease the number of individuals subject to the rule's applicability; or affect the state's economy. The proposed repeal, new rule, and amendments would create a new regulation in that it complies with HB 5629's requirements to issue alternative licenses or recognize out-of-state licenses if certain requirements are met. The proposed repeal, new rule, and amendments would also repeal current §14.2015 relating to fee exemptions and re-adopt language to comply with HB 5629.

The Commission reviewed the proposed repeal, new rule, and amendments and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(4), nor would they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(3). Therefore, the proposed repeal, new rule, and amendments are not subject to the Texas Coastal Management Program.

Comments on the proposed repeal, new rule, and amendments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 5:00 p.m. on Monday, October 6, 2025. The Commission finds that this comment period is reasonable because the proposal and an online comment form will be available on the Commission's website prior to *Texas Register* publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Karley Rudynski, Director, Alternative Fuels Safety Department, at (512) 463-6828. The status of Commission rulemakings in progress is available at www.rrc.texas.gov/general-counsel/rules/proposed-rules.

16 TAC §§14.2013, 14.2015, 14.2019

The Commission proposes the new rule and amendments under Texas Occupations Code, Chapter 55, which authorizes the Commission to promulgate rules pertaining to the issuance of occupational licenses to military service members, military veterans, and military spouses.

Statutory authority: Texas Occupations Code, Chapter 55, and Texas Natural Resources Code, §§116.012.

Cross reference to statute: Texas Occupations Code, Chapter 55, and Texas Natural Resources Code, Chapter 116.

§14.2013. License Categories, Container Manufacturer Registration, Fees, and Application for Licenses, Manufacturer Registrations, and Renewals.

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

(c) A military service member, military veteran, or military spouse shall be exempt from the original license fee specified in subsection (b) of this section pursuant to the requirements in §14.2015 of this title (relating to Military Licensing and Fee Exemption). [~~An individual who receives a military fee exemption is not exempt from renewal or transport registration fees specified in §14.2014 and §14.2704 of this title (relating to Application for License or Manufacturer Registration (New and Renewal); and Registration and Transfer of LNG Transports), respectively.~~]

(d) (No change.)

§14.2015. Military Licensing and Fee Exemption.

(a) General Provisions.

(1) Applicability. This section applies to military service members, military veterans, or military spouses, as specified in this section and as those terms are defined in Texas Occupations Code, Chapter 55.

(2) License. For purposes of this section, a "license" means a license, certificate, registration, permit, or other form of authorization required by this chapter that must be obtained by an individual to engage in a particular business.

(3) Determination of Good Standing. For purposes of this section, an individual is in good standing with another state's licensing authority if the individual:

(A) holds a license that is current, has not been suspended or revoked, and has not been voluntarily surrendered during an investigation for unprofessional conduct;

(B) has not been disciplined by the licensing authority with respect to the license or individual's practice of the occupation for which the license is issued; and

(C) is not currently under investigation by the licensing authority for unprofessional conduct related to the individual's license or profession.

(4) Complaints and Reporting. The Commission shall maintain a record of each complaint made against a military service member, military veteran, or military spouse to whom AFS issues a license or who holds an out-of-state license the Commission recognizes. The Commission shall publish at least quarterly on its website the complaint information, including a general description of the disposition of each complaint.

(b) Alternative Licensing.

(1) A military service member, military veteran, or military spouse may apply to be issued an LNG license by the Commission if the military service member, military veteran, or military spouse:

(A) holds a current license issued by the licensing authority of another state that is similar in scope of practice to an LNG license issued by the Commission and is in good standing with the other state's licensing authority; or

(B) within the five years preceding the application date held an LNG license issued by the Commission.

(2) An application for an alternative license shall be made by submitting a completed Form 16V to AFS. The applicant must attach the following to Form 16V:

(A) a copy of the applicant's current LNG license issued by the licensing authority of another state, if applicable;

(B) a copy of military documentation showing the applicant's military status as a military service member or military veteran; and

(C) if the applicant is a military spouse, a copy of the military spouse's marriage license; and

(D) any other information that may be required by AFS.

(3) Upon receipt of a completed Form 16V with required attachments, AFS shall:

(A) confirm with the other state that the military service member, military veteran, or military spouse is currently licensed and in good standing for the relevant business or occupation; and

(B) conduct a comparison of the other state's licensing requirements, statutes, and rules with AFS's licensing requirements to determine if the requirements are similar in scope of practice.

(4) AFS shall issue the alternative LNG license not later than the 10th business day after the date AFS receives an application for an alternative license in compliance with this subsection and section 55.004, Occupations Code (relating to Alternative Licensing for Military Service Members, Military Veterans, and Military Spouses).

(c) Recognition of Out-of-State Licensing.

(1) A military service member or military spouse may apply to engage in an LNG activity for which an LNG license is required by the Commission if the military service member or military spouse holds a current license issued by the licensing authority of another state that is similar in scope of practice to an LNG license issued by the Commission. A military service member or military spouse must receive a written recognition from AFS pursuant to this subsection before engaging in an LNG activity.

(2) An application for the recognition of an out-of-state LNG license shall be made by submitting a completed Form 16M to AFS. The applicant must be in good standing with the other state's licensing authority for Form 16M to be approved. The applicant must attach the following to a Form 16M:

(A) a copy of the applicant's current LNG license issued by the licensing authority of another state;

(B) a copy of military documentation showing the applicant's status as a military service member or a military spouse;

(C) a copy of the applicant's military orders showing relocation to this state;

(D) if the applicant is a military spouse, a copy of the military spouse's marriage license; and

(E) any other information that may be required by AFS.

(3) Form 16M includes an affidavit that must be notarized by the applicant affirming under penalty of perjury that:

(A) the applicant is the person described and identified in the application;

(B) all statements in the application are true, correct, and complete;

(C) the applicant understands the scope of practice for the applicable license in this state and will not perform outside of that scope of practice; and

(D) the applicant is in good standing in the state in which the applicant holds an applicable license.

(4) Upon receipt of a completed Form 16M with required attachments, AFS shall conduct a comparison of the other state's license requirements, statutes, and rules with AFS's licensing requirements to determine if the requirements are similar in scope of practice.

(5) Not later than the 10th business day after AFS receives a completed Form 16M with required attachments, AFS will notify the applicant that:

(A) AFS recognizes the applicant's out-of-state license and will provide a written recognition document;

(B) the application is incomplete, noting the area of deficiency; or

(C) AFS is unable to recognize the applicant's out-of-state license because the Commission does not issue a license similar in scope of practice to the applicant's out-of-state license.

(6) If a military service member or military spouse is granted the written recognition of an out-of-state LNG license by the Commission, the following conditions apply:

(A) The military service member or military spouse shall comply with all other laws and regulations applicable to the LNG license in this state;

(B) The military service member or military spouse may only engage in the LNG activity authorized by the written recognition for the period during which the military service member is stationed at a military installation in Texas, or, with respect to a military spouse, the military service member to whom the spouse is married is stationed at a military installation in Texas; and

(C) In the event of a divorce or similar event that affects a person's status as a military spouse, the former spouse may continue to engage in the business or occupation under the authority of this section until the third anniversary of the date the spouse submitted the Form 16M.

(d) Fee Exemptions.

(1) The Commission shall waive the license application and examination fees for a military service member, military veteran, or military spouse. To receive a military fee exemption, an applicant for a fee exemption shall file with the Commission a Form 35 and any documentation required by this subsection.

(2) A military service member, military veteran, or military spouse shall submit the following documentation with Form 35:

(A) a copy of any military records showing the applicant's dates of service; and

(B) a copy of the applicant's driver's license or state-issued identification card.

(3) AFS shall review Form 35 and required documentation to determine if the requirements for the fee exemption have been met and shall notify the applicant of the determination in writing within 10 days.

(A) If all requirements have been met, the applicant may submit the application for license or examination and attach a copy of the written notice granting military fee exemption with the application to serve as notice of payment.

(B) If AFS has notified the applicant that the application is incomplete, the applicant shall provide any requested information or documentation within 10 days of the date of the notice.

(e) Renewals.

(1) A military service member, military veteran, or military spouse who receives an alternative license or recognition by AFS of an out-of-state license remains subject to all other renewal requirements in this chapter, including all applicable fees and training or continuing education courses.

(2) A service member who fails to timely renew a license because the individual was on active duty is exempt from any increased fee or penalty imposed by AFS.

(3) A military service member who holds a license is entitled to two years of additional time to complete:

(A) any continuing education requirements; and

(B) any other requirement related to the renewal of the military service member's license.

§14.2019. Examination Requirements and Renewals.

(a) Requirements and application for a new certificate.

(1) In addition to NFPA 52 §§4.1 and 4.2 and 59A §14.9, no person shall perform work, directly supervise LNG activities, or be employed in any capacity requiring contact with LNG unless that individual:

(A) is a certificate holder who is in compliance with renewal requirements in subsection (g) of this section and is employed by a licensee; [~~or~~]

(B) is a trainee who complies with subsection (f) of this section; or[~~.~~]

(C) has an alternative license or a recognition by AFS of an out-of-state license pursuant to §14.2015 of this chapter (relating to Military Licensing and Fee Exemption) and is in compliance with renewal requirements in subsection (g) of this section.

(b) Rules examination.

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

(3) An individual who files LNG Form 2016 and pays the applicable nonrefundable examination fee may take the rules examination.

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

(C) Exam fees.

(i) - (iii) (No change.)

(iv) A military service member, military veteran, or military spouse shall be exempt from the examination fee pursuant to §14.2015 of this title (relating to Military Licensing and Fee Exemption). [~~An individual who receives a military fee exemption is not exempt from renewal fees specified in subsection (g) of this section.~~]

(v) (No change.)

(D) - (E) (No change.)

(c) - (g) (No change.)

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

Filed with the Office of the Secretary of State on August 19, 2025.

TRD-202502996

Natalie Dubiel

Assistant General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: October 5, 2025

For further information, please call: (512) 475-1295

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16 TAC §14.2015

The Commission proposes the repeal under Texas Occupations Code, Chapter 55, which authorizes the Commission to promulgate rules pertaining to the issuance of occupational licenses to military service members, military veterans, and military spouses.

Statutory authority: Texas Occupations Code, Chapter 55, and Texas Natural Resources Code, §§116.012.

Cross reference to statute: Texas Occupations Code, Chapter 55, and Texas Natural Resources Code, Chapter 116.

§14.2015. Military Fee Exemption.

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

Filed with the Office of the Secretary of State on August 19, 2025.

TRD-202502995

Natalie Dubiel

Assistant General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: October 5, 2025

For further information, please call: (512) 475-1295

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES

The Public Utility Commission of Texas (commission) proposes 13 amendments and one new rule in the Chapter 22 procedural rules. The scope of this rulemaking proceeding is limited to consideration of the proposed rule amendments, additional modifications to these rules that are reasonably related to the proposed changes, and other minor and nonsubstantive amendments. Substantive amendments to these rules not related to the proposed changes are not within the scope of this proceeding.

The proposed amendments are listed in order as follows (Subchapters G through J): Subchapter G, §22.123, relating to Appeal of an Interim Order and Motions of Reconsideration of Interim Order Issued by the Commission, §22.124, relating to Statements of Position, §22.125, relating to Interim Relief, §22.126, relating to Bonded Rates, §22.127, relating to Certification of an Issue to the Commission; Subchapter H, §22.141, relating to Form and Scope of Discovery, §22.142, relating to Limitations on Discovery and Protective Orders, §22.143, relating to Depositions, §22.144, relating to Requests for Information and Requests for Admissions of Facts; Subchapter I, §22.161, relating to Sanctions; Subchapter J, §22.181, relating to Dismissal of a Proceeding, §22.182, relating to Summary Decision, §22.183, relating to Disposition by Default. The proposed

new rule is §22.162, relating to Enforcement of Subpoenas or Commissions for Deposition.

Rule Review Stakeholder Recommendations

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

The proposed changes would amend §22.127, relating to Certification of an Issue to the Commission to clarify the procedure for certification of an issue in commission proceedings, eliminate specific deadlines for certification of an issue by the presiding officer, for placing a certified issue on the commission's agenda, and for filing party briefs. The proposed changes replace those deadlines with a general authorization for the presiding officer to certify an issue and the Office of Policy Docket Management (OPDM) place a certified issue on the commission's agenda "at the earliest time practicable." The proposed changes also authorize OPDM to establish deadlines for party briefs on certified issues.

The proposed changes would amend §22.141, relating to Form and Scope of Discovery, to authorize depositions to be taken, noticed, and used in accordance with the Texas Rules of Civil Procedure, subject to any other ruling or procedure established by the presiding officer.

The proposed changes would amend §22.143, relating to Depositions, to require the party conducting a deposition to provide a copy of the transcript to commission staff without cost to the commission.

The proposed changes would amend §22.144, relating to Requests for Information and Requests for Admissions of Facts to authorize the presiding officer to order that drafts of testimony, exhibits, and workpapers to be filed in the proceeding are not subject to disclosure upon agreement by the parties. The proposed changes would also, in instances where no response is made to requests for information, require motions to compel discovery no later than five working days after the deadline by when a response was due. The revisions further specify that a party seeking discovery in connection with an unanswered discovery request or an incomplete discovery response must file a motion to compel no later than five working days from the date the incomplete discovery response was received or the unanswered discovery request was due unless otherwise ordered by the presiding officer. The proposed changes also eliminate the provision governing the production of voluminous material and replace it with general requirements governing the production of materials in response to a request for information.

The proposed changes would amend §22.161, relating to Sanctions, to clarify that either a presiding officer or a State Office of Administrative Hearing (SOAH) administrative law judge may impose sanctions. The proposed changes also clarify that either one or more commissioners or a SOAH administrative law judge may hold a sanction hearing if a one is requested for the motion for sanctions and omits the requirement for a hearing to be held automatically upon receipt of such a motion.

The proposed changes would amend §22.181, relating to Dismissal of a Proceeding, by revising one of the grounds for dismissal of a proceeding to be abuse of discovery, rather than the higher standard of gross abuse of discovery.

The proposed changes would amend §22.182, relating to Summary Decision, to require a response to a motion for summary decision to be filed within 20 days unless otherwise ordered by the presiding officer and clarify that a hearing on a motion for summary decision is not required.

The proposed changes would amend §22.183, relating to Disposition by Default, to authorize a presiding officer to issue a proposal for decision granting default and, in such a proposal for decision, deem admitted factual matters asserted in the notice of the opportunity for a hearing.

The proposed changes would make minor and conforming changes to the aforementioned rules and to §22.123, relating to Appeal of an Interim Order and Motions of Reconsideration of Interim Order Issued by the Commission; §22.124, relating to Statements of Position; §22.125, relating to Interim Relief; §22.126, relating to Bonded Rates; and §22.142, relating to Limitations on Discovery and Protective Orders.

Proposed new §22.162, relating to Enforcement of Subpoenas or Commissions for Deposition, establishes that if a person fails to comply with a subpoena or commission for deposition issued by the presiding officer or a requesting party, the commission or the requesting party may seek enforcement in accordance with the APA.

Growth Impact Statement

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

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

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

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

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

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

(6) the proposed rules will expand, limit, and repeal existing regulations, as this is an omnibus rulemaking proceeding that is a component of the commission's Chapter 22 rule review;

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

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

Public Benefits

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

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by October 6, 2025. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by October 6, 2025. Comments must be organized by rule section in sequential order, and each comment must clearly designate which section is being commented on. The commission invites specific comments regarding the effects of the proposed rule, including the costs associated with, and benefits that will be gained by the proposed amendments. The commission also requests any data, research, or analysis from any person required to comply with the proposed rules or any other interested person. The commission will consider the information submitted by commenters and the costs and benefits of implementation in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 58401.

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

If comments are filed in PDF format, the commission requests a copy in native format (e.g. Microsoft Word .doc/docx) be provided to commission staff via email to mackenzie.arthur@puc.texas.gov. Similarly, a native copy of this proposal may be requested from commission staff via email at the same address.

SUBCHAPTER G. PREHEARING PROCEEDINGS

16 TAC §§22.123 - 22.127

Statutory Authority

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

§22.126, relating to Bonded Rates

Amended §22.126 is proposed under PURA §§36.110 and 53.110 which establish the authority and procedure for an electric utility to impose changed rates in certain circumstances by filing a bond with the commission.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.052 and Texas Water Code §13.041(b); PURA §§15.024, and 36.110 and §53.110; and Texas Government Code, Subchapter D §2001.081-103.

§22.123. Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission.

(a) Appeal of an interim order.

(1) Availability of appeal. Appeals are available for any interim order of the presiding officer that immediately prejudices a substantial or material right of a party or materially affects the course of the proceeding [~~hearing~~]. Appeals are not available for discovery or evidentiary rulings. Interim orders are not subject to exceptions or motions for rehearing.

(2) Procedure for appeal. If the presiding officer intends to reduce an oral ruling to a written order, the presiding officer must so indicate on the record at the time of the oral ruling and must promptly issue the written order. Any appeal to the commission from an interim order must be filed within ten days of the date [~~issuance~~] of the written order is filed or the date the appealable oral ruling is made when no written order is to be issued. The appeal must be served on all parties in accordance with §22.74 of this title (relating to Service of Pleadings and Documents) [~~by hand delivery, electronic mail, or by overnight courier delivery~~].

(3) Contents. An appeal must specify the reasons why the interim order is unjustified or improper and how it immediately prejudices a substantial or material right of a party or materially affects the course of the proceeding [~~hearing~~].

(4) Responses. Any response to an appeal must be filed within five working days of the filing of the appeal.

(5) Motion for stay. Pending a ruling by the commissioners, the presiding officer may, upon motion, grant a stay of the interim order if good cause is shown. A motion for a stay must specify the basis for a stay. [~~Good cause must be shown for granting a stay.~~] The mere filing of an appeal does not stay the interim order or any applicable procedural schedule.

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

(8) Reconsideration of appeal by presiding officer. The presiding officer may treat an appeal as a motion for reconsideration and may withdraw or modify the order under appeal before a commission decides on the merits of [~~decision on~~] the appeal. [~~The presiding officer must notify the commission of its decision to treat the appeal as a motion for reconsideration.~~]

(b) Motion for reconsideration of interim order issued by the commission.

(1) Availability of motion for reconsideration. Motions for reconsideration are available for any interim order of the commission that immediately prejudices a substantial or material right of a party or materially affects the course of the hearing. Motions for reconsideration may only be filed by a party to the proceeding and are not available for discovery or evidentiary rulings. Interim orders are not subject to exceptions or motions for rehearing.

(2) Procedure for motion for reconsideration. If the commission does not intend to reduce an oral ruling to a written order, the commission will so indicate on the record at the time of the oral ruling. A motion for reconsideration of an interim order issued by the commission must be filed within five workings days of the date [~~issuance~~] of the written interim order is filed or the date the oral interim ruling is made. The motion for reconsideration must be served on all parties in accordance with §22.74 of this title [~~by hand delivery, electronic mail, or by overnight courier delivery~~].

(3) - (6) (No change.)

§22.124. Statements of Position.

(a) Statements of position required.

(1) Each party that has not prefiled direct testimony must [~~and, insofar as its prefiled direct testimony does not address issues that a party intends to litigate, each party that has prefiled direct testimony shall~~] file a statement of position no later than three working days before the start of a hearing unless the presiding officer determines that such a requirement would add unjustified burden and expense to the proceeding, or that a different deadline should be imposed.

(2) In accordance with [~~Pursuant to~~] §22.161 of this title (relating to Sanctions), the presiding officer may sanction any party who fails to comply with the requirement that a statement of position be filed.

(b) Contents of Statement [~~statement~~] of Position [~~position~~]. Unless otherwise provided by order of the presiding officer, the statement of position must [~~shall~~] contain the following information:

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

(3) a concise statement of the party's position on each issue identified in accordance with [~~pursuant to~~] paragraph (2) of this subsection.

§22.125. Interim Relief.

(a) Availability. Interim relief is not available for tariff filings unless the tariff filing has been docketed.

(b) Requests for interim relief. A request for interim relief must [~~shall~~] be filed no later than 30 days before the interim relief is proposed to take effect, unless all parties agree to a later filing date.

(c) Consideration of request for interim relief. Interim relief may be granted based on the agreement of all parties. The presiding officer may, after notice and opportunity for hearing, grant a contested request for interim relief only on a showing of good cause. In determining whether good cause exists, the presiding officer must [~~shall~~] take into account:

(1) The applicant's [~~utility's~~] ability to anticipate the need for and obtain final approval of relief prior to the time relief is reasonably needed;

(2) - (6) (No change.)

(d) Standard and burden of proof. In any proceeding involving a proposed interim change in rates, the applicant bears the burden of proof to show that the proposed interim relief [~~change proposed by the utility or existing rate~~] is just and reasonable [~~shall be on the utility~~].

(e) Refunds and surcharges. Interim rates must [~~shall~~] be subject to refund or surcharge to the extent the rates ultimately established differ from the interim rates.

§22.126. Bonded Rates.

(a) During the pendency of its rate proceeding, a utility seeking to implement rates under bond as allowed by PURA §36.110 or §53.110 or as allowed by TWC §13.187 or §13.1871 must file its application for approval of bond at least two weeks prior to the date the bonded rates are to be effective.

(1) The application must conform to the requirements of subchapter E of this chapter (relating to Pleadings).

(2) The bond must be:

(A) in an amount equal to or greater than one-sixth of the annual difference between the utility's current rates and the bonded rates.

(B) approved by the presiding officer as to sufficiency based on commission staff's review of the utility's application.

(b) Any decision by the presiding officer either approving or disapproving a bond is appealable to the commission under §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission).

[~~During the pendency of its rate proceeding, a utility seeking to implement rates under bond as allowed by PURA §36.110 or §53.110 or as allowed by TWC §13.187 or §13.1871 shall file the required number of copies of its application for approval of bond at least two weeks prior to the date the bonded rates are to be effective. The application shall conform to the requirements of subchapter E of this chapter (relating to Pleadings). The bond shall be in an amount equal to or greater than one-sixth of the annual difference between the utility's current rates and the bonded rates. The bond must be approved by the Commission Advising and Docket Management Division as to sufficiency based on the commission staff's review of the utility's application. Any decision by the Commission Advising and Docket Management Division either approving or disapproving a bond is appealable to the commission under §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission).~~]

§22.127. Certification of an Issue to the Commission.

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

(c) Procedure for certification in commission proceedings. A party may request the presiding officer to certify an issue to the commission or the presiding officer may certify an issue at his or her discretion. The presiding officer must submit a certified issue to the commission by issuing a written order.

(1) If a party requests an issue to be certified, the presiding officer will either certify the requested issue or file an order denying the motion at the earliest time practicable.

(2) The Office of Policy and Docket Management (OPDM) must place the certified issue on the commission's agenda to be considered at the earliest time practicable.

(3) Party briefs on the certified issue are due within the timeframe set by OPDM.

(4) The presiding officer may abate the proceeding while a certified issue is pending.

[(c) Procedure for certification. The presiding officer shall submit the certified issue to the Commission Advising and Docket Management Division. The Commission Advising and Docket Management Division shall place the certified issue on the commission's agenda to be considered at the earliest time practicable that is not earlier than 20 days after its submission. Parties may file briefs on the certified issue within 13 days of its submission. The presiding officer may abate the proceeding while a certified issue is pending.]

(d) Commission action. [The commission shall issue a written decision on the certified issue within thirty days of its submission.] A commission decision on a certified issue is not subject to a motion for rehearing.

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

Filed with the Office of the Secretary of State on August 25, 2025.

TRD-202503082
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 936-7244

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SUBCHAPTER H. DISCOVERY PROCEDURES

16 TAC §§22.141 - 22.144

Statutory Authority

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

Amended §§22.141 - 22.144 are proposed under Texas Government Code, Subchapter D §2001.081-103 which govern the usage of and procedures for evidence, witnesses and discovery for contested cases held at agencies of the State of Texas.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.052 and Texas Water Code §13.041(b); PURA §§15.024, and 36.110 and §53.110; and Texas Government Code, Subchapter D §2001.081-103.

§22.141. Forms and Scope of Discovery.

(a) Scope. Parties may obtain discovery regarding any matter not privileged or exempted under the Texas Rules of Evidence, the Texas Rules of Civil Procedure, or other law or rule that is applicable to the subject matter in the proceeding.

(1) Discoverable matters include:

(A) the existence, description, nature, custody, condition, location and contents of any documents, including papers, books, accounts, drawings, graphs, charts, photographs, maps, email, audio or video recordings;

(B) any other data compilations from which information can be obtained and translated, if necessary, by the person from whom information is sought, into reasonably usable form; and

(C) any other tangible things which constitute or contain matters relevant to the subject matter in the action, and the identity and location of persons having any knowledge of any discoverable matter.

(2) Discovery is not limited to tangible things, but may extend to knowledge, mental impressions, and opinions of persons who will testify; explanations of documents or tangible things, or information contained therein; and other relevant information within the knowledge or control of the entity from whom discovery is sought.

(3) A person is not required to produce a document or tangible thing unless it is within that person's constructive or actual possession, custody, or control.

(4) A person has possession, custody or control of a document or tangible thing as long as the person has a superior right to compel the production from a third party and can obtain possession of the document or tangible thing with reasonable effort.

[(a) Scope. Parties may obtain discovery regarding any matter, not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding. Discoverable matters include the existence, description, nature, custody, condition, location and contents of any documents, including papers, books, accounts, drawings, graphs, charts, photographs, maps, email, audio or video recordings, and any other data compilations from which information can be obtained and translated, if necessary, by the person from whom information is sought, into reasonably usable form, and any other tangible things which constitute or contain matters relevant to the subject matter in the action, and the identity and location of persons having any knowledge of any discoverable matter. Discovery is not limited to tangible things, but may extend to knowledge, mental impressions, and opinions of persons who will testify; explanations of documents or tangible things, or information contained therein; and other relevant information within the knowledge or control of the entity from whom discovery is sought. A person is not required to produce a document or tangible thing unless it is within that person's constructive or actual possession, custody, or control. A person has possession, custody or control of a document or tangible thing as long as the person has a superior right to compel the production from a third party and can obtain possession of the document or tangible thing with reasonable effort.]

(b) (No change.)

(c) Stipulations regarding discovery procedure. The parties may, by written agreement:

(1) provide that depositions may be taken at any time or place, upon any notice, and in any manner and when so taken may be used in accordance with the Texas Rules of Civil Procedure, subject to any other ruling or procedure established by the presiding officer [~~like other depositions~~];

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

§22.142. Limitations on Discovery and Protective Orders.

(a) Limitation of discovery requests. The presiding officer may limit discovery, by order, to protect a party against unreasonable or unwarranted discovery requests.

(1) (No change.)

(2) Any person from whom discovery is sought may file a motion for a protective order, specifying the grounds on which a protective order is justified. Motions and [~~or~~] responses must include affidavits, discovery pleadings, or other pertinent documents to support the allegations made therein.

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

(b) - (c) (No change.)

(d) Limitations on requests for information.

(1) Before setting limitations on RFIs, the presiding officer may [~~must~~] consider the following factors: [~~set out in subparagraphs (A)-(K) of this paragraph.~~]

(A) - (K) (No change.)

(2) - (6) (No change.)

§22.143. Depositions.

(a) Governing statute. The taking and use of depositions in any proceeding are [~~shall be~~] governed by the APA. A request to issue a commission for deposition must [~~shall~~] be filed no later than five working days before the date of the deposition. Issuance of a commission for deposition is a ministerial act and does not preclude requests for issuance of a protective order pursuant to §22.142 of this title (relating to Limitations on Discovery and Protective Orders).

(b) Deposition by agreement. Upon agreement of the parties, parties may waive the requirement of issuance of a commission. All parties will [~~shall~~] be given no less than three working days notice of depositions, including the person to be deposed, the date, time, and place of the deposition, and the subject of the deposition.

(c) Copy to be provided. Upon receipt of a transcript of the deposition by the party, the party conducting the deposition must [~~shall~~] provide a copy of the transcript to commission staff without cost to the commission.

(d) (No change.)

§22.144. Requests for Information and Requests for Admission of Facts.

(a) Availability. At any time after an application is filed, and subject to the provisions of §22.141 of this title (relating to Forms and Scope of Discovery), any party may serve upon any other party written requests for information and requests for admission of fact. Upon agreement by the parties, the presiding officer may order that drafts of testimony, exhibits, and workpapers to be filed in the proceeding are not subject to disclosure.

(b) Making requests for information.

(1) Contents. A request under this section must [~~shall~~] identify with reasonable particularity the information, documents or material sought. A request seeking inspection of documents or property must [~~shall~~] describe with reasonable particularity the documents to be produced or the property to which access is requested, and must [~~shall~~] set forth the items to be inspected by individual item or by category.

(2) Service. A copy of each request for information must [~~shall~~] be served upon all parties to the proceeding in accordance with §22.74 of this title, relating to Service of Pleadings and Documents. [~~Requests for information may be served by facsimile transmittal on the recipient of the request if the recipient has a facsimile machine available for use in the proceeding.~~] Requests for information that are received after 5:00 [~~3:00~~] p.m. are [~~shall be~~] deemed to have been received the following working [~~business~~] day. Responses to requests for information must [~~shall~~] be served on the requesting party and any party that has requested, in writing, to be served.

(c) Responding to requests for information.

(1) Time for response. The party upon whom a request is served must [~~shall~~] serve a full written response to the request within 20 days after receipt of the request. The presiding officer, on motion and for good cause shown, may extend or shorten the time for providing responses.

(2) Requirements of response.

(A) Each response to discovery under this subsection must [~~shall~~] identify the preparer or person under whose direct supervision the response was prepared, and the sponsoring witness, if any.

(B) Each request for information must [~~shall~~] be answered separately. Responses to requests for information must [~~shall~~] be preceded by the request to which the answer pertains.

(C) Responses to requests for production of documents, property, or other items, must [~~shall~~] state, for each item or category of items for which an objection has not been raised, that inspection or other requested action will be permitted at a mutually convenient time at the location where the documents, property, or other items are maintained. If compliance with the request is impossible, a written response must [~~shall~~] be filed stating the reasons for the unavailability of the information.

(D) Where the response to a request for information may be derived or ascertained from local public records, the responding party is [~~shall~~] not be obligated to produce the documents for the requesting party. It is a [~~shall be~~] sufficient answer to identify with particularity the public records that contain the requested information.

(E) Where a request may be answered by production of or reference to information that currently exists in the form of a document, computer record, or other existing tangible thing [~~that is voluminous, as defined in subsection (h) of this section~~], it is a sufficient answer to the request to specify the records from which the answer may be derived or ascertained and to afford a reasonable opportunity to the requesting party to examine, to audit or to inspect such records and to allow the requesting party to make copies, compilations, abstracts or summaries from such records. The specification of records provided must be consistent with the method specified under subsection (h) of this section and [~~shall~~] include sufficient detail to permit the requesting party to locate and to identify[~~, as readily as can the responding party,~~] the records from which the answers may be ascertained.

(F) Responses to requests for information must [~~shall~~] be filed under oath, unless the responding party stipulates in writing that responses to requests for information can be treated by all parties as if the answers were filed under oath.

(d) Objections to requests for information. Parties must [~~shall~~] negotiate diligently and in good faith concerning any discovery dispute prior to filing an objection. The objections must [~~shall~~] include a statement that negotiations were conducted diligently and in good faith. If negotiation fails, objections to requests for information, if any, must [~~shall~~] be filed within ten [~~calendar~~] days of receipt of the request for information. The objections must [~~shall~~] state the date the request for information was received.

(1) The objections must [~~shall~~] be a separate pleading and entitled "Objections of (name of objecting party) to (style of RFI objected to)." The request for information to which an objection is being filed must [~~shall~~] be stated and the specific grounds for the objection must [~~shall~~] be separately listed for each question. If an objection pertains only to a part of a question, that part must [~~shall~~] be clearly identified. All arguments upon which the objecting party relies must [~~shall~~] be presented in full in the objection.

(2) If the objection is founded upon a claim of privilege or exemption under the Texas Rules of Civil Procedure or Texas Rules of Evidence, the objecting party must [~~shall~~] file within two working days of the filing of the objections, an index that lists, for each document: the date and title of the document; the preparer or custodian of the information; to whom the document was sent and from whom it was received; and the privilege [~~privilege(s)~~] or exemption [~~exemption(s)~~] that is claimed. A full and complete explanation of the claimed privilege or exemption must [~~shall~~] be provided. The index must [~~shall~~] be sufficiently detailed to enable the presiding officer to identify the documents from the list provided. The index and explanations must [~~shall~~] be public documents and must [~~shall~~] be served on all parties who are entitled to receive copies of responses to requests for information under subsection (b)(2) of this section. If a document is to be provided pursuant to the terms of a protective order, the responding party need not comply with the procedures of this paragraph.

(3) A party raising objections on the grounds of relevance as well as grounds of privilege or exemption is not required to file an index to the privileged or exempt documents at the time the objections are filed. A party may instead include an objection to the filing of the index. The objections must [~~shall~~] show good cause for postponement of the filing of the index. An index to the privileged or exempt documents is [~~shall be~~] due within five working days of receipt of an order denying the relevance objection or overruling the objection to the filing of an index.

(4) The requirement to respond to those requests, or portions thereof, to which objection is made will [~~shall~~]postponed until the objections are ruled upon and for such additional time thereafter as the presiding officer may direct.

(5) In the interests of narrowing discovery disputes, the responding party may agree to provide certain information sought by a request while objecting to the provision of other information sought by the request.

(e) Motions to compel. The party seeking discovery must [~~shall~~] file a motion to compel no later than five working days after the objection is received, or, if no response is made to the request for information, a motion to compel must be filed no later than five working days after the deadline by when a response was due. Absence of a motion to compel will be construed as an indication that the parties have resolved their dispute. The presiding officer may rule on the motion to compel based on written pleadings without allowing additional argument. Unless otherwise ordered by the presiding officer, a party seeking discovery in connection with an unanswered discovery request or an incomplete discovery response must file a motion to compel no later than five working days from the date the incomplete discovery response was received or the unanswered discovery request was due.

(f) Responses to motions to compel. Responses to a motion to compel must [~~shall~~] be filed within five working days after receipt of the motion[~~,~~] and must [~~shall~~] include all factual and legal arguments the respondent wants to present regarding the motion.

(g) In camera inspection. If an objection is founded on a claim of privilege or an exemption under the Texas Rules of Civil Procedure or Texas Rules of Evidence, the burden is on the objecting party to request an in camera inspection and to provide the documents for review. Any request must [~~shall~~] be filed within three working days of the receipt of the motion to compel. The request must [~~shall~~] contain the factual and legal bases [~~basis~~] to support the claimed exemption or privilege. The objecting party must [~~shall~~] review the documents and note with specificity any portions to which the claimed privilege or exemption claim does not apply. The objecting party must [~~shall~~] provide the documents to the presiding officer, under seal, no later than one working day after it requests an in camera inspection. Documents submitted for in camera review must [~~shall~~] not be filed with Central Records [~~the commission filing clerk~~]. Documents submitted for in camera review must [~~shall~~] be submitted to the presiding officer and enclosed in a sealed and labeled container accompanied by an explanatory cover letter. The cover letter must [~~shall~~] identify the control number and style of the proceeding and explain the nature of the sealed materials. The container must [~~shall~~] identify the control number, style of the case, name of the submitting party, and be marked "IN CAMERA REVIEW" in bold print at least one inch in size. Each page for which a privilege is asserted must [~~shall~~] be marked "privileged."

(h) Production of material responsive to requests for information. The following procedures apply to the production of materials responsive to requests for information unless otherwise specified by the presiding officer:

(1) A party responding to a request for information must make available all material responsive to the request to each party to that proceeding. A party responding to a request for information makes such material available by:

(A) serving a copy of all such responsive material to the other parties to the proceeding in the manner specified by §22.74 of this title; and

(B) filing all such responsive material with the commission in the manner required by §22.71 of this title (relating to Commission Filing Requirements and Procedures) and, as applicable, §22.72 of this title (relating to Form Requirements for Documents Filed with the Commission).

(2) In addition to the required methods of production specified under paragraph (1)(A) and (B) of this section, a party responding to a request for information may also make available materials responsive to such a request in a form and manner agreed to by the parties.

(3) Material responsive to a request for discovery must, at a minimum, be:

(A) consecutively categorized or classified (e.g. "Attachment A");

(B) labelled or cross-referenced by request for information number and subpart (e.g. "Responsive to RFI 1-1"); and

(C) sequentially ordered by page or bates number.

(4) A party providing materials that individually are 100 pages or greater must include with its response a detailed index of the material responsive to a particular question and must organize the responses and material to enable parties to efficiently review the material. The index must include:

(A) information sufficient to locate each individual document by page or file number;

(B) the date each document was created;

(C) the title of the document, or, if none exists, a description of the document;

(D) the name of the preparer or source of each document; and

(E) the length of each document.

(5) If a party responding to a request for information does not provide an index required under paragraph (4) of this subsection, the party filing the request for information may file a motion to compel the responding party to produce such an index.

[(h) Production of voluminous material. The following procedures shall apply to production of voluminous materials:]

[(1) Responses to particular questions that consist of less than 100 pages are not voluminous and shall be filed in full.]

[(2) Subject to paragraph (3) of this subsection, the responding party shall make available all voluminous material provided in response to a request for information at a designated location in Austin.]

[(3) A party will be released from its obligation to make available the requested voluminous material at a designated location in Austin, only if the volume of the material exceeds eight linear feet. In that event, the party shall make the material available where the material is located.]

[(4) The party providing the voluminous material shall file with its response a detailed index of the voluminous material responsive to a particular question and shall organize the responses and material to enable parties to efficiently review the material, including labeling of material by request for information number and subparts and sequentially numbering the material responsive to a particular question. The index shall include:]

[(A) information sufficient to locate each individual document by page number, file number, and box number;]

[(B) the date of each document;]

[(C) the title of the document, or, if none exists, a description of the document;]

[(D) the name of the preparer of each document; and]

[(E) the length of each document.]

(i) Duty to supplement. A responding party is under a continuing duty to supplement its discovery responses if that party acquires information upon the basis of which the party knows or should know that the response was incorrect or incomplete when made, or though correct or complete when made, is materially incorrect or incomplete. The responding party must [shall] amend its prior response within five working days of acquiring the information.

(j) Requests for admission of facts. Requests for admission of facts must [shall] be made in accordance with the Texas Rules of Civil Procedure.

(k) (No change.)

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

Filed with the Office of the Secretary of State on August 25, 2025.

TRD-202503083
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 936-7244

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SUBCHAPTER I. SANCTIONS

16 TAC §22.161, §22.162

Statutory Authority

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

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.052 and Texas Water Code §13.041(b); PURA §§15.024, and 36.110 and §53.110; and Texas Government Code, Subchapter D §2001.081-103.

§22.161. Sanctions.

[(a) Enforcement of subpoenas or commissions for depositions. If a person fails to comply with the subpoena or commission for deposition issued by the presiding officer, the commission or the party requesting the subpoena or commission for deposition may seek enforcement pursuant to APA.]

(a) [(b)] Causes for imposition of sanctions. After notice and an opportunity for a hearing, a presiding officer [administrative law judge] own motion or on the motion of a party, [after notice and an opportunity for a hearing,] may impose appropriate sanctions against a party or its representative for the reasons specified under this subsection. If a hearing on the motion for sanctions is requested, one or more commissioners or a SOAH administrative law judge must hold a sanction hearing for purposes of this section. Sanctions may be imposed for:

(1) filing a motion or pleading that was brought in bad faith, for the purpose of harassment, or for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;

(2) abusing the discovery process in seeking, making, or resisting discovery; or [and]

(3) failing to obey an order of an administrative law judge or the commission.

(b) [(c)] Types of sanctions. A sanction imposed under this section may include, as appropriate and justified, issuance of an order:

(1) disallowing further discovery of any kind or a particular kind by the offending [~~disobedient~~] party;

(2) - (5) (No change)

[~~(6) punishing the offending party or its representative for contempt to the same extent as a district court;~~]

(6) [~~(7)~~] requiring the offending party or its representative to pay, at the time ordered by the administrative law judge, the reasonable expenses, including attorney's fees, incurred by other parties because of the sanctionable behavior;

(7) [~~(8)~~] striking pleadings or testimony, or both, in whole or in part, or staying further proceedings until the order is obeyed; and [~~.~~]

(8) limiting or disallowing the offending party's rights to participate in the proceeding;

(9) dismissing the application with or without prejudice; and

(10) imposing any other sanction available to the presiding officer by law.

(c) [~~(c)~~] Procedure for seeking sanctions. A motion for sanctions may be filed at any time during the proceeding or may be initiated *sua sponte* by the presiding officer. A motion to compel discovery is not a prerequisite to the filing of a motion for sanctions. A motion should contain all factual allegations necessary to apprise the parties and the presiding officer of the conduct at issue, should request specific relief, and must [~~shall~~] be verified by affidavit. A motion must [~~shall~~] be served on all parties. [~~Upon receipt of the motion, a hearing shall be held on the motion.~~] Any order regarding sanctions issued by a presiding officer is [~~shall be~~] appealable pursuant to §22.123 of this title (relating to Appeal of an Interim Order and Motions for Reconsideration of Interim Order Issued by the Commission). Any sanction imposed by the presiding officer may [~~shall~~] be [~~automatically~~] stayed to allow the party to appeal the imposition of the sanction to the commission.

[~~(d) Imposition of sanctions by the commission. In addition to the sanctions listed in subsection (c) of this section that may be imposed by an administrative law judge, except for Subsection (c)(6), any other presiding officer including the commission, after notice and opportunity for hearing, may impose sanctions including:~~]

[~~(1) disallow the disobedient party's rights to participate in the proceeding;~~]

[~~(2) dismiss the application with or without prejudice;~~]

[~~(3) impose any other sanction available to the commission by law.~~]

§22.162. Enforcement of Subpoenas or Commissions for Deposition.

If a person fails to comply with the subpoena or commission for deposition issued by the presiding officer, the commission or the party requesting the subpoena or commission for deposition may seek enforcement in accordance with the APA.

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

Filed with the Office of the Secretary of State on August 25, 2025.

TRD-202503084

Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 936-7244

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SUBCHAPTER J. SUMMARY PROCEEDINGS

16 TAC §§22.181 - 22.183

Statutory Authority

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

§22.183, relating to Disposition by Default

Amended §22.183 is proposed under PURA §15.024 which provides the commission with the authority to assess and impose an administrative penalty against a person who fails to timely respond to a written notice summarizing an alleged violation and a corresponding recommended penalty.

Cross Reference to Statute: Public Utility Regulatory Act §§14.001, 14.002, 14.052 and Texas Water Code §13.041(b); PURA §§15.024, and 36.110 and §53.110; and Texas Government Code, Subchapter D §2001.081-103.

§22.181. Dismissal of a Proceeding.

(a) - (c) (No change.)

(d) Reasons for dismissal. Dismissal of a proceeding or one or more issues within a proceeding may be based on one or more of the following reasons:

(1) - (8) (No change.)

(9) [~~gross~~] abuse of discovery consistent with §22.161(b)(2) of this title (relating to Sanctions);

(10) - (11) (No change.)

(e) Motion for dismissal, responses, and replies. Dismissal of a proceeding or one or more issues within a proceeding may be made upon the motion of the presiding officer or the motion of any party.

(1) A party's motion for dismissal must specify at least one of the grounds for dismissal identified in subsection (d) of this section. The motion must include a statement that explains the basis for the dismissal and, if necessary:

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

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

(f) - (g) (No change.)

§22.182. Summary Decision.

(a) (No change.)

(b) Filing and contents of motion. Any party to a proceeding may move for summary decision on any or all of the issues. The motion must be filed before the close of the hearing on the merits or before the issuance of a proposal for decision or proposed order if no hearing is held, unless the time to file is extended by order of the presiding officer. The party filing the motion must [~~shall~~] demonstrate that the issue or issues may be resolved by summary decision in accordance with the standard set forth in subsection (a) of this section. Affidavits in support of the motion must [~~shall~~] be based on personal knowledge and must[~~shall~~] set forth such facts as would be admissible in evidence. A motion for summary decision must [~~shall~~] specifically describe the facts upon which the request for summary decision is based, the information and materials which demonstrate those facts, and the laws or legal theories that entitle the movant to summary decision.

(c) Response to motion. Any response to a motion for summary decision must [~~shall~~] be filed within 20 days, unless otherwise ordered [~~the time set~~] by the presiding officer. A party opposing the motion must [~~shall~~] show, by affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed, or evidence of record, that there is a genuine issue of material fact for determination at the hearing, or that summary decision is inappropriate as a matter of law.

(d) Hearing on the motion not required. A hearing on the motion for summary decision is not required [~~If appropriate, the presiding office shall set the motion for hearing~~].

(e) - (g) (No change.)

§22.183. Disposition by Default.

(a) Default. A default occurs when a party who does not have the burden of proof fails to appear for a hearing or fails to request a hearing within 30 days after service of notice of an opportunity for a hearing.

(b) Default order. Upon default, the presiding officer may issue a proposal for decision granting default and [~~default order - either a proposal for decision or a final order -~~] disposing of the proceeding without a hearing. In the proposal for decision granting default, the presiding officer may deem admitted the factual matters asserted in the notice of the opportunity for a hearing. A default order requires adequate proof that:

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

(c) - (e) (No change.)

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

Filed with the Office of the Secretary of State on August 25, 2025.

TRD-202503085
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 936-7244

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

The Public Utility Commission of Texas (commission) proposes amendments to 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 also proposed amendments to the Application to Obtain or Amend a Water or Sewer Certificate of Convenience and Necessity (CCN) form used in association with Chapter 24, Subchapter G, Certificates of Convenience and Necessity of the commission's substantive rules; the Application for Sale, Transfer, or Merger of a Retail Public Utility form used in association with 16 TAC §24.239; and a new Application for Expedited Sale, Transfer, or Merger of a Retail Public Utility form for use in association with 16 TAC §24.239.

The proposed rules will implement Texas Water Code §13.301 as revised by Senate Bill (SB) 1965 during the Texas 88th Regular Legislative Session and SB 740 during the Texas 89th Regular Legislative Session. The proposed 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.

Expedited STM Transactions (§24.239 and §24.243)

The amended rules will establish an expedited process for sale, transfer, merger (STM) transactions for water utilities in accordance with the requirements of SB 1965 and SB 740. STM transactions generally involve the acquisition of assets under Texas Water Code § 13.301 and 16 TAC §24.239 but can also involve the acquisition of stock or a controlling interest under Texas Water Code § 13.302 and 16 TAC §24.243.

Eligibility for expedited STM

Specifically, SB 1965 and SB 740 make certain water utilities that have also been appointed by the commission or Texas Commission on Environmental Quality (TCEQ) as a temporary manager, appointed by a court of competent jurisdiction as a receiver, or appointed by the commission as a supervisor eligible for an expedited STM transaction.

Waiver of notice for expedited STMs

In the expedited process, public notice requirements are waived regardless of whether the applicant elects to charge initial rates under 16 TAC §24.240 and Texas Water Code §13.3011, or use a voluntary valuation under 16 TAC §24.238, relating to Fair Market Valuation and Texas Water Code §13.305.

Waiver of review of financial, managerial, and technical requirements for expedited STMs

In an expedited STM, the applicant's appointment as a temporary manager, receiver, or supervisor is considered sufficient to demonstrate adequate financial, managerial, and technical capability for purposes of the expedited transaction.

Waiver of signature requirement in certain instances for expedited STMs

The signature of the owner is not required for commission approval of an expedited transaction if the owner has abandoned operation of the facilities that are the subject of the expedited

transaction and cannot be located or otherwise does not respond to the expedited application.

Deferral of enforcement proceedings for expedited STMs

The recent legislation also requires the commission to provide a "reasonable period" for the applicant, upon acquisition of the utility through the expedited process, to bring the acquired utility into compliance with commission rules before imposing a penalty for violations of the acquired utility for enforcement actions that are ongoing at the time of the acquisition.

Cost recovery procedures for expedited STMs (regulatory asset)

The expedited process also authorizes, if applicable, certain costs incurred by the applicant during the term of their appointment as a temporary manager, receiver, or supervisor to be considered a regulatory asset for the applicant that are recoverable in the applicant's next comprehensive base rate proceeding under 16 TAC Chapter 24, Subchapter B, relating to Rates and Tariffs (§§24.25-24.50) or system improvement charge application in accordance with 16 TAC §24.76, relating to System Improvement Charge. In the event temporary rates established in accordance with 16 TAC §24.363, the expedited process authorizes recovery of costs as a regulatory asset only to the extent such costs exceed the amount recovered by the temporary rates.

Other legislative changes (SB 740)

Amended 16 TAC §24.101 is revised to exempt municipal decisions regarding wholesale water or sewer service provided to another municipality from appeals concerning the amount paid for water or sewer service, in accordance with Texas Water Code § 13.043(f-1), as amended by SB 740.

Amended 16 TAC §24.357 adds definitions of "person" and "temporary manager" to incorporate the recent legislation and makes other conforming changes to the rule text as necessary.

Other non-legislative changes

Amended 16 TAC §24.239 is also revised to specify that, for a transaction that involves a nonfunctioning system to which a temporary manager has been appointed, the temporary manager's appointment and the monthly temporary manager's fee must be terminated upon final commission approval of the transaction.

Amended 16 TAC §24.239 and §24.243 also revise the phrase "commission approval" and variants thereof to differentiate between "[commission] approval for the transaction to proceed" and "final commission approval [of the transaction]" where necessary. These terms distinguish between commission approvals authorizing closing of the STM transaction versus the final commission determination that the closed transaction meets all applicable legal requirements and all issues attendant to the transaction are resolved.

The commission also makes minor clerical revisions for grammar and consistency with the commission's current style guide. Additionally, cross-references to §24.239 in amended §24.240 and §24.243 are revised to ensure accuracy. The public interest determination provision under §24.240(c)(5) is also revised for clarity.

Growth Impact Statement

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

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

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

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

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

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

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

(7) the proposed rule will change the number of individuals subject to the rule's applicability; and

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

Nima Momtahan, Receivership Coordinator, Division of Utility Outreach has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Mr. Momtahan has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be more efficient processing of certain water or sewer-related sale, transfer, or merger proceedings before the commission. There will not be any probable economic costs to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

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

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by October 2, 2025. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the effects of the proposed rule, including the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission also requests any data, research, or analysis from any person required to comply with the proposed rule or any other interested person. The commission will consider the information submitted by commenters and the costs and benefits of implementation in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 58390.

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

In addition to comments on the proposed rule text, the commission requests comments on the following question concerning the timing of the reconciliation of temporary rates in an STM proceeding:

1. 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 Project 50085 (See Commission Order, Item #58, Project 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.

SUBCHAPTER D. RATE-MAKING APPEALS

16 TAC §24.101

Statutory Authority

The amendments are proposed under 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 establishes 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.

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

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

(a) - (e) (No change.)

(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) - (j) (No change.)

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

Filed with the Office of the Secretary of State on August 22, 2025.

TRD-202503050
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 936-7244

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SUBCHAPTER H. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §§24.239, 24.240, 24.243

Statutory Authority

The amendments are proposed under 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 establishes 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.

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

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

(a) (No change.)

(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) - (2) (No change.)

(c) - (e) (No change.)

(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). [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.]

(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 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). [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 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.]

(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. [Before the expiration of the 120-day period described in subsection (a) 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 require a hearing if:]

[(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.]

(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. [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.]

(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: [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.]

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

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

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

[(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.]

(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. [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.]

(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: [The commission's approval of a sale, transfer, merger, consolidation, acquisition, lease, or rental of any water or sewer system or retail public utility expires 180 days following the date of the commission order allowing the transaction to proceed. If the sale has not been completed within that 180-day time period, the approval is void, unless the commission in writing extends the time period.]

(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. [If the commission does not require a hearing, and the transaction is completed as proposed, the commission may issue an order approving the transaction.]

(o) The commission order allowing the transaction to proceed expires 180 days from the date the order is issued. 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 in writing extends the time period. [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.]

(p) If the commission does not require a hearing, and the transaction is completed as proposed, the commission may issue an order approving the transaction to proceed. [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.]

(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. [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, 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. 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. 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).]

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

(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 the monthly 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 subject to the acquisition, be either:

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

(C) For purposes of determining eligibility under this paragraph, an applicant's appointment as a temporary manager or receiver of the utility subject to the application is sufficient to demonstrate adequate financial, managerial, and technical capability for:

(i) providing continuous and adequate service to the service area to be acquired; and

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

(2) Application. 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:

(A) 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

(B) 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.

(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 any other factor the commission deems relevant, including 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).

§24.240. Water and Sewer Utility Rates After Acquisition.

(a) (No change.)

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

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

(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 [~~by the commission~~]. An initial rate may be an existing rate, an authorized acquisition rate, or a rate authorized by other applicable law.

(c) Initial Rates.

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

(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. [~~In determining whether to approve an acquisition under §24.239 of this title, the commission will consider whether approving the transferee's request to charge authorized acquisition rates under this section would change whether the proposed transaction would serve the public interest under §24.239(h)(5) of this title.~~]

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

(1) - (5) (No change.)

(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[~~, according to any applicable criteria listed in §24.239(h)(5) of this title~~];

(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) (No change.)

(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[~~(h)~~] 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[~~(h)~~] 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[~~(h)~~] 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) (No change.)

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

(a) - (c) (No change.)

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

(e) - (h) (No change.)

(i) The commission approval of a transaction to proceed under this section [~~commission's approval of a utility's purchase of voting stock or a person's acquisition of a controlling interest in a utility~~] expires 180 days after the date of the commission order approving the transaction as proposed. If the transaction has not been completed within the 180-day time period, and unless the utility purchasing voting stock or the person acquiring a controlling interest has requested and received an extension for good cause from the commission, the commission approval of the transaction to proceed is void.

(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 subject to the acquisition, be either:

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

(C) For purposes of determining eligibility under this paragraph, an applicant's appointment as a temporary manager or receiver of the utility subject to the application is sufficient to demonstrate adequate financial, managerial, and technical capability for:

(i) providing continuous and adequate service to the service area to be acquired; and

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

(2) Application. 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:

(A) 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

(B) 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.

(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 any other factor the commission deems relevant, including 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 proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2025.

TRD-202503051

Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 936-7244

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SUBCHAPTER K. ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

16 TAC §24.357, §24.363

Statutory Authority

The amendments are proposed under 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 establishes 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.

Cross Reference to Statute: Texas Water Code §§ 13.041(a), 13.041(b), 13.043(f-1), 13.301, 13.3021; 13.412(g)l 13.4132(a), 13.4132(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. [~~By emergency order under TWC §13.4132, the commission may appoint a person, municipality, or political subdivision under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water Utilities) to temporarily manage and/or 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.~~]

(1) Person -- natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, water supply or sewer service corporations, corporations, a municipally owned utility, county, 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. [~~A person, municipality, or political subdivision 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.~~]

(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: [~~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.~~]

(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. [~~The temporary manager shall 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.]

(e) The temporary manager must serve a term of 180 days, unless: [Within 60 days after appointment, a temporary manager shall return to the commission an inventory of all property received.]

(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 property received. [Compensation for the temporary manager will come from utility revenues and will be set by the commission at the time of appointment. Changes in the compensation agreement may be approved by the commission.]

(g) Compensation for the temporary manager will come from utility revenues and will be set by the commission at the time of appointment. Changes in the compensation agreement may be approved by the commission. [The temporary manager shall 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 shall give priority to expenses incurred in normal utility operations and for repairs and improvements made since being appointed temporary manager.]

(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. [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.]

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

(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 must 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) - (d) (No change.)

(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, 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.

(2) This regulatory asset is eligible for recovery in the person's next comprehensive rate proceeding or system improvement charge application.

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

Filed with the Office of the Secretary of State on August 22, 2025.

TRD-202503052
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 936-7244

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CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes amendments to 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 scope of this rulemaking proceeding 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. Substantive amendments to these rules unrelated to the proposed changes are not within the scope of this proceeding. Further, an amendment proposed to a rule provision to bring it into conformity with the commission's current style does not make other substantive changes to that provision within scope. A comprehensive review of the commission's energy efficiency-related rules may be taken up in a subsequent rulemaking.

Proposed 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. Proposed amendments to §25.182 change the calculation of the utility incentive (known as the performance bonus in the existing rule) and allow the commission to further limit the utility incentive for good cause. Other amendments to these rules are minor and conforming changes. Some of the minor and conforming

changes are related to definitions. Specifically, two definitions have been moved from §25.181 to §25.5, one new definition has been added to §25.5, one definition in §25.5 has been amended, 14 definitions in §25.181 have been deleted because they are superfluous or already existing in §25.5, one definition has been added to §25.181 (low-income), and three definitions in §25.181 have been substantively edited. Finally, other minor changes bring these rules into conformity with agency guidelines for rule language.

The commission also proposes a template in Excel format that is filed on the commission's website in project number 57743. This template will be considered for adoption alongside the proposed amendments to the rule language.

Growth Impact Statement

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

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

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

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

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

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

(6) the proposed rules will expand an existing regulation;

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

(8) the proposed rules will affect this state's economy.

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

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

Public Benefits

Ms. DiLeo has determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the sections will be lower costs assessed to consumers to fund utility energy efficiency programs. There will not be any probable economic costs to persons required to comply with the rules under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by October 6, 2025. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by October 6, 2025. Comments should be organized consistent with the organization of the amended rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rules. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to project number 57743.

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

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §25.5

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; and §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The amendments are also proposed under PURA §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 PURA §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 Statute: Public Utility Regulatory Act §14.001, §14.002, §36.204, and §39.905.

§25.5. Definitions.

In this chapter, the following definitions apply unless the context indicates otherwise:

(1) - (24) (No change.)

(25) Deemed savings--A pre-determined, validated estimate of energy savings and [~~peak~~] demand reduction [~~savings~~] attributable to an energy efficiency measure in a particular type of application that a utility may use instead of energy savings and [~~peak~~] demand reduction [~~savings~~] determined through measurement and verification activities.

(26) - (76) (No change.)

(77) 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.

(78) [~~(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 Natural Resource Conservation Commission (TNRCC) in effect at the time of filing.

(79) [~~(78)~~] Off-grid renewable generation--The generation of renewable energy in an application that is not interconnected to a utility transmission or distribution system.

(80) [~~(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.

(81) [~~(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.

(82) [~~(81)~~] Power cost recovery factor (PCRF)--A charge or credit that reflects an increase or decrease in purchased power costs not in base rates.

(83) [~~(82)~~] Power generation company (PGC)--A person that:

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

(84) [~~(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.

(85) [~~(84)~~] Power region--A contiguous geographical area that is a distinct region of the North American Electric Reliability Council.

(86) [~~(85)~~] Pre-interconnection study--A study or studies that may be undertaken by a utility in response to its receipt of a completed application for interconnection and parallel operation with the utility system at distribution voltage. Pre-interconnection studies may include, but are not limited to, service studies, coordination studies, and utility system impact studies.

(87) [~~(86)~~] Premises--A tract of land or real estate or related commonly used tracts including buildings and other appurtenances thereon.

(88) [~~(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.

(89) [~~(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.

(90) [~~(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.

(91) [~~(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)).

(92) [~~(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.

(93) [~~(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.

(94) [~~(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*.

(95) [~~(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.

(96) [~~(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.

(97) [~~(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.

(98) [~~(97)~~] Qualifying facility--A qualifying cogenerator or qualifying small power producer.

(99) [~~(98)~~] Qualifying small power producer--As defined by 16 U.S.C. §796(17)(D).

(100) [~~(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.

(101) [~~(100)~~] Rate class--A group of customers taking electric service under the same rate schedule.

(102) [~~(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.

(103) [~~(102)~~] Ratemaking proceeding--A proceeding in which a rate may be changed.

(104) [~~(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.

(105) [~~(104)~~] Regulatory authority--In accordance with the context where it is found, either the commission or the governing body of a municipality.

(106) [~~(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.

(107) [~~(106)~~] Renewable energy--Energy derived from renewable energy technologies.

(108) [~~(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).

(109) [~~(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.

(110) [~~(109)~~] Renewable energy resource (renewable resource)--A resource that produces energy derived from renewable energy technologies.

(111) [~~(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.

(112) [~~(111)~~] Repowering--Modernizing or upgrading an existing facility in order to increase its capacity or efficiency.

(113) [~~(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.

(114) [~~(113)~~] Retail customer--The separately metered end-use customer who purchases and ultimately consumes electricity.

(115) [~~(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.

(116) [~~(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.

(117) [~~(116)~~] Retail stranded costs--That part of net stranded cost associated with the provision of retail service.

(118) [~~(117)~~] Retrofit--The installation of control technology on an electric generating facility to reduce the emissions of nitrogen oxide, sulfur dioxide, or both.

(119) [~~(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.

(120) [~~(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.

(121) 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.

(122) [~~(120)~~] Separately metered--Metered by an individual meter that is used to measure electric energy consumption by a retail customer and for which the customer is directly billed by a utility, retail electric provider, electric cooperative, or municipally owned utility.

(123) [~~(121)~~] Service--Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by an electric utility in the performance of its duties under 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.

(124) Small business--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.

(125) [~~(122)~~] Spanish-speaking person--A person who speaks any dialect of the Spanish language exclusively or as their primary language.

(126) [~~(123)~~] Standard meter--The minimum metering device necessary to obtain the billing determinants required by the transmission and distribution utility's tariff schedule to determine an end-use customer's charges for transmission and distribution service.

(127) [~~(124)~~] Stranded cost--The positive excess of the net book value of generation assets over the market value of the assets, taking into account all of the electric utility's generation assets, any above-market purchased-power costs, and any deferred debit related to a utility's discontinuance of the application of Statement of Financial Accounting Standards Number 71 ("Accounting for the Effect of Certain Types of Regulation") for generation-related assets if required by the provisions of 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.

(128) [~~(125)~~] Submetering--Metering of electricity consumption on the customer side of the point at which the electric utility measures electricity consumption for billing purposes.

(129) [~~(126)~~] Summer net dependable capability--The net capability of a generating unit in megawatts (MW) for daily planning and operational purposes during the summer peak season, as determined in accordance with requirements of the reliability council or independent organization in which the unit operates.

(130) [~~(127)~~] Supply-side resource--A resource, including a storage device, that provides electricity from fuels or renewable resources.

(131) [~~(128)~~] System emergency--A condition on a utility's system that is likely to result in imminent, significant disruption of service to customers or is imminently likely to endanger life or property.

(132) [~~(129)~~] Tariff--The schedule of a utility, municipally-owned utility, or electric cooperative containing all rates and charges stated separately by type of service, the rules and regulations of the utility, and any contracts that affect rates, charges, terms or conditions of service.

(133) [~~(130)~~] Termination of service--The cancellation or expiration of a sales agreement or contract by a retail electric provider by notification to the customer and the registration agent.

(134) [~~(131)~~] Tenant--A person who is entitled to occupy a dwelling unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.

(135) [~~(132)~~] Test year--The most recent 12 months for which operating data for an electric utility, electric cooperative, or municipally-owned utility are available and shall commence with a calendar quarter or a fiscal year quarter.

(136) [~~(133)~~] Texas jurisdictional installed generation capacity--The amount of an affiliated power generation company's installed generation capacity properly allocable to the Texas jurisdiction. Such allocation shall be calculated pursuant to an existing commission-approved allocation study, or other such commission-approved methodology, and may be adjusted as approved by the commission to reflect the effects of divestiture or the installation of new generation facilities.

(137) [~~(134)~~] Transition bonds--Bonds, debentures, notes, certificates, of participation or of beneficial interest, or other evidences of indebtedness or ownership that are issued by an electric utility, its successors, or an assignee under a financing order, that have a term not longer than 15 years, and that are secured or payable from transition property.

(138) [~~(135)~~] Transition charges--Non-bypassable amounts to be charged for the use or availability of electric services, approved by the commission under a financing order to recover qualified costs, that shall be collected by an electric utility, its successors, an assignee, or other collection agents as provided for in a financing order.

(139) [~~(136)~~] Transmission and distribution business unit (TDBU)--The business unit of a municipally owned utility/electric cooperative, whether structurally unbundled as a separate legal entity or functionally unbundled as a division, that owns or operates for compensation in this state equipment or facilities to transmit or distribute electricity at retail, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of electric utility in a qualifying power region certified under 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.

(140) [~~(137)~~] Transmission and distribution utility (TDU)--A person or river authority that owns, or operates for compensation in this state equipment or facilities to transmit or distribute electricity, except for facilities necessary to interconnect a generation facility with the transmission or distribution network, a facility not dedicated to public use, or a facility otherwise excluded from the definition of "electric utility", in a qualifying power region certified under 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.

(141) [~~(138)~~] Transmission line--A power line that is operated at 60 kilovolts (kV) or above, when measured phase-to-phase.

(142) [~~(139)~~] Transmission service--Service that allows a transmission service customer to use the transmission and distribution facilities of electric utilities, electric cooperatives and municipally owned utilities to efficiently and economically utilize generation resources to reliably serve its loads and to deliver power to another transmission service customer. Includes construction or enlargement of facilities, transmission over distribution facilities, control area services, scheduling resources, regulation services, reactive power support, voltage control, provision of operating reserves, and any other associated electrical service the commission determines appropriate, except that, on and after the implementation of customer choice in any portion of the 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.

(143) [~~(140)~~] Transmission service customer--A transmission service provider, distribution service provider, river authority, municipally-owned utility, electric cooperative, power generation company, retail electric provider, federal power marketing agency, exempt wholesale generator, qualifying facility, power marketer, or other person whom the commission has determined to be eligible to be a transmission service customer. A retail customer, as defined in this section, may not be a transmission service customer.

(144) [~~(141)~~] Transmission service provider (TSP)--An electric utility, municipally-owned utility, or electric cooperative that owns or operates facilities used for the transmission of electricity.

(145) [~~(142)~~] Transmission system--The transmission facilities at or above 60 kilovolts (kV) owned, controlled, operated, or supported by a transmission service provider or transmission service customer that are used to provide transmission service.

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

Filed with the Office of the Secretary of State on August 22, 2025.

TRD-202503056
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Public Utility Commission of Texas
Earliest possible date of adoption: October 5, 2025
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SUBCHAPTER H. ELECTRICAL PLANNING
DIVISION 2. ENERGY EFFICIENCY AND CUSTOMER-OWNED RESOURCES

16 TAC §25.181, §25.182

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; and §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The amendments are also proposed under PURA §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 PURA §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 Statute: Public Utility Regulatory Act §14.001, §14.002, §36.204, and §39.905.

§25.181. Energy Efficiency Goal.

(a) Purpose. The purpose of this section is to ensure that:

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

(3) each electric utility annually provides, through market-based standard offer programs, targeted market-transformation programs, or utility self-delivered programs, program incentives 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) (No change.)

(c) Definitions. The following terms, when used in this section and in §25.182 of this title, [~~shall~~] have the following meanings unless the context indicates otherwise:

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

(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 [~~and/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 [~~and/or~~] lifetime energy or demand savings values. Can be indicated as gross savings or [~~and/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 [~~shall~~] be considered a separate customer.

[~~(5) Competitive energy efficiency services--Energy efficiency services that are defined as competitive under §25.341 of this title (relating to Definitions).~~]

(5) [~~(6)~~] 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) [~~(7)~~] 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) [~~(8)~~] 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 and peak demand savings determined through measurement and verification activities.

[~~(9) Demand--The rate at which electric energy is used at a given instant, or averaged over a designated period, usually expressed in kW or megawatts (MW).~~]

[~~(10) Demand savings--A quantifiable reduction in demand.~~]

(8) [~~(11)~~] 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.

[(12) Energy efficiency--Improvements in the use of electricity that are achieved through customer facility or customer equipment improvements, devices, processes, or behavioral or operational changes that produce reductions in demand or energy consumption with the same or higher level of end-use service and that do not materially degrade existing levels of comfort, convenience, and productivity.]

[(13) Energy Efficiency Cost Recovery Factor (EECRF)--An electric tariff provision, compliant with §25.182 of this title, ensuring timely and reasonable cost recovery for utility expenditures made to satisfy the goal of PURA §39.905 that provide for a portfolio of cost-effective energy efficiency programs under this section.]

[(14) Energy efficiency measures--Equipment, materials, and practices, including practices that result in behavioral or operational changes, implemented at a customer's site on the customer's side of the meter that result in a reduction at the customer level and/or on the utility's system in electric energy consumption, measured in kWh, or peak demand, measured in kW, or both. These measures may include thermal energy storage and removal of an inefficient appliance so long as the customer need satisfied by the appliance is still met.]

(9) [(15)] 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.

[(16) Energy efficiency project--An energy efficiency measure or combination of measures undertaken in accordance with a standard offer, market transformation program, or self-delivered program.]

[(17) 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.]

[(18) Energy savings--A quantifiable reduction in a customer's consumption of energy that is attributable to energy efficiency measures, usually expressed in kWh or MWh.]

(10) [(19)] 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.

(11) [(20)] 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 [and/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 savings 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 [and/or] lifetime energy or demand savings values. Can be indicated as gross savings or [and/or] net savings values.

(12) [(21)] 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.

[(22) Evaluation, measurement, and verification (EM&V) contractor--One or more independent, third-party contractors selected and retained by the commission to plan, conduct, and report on energy efficiency evaluation activities, including verification.]

(13) [(23)] Free driver--Customers who do not directly participate in an energy efficiency program, but who undertake energy efficiency actions in response to program activity.

(14) [(24)] 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.

(15) [(25)] 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.

(16) [(26)] Gross savings--The change in energy consumption or [and/or] demand that results directly from program-related actions taken by participants in an efficiency program, regardless of why they participated.

(17) [(27)] Hard-to-reach [customers]--A customer that meets one of the following criteria: [Residential customers with an annual household income at or below 200% of the federal poverty guidelines.]

(A) has a primary residence in an area with fewer than 2,000 housing units or a total population of 5,000 or less; or

(B) 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. Such market barriers may include limited access to an energy efficiency contractor or energy efficiency service provider.

(18) [(28)] Impact evaluation--An evaluation of the program-specific, directly induced changes (e.g., energy or [and/or] demand reduction) attributable to an energy efficiency program.

(19) [(29)] Program incentive [Incentive] payment--Payment made by a utility to an energy efficiency service provider, an end-use customer, or third-party contractor to implement [and/or] attract customers to energy efficiency programs, including standard offer, market transformation and self-delivered programs.

(20) [(30)] 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) [(31)] 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) [~~(32)~~] Installation rate--The percentage of measures that receive a program incentive [~~incentives~~] 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 [~~incentives~~] under an efficiency program in a defined period of time.

[~~(33) International performance measurement and verification protocol (IPMVP)--A guidance document issued by the Efficiency Valuation Organization with a framework and definitions describing the M&V approaches.~~]

(23) [~~(34)~~] Lifetime energy (demand) savings--The energy (demand) savings over the lifetime of an installed measure, project, or program [~~measure(s), project(s), or program(s)~~]. May include consideration of measure estimated useful life, technical degradation, and other factors. Can be gross or net savings.

[~~(35) Load control--Activities that place the operation of electricity-consuming equipment under the control or dispatch of an energy efficiency service provider, an independent system operator, or other transmission organization or that are controlled by the customer, with the objective of producing energy or demand savings.~~]

(24) [~~(36)~~] Load management--Activities [~~Load control 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 that either:

(A) meets the criteria for "low-income" as determined by the United States Department of Housing and Urban Development (HUD) (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

(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.

(26) [~~(37)~~] 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) [~~(38)~~] 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 [~~and/or~~] computer simulation modeling. M&V approaches are defined in the International Performance Measurement and Verification Protocol [~~IPMVP~~].

(28) [~~(39)~~] Net savings--The total change in load that is attributable to an energy efficiency program. This change in energy or [~~and/or~~] demand use must [~~shall~~] 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 [~~and/or~~] other non-program causes of changes in energy use or [~~and/or~~] demand.

[~~(40) Net-to-gross--A factor representing net program savings divided by gross program savings that is applied to gross program impacts to convert them into net program impacts. The factor may be made up of a variety of factors that create differences between gross and net savings, commonly considering the effects of free riders and spillover.~~]

(29) [~~(41)~~] 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) [~~(42)~~] 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) [~~(43)~~] 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) [~~(44)~~] Peak demand--A distribution utility's [~~Electrical demand at the times of~~] highest annual retail demand [~~on the utility's system~~] at the source, used to determine the utility's annual energy efficiency goal [~~. Peak demand refers to Texas retail peak demand and, therefore, does not include demand of retail customers in other states or wholesale customers~~].

[~~(45) Peak demand reduction--Reduction in demand on the utility's system at the times of the utility's summer peak period or winter peak period.~~]

(33) [~~(46)~~] 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[~~, excluding weekends and Federal holidays~~].

(34) [~~(47)~~] Program year--A year in which an energy efficiency incentive program is implemented, beginning January 1 and ending December 31.

(35) [~~(48)~~] Projected savings--Estimated program or portfolio savings reported by an electric utility for planning purposes. [~~Values reported by an electric utility prior to the time the energy efficiency activities are implemented. Are typically estimates of savings prepared for program and/or portfolio design or planning purposes. These values are based on pre-program or portfolio estimates of factors such as per-unit savings values, operating hours, installation rates, and savings persistence rates. These values may utilize results of prior evaluations and/or values in the Technical Reference Manual. Can be indicated as first year, annual demand or energy savings, and/or lifetime energy or demand savings values. Can be indicated as gross savings and/or net savings values.~~]

[~~(49) Renewable demand side management (DSM) technologies--Equipment that uses a renewable energy resource (renewable resource), as defined in §25.173(c) of this title (relating to Goal for Renewable Energy), a geothermal heat pump, a solar water heater, or another natural mechanism of the environment, that when installed at a customer site, reduces the customer's net purchases of energy, demand, or both.~~]

[~~(50) 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, inclusive of any incidental repairs, of those energy efficiency measures.~~]

(36) [~~(51)~~] 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.

(37) [~~(52)~~] Spillover--Reductions in energy consumption or [~~and/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 [~~and/or~~] non-participant spillover.

(38) [~~(53)~~] Spillover rate--Estimate of energy savings attributable to spillover expressed as a percent of savings installed by participants through an energy efficiency program.

(39) [~~(54)~~] 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.

(40) [~~(55)~~] Standard offer program--A program under which a utility administers standard offer contracts between the utility and energy efficiency service providers.

(41) [~~(56)~~] 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.

(42) [~~(57)~~] 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 [~~and/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 incentives, EM&V contractor costs, utility incentive [~~any shareholder bonus awarded to the utility~~], 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 [~~shall~~] be calculated over the projected life of the measures installed or implemented under the program.

(2) The avoided cost of capacity must [~~shall~~] be established in accordance with this paragraph.

(A) By November 1 of each year, commission staff must [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] be $120 per kW-year.

(iii) (No change.)

(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 [~~shall~~] 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 [~~shall~~] be disclosed in the filing.

(3) The avoided cost of energy must [~~shall~~] be established in accordance with this paragraph.

(A) By April 1 [~~November 1~~] of each year, ERCOT must [~~shall~~] file its calculation of the avoided cost of energy for the upcoming calendar year for the ERCOT region[~~, as defined in §25.5(48) of this title (relating to Definitions), in the commission's central records~~] under the control number for the energy efficiency implementation project. ERCOT must [~~shall~~] 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 [~~two~~] previous winter and summer peaks. 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) (No change.)

(e) Annual energy efficiency goals.

(1) An electric utility must [~~shall~~] administer a portfolio of energy efficiency programs to acquire, at a minimum, the following:

(A) Until [~~Beginning with the 2013 program year, until~~] the trigger described in subparagraph (B) of this paragraph is reached, the utility must [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] 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) (No change.)

(3) Each utility's demand-reduction goal must [~~shall~~] be calculated as follows:

(A) Each year's historical demand for residential and commercial customers must [~~shall~~] 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 [~~shall~~] calculate the average growth rate for the prior five years.

(B) - (C) (No change.)

(D) If a utility's prior five-year average load growth, calculated under subparagraph (A) of this paragraph, is negative, the utility must [~~shall~~] 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 [~~shall~~] use the previous year's demand reduction goal.

(E) A utility must [~~shall~~] not claim savings obtained from energy efficiency measures funded through settlement orders or count towards the utility incentive [~~bonus calculation~~] any savings obtained from grant funds [~~incentives~~] that have been awarded directly to the utility for energy efficiency programs.

(F) Savings achieved through programs for hard-to-reach customers must [~~shall~~] be no less than 5.0% of the utility's total demand reduction goal. 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.

(G) Utilities may apply demand reduction and energy [~~peak~~] savings on a per project basis to summer or winter peak, but not to both summer and winter peaks.

(4) An electric utility must [~~shall~~] 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 [~~shall~~] administer a portfolio of energy efficiency programs to effectively and efficiently achieve the goals set out in this section.

(A) Program incentive [~~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 [~~shall~~] 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) - (iii) (No change.)

(C) (No change.)

(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 rebate or program incentive funds directly to eligible residential and commercial customers for programs implemented under this section; or

(ii) (No change.)

(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 rebate or program incentive funds 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 [~~Incentive payments~~]. The program incentive payments for each customer class must [~~shall~~] not exceed 100% of avoided cost, as determined in accordance with this section. The program incentive payments must [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] not exceed 10% of a utility's total program costs for that program year. The cumulative cost of administration and research and development must [~~shall~~] 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 [~~shall~~] be allocated among the programs in proportion to the program incentive costs. Any utility incentive [~~bonus~~] awarded by the commission must [~~shall~~] not be included in program costs for the purpose of applying these limits.

(1) (No change.)

(2) A utility must [~~shall~~] 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 incentives that a single energy efficiency service provider and its affiliates is eligible for and establishing funding set-asides for small projects.

(3) (No change.)

(4) Electric utilities offering standard offer, market transformation, and self-delivered programs must [~~shall~~] use standardized forms, procedures, and program templates. The electric utility must [~~shall~~] 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[~~shall~~] 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 [~~shall~~] 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 [~~shall~~] 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 incentives to facilitate the statewide marketing and delivery of the same or similar programs by retail electric providers;

(B) - (C) (No change.)

(h) Standard offer programs. A utility's standard offer program must [~~shall~~] 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 incentives 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 [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] provide for a complaint process that allows:

(i) - (ii) (No change.)

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

(G) may require energy efficiency service providers to provide the following:

(i) a description of how the value of any program incentive will be passed on to customers;

(ii) - (vi) (No change.)

(2) Standard offer and self-delivered programs:

(A) must [~~shall~~] 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 [~~shall~~] 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 pay program incentives 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 [~~shall~~] 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 [~~shall~~] encourage comprehensive projects incorporating more than one energy efficiency measure;

(E) must [~~shall~~] 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) (No change.)

(3) A market transformation program must [~~shall~~] identify:

(A) - (D) (No change.)

(E) a baseline study that is appropriate in time and geographic region. In establishing a baseline, the study must [~~shall~~] con-

sider the level of regional implementation and enforcement of any applicable energy code;

(F) - (H) (No change.)

(I) the period over which savings must [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] use fair competitive procedures to select energy efficiency service providers to conduct a market transformation program, and must [~~shall~~] 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 [~~shall~~] not permit an energy efficiency service provider to receive program incentives 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 for demand reduction offered under a utility load-control standard offer program.

(6) Utilities offering load management programs must [~~shall~~] work with ERCOT and energy efficiency service providers to identify eligible loads and must [~~shall~~] integrate such loads into the ERCOT markets to the extent feasible. Such integration must[~~shall~~] 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 [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] be based on program years. The plan and report must [~~shall~~] propose an annual budget sufficient to reach the goals specified in this section.

(2) Each electric utility's plan and report must [~~shall~~] include:

(A) - (H) (No change.)

(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 [~~shall~~] 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) - (N) (No change.)

(O) expenditures for the prior five years for energy and demand program incentive payments and program administration, by program and customer class;

(P) - (U) (No change.)

(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 [~~shall~~] include the budget and projected demand and energy savings;

(W) - (X) (No change.)

(m) No change.)

(n) Inspection, measurement and verification. Each standard offer, market transformation, and self-delivered program must [~~shall~~] include use of an industry-accepted evaluation or [~~and/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 [~~shall~~] not provide an energy efficiency service provider final compensation until the provider establishes that the work is complete and evaluation or [~~and/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 [~~shall~~] 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 [~~shall~~] provide inspection reports to commission staff within 20 days of staff's request.

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

(3) Where installed measures are employed, an energy efficiency service provider must [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] occur within 30 days of notification of measure installation.

(6) (No change.)

(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) - (2) (No change.)

(3) The commission must [~~shall~~] select an entity to act as the commission's EM&V contractor and conduct evaluation activities. The EM&V contractor must [~~shall~~] operate under the commission's supervision and oversight, and the EM&V contractor must [~~shall~~] offer independent analysis to the commission in order to assist in making decisions in the public interest.

(A) (No change.)

(B) The EM&V contractor must [~~shall~~] have the authority to request data it considers necessary to fulfill its evaluation, measurements, and verification responsibilities from the utilities. A utility must [~~shall~~] 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 [~~shall~~] include, but are not limited to:

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

(5) (No change.)

(6) The following apply to the development of a statewide TRM by the EM&V contractor.

(A) The EM&V contractor must [~~shall~~] 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 [~~shall~~] include applicability requirements for each deemed savings value or deemed savings calculation. The TRM may also include standardized EM&V protocols for determining or [~~and/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 [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] be applied prospectively to programs offered in the appropriate program year.

(E) The TRM must [~~shall~~] be publicly available.

(F) Utilities must [~~shall~~] utilize the values contained in the TRM, unless the commission indicates otherwise.

(7) The utilities must [~~shall~~] prepare projected savings estimates and claimed savings estimates. The utilities must [~~shall~~] 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 [~~shall~~] prepare evaluated savings for preparation of its evaluation reports and a realization rate comparing evaluated savings with projected savings estimates or [~~and/or~~] claimed savings estimates.

(8) Baselines for preparation of TRM deemed savings values or deemed savings calculations or for other evaluation activities must [~~shall~~] be defined by the EM&V contractor and commission staff must [~~shall~~] review and approve them. When common practice baselines are defined for determining gross energy or [~~and/or~~] demand savings for a measure or program, common practice may be documented by market studies. Baselines must [~~shall~~] be defined by measure category as follows (deviations from these specifications may be made with justification and approval of commission staff):

(A) - (D) (No change.)

(9) (No change.)

(10) The utilities must [~~shall~~] be assigned the EM&V costs in proportion to their annual program costs and must [~~shall~~] pay the invoices approved by the commission. The commission must [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] be itemized in the utilities' annual reports to the commission as a separate line item. The EM&V costs must [~~shall~~] not count against the utility's cost caps or administration spending caps.

(11) For the purpose of analysis, the utility must [~~shall~~] 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 [~~shall~~] be treated as confidential information.

(A) The utility must [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] 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. Each unbundled transmission and distribution utility must [~~shall~~] include in its energy efficiency plan a targeted low-income energy efficiency program. A utility in an area in which customer choice is not offered may include in its energy efficiency plan a targeted low-income energy efficiency program that utilizes the cost-effectiveness methodology provided in paragraph (2) of this subsection. Savings achieved by the program must [~~shall~~] count toward the utility's energy efficiency goal.

(1) Each utility must [~~shall~~] ensure that annual expenditures for the targeted low-income energy efficiency program are not less than 10% of the utility's energy efficiency budget for the program year.

(2) The utility's targeted low-income program must [~~shall~~] 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 [~~shall~~] be evaluated using the Savings-to-Investment ratio (SIR).

(3) Any funds that are not obligated after July of a program year may be made available for use in the hard-to-reach program.

(q) Energy Efficiency Implementation Project - EEIP. The commission will [~~shall~~] 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 [~~shall~~] provide timely responses to questions posed by other participants relevant to the tasks of the EEIP. Any recommendations from the EEIP process must [~~shall~~] relate to future years as described in this subsection.

(1) The following functions may also be undertaken in the EEIP:

(A) - (D) (No change.)

(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) - (I) (No change.)

(2) The EEIP projects must [~~shall~~] be conducted by commission staff. The commission's EM&V contractor's reports must [~~shall~~] 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 [~~shall~~] file a program template and must [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] be submitted to the commission in a petition in a separate proceeding. The approved changes must [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] be made of the following:

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

(C) the fact that program incentives are made available 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 incentives that will be provided to the customer;

(E) - (I) (No change.)

(J) a description of the complaint procedure established by the utility under this section, and toll-free [~~toll free~~] numbers for the Consumer [~~Customer~~] 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 [~~shall~~] include:

(A) - (D) (No change.)

(3) When an energy efficiency service provider completes the installation of measures for a customer, it must [~~shall~~] 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 [~~shall~~] 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. [~~Identification notice.~~] 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) [~~(c)(30)~~] of this section. The identification notice must [~~shall~~] 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(s) or ESID number(s).

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(s) or ESID number(s) identified by the industrial customer under this section must [~~shall~~] not be charged for any costs associated with programs provided under this section, including any shareholder bonus awarded; nor must [~~shall~~] the identified facilities be eligible to participate in utility-administered energy efficiency programs during the term. Notices must [~~shall~~] be submitted not later than February 1 to be effective for the following program year. A utility's demand reduction goal must [~~shall~~] be adjusted to remove any load that is lost as a result of this subsection.

(v) (No change.)

§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) (No change.)

(2) a [~~an~~] 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) (No change.)

(c) Definitions. The definitions provided in §25.181(c) of this title [~~shall~~] also apply in this section. The following terms, when used in this section, [~~shall~~] have the following meaning unless the context indicates otherwise:

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

(d) Cost recovery. A utility must [~~shall~~] 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 [~~shall~~] 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 [~~performance~~] bonus 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) (No change.)

(2) The commission may approve an EECRF for each eligible rate class. The costs must [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] be included in the EECRF calculated under paragraph (1) of this subsection as follows:

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

(4) Base rates must [~~shall~~] 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 [~~shall~~] be designed to provide only for energy charges. For non-residential rate classes whose base rates provide for demand charges, the EECRF rates must [~~shall~~] provide for energy charges or demand charges, but not both. Any EECRF demand charge must [~~shall~~] 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 [~~shall~~] not exceed the amounts prescribed in this paragraph unless a good cause exception filed under §25.181(e)(2) of this title is granted. 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.

~~[(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 shall 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 [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] be March 1. The presiding officer must [~~shall~~] 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 [~~shall~~] also provide that the compliance filing date will be at least 45 days before the effective date of March 1. The [~~In no event shall the~~] effective date of any new or adjusted EECRF must occur at least [~~less than~~] 45 days after the utility files a compliance tariff consistent with a final order approving the new or adjusted EECRF. The utility must [~~shall~~] 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 [~~in no event shall~~] the effective date of any new or adjusted EECRF must occur at least [~~less than~~] 45 days after the utility files a compliance tariff consistent with a final order approving the new or adjusted EECRF.[~~, and in no event shall~~] The [~~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 [~~shall~~] 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 [~~shall~~] be March 1. The presiding officer must [~~shall~~] 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 [~~shall~~] also provide that the compliance filing date will be at least 45 days before the effective date of March 1. The [~~In no event shall the~~] effective date of any new or adjusted EECRF must occur at least [~~less than~~] 45 days after the utility files a compliance tariff consistent with a final order approving the new or adjusted EECRF. The utility must [~~shall~~] 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 [~~in no event shall~~] the effective date of any new or adjusted EECRF must occur at least [~~less than~~] 45 days after the utility files a compliance tariff consistent with a final order approving the new or adjusted EECRF.[~~, and in no event shall~~] The [~~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 [~~shall~~] 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 [~~shall~~] 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 [~~shall~~] 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) - (B) (No change.)

(C) a calculation showing whether the utility qualifies for a [~~an~~] utility incentive [~~energy efficiency performance bonus~~] and the amount that it calculates to have earned for the prior year;

(D) - (G) (No change.)

(H) the program incentive payments by the utility, by program, including a list of each energy efficiency administrator or [~~and/or~~] service provider receiving more than 5% of the utility's overall program incentive payments and the percentage of the utility's program incentives received by those providers. Such information may be treated as confidential;

(I) - (M) (No change.)

(11) The following factors must be included in the application, as applicable, to support the recovery of energy efficiency costs under this subsection.

(A) - (I) (No change.)

(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 [~~shall~~] 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 [~~shall~~] 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) (No change.)

(14) The utility must [~~shall~~] file an affidavit attesting to the completion of notice within 14 days after the application is filed.

(15) (No change.)

(e) Utility incentive [~~Energy efficiency performance bonus~~]. To receive a utility incentive, a [~~A~~] utility must exceed [~~that exceeds~~] 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 [~~shall be awarded a performance bonus calculated in accordance with this subsection~~]. The utility incentive must [~~performance bonus shall~~] be based on the utility's energy efficiency achievements for the previous program year. The utility incentive [~~bonus~~] calculation must [~~shall~~] 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 [~~performance bonus shall entitle the~~] utility to receive a share of the net benefits realized in exceeding [~~meeting~~] its demand reduction goal established according to [~~in~~] §25.181 of this title.

(2) Net benefits are [~~shall be~~] 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 [~~shall~~] include the cost of program incentives, incurred EM&V contractor costs, any utility incentive [~~shareholder bonus~~] awarded to the utility, and actual or allocated research and development and administrative costs, but do [~~shall~~] not include any interest amounts applied to over- or under-recoveries. Total avoided costs and program costs must [~~shall~~] be calculated in accordance with this section and §25.181 of this title.

(3) A utility that exceeds 100% of its demand and energy reduction goals may [~~shall~~] receive a utility incentive [~~bonus~~] equal to 1% of the net benefits for every 2% that the demand reduction goal has been exceeded, with a maximum of 5% [~~10%~~] of the utility's total net benefits. The commission may further limit the maximum utility incentive a utility may receive for good cause.

(4) The commission may reduce the utility incentive [~~bonus~~] 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 [~~bonus shall~~] be considered in the EECRF proceeding in which the utility incentive [~~bonus~~] is requested.

(5) In calculating net benefits to determine a utility incentive [~~performance bonus~~], a discount rate equal to the utility's weighted average cost of capital of the utility and an escalation rate of 2% must [~~shall~~] be used. The utility must [~~shall~~] 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 [~~bonus~~] must [~~shall~~] 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 [~~bonus~~] earned under this section must [~~shall~~] 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 proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on August 22, 2025.

TRD-202503057
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 5, 2025
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) proposes amendments to 16 Texas Administrative Code (TAC) §25.53, relating to Electric Service Emergency Operations Plans. The scope of this rulemaking proceeding is limited to the amendments included in this proposal, the executive summary template attached to the copy of this order filed on the commission's website, and other changes that are reasonably related to the proposed amendments.

The amended rule would require entities with Emergency Operations Plans (EOPs) to comply with an executive summary template, include a comprehensive list of assets in their executive summaries, file flood annexes for transmission and distribution facilities and generation resources, file annexes in their entirety, and comprehensively re-file their EOPs every three years. The amended rule additionally would clarify how EOPs should be made available to commission staff and makes other minor changes.

Growth Impact Statement

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

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

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

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

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

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

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

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

There is no adverse economic effect anticipated for small businesses, micro-businesses, or rural communities as a result of implementing the proposed rule. Accordingly, no economic im-

pact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002(c).

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

Sherryhan Ghanem, Engineering Specialist, Infrastructure, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for the state or for units of local government under Texas Government Code §2001.024(a)(4) as a result of enforcing or administering the sections.

Public Benefits

Ms. Sherryhan Ghanem has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will improve the commission's ability to evaluate EOPs to assess the ability of the grid to withstand extreme weather events and improve considerations for flood risks regarding transmission and generation. The rule continues to support improved transparency into the ability of the electric grid to withstand extreme weather events in the future. There may be an economic cost to some persons required to comply with the rule under Texas Government Code §2001.024(a)(5). These costs are expected to be minor and to vary by person.

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

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

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by October 2, 2025. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 57928.

To further assist the commission in implementing the provisions of H.B. 145 (89th), the commission also requests 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.

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

Statutory Authority

The amendment is proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction The rule is also proposed 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) - (b) (No change.)

(c) Filing requirements.

(1) Except as provided by paragraph (3) of this subsection, an [~~An~~] entity must file an emergency operations plan (EOP) and executive summary under this section by March 15 of every calendar year [~~April 15, 2022~~]. [~~Notwithstanding the foregoing, a municipally owned utility must provide its EOP and executive summary in the manner prescribed by the commission in this paragraph no later than June 1, 2022.~~] 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) - (II) (No change.)

(III) includes a comprehensive list of affiliated 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; [~~includes the record of distribution required under paragraph (4)(A) of this subsection; and~~]

(IV) includes the record of distribution required under paragraph (4)(A) of this subsection; [~~contains the affidavit required under paragraph (4)(C) of this subsection; and~~]

(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 [~~power~~] 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 electronic method [~~at a location~~] designated by commission staff.

(E) - (G) (No change.)

(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 [~~power~~] 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 [~~Beginning in 2023, an~~] entity that has previously filed an EOP must submit an [~~annually~~] 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. [~~information included in its EOP no later than March 15 under the following circumstances:~~]

(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) - (II) (No change.)

(III) includes a comprehensive list of affiliated 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; and [~~includes the record of distribution required under paragraph (4)(A) of this subsection; and~~]

(IV) includes the record of distribution required under paragraph (4)(A) of this subsection; and [~~contains the affidavit required under paragraph (4)(C) of this section;~~]

(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 [~~power~~] region.

(B) (No change.)

(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 [~~power~~] region, with ERCOT.

(D) (No change.)

(E) An entity must make a revised unredacted EOP available in its entirety to commission staff on request through an encrypted electronic method [~~at a location~~] designated by 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) - (C) (No change.)

(5) (No change.)

(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) - (5) (No change.)

(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 [~~a~~] must include in its EOP for its transmission and distribution facilities the following annexes:

(A) - (G) (No change.)

(H) A flood annex; [~~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;~~] and

(I) (No change.)

(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.

[~~(2) An electric cooperative, an electric utility, or a municipally owned utility that operate a generation resource in Texas; and a PGC must include the following annexes for its generation resources other than generation resources authorized under PURA §39.918:~~]

[~~(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; and]

[(H) Any additional annexes as needed or appropriate to the entity's particular circumstances.]

(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.

[(3) 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.]

(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.

[(4) 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.]

(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) - (g) (No change.)

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

Filed with the Office of the Secretary of State on August 22, 2025.

TRD-202503058
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 936-7244

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CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes new 16 Texas Administrative Code (TAC) §25.60, relating to Transmission and Distribution Wildfire Mitigation Plans, and amendments to 16 TAC §25.231, relating to Cost of Service, to implement Public Utility Regulatory Act (PURA) §§38.080 and 36.064 as established and revised, respectively, by House Bill 145 during the 89th Regular Texas Legislative Session.

New §25.60 will require electric utilities, municipally owned utilities, and electric cooperatives that own transmission or distribution facilities in a wildfire risk area of this state to file and gain commission approval of a wildfire mitigation plan. Additionally, new §25.60 will provide that electric utilities, municipally owned utilities, and electric cooperatives that do not implement a plan approved by the commission under this section are subject to administrative penalties as provided by Chapter 15 of the Texas Utilities Code.

Amended §25.231 will add additional criteria for the commission to consider when approving self-insurance plans of electric utilities. Amended §25.231 will also add specific conditions for the use of self-insurance reserve funds for damages from a wildfire event. The scope of this rulemaking project, with regards to §25.231, is limited to the proposed amendments, any additional changes reasonably related to the proposed amendments, and nonsubstantive changes.

Growth Impact Statement

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

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

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

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

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

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

(6) the proposed rules will expand an existing regulation;

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

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

Public Benefits

Mr. Euton has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the section will be reduction in the likelihood and severity of wildfires and impact on the lives and properties of Texans in high wildfire risk areas. The economic costs to persons required to comply with the rule under Texas Government Code §2001.024(a)(5) will vary by person.

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by September 24, 2025. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by September 24, 2025. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 56789.

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

SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

16 TAC §25.60

Statutory Authority

The new rule and amendment are proposed under Public Utility Regulatory Act (PURA) §§ 14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; 14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; 36.064, which authorizes the commission to evaluate and approve electric utility self-insurance plans; and 38.080, which authorizes the commission to evaluate and approve, modify, or reject wildfire mitigation plans filed by electric utilities, municipally owned utilities, or electric cooperatives that own transmission or distribution facilities in a wildfire risk area of this state.

Cross Reference to Statute: Public Utility Regulatory Act §§ 14.001; 14.002; 36.064; and 38.080.

§25.60. Transmission and Distribution Wildfire Mitigation Plans.

(a) Application. This section applies to an electric utility, municipally owned utility, and electric cooperative that owns a transmission or distribution facility in this state.

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

(1) Entity--an electric utility, a municipally owned utility, or an electric cooperative operating in this state.

(2) Wildfire--any fire occurring on wildland or in a place where urban areas and rural areas meet. The term does not include a fire that constitutes controlled burning within the meaning of Section 28.01, Penal Code.

(3) Wildfire risk area--an area determined to be at an elevated risk for wildfire by the Texas Division of Emergency Management (TDEM) or an entity that owns transmission or distribution facilities within that area. An area that is determined to be a wildfire risk area by an entity that owns transmission or distribution facilities within that area is only considered to be a wildfire risk area under this section with respect to the entity that made the designation.

(c) Required filings and filing schedules.

(1) Entities responsible for filing. An entity that owns a transmission or distribution facility in a wildfire risk area of this state must comply with the filing requirements of this section.

(A) If the owner and operator of a transmission or distribution facility are different entities, the owner may authorize the operator of the facility to file an application for approval of a wildfire mitigation plan or other filings required under this section on behalf of the owner. An owner that authorizes an operator to make filings on its behalf retains responsibility for compliance with the requirements of this section.

(B) An entity may file a joint application for approval of a joint wildfire mitigation plan and other filings required under this section on behalf of itself and one or more other entities provided that the joint plan satisfies the requirements of this section for each entity as if the entity had filed a separate plan, and the executive summary required under subsection (e)(1)(A) of this section identifies which sections of the joint plan apply to each entity. Each individual entity is responsible for compliance with the requirements of this section.

(2) Wildfire mitigation plans. An entity that owns a transmission or distribution facility in a wildfire risk area of this state must implement and continuously maintain a commission-approved wildfire mitigation plan. The entity must request commission approval of its plan as required by this paragraph by filing an application in accordance with subsection (e) of this section.

(A) Initial wildfire mitigation plan. An entity must file an application for approval of a wildfire mitigation plan after an area in which the entity owns transmission or distribution facilities is determined to be a wildfire risk area.

(B) Changes to an approved plan.

(i) An entity with a plan approved by the commission must continuously maintain and improve its plan in between required filings.

(ii) An entity may make immaterial changes to a plan approved by the commission without voiding its approval.

(iii) An entity that makes material changes to a plan approved by the commission must file an application to reobtain commission approval of its plan. A material change is one that will impact how an entity will monitor, respond to, or mitigate the risk of wildfires. An application filed under this clause should describe the material changes made to the plan.

(C) Updated Plan. An entity must file an application to reobtain commission approval of its wildfire mitigation plan not later than three years after the date of approval of its most recently approved plan.

(D) Application timing. An entity that is required to file an application under this section must file the application as soon as practicable, except as provided by clauses (i) and (ii) of this subparagraph.

(i) Prior to May 1, 2026, an entity must not file an application unless the filing is scheduled by the commission under paragraph (4) of this subsection.

(ii) After May 1, 2026, an entity may file an application on its estimated filing date, as provided by the entity's notice of intent under subsection (d) of this section, unless the commission schedules the filing for a different date under paragraph (4) of this subsection.

(3) Notice of intent. Before filing an application for commission approval of a wildfire mitigation plan under subsection (f) of this section, an entity must file a notice of intent in accordance with subsection (d) of this section.

(A) An entity must file a notice of intent not later than 60 calendar days prior to the entity's estimated application filing date.

(B) An entity that files a notice of intent under this subsection must file an updated notice of intent not later than 30 calendar days prior to the estimated filing date in its original notice, if its updated estimated filing date has changed by more than 30 calendar days.

(C) An entity that owns facilities in a wildfire risk area determined by TDEM should file a notice of intent as soon as practicable to notify the commission that the entity is aware it is required to file an application under this section. An entity may file a preliminary, incomplete notice of intent for this purpose and file an updated notice when practicable.

(4) Application filing schedules. The commission will use notices of intent filed by entities under subsection (d) of this section to establish filing schedules for applications, as necessary.

(A) The commission will establish an initial filing schedule for applications, based on notices of intent that were filed by entities under subsection (d) of this section prior to March 1, 2026.

However, the commission may schedule individual filings prior to this initial filing schedule, if practicable.

(B) The commission may establish, at the recommendation of commission staff or commission counsel, subsequent filing schedules for multiple applications or scheduled filing dates for individual applications.

(5) Annual report. An entity with an approved wildfire mitigation plan must file an annual status update on its plan by May 1 of each year. The annual status update must include information regarding the entity's implementation of its plan. The entity must also either indicate that it received approval of a plan in the prior reporting year, indicate that it has a pending application for approval of a plan, attest that it did not make any material changes in the last year, or file a notice of intent to update its plan.

(6) After-action report. In the event of a wildfire that impacts an entity's transmission or distribution facilities or assets or is caused by the entity's transmission or distribution facilities or assets, the commission, the executive director of the commission, or a designee of the executive director may require the entity to provide an after-action or lessons-learned report and file it with the commission by a specified date.

(d) Notice of intent. An entity's notice of intent to file an application for approval of a wildfire mitigation plan must comply with this subsection. Commission staff must open a designated project for the filing of notices of intent under this section. All notices of intent must be filed under this project unless commission staff designates an updated method of filing, such as an annual project number or online portal. A notice of intent must include:

(1) An acknowledgment that the entity is required to file an application under this section.

(2) A description of the entity's wildfire risk area(s), and whether the area was determined to be a wildfire risk area by TDEM or the entity.

(3) A description of the transmission and distribution facilities the entity owns in its wildfire risk area(s).

(4) The approximate number of customers served by the entity, and the approximate number of transmission and distribution customers located in the entity's wildfire risk area(s).

(5) A statement of the entity's preparedness to file an application under this section, including an estimated date that the entity will file its application.

(6) A statement of whether the entity intends to use a pro forma plan developed under subsection (g) of this section when assembling its application.

(7) A statement of whether the entity intends to file a joint application with another entity and an explanation for the joint filing.

(e) Application. An entity's application for approval of a wildfire mitigation plan under this section must comply with this subsection.

(1) Application contents. An entity's application must include:

(A) An executive summary or comprehensive chart that includes:

(i) A description of the contents of the entity's application;

(ii) A reference to specific sections and page numbers of the entity's application that correspond with the requirements of this paragraph;

(iii) A description and map of each area of this state to which the entity provides transmission or distribution service that is in a wildfire risk area and a description of how the entity identified each wildfire risk area.

(iv) A description of the entity's history with wildfire in its service territory for the preceding 15 years, including the date, implicated TDEM disaster districts, and known impacts of each wildfire to life, property, and the entity's infrastructure;

(v) A description of the environmental and operational risks that the entity's wildfire mitigation plan is designed to address (e.g., low-moisture, high-temperature, or high-wind conditions or events, the presence of salt moisture or other contaminants on transmission or distribution facilities or equipment, dry or high-volumes of vegetation, etc.); and

(vi) An explanation of how the entity's wildfire mitigation plan sufficiently mitigates for wildfire risk in the entity's wildfire risk area(s).

(B) A wildfire mitigation plan that includes:

(i) A description of the entity's process for periodically inspecting its transmission and distribution facilities in its wildfire risk areas, including, if applicable, a description of the entity's use of geospatial or remote sensing technologies (such as LiDAR, satellite, etc.) or risk-modeling tools;

(ii) A detailed plan for vegetation management in the entity's wildfire risk areas, including, if applicable, a description of the entity's use of geospatial or remote sensing technologies (such as LiDAR, satellite, etc.) or risk-modeling tools;

(iii) A detailed operations plan for reducing the likelihood of wildfire ignition from the entity's transmission and distribution facilities, including, if applicable, a description of the entity's use of automated fault detection devices or programs (such as microprocessor-based relays, SCADA, etc.);

(iv) A detailed operations plan for responding to a wildfire in the entity's wildfire risk areas;

(v) A description of the procedures the entity intends to use to restore its system during and after a wildfire, including contact information for the entity that may be used for coordination with TDEM and first responders;

(vi) The entity's community outreach and public awareness plan regarding wildfire risks and actual wildfires affecting the entity's service territory or system, including a specific communications plan for responding to a wildfire;

(vii) A description of the entity's procedures for de-energizing power lines and disabling reclosers or implementing a public safety power shut-off plan to mitigate for potential wildfires, including, if applicable, a description of the entity's procedures for coordinating with its regional transmission organization, independent system operator, or other reliability coordinator; and

(viii) A description of the procedures, measures, and standards that the entity will use to inspect and operate its infrastructure to mitigate for wildfire risks.

(C) An analysis of the entity's wildfire mitigation plan prepared by an independent expert in fire risk mitigation. The independent expert's analysis must include the following:

(i) a description of the independent expert's qualifications and expertise relative to fire risk mitigation;

(ii) a description of the independent expert's methodology for analyzing the contents of the entity's plan; and

(iii) a detailed assessment of adequacy and appropriateness of the contents of the entity's plan, relative to the risks in the entity's wildfire risk area(s), industry standards and best practices, and any available alternative wildfire mitigation measures.

(D) A description of how the entity will monitor implementation and compliance with its wildfire mitigation plan, if approved by the commission.

(E) Any other infrastructure report, maintenance report, transmission or distribution pole maintenance plan, or information that the entity is required to submit under PURA, other commission rules, North American Electric Reliability Corporation or other federal standards, or ERCOT protocols or operating guides that the entity determines is relevant to its wildfire mitigation efforts and would assist the commission in making a public interest determination on the entity's wildfire mitigation plan. An entity submitting a report, plan, or other information under this paragraph must submit the report, plan, or other information in its entirety and include a summary of how the report, plan, or other information relates to, or impacts, the entity's wildfire mitigation efforts.

(2) Substantially similar information. An entity may fulfill the requirements of paragraph (1)(B) of this subsection by submitting any information required under other law that is substantially similar to the information required by paragraph (1)(B) of this subsection. An entity must clearly identify in its wildfire mitigation plan the requirement the submitted information is intended to fulfill and include a description of why the entity believes the submitted information is substantially similar to that requirement.

(3) Confidentiality. An entity may designate portions of its application, including portions of its wildfire mitigation plan, as critical energy infrastructure information, as defined by applicable law, and file such portions confidentially.

(f) Commission processing of application.

(1) Notice of filing and intervention deadline. An entity must provide notice of its filed application under subsection (e) of this section, including the docket number assigned to the application and the deadline for intervention, not later than the working day following the filing. The intervention deadline is 30 calendar days from the date service of notice is complete. The notice must be provided using a reasonable method of notice, as applicable, to:

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

(B) all parties in the entity's most recent base-rate proceeding;

(C) the Office of Public Utility Counsel; and

(D) the entity's regional transmission operator, independent system operator, or other reliability coordinator.

(2) Sufficiency of application. An application is sufficient if the entity has filed a notice of intent as required by subsection (d) of this section, the entity's application includes the information required by subsection (e) of this section, and the entity has filed proof that the notice the notice of filing has been provided in accordance with this subsection.

(A) Commission staff must review each application for sufficiency and file a recommendation on sufficiency within 28 calendar days after the application is filed. If commission staff recommends the application plan be found deficient, commission staff must identify the deficiencies in its recommendation. An entity will have seven calendar days to file a response.

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

(C) If the presiding officer has not filed a notice of deficiency within 14 working days after a deadline for a recommendation on sufficiency, the application is deemed sufficient.

(3) The commission will approve or deny an application or approve a modified wildfire mitigation plan not later than 180 days after a complete application is filed. The presiding officer must establish a procedural schedule that will enable the commission to approve or deny an application or approve a modified wildfire mitigation plan not later than 180 days after a complete application is filed. An application is not complete if it is deemed insufficient.

(4) Commission review of application. In determining whether to approve or deny an application or approve a modified wildfire mitigation plan, the commission will consider whether an entity's plan is in the public interest. The commission will not approve an application for a plan that is not in the public interest. In evaluating the public interest, the commission may consider:

(A) the extent to which the plan will:

(i) mitigate the wildfire risks present in an entity's wildfire risk areas;

(ii) reduce the potential frequency or duration of service interruptions, or potential damages to utility infrastructure, that are attributable to wildfires in an entity's wildfire risk areas; and

(iii) improve an entity's communication and coordination before, during, and after a wildfire in an entity's wildfire risk areas with:

(I) the entity's customers;

(II) the commission;

(III) if applicable, the entity's regional transmission operator, independent system operator, or other reliability coordinator;

(IV) first responders; and

(V) TDEM.

(B) whether there are more efficient or otherwise superior means of preventing, withstanding, mitigating for, or responding to wildfire risks addressed by the plan; or

(C) other factors deemed relevant by the commission.

(5) Commission decision.

(A) The commission's denial of an entity's application is not a finding on the prudence or imprudence of the contents of the entity's wildfire mitigation plan. Upon denial of an application, an entity may file a revised application for review and approval by the commission under this subsection.

(B) Commission approval of an entity's application under this subsection is effective until the earlier of:

(i) the fifth anniversary of the date the application was approved; or

(ii) the date the entity receives commission approval of a subsequent application under this subsection.

(g) Pro forma plan. Commission staff may initiate a proceeding to develop one or more pro forma wildfire mitigation plans. Commission staff may designate the size or characteristics of the entities or systems for which each pro forma plan is appropriate. An entity that uses a pro forma plan must adapt the details of the pro forma plan to the characteristics of its system and the wildfire risks to which its system is exposed. Additionally, an entity that uses a pro forma plan must include in the executive summary under subsection (e)(1)(A) of this section a description of the modifications made to the pro forma plan to adapt the plan to its system, and the analysis under subsection (c)(1)(C) of this section must include an assessment of whether the pro forma plan has been appropriately adapted to the entity's system.

(h) Administrative penalty. An entity that fails to adequately implement a wildfire mitigation plan approved by the commission under this section, including an entity that that fails to timely submit a plan or submits a plan that is not approved by the commission, is subject to an administrative penalty.

(i) Record retention. An entity with an approved wildfire mitigation plan under must maintain records associated with the information referred to in this section for five years, beginning the year after the plan is approved.

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

Filed with the Office of the Secretary of State on August 22, 2025.

TRD-202503054
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 936-7244

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SUBCHAPTER J. COSTS, RATES AND TARIFFS
DIVISION 1. RETAIL RATES

16 TAC §25.231

Statutory Authority

The amendment is proposed under Public Utility Regulatory Act (PURA) §§ 14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; 14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; 36.064, which authorizes the commission to evaluate and approve electric utility self-insurance plans; and 38.080, which authorizes the commission to evaluate and approve, modify, or reject wildfire mitigation plans filed by electric utilities, municipally owned utilities, or electric cooperatives that own transmission or distribution facilities in a wildfire risk area of this state.

Cross Reference to Statute: Public Utility Regulatory Act §§ 14.001; 14.002; 36.064; and 38.080.

§25.231. Cost of Service.

(a) (No change.)

(b) Allowable expenses. Only those expenses which are reasonable and necessary to provide service to the public will be included in allowable expenses. In computing an electric utility's allowable expenses, only the electric utility's historical test year expenses as adjusted for known and measurable changes will be considered, except as provided for in any section of these rules dealing with fuel expenses.

(1) Components of allowable expenses. Allowable expenses, to the extent they are reasonable and necessary, and subject to this section, may include, but are not limited to the following general categories:

(A) - (F) (No change.)

(G) Accruals credited to reserve accounts for self-insurance under a self-insurance plan requested by an electric utility and approved by the commission. The commission may consider approval of a self-insurance [~~self insurance~~] plan in a rate case in which expenses or rate base treatment are requested for a such a plan. For the purposes of this section, a self-insurance [~~self insurance~~] plan is a plan providing for accruals to be credited to reserve accounts. The reserve accounts are to be charged with losses that are not paid or reimbursed with commercial insurance and are either [~~with~~] property and liability losses which occur, and which could not have been reasonably anticipated and included in operating and maintenance expenses, or liability losses resulting from personal injury or property damage caused by a wildfire. [~~and are not paid or reimbursed by commercial insurance.~~] The reserve accounts must not be charged for liability losses resulting from personal injury or property damage caused by a wildfire that the utility caused intentionally, recklessly, or with gross negligence. The commission will approve a self-insurance [~~self insurance~~] plan to the extent it finds it to be in the public interest; that ratepayers will receive the benefits of any savings; and [~~. In order to establish that the plan is in the public interest,~~] the electric utility must present a cost benefit analysis performed by a qualified independent insurance consultant who demonstrates that either, with consideration of all costs, self-insurance is a lower-cost alternative than commercial insurance, that commercial insurance alone is insufficient to cover potential liability losses, damages, or catastrophic property loss, or the electric utility cannot obtain commercial insurance for a reasonable premium [~~and the ratepayers will receive the benefits of the self insurance plan~~]. The cost benefit analysis must present a detailed analysis of the appropriate limits of self-insurance [~~self insurance~~], an analysis of the appropriate annual accruals to build a reserve account for self-insurance [~~self insurance~~], and the level at which further accruals should be decreased or terminated. In approving a self-insurance plan under this section, the commission will prioritize the consideration of the presence and potential extent of wildfire losses, including historical data, actuarial studies and analyses, and the risk of the electric utility's exposure to losses from multiple types of disasters occurring within the utility's service territory.

(H) (No change.)

(2) (No change.)

(c) (No change.)

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

Filed with the Office of the Secretary of State on August 22, 2025.

TRD-202503055
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 936-7244

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SUBCHAPTER S. WHOLESALE MARKETS

16 TAC §25.504

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §25.504 relating to Wholesale Market Power in the Electric Reliability Council of Texas Power Region. The amended rule will remove the exemption that currently prevents a generation company controlling less than 5% of ERCOT's total installed capacity from being considered to have market power. The scope of this rulemaking is limited to amendments to 16 TAC §25.504(c) and any related conforming changes.

Growth Impact Statement

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

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

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

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

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

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

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

(7) the proposed rule will change the number of individuals subject to the rule's applicability; and

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

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

Public Benefits

Mr. Lakhani has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be a reduction in economic withholding and a more efficient electricity market in the ERCOT region. There will be no probable economic cost to persons required to comply with the rule under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

Commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by October 3, 2025. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website or by submitting a paper copy to Central Records, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. Comments must be filed by October 3, 2025. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 58379.

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

Statutory Authority

The amendment is proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient

to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; and §39.157, which authorizes the commission to monitor and address market power associated with the generation, transmission, distribution, and sale of electricity in this state.

Cross Reference to Statute: Public Utility Regulatory Acts §§ 14.001; 14.002; and 39.157.

§25.504. Wholesale Market Power in the Electric Reliability Council of Texas Power Region.

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

(c) Withholding of production. Prices offered by a generation entity with market power may be a factor in determining whether the entity has withheld production. A generation entity with market power that prices its services substantially above its marginal cost may be found to be withholding production; offering prices that are not substantially above marginal cost does not constitute withholding of production. [~~Exemption based on installed generation capacity. A single generation entity that controls less than 5% of the installed generation capacity in ERCOT, as the term "installed generation capacity" is defined in §25.5 of this title (relating to Definitions), excluding uncontrollable renewable resources, is deemed not to have ERCOT-wide market power. Controlling 5% or more of the installed generation capacity in ERCOT does not, of itself, mean that a generating entity has market power.~~]

(d) Voluntary mitigation plan. Any generation entity may submit to the commission a voluntary mitigation plan relating to compliance with §25.503(g)(7) of this title or with the Public Utility Regulatory Act (PURA) §39.157(a). Adherence to a commission-approved voluntary mitigation plan must be considered in a proceeding to determine whether the generation entity violated PURA §39.157 or §25.503(g)(7) of this title and, if so, the amount of the administrative penalty to be assessed for the violation. [~~Withholding of production. Prices offered by a generation entity with market power may be a factor in determining whether the entity has withheld production. A generation entity with market power that prices its services substantially above its marginal cost may be found to be withholding production; offering prices that are not substantially above marginal cost does not constitute withholding of production.~~]

(1) The commission will approve the voluntary mitigation plan only if it finds that the plan is in the public interest.

(2) A generation entity or commission staff may apply to amend a voluntary mitigation plan that applies to the generation entity.

(3) The parties to a proceeding related to the approval or amendment of a voluntary mitigation plan are limited to the generation entity applying for the mitigation plan, commission staff, and the independent market monitor.

(4) Termination of voluntary mitigation plan.

(A) The commission, on its own motion, may terminate, in whole or in part, a voluntary mitigation plan approved under this subsection. The executive director or the executive director's designee may also terminate a voluntary mitigation plan, in whole or in part, under the following conditions:

(i) The executive director or the executive director's designee must determine that continuation of the plan is no longer in the public interest.

(ii) The executive director or the executive director's designee must provide notice of the termination to the applicable generation entity and file a notice of termination in the same control number in which the plan was approved at least three working days prior to the effective date of the termination. The executive director or the executive director's designee may withdraw the notice of termination at any point prior to the effective date of the termination.

(iii) The commission must affirm or set aside the executive director or the executive director's designee's termination of a voluntary mitigation plan as soon as practicable after the effective date of the termination.

(B) A generation entity with a commission-approved voluntary mitigation plan may terminate the plan. The generation entity must provide the executive director or executive director's designee notice of the termination and file a notice of termination in the same control number in which the plan was approved at least three working days prior to the effective date of the termination. The generation entity may withdraw its notice of termination at any point prior to the effective date of the termination.

(e) Review of voluntary mitigation plans.

(1) The commission will review each effective voluntary mitigation plan adopted under subsection (d) of this section to determine whether the plan remains in the public interest at least once every two years and not later than 90 days after the implementation date of a wholesale market design change. Commission staff, in consultation with the independent market monitor, will determine when a wholesale market design change requiring the review of voluntary mitigation plans has occurred.

(A) In determining whether a change in a commission or ERCOT regulation constitutes a wholesale market design change for purposes of this subsection, commission staff and the independent market monitor must consider whether the change could materially increase the ability of a generation entity with an existing voluntary mitigation plan to exercise market power.

(B) If, at the time a proposed change in a commission or ERCOT regulation is being considered for approval by the commission, commission staff has determined that the proposed change would, if implemented, constitute a wholesale market design change, commission staff may include its determination in a filing addressing the proposed change (e.g., as part of a staff memo recommending commission approval of a change in the ERCOT protocols).

(C) Commission staff must provide notice, using a reasonable method of notice, to a generation entity with an existing voluntary mitigation plan when its voluntary mitigation plan is under review. This notice must be provided no later than the date commission staff files its recommendation under paragraph (2) of this subsection.

(D) Nothing in this paragraph prevents the commission, on its own motion, from determining that a change in a commission or ERCOT regulation constitutes a wholesale market design change for purposes of this subsection and directing commission staff, in consultation with the independent market monitor, to provide a recommendation on whether each existing voluntary mitigation plan remains in the public interest.

(2) At least 40 days prior to a deadline established by paragraph (1) of this subsection, commission staff must file a recommendation and draft order addressing whether each voluntary mitigation plan remains in the public interest. Commission staff's recommendation must include the date of the deadline established by paragraph (1) of this subsection and, if applicable, the details and implementation date of the applicable wholesale market design change. As part of its recommendation, for each voluntary mitigation plan adopted prior to September 1, 2023, commission staff must also address whether the plan complies with PURA §15.023(f) and this section.

(3) If the commission determines that all or a part of the plan is no longer in the public interest, the commission will terminate any part of the plan that it determines is no longer in the public interest. The generation entity may propose an amended plan for the commission's consideration.

[(e) Voluntary mitigation plan. Any generation entity may submit to the commission a voluntary mitigation plan relating to compliance with §25.503(g)(7) of this title or with the Public Utility Regulatory Act (PURA) §39.157(a). Adherence to a commission-approved voluntary mitigation plan must be considered in a proceeding to determine whether the generation entity violated PURA §39.157 or §25.503(g)(7) of this title and, if so, the amount of the administrative penalty to be assessed for the violation.]

[(1) The commission will approve the voluntary mitigation plan only if it finds that the plan is in the public interest.]

[(2) A generation entity or commission staff may apply to amend a voluntary mitigation plan that applies to the generation entity.]

[(3) The parties to a proceeding related to the approval or amendment of a voluntary mitigation plan are limited to the generation entity applying for the mitigation plan, commission staff, and the independent market monitor.]

[(4) Termination of voluntary mitigation plan.]

[(A) The commission, on its own motion, may terminate, in whole or in part, a voluntary mitigation plan approved under this subsection. The executive director or the executive director's designee may also terminate a voluntary mitigation plan, in whole or in part, under the following conditions:]

[(i) The executive director or the executive director's designee must determine that continuation of the plan is no longer in the public interest.]

[(ii) The executive director or the executive director's designee must provide notice of the termination to the applicable generation entity and file a notice of termination in the same control number in which the plan was approved at least three working days prior to the effective date of the termination. The executive director or the executive director's designee may withdraw the notice of termination at any point prior to the effective date of the termination.]

[(iii) The commission must affirm or set aside the executive director or the executive director's designee's termination of a voluntary mitigation plan as soon as practicable after the effective date of the termination.]

[(B) A generation entity with a commission-approved voluntary mitigation plan may terminate the plan. The generation entity must provide the executive director or executive director's designee notice of the termination and file a notice of termination in the same control number in which the plan was approved at least three working days prior to the effective date of the termination. The generation entity may withdraw its notice of termination at any point prior to the effective date of the termination.]

[(f) Review of voluntary mitigation plans.]

[(1) The commission will review each effective voluntary mitigation plan adopted under subsection (e) of this section to determine whether the plan remains in the public interest at least once every two years and not later than 90 days after the implementation date of a wholesale market design change. Commission staff, in consultation with the independent market monitor, will determine when a wholesale market design change requiring the review of voluntary mitigation plans has occurred.]

[(A) In determining whether a change in a commission or ERCOT regulation constitutes a wholesale market design change for purposes of this subsection, commission staff and the independent market monitor must consider whether the change could materially increase the ability of a generation entity with an existing voluntary mitigation plan to exercise market power.]

[(B) If, at the time a proposed change in a commission or ERCOT regulation is being considered for approval by the commission, commission staff has determined that the proposed change would, if implemented, constitute a wholesale market design change, commission staff may include its determination in a filing addressing the proposed change (e.g., as part of a staff memo recommending commission approval of a change in the ERCOT protocols).]

[(C) Commission staff must provide notice, using a reasonable method of notice, to a generation entity with an existing voluntary mitigation plan when its voluntary mitigation plan is under review. This notice must be provided no later than the date commission staff files its recommendation under paragraph (2) of this subsection.]

[(D) Nothing in this paragraph prevents the commission, on its own motion, from determining that a change in a commission or ERCOT regulation constitutes a wholesale market design change for purposes of this subsection and directing commission staff, in consultation with the independent market monitor, to provide a recommendation on whether each existing voluntary mitigation plan remains in the public interest.]

[(2) At least 40 days prior to a deadline established by paragraph (1) of this subsection, commission staff must file a recommendation and draft order addressing whether each voluntary mitigation plan remains in the public interest. Commission staff's recommendation must include the date of the deadline established by paragraph (1) of this subsection and, if applicable, the details and implementation date of the applicable wholesale market design change. As part of its recommendation, for each voluntary mitigation plan adopted prior to September 1, 2023, commission staff must also address whether the plan complies with PURA §15.023(f) and this section.]

[(3) If the commission determines that all or a part of the plan is no longer in the public interest, the commission will terminate any part of the plan that it determines is no longer in the public interest. The generation entity may propose an amended plan for the commission's consideration.]

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

Filed with the Office of the Secretary of State on August 22, 2025.

TRD-202503053
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 936-7244

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER K. DETERMINATION OF RESIDENT STATUS

19 TAC §§13.191 - 13.203

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter K, §§13.191 - 13.203, concerning Determination of Resident Status. Specifically, this new section will consolidate existing rules relating to tuition and fees with the rules determining resident status, as the two concepts are inextricably linked, provide greater clarity to rules relating to determining resident status, and codify the current practices relating to documentation needed to establish domicile. The rules also incorporate the requirements of interpreting federal law related to establishing lawful presence as a condition of eligibility for resident tuition. The Coordinating Board is authorized by Texas Education Code, §54.075, to adopt rules to carry out the purposes of Texas Education Code, Chapter 54, Subchapter B, Tuition Rates.

Rule 13.191, Authority and Applicability, is the reconstituted §21.21, and establishes the general statutory authority, Texas Education Code (TEC), §54.075, for the provisions of the subchapter and makes it clear that this new chapter applies to public, private, and independent institutions of higher education when determining a person's entitlement to resident status under any provision of the TEC.

Rule 13.192, Definitions, is the reconstituted §21.22, and establishes definitions for words and terms used throughout the subchapter and adds new terms. Definitions that now appear in Chapter 13, Subchapter A, have been removed from this section. Definitions that are no longer relevant because the corresponding rules that used the term have been revised or removed, such as "clear and convincing evidence," have also been removed. New language was added to the definition of "private high school" to specify that it includes a homeschool. The definition of "temporary absence" was modified to make clear that the phrase "short duration" applies to the length of absence and not to the intent to return to Texas. When definitions are defined in TEC, §54.0501, reference was made to the statute. References to the Probate Code were deleted because the Probate Code no longer exists in Texas. Also, the concepts of "possessory conservator" and other similar terms have been removed. In addition, a new definition for "lawful presence" was added to comply with requirements of federal law and implement a court order effective for Fall 2025 resident tuition determinations.

Rule 13.193, Effective Date of this Subchapter, is the reconstituted §21.23, and makes clear when changes to this subchapter are effective as it relates to making resident status decisions and provides clarification to institutions who made resident status determinations before the effective date.

Rule 13.194, Determination of Resident Status, is the reconstituted §21.24(a) and (e) to reflect TEC, §54.052, and to reflect a recent court order implementing the requirements of federal law. A person must be able to demonstrate, and each institution must verify, that the person is lawfully present in the United States and also meets one of the three classifications of resident status defined in TEC, §54.052(a)(1) - (3). Subsection (a)(1) contains language to clarify that a person cannot be a dependent if they seek to qualify for resident status under TEC, §54.052(a)(1). Subsection (a)(3) contains language to comply with a recent court order implementing the requirements of federal law that, in order to be eligible for in-state tuition, a person must be lawfully present in the United States, in addition to meeting the other requirements set forth in the new rule. As to the separate requirement of domicile, subsection (b) captures the presumption stated in TEC, §54.052(b), that the domicile of a dependent's parent is presumed to be the domicile of the dependent. This presumption of domicile is reiterated in rule to specifically correlate to a person who seeks to establish resident status under TEC, §54.052(a)(2).

Rule 13.195, Core Residency Questions, reconstitutes §21.25, to reflect TEC, §54.053. The Coordinating Board promulgates the core residency questions, and each person who applies to a Texas institution must complete the Core Residency questions, either through the ApplyTexas application or with the institution directly. Institutions may not derive their own set of residency questions. The requirements outlined in TEC, §54.053(1) - (3) as they relate to the determination of resident status classifications are incorporated into the core residency questions. Furthermore, this rule provides that non-citizen students seeking resident status under TEC, §54.052(a)(3) shall also provide to the institution an affidavit attesting to lawful presence so that an institution can make an initial determination of the person's resident status. Institutions may request reasonable documentation not specifically listed in these rules when that information is necessary to substantiate information a person has listed in the "general comments" section of the Core Residency Questions, which provides the opportunity for a person to provide additional information or background commentary to substantiate their resident status claim.

Rule 13.196, Information Needed to Document Resident Status, is the reconstituted §21.24(b) - (d) and (f) - (i). The rule details the documents a person must provide to demonstrate domicile as one condition of eligibility for resident status depending upon which of the two resident categories under TEC, §54.052(a)(1) - (2), for which the person is seeking to establish resident status, depending on whether the person is claiming domicile based on the person's own domicile or, in the case of a dependent, based on the domicile of the person's parent. The documentation, which must be at least one of the four options (significant gainful employment, residential real property, marriage, or ownership of a business), must be for the consecutive twelve-month period immediately preceding the census date of the academic term the person seeks to enroll at an institution.

Subsection (a) addresses the four categories of information a person may provide to demonstrate they are domiciled in Texas under TEC, §54.052(a)(1). The four categories are substantially similar to §21.24(f). Demonstrating domicile through "significant gainful employment" which is a defined term, now requires the person to show the salary they earned. For a person who is self-employed, the person must show federal tax documentation showing domicile in Texas. For Subsection (a)(2), residential real property has been broadened to account for person who leases or rents, in addition to owning property. Subsection (b) establishes that a person who has demonstrated domicile, as outlined in at least one of the four listed factors, and who resides in Texas, is considered to have been domiciled in Texas for that period of time.

Subsection (c) addresses the four categories of information a dependent may provide to an institution to demonstrate that their parents have established domicile in Texas under TEC, §54.052(a)(2). Subsection (d) establishes that a dependent whose parent has demonstrated domicile, as outlined in at least one of the four listed factors, and who resides in Texas, is

considered to have been domiciled in Texas for that period of time.

The rule also details the documents a person must provide to demonstrate the person has maintained a residence as one condition of eligibility for resident status under TEC, §54.052(a)(3). The documentation, which must be at least one of the eight options (utility bills, Texas high school transcripts, Texas voter registration card, Texas vehicle registration that was issued at least twelve months immediately preceding the census date, valid Texas driver's license or Texas identification card, lease or rental of residential real property, or other documentation used by the student to establish eligibility to enroll in the school district where the student attended high school) must be for the consecutive twelve-month period immediately preceding the census date of the academic term the person seeks to enroll at an institution. The rule also establishes that once a person demonstrates domicile under at least one of the four categories, they are considered to have maintained domiciled for that time.

Subsection (e) specifies the necessary evidence a person may use to support a claim of residence under TEC, §54.052 (a)(3)(B)(i), which mentions the "three years preceding the date of graduation or receipt of the diploma equivalent." Subsection (f) outlines options institutions may use as the necessary evidence a person may use to support a claim of residence under TEC, §54.052(a)(3)(B)(ii), which reconstitutes §21.24(b), with some changes. For example, "cancelled checks" was removed from the list to support a claim of residence under TEC, §54.052(a)(3)(B)(ii), because the use of checks is now minimal and no longer as relevant. Similarly, credit reports were also removed since reports can be delayed, there may be a cost, and the report may contain sensitive information that is not relevant to the demonstration of residency. Instead of these, the rule includes new categories of information, such as a Texas driver's license, and a broad category that allows for any other documentation used by the student to establish eligibility to enroll in the school district where the student attended high school.

Subsection (g) maintains the clause under §21.24(g), and applies to all persons, no matter which category they seek to establish resident status under TEC, §54.052 (a)(1) - (3), in asserting that a person whose initial reason is to attend higher education in Texas is presumed not to make Texas their domicile.

Subsection (h) maintains the clause under §21.24(h), and applies to all persons, no matter which category they seek to establish resident status under TEC, §54.052(a)(1) - (3), in asserting that a person that a person may not establish domicile by fulfilling an educational objection or other activities that are generally performed only by temporary residents of Texas.

Subsection (i) maintains the clause under §21.24(i), exactly regarding the rights of members of the United States Armed Forces for purposes of the determination of Texas resident status.

Subsection (j) reinforces TEC, §54.075(b), that an institution cannot require evidence of resident status beyond what is stated in administrative rules. Subsection (k) is a reconstitution of §21.30(a), which serves as a reminder to institutions that they must retain documentation provided to them according to their record retention schedule. Current §21.24(d)(1) - (7), is no longer included in the determination of resident status rules, and former guidance that THECB may have issued on this subject is no longer relevant.

Rule 13.197, Continuing Resident Status, reconstitutes §21.26, to reflect TEC, §54.054. Once an institution classifies a person as a resident of Texas, the person is entitled to continue to be classified as a resident without submitting additional information, unless information is identified that would lead to a reclassification or the correction of an error, or if a person is not enrolled in a Texas institution for two or more consecutive regular semesters. The rule clarifies that both the person and the institution may identify information that warrants a change in resident status.

Rule 13.198, Reclassification Based on Changed or Additional Information, reconstitutes §21.27, to reflect TEC, §54.055. Reclassification is based on new or changed information. Errors in classification, including errors due to failure of a person to provide information, are addressed in subsequent sections. Institutions are permitted to reclassify a person's status from resident to nonresident, or vice-versa, based on additional or changed information. Individuals are required to provide timely information which may affect their resident or nonresident status. Such reclassification takes effect in the current semester if the reclassification occurs prior to the census date. Otherwise, it takes effect in the first succeeding academic term. A change in eligibility for resident tuition based on the June 2025, court order implementing federal law would require each institution to reclassify students and charge the correct tuition during the Fall 2025 semester.

Rule 13.199, Errors in Classification for Nonresident Tuition, reconstitutes aspects of §21.28(a), to better reflect TEC, §54.056(a). Institutions are responsible for charging a person nonresident tuition beginning with the first academic term that begins after the date the institution discovers that the institution erroneously classified a person as a Texas resident. Liability for unpaid tuition due to an error in classification is limited by §13.200, and an institution may not request payment of the unpaid tuition until the first day of the academic term after the error is discovered.

Rule 13.200, Liability for Errors in Classification, reconstitutes additional aspects of §21.28(a), to reflect TEC, §54.057 and aspects of §54.056(a). The rule outlines those situations when a person is liable for errors in classification. Persons are liable to pay the difference in resident and nonresident tuition resulting from an erroneous classification in situations where a person failed to provide new or changed information or provided false information that the person reasonably should have known would result in a change of classification. An institution may not require a person to pay unpaid tuition owed as a condition for any subsequent enrollment by the person in the institution. However, persons who do not pay the tuition for which they are liable are restricted from receiving a certificate, diploma, or transcript under certain circumstances. Persons who are entitled to permitted to have their nonresident tuition reduced to the level of resident tuition are not liable under this section.

Rule 13.201, Institutional Errors in Classification for Resident Tuition, reconstitutes §21.28(b), to reflect TEC, §54.056(b). An institution must begin charging resident tuition in the academic term in which the institution identifies that a person was erroneously classified as a nonresident and must immediately refund the amount the person paid in excess of resident tuition.

Rule 13.202, Resident Status Determination Official, reconstitutes §21.29. Each institution must employ at least one person to serve as the resident status determination official who shall be familiar with these rules and corresponding statutes, as well as applicable state and federal laws.

Rule 13.203, Required Notification Regarding Permanent Residency, reconstitutes rule §21.30(b). An institution must notify students who are not U.S. citizens or permanent residents, and who demonstrated lawful presence, of their duty to apply for permanent resident status as soon as they are able. Institutions must notify such students upon admission, annually while the student is enrolled, and upon graduation or separation from the institution.

Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the improved clarity, specificity, and operability of rules relating to the determination of resident status. The proposed new rules bring the rules into compliance with recent court orders. There are limited anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

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

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

(5) the rules will create a new rule;

(6) the rules will not limit an existing rule;

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

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

Comments on the proposed rule or information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research or analysis, may be submitted to Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under Texas Education Code, Section 54.075, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, Chapter 54, Subchapter B.

The proposed new section affects Texas Education Code, Title 19, Part 1, Chapters 13 and 22.

§13.191. Authority and Applicability.

(a) Authority. Texas Education Code, §54.075, authorizes the Board to adopt rules to carry out the purposes of Texas Education Code, chapter 54, subchapter B, concerning the determination of resident status.

(b) Applicability. Each institution of higher education or private or independent institution of higher education shall use the provisions of this subchapter for the determination of the entitlement to resident status under any provision of the Texas Education Code.

§13.192. Definitions.

In addition to the words and terms defined in §13.1 of this chapter (relating to Definitions), the following terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise or the relevant subchapter specifies a different definition:

(1) Core Residency Questions--Board promulgated questions that a person completes for an institution's use in determining if the person is a Texas resident. The Core Residency Questions shall be included in the ApplyTexas Application and posted on the Board's website.

(2) Dependent--A person who:

(A) is less than 18 years of age and has not been emancipated by marriage or by court order; or

(B) is eligible to be claimed as a dependent of a parent of the person for purposes of determining the parent's income tax liability under the Internal Revenue Code of 1986 26 U.S. Code §152, regardless whether another person has claimed the dependent.

(3) Domicile--A person's principal, permanent residence to which the person intends to return after any temporary absence, as defined in Texas Education Code, §54.0501(3).

(4) Significant Gainful Employment--Employment, including self-employment, intended to provide an income to a person or allow a person to avoid the expense of paying another person to perform the tasks (as in child care) that is sufficient to provide at least one-half of the person's tuition, fees and living expenses as determined in keeping with the institution's student financial aid budget or that represents an average of at least twenty hours of employment per week. A person who is living off his/her earnings (present or past- such as pensions, veterans' benefits, social security, and savings from previous earnings) may be considered gainfully employed for purposes of establishing domicile, as may a person whose primary support is public assistance. Employment conditioned on student status, such as work study, internships, the receipt of stipends, fellowships, or research or teaching assistantships does not constitute gainful employment for purposes of resident determination.

(5) Lawfully Present Alien--A non-U.S. citizen who seeks resident tuition and who proves by clear and convincing evidence that the alien is lawfully present in the United States as required by 8 U.S.C. §1623(a).

(6) Nonresident Tuition--The amount of tuition paid by a person who is not a Texas resident and who is not entitled or permitted to pay resident tuition under this subchapter and as defined in Texas Education Code, §54.0501(4).

(7) Parent--A natural or adoptive parent, managing or possessory conservator, or legal guardian of a person. Parent does not include a stepparent.

(8) Private High School--A private, parochial, or home school in Texas.

(9) Regular Semester--A fall or spring regular semester typically consisting of sixteen weeks.

(10) Residence--A person's home or other dwelling unit, as defined in Texas Education Code, §54.0501(6).

(11) Resident Tuition--The amount of tuition paid by a person who is a resident of Texas, as defined in Texas Education Code, §54.0501(7).

(12) Residential Real Property--Land and improvements on it, such as a dwelling intended for long-term human habitation.

(13) Temporary Absence--When a person who has previously met the criteria for resident status but is absent only for a short duration (i.e., less than one year) from the state of Texas and the person has the intention to return to the person's domicile in Texas. Temporary absence does not include a person's or dependent's parent's service in the U.S. Armed Forces, U.S. Public Health Service, or U.S. Department of State, due to employment assignment or for educational purposes.

§13.193. Effective Date of this Subchapter.

Changes to this subchapter adopted in October 2025, are effective to resident status decisions for payment of tuition made after the census date of the fall Regular Semester, 2025. Resident status determinations made prior to the effective date of these rules are governed by the state or federal law, including those modified by court order, at the time of determination.

§13.194. Determination of Resident Status.

(a) Persons Classified as Texas Residents. Subject to other applicable provisions of this subchapter, for an institution to classify a person as a resident of Texas, the person must be able to demonstrate, and each institution shall verify, that the person is a U.S. citizen or is a lawfully present alien, and also meets one of the following categories:

(1) a person, other than a dependent, who qualifies for resident status pursuant to Texas Education Code, §54.052(a)(1), and who:

(A) established a domicile in Texas not later than one year (12 months) before the census date of the academic term in which the person is enrolled in an institution; and

(B) maintained that domicile continuously for the year (12 months) preceding that census date;

(2) a dependent whose parent:

(A) established a domicile in Texas not later than one year (12 months) before the census date of the academic term in which the dependent is enrolled in an institution; and

(B) maintained the domicile continuously for the year (12 months) preceding the census date; or

(3) a person who:

(A) is a U.S. Citizen, permanent resident, or is otherwise lawfully present in the United States, and graduated from a public or private high school in Texas or received a State of Texas Certificate of High School Equivalency or other diploma or high school degree recognized by the state; and

(B) maintained a residence continuously in Texas for:

(i) the three years (36 months) preceding the date of graduation or receipt of the diploma equivalent, as applicable; and

(ii) the year (12 months) preceding the census date of the academic term in which the person is enrolled in an institution.

(b) Presumption of Domicile. Pursuant to Texas Education Code, §54.052(b), the domicile of a dependent's parent, as established in accordance with §13.196(c) of this subchapter (relating to Information Needed to Document Resident Status), is presumed to be the domicile of the dependent, except when the person establishes eligibility of resident status under subsection (a)(3) of this section.

(c) Except as provided in subsection (d) of this section, an institution may not require a person to provide evidence of resident status beyond what is included in this subchapter.

(d) A person seeking resident tuition has the burden of proof to show by clear and convincing evidence that the person is a U.S. citizen or a lawfully present alien and has established and maintained domicile in Texas as required by subsection (a)(3) of this section. An institution may request any additional information reasonably necessary to verify that a student seeking resident tuition pursuant to Texas Education Code, §54.052(a)(3), is lawfully present. An institution may verify lawful presence by confirming an applicant's eligibility with the United States Citizenship and Immigration Services (USCIS).

§13.195. Core Residency Questions.

(a) In order for an institution to make an initial determination regarding a person's resident status under §13.194 of this subchapter (relating to Determination of Resident Status), the institution shall require each student who seeks resident tuition to complete the set of Core Residency Questions provided in Figure: 19 TAC §13.195(a), which is incorporated into this subchapter for all purposes, and evidence described in §13.196 of this subchapter (relating to Information Needed to Document Resident Status).
Figure: 19 TAC §13.195(a)

(b) Additionally, each student seeking resident tuition under §13.194(a)(3) of this subchapter shall also provide the institution with an affidavit in the form promulgated by the Board and provided in Figure: 19 TAC §13.195(b), which is incorporated into this subchapter for all purposes, stating that the person is able to demonstrate that he or she: is a lawfully present alien, can provide any documentation necessary for the institution to verify the contents of the affidavit required by this section, and will apply to become a permanent resident of the United States as soon as the person is eligible to do so.
Figure: 19 TAC §13.195(b)

(c) Clarifying Core Residency Questions. In instances where answers to the Core Residency Questions under "General Comments" are unclear, an institution may make a good faith request that a person provide reasonable documentation to support or clarify their original comments.

§13.196. Information Needed to Document Resident Status.

(a) Evidence Supporting Domicile in Texas Pursuant to Texas Education Code, §54.052(a)(1). Each institution shall use the factors described by paragraphs (1) - (4) of this subsection for the consecutive twelve-month period immediately preceding the census date of the academic term in which a person seeks to enroll at an institution in determining a person's claim of domicile in Texas.

(1) Significant Gainful Employment:

(A) An employer's statement of dates of employment and salary earned in Texas (beginning and current or ending dates) that encompass at least the twelve consecutive months immediately preceding the census date of the academic term in which the person enrolls showing the salary the person earned or pay stubs for twelve consecutive months immediately preceding the census date, reflecting significant gainful employment in Texas, or proof of other earned income such as pensions, veterans' benefits, social security, and savings from previous earnings for twelve consecutive months immediately preceding the census date of the academic term in which the person enrolls.

(B) For a person who is unemployed and living on public assistance, written statements from the office of one or more social

service agencies located in Texas that attest to the provision of services to the person for at least the twelve consecutive months immediately preceding the census date of the academic term in which the person enrolls.

(C) For a person who is self-employed, federal tax documents showing significant gainful employment and domicile in Texas (beginning and current or ending dates) that encompass at least the twelve consecutive months immediately preceding the census date of the academic term in which the person enrolls.

(2) Residential Real Property. Sole or joint marital ownership, lease, or rental of residential real property in Texas with documentation, such as a warranty deed, lease agreement, or rental agreement, to verify ownership, renting, or leasing, with the person having established and maintained domicile at that residence during at least the twelve consecutive months immediately preceding the census date of the academic term in which the person enrolls.

(3) Marriage. Marriage certificate or declaration of registration of informal marriage with documentation to support that the spouse has established and maintained domicile in Texas for the twelve consecutive months prior to the census date of the academic term in which the person enrolls.

(4) Ownership of a Business. Documents that evidence the organization of the business in Texas for twelve consecutive months prior to the census date of the academic term in which the person enrolls that reflect the ownership interest of the person, and the customary management of the business by the person without the intention of liquidation for the foreseeable future.

(b) A person who has demonstrated domicile by satisfying at least one of the factors described in subsection (a)(1) - (4) of this section, and who continues to reside in Texas, except for temporary absences, is considered to have maintained domicile for the period of time unless the person take steps to the contrary.

(c) Evidence Supporting a Dependent Pursuant to Texas Education Code, §54.052(a)(2). Each institution shall use the factors described by paragraphs (1) - (4) of this subsection for the consecutive twelve-month period immediately preceding the census date of the academic term in which a dependent seeks to enroll at an institution in determining a dependent's parent's claim of domicile in Texas.

(1) Significant Gainful Employment of the Parent:

(A) An employer's statement of dates of employment and salary earned of the dependent's parent in Texas (beginning and current or ending dates) that encompass at least the twelve consecutive months immediately preceding the census date of the academic term in which the dependent enrolls showing the salary the dependent's parent earned or pay stubs for twelve consecutive months immediately preceding the census date, reflecting significant gainful employment in Texas, or proof of other earned income such as pensions, veterans' benefits, social security, and savings from previous earnings for twelve consecutive months immediately preceding the census date the dependent enrolls.

(B) For a dependent's parent who is unemployed and living on public assistance, written statements from the office of one or more social service agencies located in Texas that attest to the provision of services to the dependent's parent for the twelve consecutive months immediately preceding the census date of the academic term in which the dependent enrolls.

(C) For a dependent's parent who is self-employed, federal tax documents showing domicile in Texas (beginning and current or ending dates) that encompass at least the twelve consecutive months immediately preceding the census date of the academic term in which the dependent enrolls.

(2) Residential Real Property of the Parent. Sole or joint marital ownership, lease, or rental of residential real property in Texas with documentation, such as a warranty deed, lease agreement, or rental agreement, to verify ownership, rental, and leasing with the dependent's parent having established and maintained domicile at that residence during at least the twelve consecutive months immediately preceding the census date of the academic term in which the dependent enrolls.

(3) Marriage of the Parent. Marriage certificate or declaration of registration of informal marriage with documentation to support that the dependent's parent's spouse has established and maintained domicile in Texas for at least the twelve consecutive months immediately preceding the census date of the academic term in which the person enrolls.

(4) Ownership of a Business of the Parent. Documents that evidence the organization of the business in Texas for at least the twelve consecutive months immediately preceding the census date of the academic term in which the dependent enrolls, that reflect the ownership interest of the dependent's parent, and the customary management of the business by the dependent's parent without the intention of liquidation for the foreseeable future.

(d) A dependent whose parent who has demonstrated domicile by satisfying at least one of the factors described in subsection (c)(1) - (4) of this section, and who continues to reside in Texas, except for temporary absences, the dependent is considered to have maintained domicile for the period of time unless the person take steps to the contrary.

(e) Evidence Supporting Residence Pursuant to Texas Education Code, §54.052(a)(3)(B)(i). Each institution should accept a person's high school transcript, GED, or receipt of diploma equivalent showing three years of attendance at a public or private high school in Texas before graduation or receipt of diploma equivalent as evidence supporting a person's claim of residence in Texas. In cases where there may be a gap between a person's high school transcript, GED, or receipt of diploma equivalent, and the person is seeking to establish continuous residence for the three year period, the person shall use the factors listed in subsection (f) of this section.

(f) Evidence Supporting Residence Pursuant to Texas Education Code, §54.052(a)(3)(B)(ii). Each institution shall use at least one of the following evidence in determining a person's claim of residence in Texas:

(1) Utility bills for the twelve consecutive months immediately preceding the census date;

(2) Texas high school transcript(s) for the person's full senior year or twelve months immediately preceding the census date;

(3) Texas voter registration card that was issued at least twelve months preceding the census date;

(4) Texas vehicle registration that was issued at least twelve months immediately preceding the census date;

(5) Possession of a valid Texas driver's license or Texas identification card that was issued at least twelve months immediately preceding the census date;

(6) Lease or rental of residential real property in the name of the person for the twelve consecutive months immediately preceding the census date; or

(7) any other documentation used by the student to establish eligibility to enroll in the school district where the student attended high school.

(g) A person whose initial purpose for moving to Texas is to attend an institution as a full-time student will be presumed not to have the required intent to make Texas his or her domicile; however, the presumption may be overruled by clear and convincing evidence.

(h) A person shall not be able to establish domicile by performing acts which are directly related to fulfilling educational objectives or which are required or routinely performed by temporary residents of the State.

(i) Members of the United States Armed Forces. A member of the United States Armed Services whose Home of Record with the military is Texas is presumed to be a Texas resident, as are his or her spouse and dependent children. A member whose Home of Record is not Texas but who provides the institution Leave and Earnings Statements that show the member has claimed Texas as his or her place of residence for the twelve consecutive months prior to enrollment is presumed to be a Texas resident, as are his or her spouse and dependent children.

(j) An institution may not require a person to provide evidence of resident status beyond what is included this subchapter.

(k) Documentation provided to an institution in accordance with this subchapter, must be retained by the institution in paper or electronic format as required by the institution's record retention schedule.

§13.197. Continuing Resident Status.

(a) Except as provided under subsection (b) of this section, a person classified by an institution as a resident of Texas under this subchapter may, without submitting the information required by §13.195 and §13.196 of this subchapter (relating to Core Residency Questions and Information Needed to Document Resident Status, respectively), be classified as a resident by any institution in each subsequent academic term in which the person enrolls unless the person provides information to the institution, or the institution identifies information, including a change in fact or law, that indicates a change in resident status is appropriate or required as indicated in §13.198 or §13.199 of this subchapter (relating to Reclassification Based on Changed or Additional Information and Errors in Classification for Nonresident Tuition, respectively).

(b) If a person is not enrolled in an institution for two or more consecutive regular semesters, then the person must reapply for resident status and shall submit the information required in §13.195 and §13.196 of this subchapter and satisfy all the applicable requirements to establish resident status.

§13.198. Reclassification Based on Changed or Additional Information.

(a) An institution may reclassify a person previously classified as a resident or nonresident under this subchapter based on additional or changed information.

(b) If a person discovers additional or changed information which may affect their resident or nonresident classification status, the person shall timely provide the information to the institution.

(c) If a person is initially classified as a nonresident, the person may request reclassification by providing the institution with the documentation described in §13.195 and §13.196 of this subchapter (relating to Core Residency Questions and Information Needed to Document Resident Status, respectively).

(d) Any change made under this section shall apply to the first succeeding academic term in which the person is enrolled, if the change is made on or after the census date of that academic term. If the change is made prior to the census date, it will apply to the academic term in which the change was made.

§13.199. Errors in Classification for Nonresident Tuition.

(a) If an institution erroneously classified a person as a Texas resident and the person is not entitled or permitted to pay resident tuition, liability for payment of nonresident tuition is as outlined in this subchapter:

(1) the institution shall charge nonresident tuition to the person beginning with the first academic term that begins after the date the institution discovers the error; and

(2) the person is liable for the difference between resident and nonresident tuition for each academic term in which the person paid resident tuition as a result of the error in classification.

(b) Liability is Limited. An institution is limited to the provisions outlined in §13.200 of this subchapter (relating to Liability for Errors in Classification) for the sanction of a student based on unpaid tuition owed by a person due to errors in classification for nonresident tuition.

(c) Regardless of whether the person is still enrolled at the institution, not earlier than the first day of the academic term that begins after the date the institution discovers the error, the institution may request the person to pay the difference between resident and nonresident tuition.

§13.200. Liability for Errors in Classification.

(a) The following persons are liable to pay the difference between resident and nonresident tuition for each academic term in which the person paid resident tuition as the result of an error in classification under this subchapter:

(1) A person who, upon receiving information that the person reasonably should have known would be relevant to or could lead to a correction or reclassification of the person's resident or nonresident classification status, failed to provide the information to the institution in a timely manner;

(2) A person who knowingly provided false information to the institution that the person reasonably knew or should have known could lead to an error in classification by the institution under this subchapter; or

(3) A person whose institution received or discovered information relevant to, or could lead to, a correction of a person's resident or nonresident classification status.

(b) The person liable under subsection (a) of this section shall pay the applicable amount to the institution not later than the 30th day after the date the institution notified a person of the person's liability for the amount owed. After receiving the notice and until the amount is paid in full, the person is not entitled to receive from the institution a certificate or diploma, if not yet awarded on the date of the notice, or official transcript that is based at least partially on or includes credit for courses taken while the person was erroneously classified as a Texas resident. An institution may not withhold a transcript if prohibited by federal law.

(c) Subsequent Enrollment. An institution may not require a person to pay unpaid tuition owed as a condition for any subsequent enrollment by the person in the institution.

(d) A person who an institution erroneously classified as a resident of Texas but who is entitled or permitted to have their nonresident tuition reduced to the same amount as resident tuition is not liable for

the difference between resident and nonresident tuition under this section.

§13.201. Institutional Errors in Classification for Resident Tuition.

(a) Regardless of the reason for the error, if an institution erroneously classifies a person as a nonresident, the institution shall charge resident tuition to the person beginning with the academic term in which the institution discovers the error.

(b) If an institution incorrectly charged or classified a person as liable for nonresident tuition when the student was entitled to pay resident tuition, the institution shall immediately refund the amount of tuition the person paid in excess of resident tuition.

§13.202. Resident Status Determination Official.

Each institution shall designate at least one individual who is employed by the institution as a Resident Status Determination Official who shall be knowledgeable of the requirements set out in this subchapter and the applicable statutes, including state and federal law, and who is responsible for determining the resident status of students at the institution.

§13.203. Required Notification Regarding Permanent Residency.

Each institution shall provide a notification to each student who demonstrated that the student is a lawfully present alien of the student's obligation to apply for Permanent Resident status as soon as the student is eligible to do so, pursuant to Texas Education Code, §54.053(3)(B). An institution shall provide this notification to each applicable student upon admission, annually while the student is enrolled, and upon graduation or separation from the institution.

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

Filed with the Office of the Secretary of State on August 26, 2025.

TRD-202503087
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 427-6365

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SUBCHAPTER L. ENGINEERING SUMMER PROGRAM

19 TAC §§13.200 - 13.202

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter L, §§13.200 - 13.202, concerning Engineering Summer Program. Specifically, this repeal will eliminate rules related to a program that is not currently funded and has not been funded in recent years.

The Coordinating Board is authorized by Texas Education Code, §61.027, to adopt and publish rules in accordance with Texas Government Code, Chapter 2001.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be eliminating rules related to a program that is not currently funded and has not been funded in recent years. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

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

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at SFAPPolicy@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Section 61.027, which provides the Coordinating Board with the authority to adopt and publish rules in accordance with Texas Government Code, Chapter 2001.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter L.

§13.200. Authority, Scope, and Purpose.

§13.201. Definitions.

§13.202. Summer Program.

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

Filed with the Office of the Secretary of State on August 26, 2025.

TRD-202503086
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 427-6365

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS SUBCHAPTER D. LOW-THC CANNABIS FOR COMPASSIONATE USE

25 TAC §1.61, §1.63

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), proposes an amendment to §1.61, concerning Incurable Neurodegenerative Diseases, and new §1.63, concerning Pulmonary Inhalation Devices for Low-THC Cannabis.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill (H.B.) 46, by King et al, 89th Legislature, Regular Session, 2025, which amends Texas Occupations Code §169.003 to allow DSHS to receive physician requests to add medical conditions to the list of qualifying conditions for which physicians may prescribe low-THC cannabis under the Texas Compassionate Use Program at the Texas Department of Public Safety. H.B. 46 also amends Texas Occupations Code Chapter 169 to add §169.006 to allow physicians to prescribe medical devices for the pulmonary inhalation of an aerosol or vapor to administer low-THC cannabis and establish a timeline for reviewing and approving such devices. In accordance with H.B. 46, the rule must be effective not later than October 1, 2025.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §1.61, Incurable Neurodegenerative Diseases, changes the rule title to "Medical Conditions for which a Physician May Prescribe Low-THC Cannabis." The proposed amendment also prescribes the way a physician may request additional medical conditions be added to the list of qualifying conditions.

Proposed new §1.63, Pulmonary Inhalation Devices for Low-THC Cannabis, defines a pulmonary inhalation medical device of an aerosol or vapor a physician may prescribe to a qualified patient and establishes a timeline for reviewing and approving such devices.

FISCAL NOTE

Christy Havel-Burton, DSHS Chief Financial Officer, has determined for each year of the first five years the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

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

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

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

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

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

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

(6) the proposed rules will expand existing regulation;

(7) the proposed rules will increase the number of individuals subject to the rules; and

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

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

Christy Havel-Burton has also determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any requirements or costs to small businesses, microbusinesses, or rural communities.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Manda Hall, M.D., Deputy Commissioner, Community Health Improvement Division, has determined for each year of the first five years the rules are in effect, the public may benefit from the use of pulmonary inhalation devices for low-THC cannabis treatment through the Texas Compassionate Use Program.

Christy Havel-Burton has also determined for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The rules are intended to provide guidance for low-THC cannabis pulmonary inhalation devices for treatment under the Texas Compassionate Use Program.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov.*

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R037" in the subject line.

STATUTORY AUTHORITY

The amendment and new section are authorized by Texas Occupations Code Chapter 169 and Texas Government Code §524.0151, which provide that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Health and Safety Code §1001.075 which authorizes the executive commissioner of HHSC to adopt rules necessary for the operation and provision of health and human services by DSHS and for the administration of Texas Occupations Code Chapter 169.

The amendment and new section affect Texas Occupations Code Chapter 169, Texas Government Code §524.0151, and Texas Health and Safety Code Chapter 1001.

§1.61. Medical Conditions for which a Physician May Prescribe Low-THC Cannabis [~~Incurable Neurodegenerative Diseases~~].

(a) An incurable neurodegenerative disease is a condition, injury, or illness:

(1) that occurs when nerve cells in the brain or peripheral nervous system lose function over time; and

(2) for which there is no known cure.

(b) A qualifying physician under Texas Occupations Code, Chapter 169, may prescribe low-THC cannabis to a patient with a documented diagnosis of one or more of the conditions listed under Texas Occupations Code §169.003, or one or more of the following incurable neurodegenerative diseases:

(1) Incurable Neurodegenerative Diseases with Adult Onset:

(A) Motor Neuron Disease:

(i) Amyotrophic lateral sclerosis;

(ii) Spinal-bulbar muscular atrophy; and

(iii) Spinal Muscular Atrophy.

(B) Muscular Dystrophies:

(i) Duchenne Muscular Dystrophy;

(ii) Central Core; and

(iii) Facioscapulohumeral Muscular Dystrophy.

(C) Freidreich's Ataxia.

(D) Vascular dementia.

(E) Charcot Marie Tooth and related hereditary neuropathies.

(F) Spinocerebellar ataxia.

(G) Familial Spastic Paraplegia.

(H) Progressive dystonias DYT genes 1 through 20.

(I) Progressive Choreas: Huntington's Disease.

(J) Amyloidoses:

(i) Alzheimer's Disease;

(ii) Prion Diseases:

(I) Creutzfeldt-Jakob Disease;

(II) Gerstmann-Straussler-Scheinker Disease;

(III) Familial or Sporadic Fatal Insomnia; and

(IV) Kuru.

(K) Tauopathies.

(i) Chronic Traumatic Encephalopathy:

(ii) Pick Disease;

(iii) Globular Glial Tauopathy;

(iv) Corticobasal Degeneration;

(v) Progressive Supranuclear Palsy;

(vi) Argyrophilic Grain Disease;

(vii) Neurofibrillary Tangle dementia, also known as Primary Age-related Tauopathy; and

(viii) Frontotemporal dementia and parkinsonism linked to chromosome 17 caused by mutations in MAPT gene.

(L) Synucleinopathies:

(i) Lewy Body Disorders:

(I) Dementia with Lewy Bodies; and

(II) Parkinson's Disease; and

(ii) Multiple System Atrophy.

(M) Transactive response DNA-binding protein-43 (TDP-43) Proteinopathies:

(i) Frontotemporal Lobar Degeneration;

(ii) Primary Lateral Sclerosis; and

(iii) Progressive Muscular Atrophy.

(2) Incurable Neurodegenerative Diseases with Pediatric Onset:

(A) Mitochondrial Conditions:

(i) Kearn Sayers Syndrome;

(ii) Mitochondrial Encephalopathy Ragged Red Fiber;

(iii) Mitochondrial Encephalopathy Lactic Acidosis Stroke;

(iv) Neuropathy, Ataxia, and Retinitis Pigmentosa;

(v) Mitochondrial neurogastrointestinal encephalopathy;

(vi) Polymerase G Related Disorders:

(I) Alpers-Huttenlocher syndrome;

(II) Childhood Myocerebrohepatopathy spectrum;

(III) Myoclonic epilepsy myopathy sensory ataxia; and

(IV) Ataxia neuropathy spectrum;

(vii) Subacute necrotizing encephalopathy, also known as Leigh syndrome;

(viii) Respiratory chain disorders complex 1 through 4 defects: Co Q biosynthesis defects;

(ix) Thymidine Kinase;

(x) Mitochondrial Depletion syndromes types 1 through 14:

(I) Deoxyguanisine kinase deficiency;

(II) SUCLG1-related mitochondrial DNA depletion syndrome, encephalomyopathic form with methylmalonic aciduria; and

(III) RRM2B-related mitochondrial disease.

(B) Creatine Disorders:

(i) Guanidinoacetate methytransferase deficiency;

(ii) L-Arginine/glycine amidinotransferase deficiency; and

(iii) Creatine Transporter Defect, also known as SLC 6A8.

(C) Neurotransmitter defects:

(i) Segawa Disease [~~Diease~~], also known as Dopamine Responsive Dystonia;

(ii) Guanosine triphosphate cyclohydrolase deficiency;

(iii) Aromatic L-amino acid decarboxylase deficiency;

(iv) Monoamine oxidase deficiency;

(v) Biopterin Defects:

(I) Pyruvoyl-tetahydropterin synthase;

(II) Sepiapterin reductase;

(III) Dihydropteridine reductase; and

(IV) Pterin-4-carbinolamine dehydratase.

(D) Congenital Disorders of Glycosylation.

(E) Lysosomal Storage Diseases:

(i) Mucopolysaccaridosis:

(I) Mucopolysaccharidosis Type I, also known as Hurler Syndrome or Scheie Syndrome;

(II) Mucopolysaccharidosis Type II, also known as Hunter Syndrome;

(III) Mucopolysaccharidosis Type III, also known as Sanfilippo A and B;

(IV) Mucopolysaccharidosis Type IV, also known as Maroteaux-Lamy; and

(V) Mucopolysaccharidosis Type VII, also known as Sly.

(ii) Oligosaccharidoses:

(I) Mannosidosis;

(II) Alpha-fucosidosis;

(III) Galactosialidosis;

(IV) Asparylglucosaminuria;

(V) Schindler; and

(VI) Sialidosis;

(iii) Mucolipidoses:

(I) Mucolipidoses Type II, also known as Inclusion Cell disease; and

(II) Mucolipidoses Type III, also known as pseudo-Hurler polydystrophy;

(iv) Sphingolipidoses:

(I) Gaucher Type 2 and Type 3;

(II) Neimann Pick Type A and B;

(III) Neimann Pick Type C;

(IV) Krabbe;

(V) GM1 gangliosidosis;

(VI) GM2 gangliosidosis also known as Tay-sachs and Sandhoff Disease;

(VII) Metachromatic leukodystrophy;

(VIII) Neuronal ceroid lipofuscinosis types 1-10 including Batten Disease; and

(IX) Farber Disease; and

(v) Glycogen Storage-Lysosomal: Pompe Disease.

(F) Peroxisomal Disorders:

(i) X-linked adrenoleukodystrophy;

(ii) Peroxisomal biosynthesis defects:

(I) Zellweger syndrome:

(II) Neonatal Adrenoleukodystrophy; and

(iii) D Bidirectional enzyme deficiency.

(G) Leukodystrophy:

(i) Canavan disease;

(ii) Pelizaeus-Merzbacher disease;

(iii) Alexander disease;

(iv) Multiple Sulfatase deficiency;

(v) Polyol disorders;

(vi) Glycine encephalopathy, also known as non-ketotic hyperglycinemia;

(vii) Maple Syrup Urine Disease;

(viii) Homocysteine re-methylation defects;

(ix) Methylenetetrahydrofolate reductase deficiency severe variant;

(x) L-2-hydroxyglutaric aciduria;

(xi) Glutaric acidemia type 1;

(xii) 3-hydroxy-3-methylglutaryl-CoA lyase deficiency;

(xiii) Galactosemia;

(xiv) Manosidosis alpha and beta;

(xv) Salidosis;

(xvi) Peripheral neuropathy types 1 through 4;

(xvii) Pyruvate Dehydrogenase Deficiency;

(xviii) Pyruvate Carboxylase Deficiency;

(xix) Refsum Disease; and

(xx) Cerebral Autosomal Dominant Arteriopathy with Sub-cortical Infarcts and Leukoencephalopathy.

(H) Fatty Acid Oxidation:

(i) Trifunctional protein deficiency; and

(ii) Long-chain L-3 hydroxyacyl-CoA dehydrogenase deficiency.

(I) Metal Metabolism:

(i) Wilson Disease;

(ii) Pantothenate Kinase Associated Neurodegeneration; and

(iii) Neurodegeneration with brain iron accumulation.

(J) Purine and Pyrimidine Defects:

(i) Adenylosuccinate synthase Deficiency;

(ii) 5-aminoimidazole-4-carboxamide ribonucleotide transformylase deficiency;

(iii) Hypoxanthine-guanine phosophoribosyltransferase Deficiency also known as Lesch-Nyhan disease;

(iv) Dihydropyrimidine dehydrogenase Deficiency; and

(v) Dihydropirimidinase Deficiency.

(c) A [~~treating~~] physician [~~of a patient suffering from an incurable neurodegenerative disease not listed in subsection (b) of this section~~] may submit a form [~~request~~] to the Texas Department of State Health Services (DSHS) [~~the department~~] to request adding a condition to the list of medical conditions in subsection (b) of this section for which a physician may prescribe low-THC cannabis [~~have a disease added~~].

(1) For forms that request addition of non-neurodegenerative diseases to the list of medical conditions, DSHS will provide those forms and any submitted peer reviewed evidence to the Department of Public Safety (DPS). DPS will then submit requests to the legislature for consideration.

(2) For forms that request addition of neurodegenerative diseases to the list of medical conditions, DSHS will assess those requests for any neurodegenerative diseases not currently listed in subsection (b) of this section.

(d) A request under subsection (c) of this section must [~~shall~~] be submitted using the form, Request to Add Medical Conditions for Which a Physician May Prescribe Low-THC Cannabis or Add Pulmonary Inhalation Devices for Low-THC Cannabis, located on the DSHS website [~~to the department on a form prescribed by the department, which can be found on the department's website at https://www.dshs.texas.gov/chronic/default.shtm~~].

(e) DSHS [~~After review of the submitted documentation, the department~~] may request additional information after review of the submitted form [~~or make a determination~~].

§1.63. Pulmonary Inhalation Devices for Low-THC Cannabis.

(a) A pulmonary inhalation device is a machine designed, marketed, and commercially sold to allow a user to inhale an aerosolized or vaporized substance.

(b) A pulmonary inhalation device must not burn or ignite a substance for the purpose of inhaling smoke.

(c) A qualifying physician under Texas Occupations Code Chapter 169 may prescribe a pulmonary inhalation device for low-THC cannabis to a patient who is qualified to receive a low-THC cannabis prescription.

(d) A qualifying physician under Texas Occupations Code Chapter 169 may submit a form to DSHS to request adding a pulmonary inhalation device to the list from which a physician may choose when prescribing a pulmonary inhalation device for low-THC cannabis.

(e) A request under subsection (d) of this section must be submitted using the form, Request to Add Medical Conditions for Which a Physician May Prescribe Low-THC Cannabis or Add Pulmonary Inhalation Devices for Low-THC Cannabis, located on the DSHS website.

(f) The Texas Department of State Health Services must review pulmonary inhalation devices every six months with stakeholders to determine potential changes to this section.

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

Filed with the Office of the Secretary of State on August 20, 2025.

TRD-202503019
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 776-3554

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 17. TAX RELIEF FOR PROPERTY USED FOR ENVIRONMENTAL PROTECTION

30 TAC §§17.2, 17.10, 17.12, 17.14, 17.17, 17.18, 17.20, 17.25

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 30 TAC §§17.14, 17.17 and 17.18 are not included in the print version of the Texas Register. The figures are available in the on-line version of the September 5, 2025, issue of the Texas Register.)

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§17.2, 17.10, 17.12, 17.14, 17.17, 17.20, and 17.25 and add new §17.18.

Background and Summary of the Factual Basis for the Proposed Rules

The commission's rules in 30 Texas Administrative Code (TAC) Chapter 17 implement the exemption from taxation established in Texas Tax Code (TTC), §11.31 for certain property that is used wholly or partially as a facility, device, or method for the control of air, water, or land pollution. Under the requirements of 30 TAC Chapter 17, an owner of property may submit an application to the executive director to determine if the facility, device, or method is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. The proposed rulemaking would amend the provisions in 30 TAC Chapter 17 to update the requirements of the Tax Relief for Pollution Control Property Program based on the recommendations and advice of

the Tax Relief for Pollution Control Property Advisory Committee (committee), established under TTC, §11.31(n), make clarifying changes to existing items on the Tier I Table, and provide other updates as discussed in the Section by Section Discussion. This rulemaking would also fulfill the requirement of TTC, §11.31(l) that the commission, by rule, update the list adopted under TTC, §11.31(k), the Expedited Review List (ERL), at least once every three years and fulfills the requirement of 30 TAC §17.14(b) that the commission review and update the Tier I Table every three years.

On December 1, 2022, the committee submitted its recommendations to TCEQ as part of the triennial review of the Tier I Table located in §17.14(a) and the ERL included as part of §17.17(b). The committee evaluated Tier II and Tier III applications submitted from April 1, 2018, through April 30, 2021, that received positive use determinations (PUD) to determine whether the pollution control property, if any, had been demonstrated consistently to be wholly used as pollution control property in the same manner on each application for any given property. The committee determined that one type of pollution control property currently submitted as Tier II property should be considered Tier I property in the Tier I Table, which would no longer require a Tier II application. Additional proposed changes include clarifying changes to existing items on the Tier I Table.

Applications for use determinations may be submitted under Tiers I, II, and III. A Tier I application may be submitted for property used as listed on the Tier I Table that is used for pollution control in accordance with the description listed in the Tier I Table for that property type. A Tier II application may be submitted for property that is not listed on the Tier I Table, but is used wholly for the control of air, water, and/or land pollution. A Tier III application may be submitted for property that is used partially for pollution control. For Tier III applications, a cost analysis procedure (CAP) is used to determine the proportion of the property used for pollution control purposes.

The proposed rulemaking would remove existing requirements that the commission review and update the Tier I Table every three years. This review is not required by statute and would not preclude the commission from reviewing the table or the committee from providing advice regarding the Tier I Table at any time. The requirement to review the ERL would not change because it is required in TTC, §11.31(l).

This proposed rulemaking would allow for appeal-related documents and executive director notifications to be sent and received electronically to make the process more efficient.

The commission also proposes to amend the corresponding provisions in Chapter 18, Voter-Approval Tax Relief for Pollution Control Requirements, to mirror the proposed changes in Chapter 17.

Section by Section Discussion

In addition to the proposed amendments to address recommendations from the advisory committee and to update and clarify program requirements, the commission proposes non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, establish consistency in the rules, and conform to the standards in the Texas Legislative Council Drafting Manual, September 2020. The specific substantive changes are discussed in greater detail in this Section by Section Discussion in the corresponding portions related to the affected rule sections. Non-substantive changes are not intended to alter the existing rule requirements in any way and may not be specifically discussed in this preamble.

§17.2 Definitions

The commission proposes to update references included in certain definitions in §17.2 to reflect revisions to other sections of the chapter. The proposed relocation of the ERL from §17.17(b) to a new section, §17.18, would make the reference to §17.17(b)(1) obsolete; therefore, the reference to 17.17(b)(1) of this title relating to Partial Determinations will be replaced with a reference to §17.18 of this title (relating to Expedited Review List) in the definition of "capital cost old." Similarly, the proposed removal of subsection (b) in §17.14 would make references to §17.14(b) obsolete, and those references are proposed for revision from §17.14(b) to §17.14 in the definitions for "Tier I," "Tier II," and "Tier III."

§17.10. Application for Use Determination

The commission proposes amendments to §17.10(a)(1) to provide that the executive director specifies the form of applications submitted to the program instead of requiring applicants to submit two printed copies of the application. This would allow for the executive director to require electronic submittal of applications, which is more efficient for the program to administer than processing paper applications. Proposed amendments to §17.10(c) would remove references to the postmarking of applications and replace them with references to submittal of applications.

The commission proposes to add language in §17.10(d)(1) to specify that applications pertaining only to property listed on the ERL need not provide the environmental benefits of the property. This change is consistent with TTC, §11.31(m), and existing requirements in Chapter 17.

The commission proposes to amend §17.10(d)(5) to change the reference to §17.17(c) to §17.17(b). This change would correspond with the proposed relocation of the ERL.

§17.12. Application Review Schedule

The commission proposes revisions to §17.12 to allow administrative completeness "notifications" to be sent in a form other than a letter, such as via electronic mail. Electronic correspondence for communications with applicants is more efficient. The commission also proposes an amendment to §17.12(3) to revise the reference to the ERL to reflect the proposed renumbering of the ERL to proposed new §17.18.

§17.14. Tier I Pollution Control Property

The commission proposes to amend §17.14 to remove subsection (b) and update the Tier I table. Proposed amendments to the table include adding an item based on a recommendation from the committee and revising existing items for clarity and to expand applicability.

The property listed in the table of §17.14 is designated as Tier I because the property has been predetermined to be pollution control property when used as described in the table. The commission proposes to add item number M-25 to the Tier I Table at 100% use for pollution control purposes as the committee recommended, but with some deviations from the committee's recommendation. The commission agrees with the committee's recommendation to add Amine Treating Systems (components necessary to transfer impurities removed from natural gas to a final control device), when used as described in the committee's recommendation, to the Tier I Table because they are used wholly for pollution control purposes.

The committee recommended adding amine treating systems as an item number beginning with letter "A," to designate it as air pollution control equipment. However, the commission proposes to designate this as miscellaneous pollution equipment, using the letter "M" because this property could be used to control pollution from the air, water, or land. Similarly, the commission proposes to list Amine Treating Systems with the media Air/Land/Water. The commission proposes to add the item using the property name, description, and use determination percentage recommended by the committee. This property type is described in the proposed rule language and is not further discussed in the Section by Section Discussion of this preamble.

The committee recommended that amine treating systems be added to the Tier I Table based on a review and analysis of Tier II applications submitted from April 1, 2018, through April 30, 2021. The property type consistently received a PUD of 100% each time an applicant requested a use determination for such property, demonstrating the property was consistently used wholly for pollution control. Although the proposed item number is added to the Tier I Table as 100% for pollution control purposes, an applicant would still be required, under §17.14 and §17.17, to submit a Tier III application if such property produces a marketable product or a Tier II or Tier III application if it is not used as described in the Tier I table.

The commission proposes to remove the requirement from item A-115 that external floating roofs be used to comply with a requirement in 30 TAC §115.112. This rule applies only to certain geographical areas in Texas, but external floating roofs may be used throughout the state to comply with a pollution control requirement other than those in §115.112. Additionally, other rules may be appropriate for applicants to cite when identifying the sections of the law(s), rule(s), or regulation(s) being met or exceeded by the use, installation, construction, or acquisition of the external floating roofs. Removing this requirement for item A-115 would allow applicants outside of the areas specified in §115.112 to be able to apply for a use determination using a Tier I application.

The commission proposes an amendment to revise the description for item T-32 for Dielectric Coatings to clarify that the item includes factory installed coal-tar epoxies, enamels, fiberglass reinforced plastic, or urethanes on tanks and/or piping. This change would clarify that newer and alternative technologies such as fusion-bonded epoxies that protect against corrosion of tanks or pipes could also qualify for Tier I applications.

The commission proposes to remove subsection (b) that requires the commission to update and review the Tier I Table at least once every three years. The scheduled review required in this section is not required by statute and places an unnecessary burden on the commission to engage in a review and rulemaking on a rigid schedule. Further, the standard of review requiring "compelling evidence" in paragraphs (1) and (2) to add or remove items on the Tier I Table is not required by statute and does not need to be imposed on the commission. Any future rulemaking to revise the Tier I Table would be subject to the rulemaking authority conferred to the commission in the Texas Water Code, the Texas Government Code, and the TTC. Removal of the requirements and limitations would not preclude the commission from reviewing the table or the committee from providing advice on its contents at any time. The proposed removal of subsection (b) would result in a §17.14 that no longer requires subsection formatting. Corresponding changes to reflect reference to the renumbering of §17.14 would also be made.

§17.17. Partial Determinations

The proposed rulemaking would move §17.17(b) concerning and including the ERL to proposed new §17.18. The rule provisions for applications for partial use determinations and applications for property on the ERL are different and should be addressed in separate sections. No changes are proposed to the ERL in the figure in existing 30 TAC §17.17(b). Subsections (c) and (d) and figures in 30 TAC §17.17(c)(1) and §17.17(c)(2) would be renumbered accordingly. References to §17.14(a) would also be removed from the rule language.

§17.18. Expedited Review List

The proposed rulemaking would add new §17.18 and move existing §17.17(b), including the ERL, into the new section. The proposed move would help clarify that the applicability of the ERL is independent of the application requirements for partial use determinations, which are provided in existing §17.17. No changes are proposed for the ERL in the existing figure in 30 TAC §17.17(b), proposed new figure 30 TAC §17.18. However, the rule language in proposed new §17.18 would be revised from existing §17.17(b) to indicate that an application that relies on an item from the ERL must still adhere to the requirements in Chapter 17 associated with application tier and fee.

§17.20. Application Fees

The proposed amendments would update rules related to the payment of application fees. The proposed rule revisions in §17.20(b) would clarify that if it is determined, during review of an application, that the fee originally remitted with an application was not appropriate for the application, the correct fee must be submitted before application review continues. Additionally, proposed revisions to §17.20(c) would specify how payment may be remitted and that the payment must be made payable to the Texas Commission on Environmental Quality. This change would reflect rule language used by other program areas for processing payments to the agency. Finally, the commission proposes an amendment to §17.20(d) to specify that either the application fee or a receipt for payment of the application fee must accompany the application.

§17.25. Appeals Process

The commission proposes amendments to §17.25 to provide for electronic submission of appeals and related correspondence by e-mail. Allowing such communications by e-mail provides more efficient administration of the program. This proposed rule would allow for appeal-related documents to be sent and received electronically. Currently, the rules specify appeals must be submitted via United States mail, facsimile or hand delivery, but do not specifically include e-mail. Conforming changes, including requiring the appeal to include the e-mail address of the person who files the appeal, to accommodate these changes, are also proposed in §17.25(b), (c), (f), and (g).

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, the proposed rulemaking will not result in increased costs to TCEQ. Additionally, it is anticipated that there would be no or minimal revenue impacts to the agency. Addition of Amine Treating Systems and other minor revisions to the Tier I table (§17.14), would decrease the application fee for impacted

systems from $1,000 (Tier II fee amount) to $150. However, only four Tier II applications received since 2020 would have been affected by these revisions.

The rulemaking is not anticipated to result in any fiscal implications for other state or local government entities.

Public Benefits and Costs

Mr. Girten determined that the public benefit of this rulemaking is that the agency will be compliant with state law, specifically the requirement in TTC, §11.31(l), that TCEQ update the list of pollution control properties in §17.14 at least once every three years. Additionally, the public will benefit from the addition of Amine Treating Systems and other minor revisions to the Tier I Table (§17.14), and this would reduce the application fee for applicants affected by these changes from $1,000 (Tier II fee amount) to $150. Lastly, the public will benefit from provisions allowing for electronic submittals of applications and uses of other electronic tools and communications (§17.10, §17.12, §17.20, and §17.25) and from non-substantive revisions which improve the clarity of the rule. This rulemaking would not result in any compulsory costs or requirements for any businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation, and it does not create, expand, repeal, or limit this regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed amendments in light of the regulatory analysis requirements of Texas Government Code (TGC), §2001.0225, and determined the rules do not meet the definition of "a Major environmental rule." Under TGC, §2001.0225, "a major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in TGC, §2001.0225(a). TGC, §2001.0225 applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking amends the Tax Relief for Pollution Control Property rules. The commission rules in Chapter 17 implement a voluntary property tax exemption for owners of certain property used to control pollution as set out in TTC, §11.31. Because the proposed rules are not specifically intended to protect the environment or reduce risks to human health from environmental exposure but to implement a tax relief program, this rulemaking is not a major environmental rule and does not meet any of the four applicability requirements. These rules do not result in any new environmental requirements and should not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. The commission invites public comment regarding this draft regulatory impact analysis determination.

Written comments on the Draft Regulatory Impact Analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated these amended rules and performed a preliminary assessment of whether TGC, Chapter 2007 is applicable. The commission's preliminary assessment indicates TGC, Chapter 2007 does not apply to these proposed amendments. Enforcement of these proposed rules would be neither a statutory nor constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property, because this rulemaking action does not burden, restrict, or limit the owner's rights to property or reduce its value by 25% or more beyond which would otherwise exist in the absence of the proposed regulations.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

Participation in the Tax Relief for Pollution Control Property Program is voluntary, but sites subject to the Federal Operating Permits Program could choose to file an application for a use determination. If the proposed rules are adopted, owners or operators of affected sites subject to the federal operating permit program may choose to apply consistent with Chapter 17.

Announcement of Hearing

The commission will hold a virtual public hearing on this proposal on September 29, 2025, at 10:00 a.m. Central Daylight Time (CDT). The hearing is structured for the receipt of oral comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 9:30 a.m. CDT.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Thursday, September 25, 2025. To register for the hearing, please e-mail Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Friday, September 26, 2025, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://events.teams.microsoft.com/event/2a564f09-897c-468b-a887-20536f00caa5@871a83a4-a1ce-4b7a-8156-3bcd93a08fba

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: *https://tceq.commentinput.com/comment/search*. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2023-123-017-AI. The comment period closes on October 6, 2025. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Elizabeth Sartain, Air Quality Planning Section, at (512) 239-3933 or elizabeth.sartain@tceq.texas.gov, Tax Relief for Pollution Control Property Program 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753, Mail: MC-110, P.O. Box 13087, Austin Texas 78711-3087.

Statutory Authority

The new and amended rules are proposed under Texas Water Code (TWC), §5.102, which authorizes the commission to perform any acts authorized by the TWC or other laws that are necessary and convenient to the exercise of its jurisdiction and powers; and TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC. The rules are also proposed under Texas Tax Code (TTC), §11.31, which authorizes the commission to adopt rules to implement the tax exemption for pollution control property.

The proposed amendments and new section implement TTC, §11.31.

§17.2. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA), the Texas Solid Waste Disposal Act (TSWDA), the Texas Water Code (TWC), the Texas Tax Code (TTC), or the Texas Health and Safety Code (THSC), or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the fields of pollution control or property taxation. In addition to the terms that are defined by Chapter 3 of this title (relating to Definitions), the TCAA, the TSWDA, TWC, TTC, and THSC, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Capital cost new--The estimated total capital cost of the equipment or process.

(2) Capital cost old--The cost of the equipment that is being or has been replaced by the equipment covered in an application. The value of this variable in the cost analysis procedure is calculated using one of the four hierarchal methods for this variable in the figure in §17.18 [~~§17.17(b)(1)~~] of this title (relating to Expedited Review List [~~Partial Determinations~~]).

(3) Cost analysis procedure--A procedure that uses cost accounting principles to calculate the percentage of a project or process that qualifies for a positive use determination as pollution control property.

(4) Environmental benefit--The prevention, monitoring, control, or reduction of air, water, and/or land pollution that results from the actions of the applicant. For purposes of this chapter, environmental benefit does not include the prevention, monitoring, control, or reduction of air, water, and/or land pollution that results from the use or characteristics of the applicant's goods or service produced or provided. For the purpose of this chapter, the terms "environmental benefit" and "pollution control" are synonymous.

(5) Marketable product--Anything produced or recovered using pollution control property that is sold as a product, is accumulated for later use, or is used as a raw material in a manufacturing process. Marketable product includes, but is not limited to, anything recovered or produced using the pollution control property and sold, traded, accumulated for later use, or used in a manufacturing process (including at a different facility). Marketable product does not include any emission credits or emission allowances that result from installation of the pollution control property.

(6) Partial Determination--A determination that an item of property or a process is not used wholly as pollution control.

(7) Pollution control property--A facility, device, or method for control of air, water, and/or land pollution as defined by TTC, §11.31(b).

(8) Tier I--An application containing property that is on the Tier I Table in §17.14 [~~§17.14(a)~~] of this title (relating to Tier I Pollu-

tion Control Property) or that is necessary for the installation or operation of property located on the Tier I Table.

(9) Tier II--An application for property that is used wholly for the control of air, water, and/or land pollution, but is not located on the Tier I Table in §17.14 [~~§17.14(a)~~] of this title.

(10) Tier III--An application for property used partially for the control of air, water, and/or land pollution and that does not correspond exactly to an item on the Tier I Table in §17.14 [~~§17.14(a)~~] of this title.

(11) Use determination--A finding, either positive or negative, by the executive director that the property is used wholly or partially for pollution control purposes and listing the percentage of the property that is determined to be used for pollution control.

§17.10. Application for Use Determination.

(a) To be granted a use determination a person shall submit to the executive director:

(1) a completed and signed [~~commission~~] application form specified by the executive director [~~and one copy of the completed, signed form~~]; and

(2) the appropriate fee, under §17.20 of this title (relating to Application Fees).

(b) An application must be submitted for each unit of pollution control property or for each group of integrated units that has been, or will be, installed for a common purpose.

(c) If the applicant desires to apply for a use determination for a specific tax year, the application must be submitted [~~postmarked~~] no later than January 31 of the same tax year. Applications submitted [~~postmarked~~] after this date will be processed as a lower priority than applications submitted [~~postmarked~~] by the due date and without regard for any appraisal district deadlines.

(d) All use determination applications must contain at least the following:

(1) the anticipated environmental benefits from the installation of the pollution control property for the control of air, water, and/or land pollution, except for applications containing only equipment on the Expedited Review List located in §17.18 of this title (relating to Expedited Review List);

(2) the estimated cost of the pollution control property;

(3) the purpose of the installation of such facility, device, or method, and the proportion of the installation that is for pollution control, such as, if deemed by the executive director to be relevant and essential to the use determination, a detailed description of the pollution source and a detailed and labeled process flow diagram that clearly depicts the pollution control property and the processes and equipment that generate the pollutant(s) being controlled;

(4) the specific sections of the law(s), rule(s), or regulation(s) being met or exceeded by the use, installation, construction, or acquisition of the pollution control property;

(5) if the installation includes property that is not used wholly for the control of air, water, and/or land pollution and is not on the Tier I Table, a worksheet showing the calculation of the Cost Analysis Procedure, §17.17(b) [~~§17.17(c)~~] of this title (relating to Partial Determinations), and explaining each of the variables;

(6) any information that the executive director deems reasonably necessary to determine the eligibility of the application;

(7) if the property for which a use determination is sought has been purchased from another owner who previously used the property as pollution control property, a copy of the bill of sale or other information submitted by the person or political subdivision that demonstrates, to the satisfaction of the executive director, that the transaction involves a bona fide change in ownership of the property and is not a sham transaction for the purpose of avoiding tax liability; and

(8) the name of the appraisal district for the county in which the property is located.

§17.12. Application Review Schedule.

Following submission of the information required by §17.10 of this title (relating to Application for Use Determination), the executive director shall determine whether the pollution control property is used wholly or partly for the control of air, water, and/or land pollution. If the determination is that the property is used partly for pollution control, the executive director shall determine the proportion of the property used for pollution control.

(1) As soon as practicable, the executive director shall send notice by regular mail or electronic mail to the chief appraiser of the appraisal district for the county in which the property is located that the person has applied for a use determination under this chapter.

(2) As soon as practicable after receipt of an application for use determination, the executive director shall send written notification informing the applicant that the application is administratively complete or that it is deficient.

(A) If the application is not administratively complete, the notification will specify the deficiencies, and allow the applicant 30 days to provide a revised application with the requested information. If the applicant does not submit the requested information within 30 days, the executive director shall take no further action on the application and the application fee will be forfeited under §17.20(b) of this title (relating to Application Fees). If the first revised application is deficient, the executive director shall send written notification informing the applicant that the application is deficient and providing the applicant 30 days to provide a second revised application. If the second revised application is not administratively complete or the applicant does not provide a second revised application within the 30 days, the executive director shall take no further action on the application and the application fee will be forfeited under §17.20(b) of this title.

(B) The executive director may request additional technical information within 60 days of issuance of an administrative completeness notification [~~letter~~]. If additional information is requested, the applicant shall provide a revised application with the requested information. If the revised application is determined to be incomplete or the applicant does not provide the requested technical information within 30 days, the executive director may request additional technical information or the executive director may decide to take no further action on the application and the application fee will be forfeited under §17.20(b) of this title. The executive director may not issue more than two notices of deficiency after the issuance of an administrative completeness notification [~~letter~~] on an application.

(C) The technical review process is limited to a total of 230 days from the date of declaration that the application is administratively complete. If at the end of the review period the application is considered to be incomplete, the executive director shall issue a negative use determination for failure to document the eligibility of the property/equipment to receive a positive use determination.

(D) An application where the executive director will take no further action under subparagraph (A) or (B) of this paragraph

may be refiled by the applicant. In such cases, the applicant shall pay the appropriate fee as required by §17.20 of this title.

(3) For applications covering property listed in the table in §17.18 [~~§17.17(b)~~] of this title (relating to Expedited Review List [~~Partial Determinations~~]), the executive director will complete the technical review of the application within 30 days of receipt of the required application information without regard to whether the information required by §17.10(d)(1) of this title has been submitted.

(4) The executive director shall determine whether the property is or is not used wholly or partly to control pollution. The executive director is authorized to grant positive use determinations for the portion of the property included in the application that is deemed pollution control property.

(A) If a positive use determination is made, the executive director shall issue a use determination letter to the applicant that describes the proportion of the property that is pollution control property.

(B) If a negative use determination is made, the executive director shall issue a denial letter explaining the reason for the denial.

(C) A letter enclosing a copy of the determination shall be sent by regular or electronic mail to the chief appraiser of the appraisal district for the county in which the property is located.

§17.14. Tier I Pollution Control Property.

[~~(a)~~] For the property listed in the Tier I Table located in this subsection that is used wholly for pollution control purposes, a Tier I application is required. A Tier I application must not include any property that is not listed in this subsection or that is used for pollution control purposes at a use percentage that is different than what is listed in the table. Unless otherwise designated with a partial use percentage on the Tier I Table, if a marketable product is recovered (not including materials that are disposed) from property listed in this subsection, a Tier III application is required.
Figure: 30 TAC §17.14
[~~Figure: 30 TAC §17.14(a)~~]

~~[(b) The commission shall review and update the Tier I Table at least once every three years.]~~

~~[(1) The commission may add an item to the table only if there is compelling evidence to support the conclusion that the item provides pollution control benefits and a justifiable pollution control percentage is calculable.]~~

~~[(2) The commission may remove an item from the table only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits.]~~

§17.17. Partial Determinations.

(a) A Tier III application requesting a partial determination must be submitted for all property that is either not used as described on the Tier I Table located in §17.14 [~~§17.14(a)~~] of this title (relating to Tier I Pollution Control Property), or does not fully satisfy the requirements for a 100% positive use determination under this chapter. For all property for which a partial use determination is sought, the cost analysis procedure (CAP) described in subsection (b) [~~(c)~~] of this section must be used.

~~[(b) The Expedited Review List in this subsection is adopted as a nonexclusive list of facilities, devices, or methods for the control of air, water, and/or land pollution. This table consists of the list located in Texas Tax Code, §11.31(k) with changes as authorized by Texas Tax Code, §11.31(l). The commission shall review and update the items listed in this table only if there is compelling evidence to support the conclusion that the item provides pollution control benefits. The commission may remove an item from this table only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits.]~~
~~[Figure: 30 TAC §17.17(b)]~~

(b) [~~(c)~~] Consistent with subsection (a) of this section, the following calculation (cost analysis procedure) must be used to determine the creditable partial percentage for a property that is filed on a Tier III application:

(1) If no marketable product results from the use of the property, use the following equation and enter "0" for the net present value of the marketable product (NPVMP):
Figure: 30 TAC §17.17(b)(1)
[~~Figure: 30 TAC §17.17(c)(1)~~]

(2) For property that generates a marketable product (MP), the net present value (NPV) of the MP is used to reduce the partial determination when used in the equation in the figure in paragraph (1) of this subsection. The value of the MP is calculated by subtracting the production costs of the MP from the market value of the MP. This value is then used to calculate the NPV of the MP (NPVMP) over the lifetime of the equipment. The equation for calculating NPVMP is as follows:
Figure: 30 TAC §17.17(b)(2)
[~~Figure: 30 TAC §17.17(c)(2)~~]

(c) [~~(d)~~] If the cost analysis procedure of this section produces a negative number or a zero, the property is not eligible for a positive use determination.

§17.18. Expedited Review List.

The Expedited Review List in this section is adopted as a nonexclusive list of facilities, devices, or methods for the control of air, water, and/or land pollution. This table consists of the list located in Texas Tax Code (TTC), §11.31(k) with changes as authorized by TTC, §11.31(l). The commission shall review and update the items listed in this table only if there is compelling evidence to support the conclusion that the item provides pollution control benefits. The commission may remove an item from this table only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits. An application that identifies an appropriate item from this list must be submitted as the appropriate tier level described in §17.2 (Relating to Definitions) and remit the corresponding fee as listed in §17.20(a) (relating to Application Fees).
Figure: 30 TAC §17.18

§17.20. Application Fees.

(a) Fees shall be remitted with each application for a use determination as required in paragraphs (1) - (3) of this subsection.

(1) Tier I Application--A $150 fee shall be charged for applications for property that is located in the Tier I Table located in §17.14 [~~§17.14(a)~~] of this title (relating to Tier I Pollution Control Property), as long as the application seeks no variance from that use determination.

(2) Tier II Application--A $1,000 fee shall be charged for applications for property that is used wholly for the control of air, water, and/or land pollution, but not in the Tier I Table located in §17.14 [~~§17.14(a)~~] of this title.

(3) Tier III Application--A $2,500 fee shall be charged for applications for property used partially for the control of air, water, and/or land pollution.

(b) Fees will be forfeited for applications for use determination on which the executive director will take no further action under

§17.12(2) of this title (relating to Application Review Schedule). An applicant who submits an insufficient fee will receive a deficiency notice in accordance with the procedures in §17.12(2) of this title. The fee must be remitted with the response to the deficiency notice before the application will be deemed administratively complete. If it is determined [~~during a technical review~~] that an application was submitted at the wrong tier level, the executive director will notify the applicant of the amount in which the fees are deficient or in excess, and if there are deficient fees, the applicant shall remit the appropriate fee according to the requirements in subsection (a) of this section [~~deficient amount of fees~~] before review of the application continues. If the deficient fees are not paid in full within 30 days of the applicant being notified of the deficiency, the executive director will take no further action on the application. If the executive director takes no further action on the application, the portion of the fees already paid shall be forfeited by the applicant.

(c) All fees shall be paid by check, money order, electronic funds transfer, or through the commission's payment portal, and shall be made payable to the Texas Commission on Environmental Quality [~~either be remitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality (TCEQ), by electronic funds transfer, or by using the commission's ePay system~~].

(d) The application fee or receipt for payment of the application fee [~~check, money order, or electronic funds transfer receipt~~] must be delivered with the application to the commission [~~, at the address listed on the application form~~].

§17.25. Appeals Process.

(a) Applicability.

(1) This subchapter applies to all appeals of use determinations issued by the executive director. A proceeding based upon an appeal filed under this subchapter is not a contested case for purposes of Texas Government Code, Chapter 2001.

(2) The following persons may appeal a use determination issued by the executive director:

(A) the applicant seeking a use determination; and

(B) the chief appraiser of the appraisal district for the county in which the property for which a use determination is sought is located.

(b) Form and timing of appeal. An appeal must be in writing and must be filed by United States mail, facsimile, e-mail, or hand delivery with the chief clerk of the commission within 20 days after the receipt of the executive director's determination letter. A person is presumed to have been notified on the third regular business day after the date the notice of the executive director's action is e-mailed or mailed by first class mail. If an appeal meeting the requirements of this subsection is not filed within the time period specified, the executive director's use determination is final. An appeal filed under this subchapter must:

(1) provide the name, address, e-mail address, and daytime telephone number of the person who files the appeal;

(2) give the name and address of the entity to which the use determination was issued;

(3) provide the use determination application number for the application for which the use determination was issued;

(4) request commission consideration of the use determination; and

(5) explain the basis for the appeal.

(c) Appeal processing. The chief clerk shall:

(1) deliver, e-mail, or mail to the executive director a copy of the appeal;

(2) deliver, e-mail, or mail a copy of the appeal to the applicant if the appeal was filed by the chief appraiser or to the chief appraiser if the appeal was filed by the applicant; and

(3) schedule the appeal for consideration at the next regularly scheduled commission meeting for which adequate notice can be given.

(d) Action by the general counsel. The general counsel may remand a matter from the commission's agenda to the executive director if the executive director or the public interest counsel requests a remand.

(e) Action by the commission.

(1) The person seeking the determination and the chief appraiser may testify at the commission meeting at which the appeal is considered.

(2) The commission may remand the matter to the executive director for a new determination or deny the appeal and affirm the executive director's use determination.

(3) If the commission denies the appeal and affirms the executive director's use determination, the commission's decision shall be final and appealable in district court.

(f) Action by the executive director.

(1) If the commission remands a use determination to the executive director, the executive director shall:

(A) conduct a new technical review of the application that includes an evaluation of any information presented during the commission meeting; and

(B) upon completion of the technical review, issue a new determination. A copy of the new determination shall be e-mailed [~~mailed~~] to both the applicant and the chief appraiser of the county in which the property is located.

(2) A new determination by the executive director may be appealed to the commission in the manner provided by this subchapter.

(g) Withdrawn appeals. An appeal may be withdrawn by the entity who requested the appeal. The withdrawal must be in writing, and give the name, e-mail address, address, and daytime telephone number of the person who files the withdrawal, and the withdrawal shall indicate the identification number of the use determination. The withdrawal must be filed by United States mail, facsimile, e-mail, or hand delivery with the chief clerk of the commission.

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

Filed with the Office of the Secretary of State on August 21, 2025.

TRD-202503030
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Earliest possible date of adoption: October 5, 2025
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CHAPTER 18. VOTER-APPROVAL TAX RELIEF FOR POLLUTION CONTROL REQUIREMENTS

30 TAC §§18.2, 18.10, 18.15, 18.25, 18.26, 18.30, 18.35

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figures in 30 TAC §18.25 and §18.26 are not included in the print version of the Texas Register. The figures are available in the on-line version of the September 5, 2025, issue of the Texas Register.)

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend the title of Chapter 18 and §§18.2, 18.10, 18.15, 18.25, 18.26, 18.30, and 18.35.

Background and Summary of the Factual Basis for the Proposed Rules

The commission's rules in 30 Texas Administrative Code (TAC) Chapter 18 implement a tax rate adjustment program established in Texas Tax Code (TTC), §26.045 to increase a political subdivision's tax rate equal to an amount that would allow the political subdivision to spend maintenance and operation funds to pay for certain property that is used wholly or partially as a facility, device, or method for the control of air, water or land pollution necessary to meet a permit issued by the commission. Under the requirements of 30 TAC Chapter 18, a political subdivision may submit an application to the executive director to determine if property is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. If the determination is approved by the executive director, the political subdivision then presents the executive director's determination to the tax assessor for adjustment of the tax rate for the political subdivision.

The proposed rulemaking would amend the provisions in 30 TAC Chapter 18 to correct the title of the chapter from Voter-Approval Tax Relief for Pollution Control Requirements to Voter-Approval Tax Rate Relief for Pollution Control Requirements. Senate Bill (SB) 2, Section 44, 86th Texas Legislature, 2019, required the revision of the title's chapter. This change was adopted as part of a previous rulemaking, Rule Project Number 2020-031-018-AI, but the full title change was not made correctly.

The proposed rulemaking would also amend the provisions in Chapter 18 to mirror the changes proposed in Chapter 17 as part of this rulemaking project (Rule Project No. 2023-123-017-AI). The commission's proposed amendments are based on the recommendations and advice of the Tax Relief for Pollution Control Property Advisory Committee (committee) and also include clarifying changes to existing items on the Tier I Table, and provide other updates as discussed in the Section by Section Discussion. This rulemaking would also fulfill the requirement of TTC, §26.045(g) that the commission, by rule, update the list adopted under TTC, §26.045(f), the Expedited Review List (ERL), at least once every three years and fulfills the existing requirement of 30 TAC §18.25(b) that the commission review and update the Tier I Table every three years.

On December 1, 2022, the committee submitted its recommendations to TCEQ as part of the triennial review of the Tier I Table located in §17.14(a) and ERL located in existing §17.17(b). This proposed rulemaking mirrors the committee's recommendation made for Chapter 17 regarding the Tier I Table and ERL in Chapter 18, except when deviation from these recommendations is needed to ensure the rule appropriately and consistently describes pollution control property eligible for a positive use determination (PUD) under Chapter 18.

Because Chapter 18 is not in the committee's purview, it did not consider the ERL in TTC, §26.045(f), codified in §18.26, or the Tier I Table in §18.25(a). The ERL and Tier I table in Chapter 18 are identical to the ERL in existing §17.17(b) and the Tier I Table in existing §17.14(a), respectively. The committee did not recommend any changes for the ERL in existing §17.17(b). However, the committee recommended the addition of one type of pollution control property be added to the Tier I Table. In the associated rule project for Chapter 17, several changes are proposed to the Tier I Table; therefore, the commission proposes corresponding changes to the Tier I Table in §18.25(a). The proposed changes would afford applicants applying under the Chapter 18 rules the same opportunities to receive a PUD for property submitted on a Tier I application as applicants applying under the Chapter 17 rules.

The proposed rulemaking would remove existing requirements in §18.25(b) that the commission review and update the Tier I Table every three years. This review is not required by statute and would not preclude the commission from reviewing the table at any time. The requirement to review the ERL would not change because it is required in TTC, §26.045(g).

Section by Section Discussion

The commission proposes to amend the title of Chapter 18 from "Voter-Approval Tax Relief for Pollution Control Requirements" to "Voter-Approval Tax Rate Relief for Pollution Control Requirements" to implement SB 2, Section 44 and revise the chapter's title.

In addition to the proposed amendments to incorporate corresponding proposed changes to Chapter 17, the commission proposes non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, establish consistency in the rules, and conform to the standards in the Texas Legislative Council Drafting Manual, September 2020. The specific substantive changes are discussed in greater detail in this Section by Section Discussion in the corresponding portions related to the affected rule sections. Non-substantive changes are not intended to alter the existing rule requirements in any way and may not be specifically discussed in this preamble.

§18.2 Definitions

The commission proposes revisions to the definition of Tier II in §18.2(5) to remove language that associates a Tier II application with property listed on the ERL. This change would clarify that the applicability of the ERL is independent of the Tier II application requirements for partial use determinations. The definition for Tier II would also be revised to add language that clarifies Tier II applications are associated not only with property not included on the Tier I Table but also with property that does not correspond exactly to an item on the Tier I Table.

Under the current rules, §18.25(a) requires applicants to submit a Tier II application for any of the proposed property additions if the property is used for pollution control purposes at a percentage different than what is listed on the table or, at the request of the executive director, if the equipment is not being used in a standard manner. These existing criteria in §18.25(a) are not proposed for revision. Any of the property proposed for inclusion

in the Tier I Table would need to continue to adhere to these existing requirements.

§18.10 Application for Use Determination

The commission proposes amendments to §18.10 to provide that the executive director specifies the form of applications submitted to the program. This would allow for the executive director to require electronic submittal of applications, which is more efficient for the program to administer than processing paper applications.

The commission proposes revision to §18.10(c)(5) to specify that the applicability of the ERL is independent of the Tier II application requirements for partial use determinations as specified in §18.30, relating to Partial Determinations.

§18.15 Application Review Schedule

The commission proposes amendments to §18.15 to allow the executive director to send notifications in a form other than a letter, such as via electronic mail, and to remove references to applications being mailed or sent back with notices of deficiency. Electronic correspondence for communications with applicants is more efficient. The commission also proposes amendments to §18.15 to specify that the executive director will take no action on an application, rather than sending an application back, if an applicant does not submit an adequate response within the 30 days.

§18.25 Tier I Eligible Equipment

The commission proposes amendments to §18.25 to remove subsection (b) and update the Tier I table. In addition to proposed updates to the Tier I table in §18.25 to mirror the updates proposed for the Chapter 17 Tier I table in §17.14, the commission proposes revisions to the Tier I table in §18.25 to remove the reference to the Cost Analysis Procedure, which is not found in Chapter 18, and to add a reference to documentation of the calculation of the partial determination for Tier II applications. The proposed revisions would also correct the citation in the introductory paragraph to the Tier I table to refer to the appropriate section in the TTC.

The commission proposes to add item number M-25 to the Tier I Table in §18.25(a), at 100% pollution control property as the advisory committee recommended for the Tier I Table of Chapter 17, but with some deviations from the committee's recommendation. The commission agrees with the committee's recommendation to add Amine Treating Systems (components necessary to transfer impurities removed from natural gas to a final control device), when used as described in the committee's recommendation, to the Tier I Table because they are used wholly for pollution control purposes. The commission proposes to add item M-25 to be consistent with the proposed revisions for Chapter 17.

The committee recommended adding amine treating systems as an item number beginning with letter "A," to designate it as air pollution control equipment. However, the commission proposes to designate this as miscellaneous pollution equipment, using the letter "M" because this property could be used to control pollution from the air, water, or land. Similarly, the commission proposes to list Amine Treating Systems with the media Air/Land/Water. The commission proposes to add the item using the property name, description, and use determination percentage recommended by the committee. This property type is described in the proposed rule language and is not further discussed in the Section by Section Discussion of this preamble.

The committee recommended that amine treating systems be added to the Tier I Table based on a review and analysis of Tier II applications submitted under Chapter 17 from April 1, 2018, through April 30, 2021. The property type consistently received a PUD of 100% each time an applicant requested a use determination for such property, demonstrating the property was consistently used wholly for pollution control. Although the proposed item number is added to the Tier I Table as 100% for pollution control purposes, an applicant would still be required, under §18.25, to submit a Tier II application if such property produces a marketable product or is not used as described in the Tier I table.

The commission proposes to remove the requirement from item A-115 that external floating roofs be used to comply with a requirement in 30 TAC §115.112. This rule applies only to certain geographical areas in Texas, but external floating roofs may be used throughout the state to comply with a pollution control requirement other than those in §115.112. Additionally, other rules may be appropriate for applicants to cite when identifying the sections of the law(s), rule(s), or regulation(s) being met or exceeded by the use, installation, construction, or acquisition of the external floating roofs. Removing this requirement for item A-115 would allow applicants outside of the areas specified in §115.112 to be able to apply for a use determination using a Tier I application.

The commission proposes amendments to revise the description for item T-32 for Dielectric Coatings to clarify that the item includes factory installed coal-tar epoxies, enamels, fiberglass reinforced plastic, or urethanes on tanks and/or piping. This change would clarify that newer and alternative technologies such as fusion-bonded epoxies that protect against corrosion of tanks or pipes could also qualify for Tier I applications.

The commission proposes to remove subsection (b) that requires the commission to update and review the Tier I Table at least once every three years. The scheduled review required in this section is not required by statute and places an unnecessary burden on the commission to engage in a review and rulemaking on a rigid schedule. Further, the standard of review requiring "compelling evidence" in paragraphs (1) and (2) to add or remove items on the Tier I Table is not required by statute and does not need to be imposed on the commission. Any future rulemaking to revise the Tier I Table would be subject to the rulemaking authority conferred to the commission in the Texas Water Code, the Texas Government Code (TGC), and the TTC. Removal of the requirements and limitations would not preclude the commission from reviewing the table or the committee from providing advice on it at any time. The proposed removal of subsection (b) would result in §18.25 that no longer requires subsection formatting. References to the subsection for §18.25(a) would also be removed from the rule language.

§18.26 Expedited Review List

The commission proposes amendments to §18.26 to add language to §18.26 to indicate that an application that relies on an item from the ERL must still adhere to the requirements in Chapter 18 associated with application tier and fee.

§18.30 Partial Determinations

The commission proposes amendments to §18.30 to remove the requirement that applicants must request a partial use determination for items on the ERL. Existing rule language does not account for a scenario in which ERL property could be used as described on the Tier I Table, making it eligible for a Tier I ap-

plication. This change would clarify that property included on the Tier I Table and ERL may be included on a Tier I application when used as described on the Tier I Table. A Tier II application would still be required if the property is not used wholly for pollution control purposes or as described on the Tier I Table.

§18.35 Application Fees

Revisions are proposed to remove the provision in existing §18.35(a)(2) that a Tier II application is required for items listed on the ERL. Removal of this provision would help clarify that property on the ERL does not have to be submitted on a Tier II application.

The proposed amendments would also update rules related to application fees. Proposed revisions to §18.35(b) would explain that fees would be forfeited for a use application upon which the executive director takes no further action, rather than for an application that is sent back to an applicant. The proposed rule revisions in §18.35(b) would clarify that if, during review of an application, it is determined that the fee originally remitted with an application was not appropriate for the application, the correct fee must be submitted before application review continues. Additional proposed revisions to §18.35(c) would clarify how payment may be remitted and that the payment must be made payable to the Texas Commission on Environmental Quality. This change would reflect rule language used by other program areas for processing payments to the agency. Finally, the commission proposes amendment to §18.35(d) to specify that either the application fee or a receipt for payment of the application fee must accompany the application.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, the proposed rulemaking would not result in increased costs to TCEQ.

The rulemaking is not anticipated to result in any costs for other state government entities or local government entities. This rulemaking would not result in any compulsory costs or requirements for any local entities.

Public Benefits and Costs

Mr. Girten determined that the public benefit of this rulemaking is that the agency would be compliant with state law, specifically the requirement in TTC, §26.045(g) that TCEQ update the list of pollution control properties in §18.25 at least once every three years. Additionally, the public would benefit from provisions allowing for electronic submittals of applications and uses of other electronic tools and communications (§18.10, §18.15, and §18.35) and from non-substantive revisions which improve the clarity of the rule.

The proposed rulemaking would not result in any costs or requirements for businesses or individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation, and it does not create, expand, repeal, or limit this regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed amendments in light of the regulatory analysis requirements of TGC, §2001.0225, and determined the rules do not meet the definition of a "major environmental rule." Under TGC, §2001.0225, a "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in TGC, §2001.0225(a). TGC, §2001.0225 applies only to a major environmental rule that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking amends the voter-approval tax rate relief for pollution control property rules. The commission rules in Chapter 18 implement a procedure available to political subdivisions to adjust tax rates to recover maintenance and operation funds used to pay for certain property used to control pollution as set out in TTC, §26.045. The proposed rule amendments revise requirements for use determination applications submitted to the executive director. Because the proposed rules are not specifically intended to protect the environment or reduce risks to human health from environmental exposure but

to implement a tax rate adjustment program, this rulemaking is not a major environmental rule and does not meet any of the four applicability requirements. These rules do not result in any new environmental requirements and should not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. The commission invites public comment regarding this draft regulatory impact analysis determination.

Written comments on the Draft Regulatory Impact Analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated these amended rules and performed a preliminary assessment of whether TGC, Chapter 2007 is applicable. The commission's preliminary assessment indicates TGC, Chapter 2007 does not apply to these proposed amendments. Enforcement of these proposed rules would be neither a statutory nor constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property, because this rulemaking action does not burden, restrict, or limit the owner's rights to property or reduce its value by 25% or more beyond which would otherwise exist in the absence of the proposed regulations.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §29.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

Participation in the Tax Relief for Pollution Control Property Program is voluntary, but sites subject to the Federal Operating Permits Program could choose to file an application for a use determination. If the proposed rules are adopted, political subdivisions that own or operate affected sites subject to the federal operating permit program may choose to apply consistent with Chapter 18.

Announcement of Hearing

The commission will hold a virtual public hearing on this proposal on September 29, 2025, at 10:00 a.m. Central Daylight Time (CDT). The hearing is structured for the receipt of oral comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 9:30 a.m. CDT.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Thursday, September 25, 2025. To register for the hearing, please e-mail Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Friday, September 26, 2025, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://events.teams.microsoft.com/event/2a564f09-897c-468b-a887-20536f00caa5@871a83a4-a1ce-4b7a-8156-3bcd93a08fba

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: *https://tceq.commentinput.com/comment/search*. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2023-123-017-AI. The comment period closes on October 6, 2025. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Elizabeth Sartain, Air Quality Planning Section, at (512) 239-3933 or elizabeth.sartain@tceq.texas.gov, Tax Relief for Pollution Control Property Program 12100 Park 35 Circle, Bldg. F, Austin, Texas 78753, Mail: MC-110, P.O. Box 13087, Austin Texas 78711-3087.

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which authorizes the commission to perform any acts authorized by the TWC or other laws that are necessary and convenient to the exercise of its jurisdiction and powers; and TWC, §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC. The rules are also proposed under Texas Tax Code, §26.045, which authorizes the commission to adopt rules to implement the program for the voter-approval tax rate relief for pollution control requirements.

The proposed amendments implement Texas Tax Code, §26.045.

§18.2. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA), the Texas Solid Waste Disposal Act (TSWDA), the Texas Water Code (TWC), the Texas Tax Code (TTC), the Texas Health and Safety Code (THSC), or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the fields of pollution control or property taxation. In addition to the terms that are defined by §3.2 of this title (relating to Definitions), the TCAA, the TSWDA, TWC, TTC, and THSC, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Partial determination--A determination that an item of property or a process is not used wholly as pollution control.

(2) Permit requirement--A clause within a permit issued by the Texas Commission on Environmental Quality (TCEQ) which requires the receiver of a permit to expend funds for a facility, device, or

method for control of air, water, or land pollution as defined by TTC, §26.045(b).

(3) Pollution control property--A facility, device, or method for control of air, water, or land pollution as defined by TTC, §26.045(b).

(4) Tier I--An application containing only property that is on the Tier I Table in §18.25 [~~§18.25(a)~~] of this title (relating to Tier I Eligible Equipment) or that is necessary for the installation or operation of property located on the Tier I Table.

(5) Tier II--An application containing property that [~~is listed or contained on the Expedited Review List in §18.26 of this title (relating to Expedited Review List) or that~~] is not listed on the Tier I Table or that does not correspond exactly to an item on the Tier I Table in §18.25(a) of this title.

(6) Use determination--A finding, either positive or negative, by the executive director that the property is used wholly or partially for pollution control purposes and listing the percentage of the property that is determined to be used for pollution control.

§18.10. Application for Use Determination.

(a) In order to be granted a positive use determination, a political subdivision shall submit to the executive director:

(1) a completed and signed application form specified by the executive director [~~a Texas Commission on Environmental Quality application form or a similar reproduction~~]; and

(2) the appropriate fee, under §18.30 of this title (relating to Application Fees).

(b) An application must be submitted for each permit requirement for which pollution control property has been or will be installed.

(c) The application shall contain at least the following:

(1) the anticipated environmental benefits from the installation of the pollution control property for the control of air, water, or land pollution, except for applications containing only equipment on the Expedited Review List located in §18.26 of this title (relating to Expedited Review List);

(2) the estimated cost of the pollution control property, where the cost includes not only the cost of the specific property, but also any costs related to the installation or construction of the property;

(3) the permit requirement being met by the installation of such facility, device, or method, and the proportion of the installation that is pollution control property;

(4) a copy of the permit that is being met or exceeded by the use, installation, construction, or acquisition of the pollution control property;

(5) if the installation includes property that is not used wholly for the control of air, water, or land pollution, and is not on the Tier I Table [~~or is property that is listed on the Expedited Review List~~], a worksheet showing the calculation of the partial determination as required in §18.30 of this title (relating to Partial Determinations), and explaining each of the variables; and

(6) any information that the executive director deems reasonably necessary to determine the eligibility of the application.

§18.15. Application Review Schedule.

Following submission of the information required by §18.10 of this title (relating to Application for Use Determination), the executive director shall determine whether the pollution control property is used wholly or partly to meet the requirements of a permit issued by the commission. If the determination is that the property is used partly for pollution control, the executive director shall determine the proportion of the property used for pollution control.

(1) As soon as practicable, the executive director shall send [~~mail~~] written notification informing the applicant that the application has been received and if the application is considered to be administratively complete or deficient.

(A) If the application is not administratively complete, the notification shall specify the deficiencies and allow the applicant 30 days to provide the requested information. If the applicant does not submit an adequate response, the executive director shall take no [~~the application will be sent back to the applicant without~~] further action on the application [~~by the executive director~~] and the application fee will be forfeited under §18.35(b) of this title (relating to Application Fees).

(B) If no further action is taken on an application [~~is sent back to the applicant~~] under subparagraph (A) of this paragraph, the applicant may re-file the application and pay the appropriate fee as required by §18.35(a) of this title [~~(relating to Application Fees)~~].

(2) For applications which contain only property that is listed on the Expedited Review List in §18.26 of this title (relating to Expedited Review List), the executive director shall complete the technical review of the application and issue the use determination within 30 days of receipt of the required application documents.

(3) For all other applications, within 30 days of receiving the application, the executive director shall either issue a notification requesting additional information or issue the final determination.

(A) If additional information is requested, the notification shall specify the deficiencies and allow the applicant 30 days to provide the requested information. If the applicant does not submit an adequate response, the executive director shall take no [~~the application will be sent back to the applicant without~~] further action [~~by the executive director~~] and the application fee will be forfeited under §18.35(b) of this title.

(B) If no further action is taken on an application [~~is sent back to the applicant~~] under subparagraph (A) of this paragraph, the applicant may re-file the application and pay the appropriate fee as required by §18.35(a) of this title.

(4) The executive director shall determine whether the property is used wholly or partly to control pollution. The executive director is authorized to grant positive use determinations for some or all of the property included in the application that is deemed pollution control property.

(A) If a positive use determination is made, the executive director shall issue a use determination letter to the applicant that describes the proportion of the property that is pollution control property.

(B) If a negative use determination is made, the executive director shall issue a denial letter explaining the reason for the denial.

§18.25. Tier I Eligible Equipment.

[~~(a)~~] For the property listed on the Tier I Table located in this subsection that is used wholly for pollution control purposes, a Tier I application is required. A Tier I application must not include any property that is not listed in this subsection or that is used for pollution control purposes at a use percentage that is different than what is listed in the table in this subsection. Unless otherwise designated with a partial use percentage in the Tier I Table of this subsection, if a marketable product is recovered (not including materials that are disposed) from property listed in this subsection, a Tier II application is required.

Figure 30 TAC §18.25
[Figure 30 TAC §18.25(a)]

[(b) The commission shall review and update the Tier I Table in subsection (a) of this section at least once every three years.]

[(1) An item may be added to the list only if there is compelling evidence to support the conclusion that the item provides pollution control benefits and a justifiable pollution control percentage is calculable.]

[(2) An item may be removed from the list only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits.]

§18.26. Expedited Review List.

The Expedited Review List in this section is a nonexclusive list of facilities, devices, or methods for the control of air, water, and/or land pollution. This table consists of the list located in Texas Tax Code, §26.045(f) with changes as authorized by Texas Tax Code, §26.045(g). The commission shall review and add to the items listed in this table only if there is compelling evidence to support the conclusion that the item provides [provide] pollution control benefits. The commission may remove an item from this table only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits. An application that identifies an appropriate item from this list must be submitted as the appropriate tier level described in §18.2 (Relating to Definitions) along with the corresponding fee as listed in §18.35(a) (related to Application Fees).
Figure: 30 TAC §18.26
[Figure: 30 TAC §18.26]

§18.30. Partial Determinations.

A partial determination must be requested for all property that [is in the figure in §18.26 of this title (relating to Expedited Review List) or that] is not wholly used for pollution control, except for property that is on the Tier I Table located in §18.25 [§18.25(a)] of this title (relating to Tier I Eligible Equipment) at a specified partial use percentage. It is the responsibility of the applicant to propose a reasonable method for calculating a partial determination. The calculation must be documented and included with the application. It is the responsibility of the executive director to review the appropriateness of the proposed method and make the final determination.

§18.35. Application Fees.

(a) Fees shall be remitted with each application for a use determination as required in paragraphs (1) - (2) of this subsection.

(1) Tier I Application. A $150 fee shall be charged for applications which contain only property that is listed in the figure in §18.25 [§18.25(a)] of this title (relating to Tier I Eligible Equipment) or is necessary for the installation or operation of an item listed on the Tier I Table, as long as the application seeks no variance from the percentage listed on the Tier I Table.

(2) Tier II Application. A $500 fee shall be charged for applications for property not listed in the figure located in §18.25 [§18.25(a)] of this title [or that is listed in the figure located in §18.26 of this title (relating to Expedited Review List)].

(b) Fees shall be forfeited for applications for use determination on which the executive director will take no further action under §18.15 of this title (relating to Application Review Schedule) [are sent back under §18.15 of this title (relating to Application Review Schedule)]. An applicant who submits an insufficient fee will receive a deficiency notice in accordance with the procedures in §18.15 of this title. The fee must be remitted with the response to the deficiency notice before the application will be deemed administratively complete. If it is determined that an application was submitted at an inappropriate tier level, the executive director will notify the applicant of the amount in which the fees are deficient or in excess, and if there are deficient fees, the applicant shall remit the appropriate fee described under §18.35(a) before review of the application proceeds. If the deficient fees are not paid in full within 30 days of the applicant being notified of the deficiency, the executive director will take no further action on the application. If the executive director takes no further action on the application, the portion of the fees already paid shall be forfeited by the applicant.

(c) All fees shall be paid by check, money order, electronic funds transfer, or through the commission's payment portal, and shall be made payable to the Texas Commission on Environmental Quality [either be remitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality or by electronic funds transfer by using the commission's ePay system].

(d) The application fee or receipt for payment [check, money order, or electronic funds transfer] must be delivered with the application [to the commission at the address listed on the application form].

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

Filed with the Office of the Secretary of State on August 21, 2025.

TRD-202503031
Charmaine K. Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 239-0682

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

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) proposes an amendment to rule §263.40, concerning life safety plans in county jails. The proposed rule adds language to 37 TAC §263.40, which makes grammatical corrections. This language is proposed following comments from the State Fire Marshal's Office, which were evaluated by the TCJS Administrative Rules Advisory Committee (ARAC). The TCJS ARAC recommended publication of this amendment, for public comment, to the Commission.

Brandon Wood, Executive Director, has determined that there will be no fiscal implications for state or local government as a result of enforcing this rule for the first five-year period.

Brandon Wood, Executive Director, has determined that for each year of the first five-years the rule is in effect, the public benefit anticipated as a result of enforcing this amended rule is enhanced compliance to national standards of fire protection. There will not be an effect on small businesses. There is

no anticipated economic cost to persons who are required to comply with proposed amendment.

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

1. The proposed rule will not create a government program and will not eliminate a government program;

2. Implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

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

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

5. The proposed rule will not create a new regulation;

6. The proposed rule will expand, limit, or repeal an existing regulation;

7. The proposed rule will change the number of individuals subject to the rules applicability; and

8. The proposed rule will not affect this state's economy.

Comments on the proposal may be submitted in writing to Richard Morgan, Research Specialist, at P.O. Box 12985, Austin, Texas 78711-2985, or by email at richard.morgan@tcjs.state.tx.us.

This amended rule is proposed under the authority of Government Code, Chapter 511, which authorizes the TCJS to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This rule change does not affect other rules or statutes.

§263.40. Plans.

Each facility shall have and implement a written plan, approved by the commission, for escapes, riots, assaults, fires, evacuations, rebellions, civil disasters, and any other emergencies. Each plan shall provide for:

(1) use and response to alarms;

(2) notification of and access for:

(A) fire department;

(B) emergency medical service;

(C) other law enforcement officials;

(3) isolation of emergency areas;

(4) prompt release and evacuation of emergency areas (including non-ambulatory [~~nonambulatory~~] inmates);

(5) prevention of escapes during evacuations;

(6) fire suppression and extinguishment, rendering of prompt medical aid and quelling disturbances; and

(7) protection of staff during emergencies.

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

Filed with the Office of the Secretary of State on August 25, 2025.

TRD-202503061
Brandon Wood
Director Wood
Texas Commission on Jail Standards
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 850-9668

SUBCHAPTER E. LIFE SAFETY AND EMERGENCY EQUIPMENT

37 TAC §263.53

The Texas Commission on Jail Standards (TCJS) proposes an amendment to rule §263.53, concerning life safety and portable fire extinguishers in county jails. The proposed rule adds language to 37 TAC §263.53, which adds a reference to the National Fire Protection Association standards. This language is proposed following comments from the State Fire Marshal's Office, which were evaluated by the TCJS Administrative Rules Advisory Committee (ARAC). The TCJS ARAC recommended publication of this amendment, for public comment, to the Commission.

Brandon Wood, Executive Director, has determined that there will be no fiscal implications for state or local government as a result of enforcing this rule for the first five-year period.

Brandon Wood, Executive Director, has determined that for each year of the first five-years the rule is in effect, the public benefit anticipated as a result of enforcing this amended rule is enhanced compliance to national standards of fire protection. There will not be an effect on small businesses, microbusinesses, rural communities, and/or individuals. There is no anticipated economic cost to persons who are required to comply with proposed amendment.

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

1. The proposed rule will not create a government program and will not eliminate a government program;

2. Implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

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

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

5. The proposed rule will not create a new regulation;

6. The proposed rule will expand, limit, or repeal an existing regulation;

7. The proposed rule will change the number of individuals subject to the rules applicability; and

8. The proposed rule will not affect this state's economy.

Comments on the proposal may be submitted in writing to Richard Morgan, Research Specialist, at P.O. Box 12985, Austin, Texas 78711-2985, or by email at richard.morgan@tcjs.state.tx.us.

This amended rule is proposed under the authority of Government Code, Chapter 511, which authorizes the TCJS to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This rule change does not affect other rules or statutes.

§263.53. Portable Fire Extinguishers.

Portable fire extinguishers of the number, size, and type, and in appropriate locations or in accordance with NFPA 101, Life Safety Code and NFPA 10, Standard for Portable Fire Extinguisher shall be provided.

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

Filed with the Office of the Secretary of State on August 25, 2025.

TRD-202503062
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 850-9668

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37 TAC §263.54

The Texas Commission on Jail Standards (TCJS) proposes an amendment to rule §263.54, concerning life safety and storage of life safety equipment in county jails. The proposed rule adds language to 37 TAC §263.54, which corrects a grammatical mistake. This language is proposed following comments from the State Fire Marshal's Office, which were evaluated by the TCJS Administrative Rules Advisory Committee (ARAC). The TCJS ARAC recommended publication of this amendment, for public comment, to the Commission.

Brandon Wood, Executive Director, has determined that there will be no fiscal implications for state or local government as a result of enforcing this rule for the first five-year period.

Brandon Wood, Executive Director, has determined that for each year of the first five-years the rule is in effect, the public benefit anticipated as a result of enforcing this amended rule is enhanced compliance to national standards of fire protection. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with proposed amendment.

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

1. The proposed rule will not create a government program and will not eliminate a government program;

2. Implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

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

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

5. The proposed rule will not create a new regulation;

6. The proposed rule will expand, limit, or repeal an existing regulation;

7. The proposed rule will change the number of individuals subject to the rules applicability; and

8. The proposed rule will not affect this state's economy.

Comments on the proposal may be submitted in writing to Richard Morgan, Research Specialist, at P.O. Box 12985, Austin, Texas 78711-2985, or by email at richard.morgan@tcjs.state.tx.us.

This amended rule is proposed under the authority of Government Code, Chapter 511, which authorizes the TCJS to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This rule change does not affect other rules or statutes.

§263.54. Equipment.

All life safety equipment shall be out of reach of inmates or otherwise secured from unauthorized tampering. At least one self-contained breathing apparatus shall be available and maintained in or near each facility control station. All staff shall be trained, and quarterly drills conducted in the use of this equipment. A minimum of one unit shall be provided for each building of a multibuilding facility and on each floor of a multistory facility.

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

Filed with the Office of the Secretary of State on August 25, 2025.

TRD-202503063
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 850-9668

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CHAPTER 265. ADMISSION

37 TAC §265.13

The Texas Commission on Jail Standards (TCJS) proposes an amendment to rule §265.13 verification of inmate status for county jails. The proposed rule adds language to 37 TAC §265.13 that requires a county jail to verify an inmates' veteran status during the intake process. This language is proposed to comply with SB 2938, 89(R).

Brandon Wood, Executive Director, has determined that there will be no fiscal implications for state or local government as a result of enforcing this rule for the first five-year period.

Brandon Wood, Executive Director, has determined that for each year of the first five-years the rule is in effect, the public benefit anticipated as a result of enforcing this amended rule will be

enhanced sanitation in county jail holding cells. There will not be an effect on small businesses, microbusinesses, rural communities, and/or individuals. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

1. The proposed rule will not create a government program and will not eliminate a government program;

2. Implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

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

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

5. The proposed rule will not create a new regulation;

6. The proposed rule will expand, limit, or repeal an existing regulation;

7. The proposed rule will change the number of individuals subject to the rules applicability; and

8. The proposed rule will not affect this state's economy.

Comments on the proposal may be submitted in writing to Richard Morgan, Research Specialist, at P.O. Box 12985, Austin, Texas 78711-2985, or by email at richard.morgan@tcjs.state.tx.us.

This amended rule is proposed under the authority of Government Code, Chapter 511, which authorizes the TCJS to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This rule change does not affect other rules or statutes.

§265.13. Verify Veteran Status.

(a) Each sheriff/operator shall investigate and verify the veteran status of each prisoner by using data made available from the Veterans Reentry Search Service (VRSS) operated by the United States Department of Veteran Affairs or similar service during intake, prior to housing.

(b) Each sheriff/ operator shall provide assistance to prisoners identified as veterans, identified through either self-report or the VRSS, in applying for federal benefits or compensation for which the prisoners may be eligible under a program administered by the United States Department of Veterans Affairs. Assistance includes, but not limited to, direct assistance by qualified claims counselor, issuance of a referral card, or similar assistance.

(c) Each sheriff shall maintain a log of positive VRSS returns with identifying prisoner number and whether a referral card was issued to the identified veteran prior to his or her release. If a referral card was not issued, a reason shall be provided on the log. A report shall be provided to the Texas Veterans Commission of positive identification of veteran status weekly.

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

Filed with the Office of the Secretary of State on August 25, 2025.

TRD-202503064
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 850-9668

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CHAPTER 291. SERVICES AND ACTIVITIES

37 TAC §291.4

The Texas Commission on Jail Standards (TCJS) proposes an amendment to rule §291.4 Visitation Plans in county jails. The proposed rule adds language to 37 TAC §291.4 that requires a county jail to allow certain visitation to inmates whose veteran status has been confirmed. This language is proposed to comply with SB 2938, 89(R).

Brandon Wood, Executive Director, has determined that there will be no fiscal implications for state or local government as a result of enforcing this rule for the first five-year period.

Brandon Wood, Executive Director, has determined that for each year of the first five-years the rule is in effect, the public benefit anticipated as a result of enforcing this amended rule will be enhanced sanitation in county jail holding cells. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

1. The proposed rule will not create a government program and will not eliminate a government program;

2. Implementation of the proposed rule will not require the creation of new employee positions and will not require the elimination of existing employee positions;

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

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

5. The proposed rule will not create a new regulation;

6. The proposed rule will expand, limit, or repeal an existing regulation;

7. The proposed rule will change the number of individuals subject to the rules applicability; and

8. The proposed rule will not affect this state’s economy.

Comments on the proposal may be submitted in writing to Richard Morgan, Research Specialist, at P.O. Box 12985, Austin, Texas 78711-2985, or by email at richard.morgan@tcjs.state.tx.us.

This amended rule is proposed under the authority of Government Code, Chapter 511, which authorizes the TCJS to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This rule change does not affect other rules or statutes.

§291.4. Visitation Plan.

Each facility shall have and implement a written plan, approved by the commission, governing inmate visitation. The plan shall:

(1) indicate frequency of visitation periods; each inmate shall be allowed a minimum of two in-person, noncontact visitation periods per week of at least 20 minutes duration each;

(A) Facilities exempt from in-person visitation shall be determined by the provisions set forth in Government Code §511.009(20)(a-1).

(B) The requirement of in-person visitation does not remove a sheriff's/operator's authority to limit visitation for disciplinary reasons as per 37 TAC §283.1.

(2) provide that at least one visitation period be allowed during evenings or weekends;

(3) provide for reasonable attorney/client visitation;

(4) provide for inmates whose veteran status has been verified to have in-person or video visitation with the veterans county service officer for the county or a peer service coordinator, at no cost to the inmate. These visits may not be counted towards the minimum allowed visits;

(5) [~~(4)~~] provide procedures for the selection of visitors, including inmates' minor children. Accompaniment by parent, guardian, or legal counsel may be required. The sheriff/operator shall provide procedures regarding visitation by a guardian. The procedures shall include placement of a guardian, at the guardian's request, on the inmate's visitation list, and provide the guardian access to the inmate during regular visitation hours to an eligible inmate. A guardian's visit shall be in addition to normal visitation. The sheriff/operator shall require the guardian to provide the sheriff/operator with letters of guardianship as provided by §§1002.012, 1106.001 - 1106.003, Estates Code, before allowing visitation with the inmate;

(6) [~~(5)~~] define procedures where contact visitation is permitted;

(7) [~~(6)~~] contain procedures for emergency visitation.

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

Filed with the Office of the Secretary of State on August 25, 2025.

TRD-202503060
Brandon Wood
Executive Director
Texas Commission on Jail Standards
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 850-9668

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 809. CHILD CARE SERVICES

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 809, relating to Child Care Services:

Subchapter A. General Provisions, §809.1 and §809.2

Subchapter C. Eligibility for Child Care Services, §809.43

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed amendments to Chapter 809 is to improve the efficiency and delivery of child care services and allow TWC's three-member Commission (Commission) flexibility to implement new service delivery concepts or Commission-approved statewide initiatives or special projects within Commission-defined parameters. The proposed amendments also clarify that the provisions of Chapter 809 apply to any entity receiving Commission funds or benefits related to child care services.

Additionally, the proposed amendments include child care waiting list priority for children of child care workers. Senate Bill (SB) 462, passed by the 89th Legislature, Regular Session, 2025, and signed by the governor, amended Texas Labor Code, Chapter 302 by adding §302.0064, which requires the Commission to establish a waiting list priority group for children of child care workers. The proposed amendments include the definition of a child care worker as provided in Texas Labor Code, §302.0064(a).

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§809.1. Short Title and Purpose

Section 809.1(b) is amended to conform with TWC style practices.

Section 809.1(d) is amended to clarify that the provisions of Chapter 809 apply to all entities receiving Commission funds related to child care services. This amendment will ensure that all entities participating in and receiving benefits or funds from any Commission child care initiative will be subject to applicable rules, including rules related to fraud and improper payments, governing child care services and quality initiatives.

New §809.1(e) is added to allow the Commission to suspend a provision of Chapter 809 for a specified time, on either a statewide or other basis, if the Commission determines that suspending the provision does not violate federal or state statutes or regulations and will improve the efficiency and delivery of child care services, or is necessary to implement new service delivery concepts or Commission-approved statewide initiatives or special projects within Commission-defined parameters.

This new subsection is designed to provide the Commission the flexibility to improve the delivery of child care services on a timely basis and to implement statewide initiatives or other special projects. In exercising this flexibility, the Commission intends to specify the provisions to be suspended and any applicable time limits on the suspension during public Com-

mission meetings, and when the initiative or special project is approved by the Commission. The amended rule requires that the Commission must determine that the suspension does not violate federal or state statutes or regulations.

Section 809.2. Definitions

Section 809.2 is amended to add a definition of a child care worker for purposes of the waiting list priority in §809.43. The definition is identical to the definition provided in Texas Labor Code, §302.0064(a) and states that a child care worker is an individual employed by and working in a child care facility licensed under Texas Human Resources Code, Chapter 42 for a minimum of 25 hours per week. The term does not include the owner or director of a child care facility unless the owner's or director's child is served in a program other than a program directly supervised by the owner or director.

SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

TWC proposes the following amendments to Subchapter C:

Section 809.43. Priority for Child Care Services

Section 809.43 is amended to add a waiting list priority group for children of child care workers as required by Texas Labor Code, §302.0064.

The Commission notes that Texas Labor Code, §302.0064(c) states that a child care worker whose child receives child care services under this priority group is subject to redetermination of the individual's eligibility for services in accordance with Commission rule each year. Therefore, once a child of a child care worker is initially authorized for child care under this priority, the child and child's family will be subject to eligibility redetermination as described in §809.42.

Additionally, TWC is concurrently making necessary enhancements to the child care information system to implement the new priority group. The enhancements are expected to be completed when the rules are scheduled to be effective in late 2025.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to individuals required to comply with the rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to improve the efficiency and delivery of child care services and implement state requirements regarding waiting list priority for children of child care workers.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the rules will be in effect, they:

--will not create or eliminate a government program;

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

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

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

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

--will not change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Child Care & Early Learning, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the

proposed rules will be to improve the efficiency and delivery of child care services, statewide initiatives, or special projects and implement state requirements regarding waiting list priority for children of child care workers.

PART IV. COORDINATION ACTIVITIES

The proposed amendments clarify the Commission's authority to suspend provisions of Chapter 809 rules for certain purposes as specified in the proposed rule language and implement child care waiting list priority requirements enacted by SB 462. Interested individuals may provide input by submitting comments to TWCPolicyComments@twc.texas.gov no later than October 6, 2025.

PART V. REQUEST FOR IMPACT INFORMATION

TWC requests, from any person required to comply with the proposed rules or any other interested person, information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. Please submit the requested information to TWCPolicyComments@twc.texas.gov no later than October 6, 2025.

PART VI. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than October 6, 2025.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §809.1, §809.2

PART VII. STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§809.1. Short Title and Purpose.

(a) The rules contained in this chapter may be cited as the Child Care Services rules.

(b) The purpose of the rules contained in this chapter is to interpret and implement the requirements of state and federal statutes and regulations governing child care and quality improvement activities funded through the [~~Texas Workforce Commission~~ (]Commission[)], to include the Child Care and Development Fund (CCDF), which includes:

(1) funds allocated to local workforce development areas (workforce areas) as provided in §800.58 of this title;

(2) private donated funds described in §809.17 of this chapter;

(3) public transferred funds described in §809.17 of this chapter;

(4) public certified expenditures described in §809.17 of this chapter; and

(5) funds used for children receiving protective services described in §809.49 of this chapter.

(c) The rules contained in this chapter apply to other funds that are used for child care services allocated to workforce areas under Chapter 800 of this title, except for the following:

(1) Funds used for quality improvement activities described in §809.16 of this chapter;

(2) Assessing the parent share of cost described in §809.19 of this chapter; and

(3) Subchapter C of this chapter [~~(relating to Eligibility for Child Care Services)~~].

(d) The rules contained in this chapter shall apply to the Agency [~~Commission~~], Local Workforce Development Boards (Boards), their child care contractors, child care providers, [~~and~~] parents applying for or eligible to receive child care services, and other entities participating in any Agency child care program or initiative.

(e) The Commission may suspend a provision in this chapter for a specified time, on either a statewide or other basis, if the Commission determines that suspending the provision does not violate federal or state statutes or regulations, and:

(1) will improve the efficiency and delivery of child care services; or

(2) is necessary to implement new service delivery concepts or Commission-approved statewide initiatives or special projects within Commission-defined parameters.

§809.2. Definitions.

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

(1) Attending a job training or educational program--An individual is attending a job training or educational program if the individual:

(A) is considered by the program to be officially enrolled;

(B) meets all attendance requirements established by the program; and

(C) is making progress toward successful completion of the program as demonstrated through continued enrollment in the program upon eligibility redetermination as described in §809.42 of this chapter.

(2) Child--An individual who meets the general eligibility requirements contained in this chapter for receiving child care services.

(3) Child care contractor--The entity or entities under contract with the Board to manage child care services. This includes contractors involved in determining eligibility for child care services, contractors involved in the billing and provider payment process related to child care, as well as contractors involved in the funding of quality improvement activities as described in §809.16 of this chapter.

(4) Child care desert [~~Care Desert~~]--An area described in Texas Labor Code, §302.0461 in which the number of children under age six with working parents is at least three times greater than the capacity of licensed child care providers in the area, based on data published annually by the Commission.

(5) Child Care Regulation (CCR)--Division in the Texas Health and Human Services Commission responsible for protecting the health, safety, and well-being of children who attend or reside in regulated child care facilities and homes.

(6) Child care services--Child care subsidies and quality improvement activities funded by the Commission.

(7) Child care subsidies--Commission-funded child care payments to an eligible child care provider for the direct care of an eligible child.

(8) Child care worker--for purposes of the waiting list priority described in §809.43 of this chapter, and pursuant to Texas Labor Code, §302.0064, a child care worker is an individual employed by and working in a child care facility licensed under Texas Human Resources Code, Chapter 42 for a minimum of 25 hours per week. The term does not include the owner or director of a child care facility unless the owner's or director's child is served in a program other than a program directly supervised by the owner or director.

(9) [~~(8)~~] Child experiencing homelessness--A child who is homeless, as defined in the McKinney-Vento Act (42 USC 11434(a)), Subtitle VII-B, §725.

(10) [~~(9)~~] Child with disabilities--A child who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Major life activities include, but are not limited to, caring for oneself; performing manual tasks; walking; hearing; seeing, speaking, or breathing; learning; and working.

(11) [~~(10)~~] Educational program--A program that leads to:

(A) a high school diploma;

(B) a Certificate of High School Equivalency; or

(C) an undergraduate degree from an institution of higher education.

(12) [~~(11)~~] Excessive unexplained absences--More than 40 unexplained absences within a 12-month eligibility period as described in §809.78 of this chapter.

(13) [~~(12)~~] Family--Two or more individuals related by blood, marriage, or decree of court, who are living in a single residence and are included in one or more of the following categories:

(A) Two individuals, married--including by common-law, and household dependents; or

(B) A parent and household dependents.

(14) [~~(13)~~] Household dependent--An individual living in the household who is:

(A) an adult considered a dependent of the parent for income tax purposes;

(B) a child of a teen parent; or

(C) a child or other minor living in the household who is the responsibility of the parent.

(15) [~~(14)~~] Improper payments--Any payment of Child Care Development Fund (CCDF) funds that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements governing the administration of CCDF grant funds and includes payments:

(A) to an ineligible recipient;

(B) for an ineligible service;

(C) for any duplicate payment; and

(D) for services not received.

(16) [~~(15)~~] Job training program--A program that provides training or instruction leading to:

(A) basic literacy;

(B) English proficiency;

(C) an occupational or professional certification or license; or

(D) the acquisition of technical skills, knowledge, and abilities specific to an occupation.

(17) [~~(16)~~] Listed family home--A family home, other than the eligible child's own residence, that is listed, but not licensed or registered with, CCR pursuant to Texas Human Resources Code, §42.052(c).

(18) [~~(17)~~] Military deployment--The temporary duty assignment away from the permanent military installation or place of residence for reserve components of the single military parent or the dual military parents. This includes deployed parents in the regular military, military reserves, or National Guard.

(19) [~~(18)~~] Parent--An individual who is responsible for the care and supervision of a child and is identified as the child's natural parent, adoptive parent, stepparent, legal guardian, or person standing in loco parentis (as determined in accordance with Commission policies and procedures). Unless otherwise indicated, the term applies to a single parent or both parents.

(20) [~~(19)~~] Protective services--Services provided when a child:

(A) is at risk of abuse or neglect in the immediate or short-term future and the child's family cannot or will not protect the child without Texas Department of Family and Protective Services (DFPS) Child Protective Services (CPS) intervention;

(B) is in the managing conservatorship of DFPS and residing with a relative or a foster parent; or

(C) has been provided with protective services by DFPS within the prior six months and requires services to ensure the stability of the family.

(21) [~~(20)~~] Provider--A provider is defined as a:

(A) regulated child care provider;

(B) relative child care provider; or

(C) listed family home subject to the requirements in §809.91(e) of this chapter.

(22) [~~(21)~~] Regulated child care provider--A provider caring for an eligible child in a location other than the eligible child's own residence that is:

(A) licensed by CCR;

(B) registered with CCR; or

(C) operated and monitored by the United States military services.

(23) [~~(22)~~] Relative child care provider--An individual who is at least 18 years of age, and is, by marriage, blood relationship, or court decree, the child's:

(A) grandparent;

(B) great-grandparent;

(C) aunt;

(D) uncle; or

(E) sibling (if the sibling does not reside in the same household as the eligible child).

(24) [~~(23)~~] Residing with--Unless otherwise stipulated in this chapter, a child is considered to be residing with the parent when

the child is living with, and physically present with, the parent during the time period for which child care services are being requested or received.

(25) [~~(24)~~] Teen parent--A teen parent (teen) is an individual 18 years of age or younger, or 19 years of age and attending high school or the equivalent, who has a child.

(26) [~~(25)~~] Texas Rising Star program--A quality-based rating system of child care providers participating in Commission-subsidized child care.

(27) [~~(26)~~] Texas Rising Star provider--A regulated child care provider meeting the Texas Rising Star program standards. Texas Rising Star providers are:

(A) designated as an Entry Level Provider;

(B) certified as a Two-Star Provider;

(C) certified as a Three-Star Provider; or

(D) certified as a Four-Star Provider.

(28) [~~(27)~~] Working--Working is defined as:

(A) activities for which one receives monetary compensation such as a salary, wages, tips, and commissions;

(B) participation in Choices or Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) activities; or

(C) engaging in job search at the time of eligibility determination or redetermination as described in §809.56 of this chapter.

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

Filed with the Office of the Secretary of State on August 19, 2025.

TRD-202502989
Les Trobman
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: October 5, 2025
For further information, please call: (737) 301-9662

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SUBCHAPTER C. ELIGIBILITY FOR CHILD CARE SERVICES

40 TAC §809.43

The rules are proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§809.43. Priority for Child Care Services.

(a) A Board shall ensure that child care services are prioritized among the following three priority groups:

(1) The first priority group is assured child care services and includes children of parents eligible for the following:

(A) Choices child care as referenced in §809.45 of this subchapter;

(B) Temporary Assistance for Needy Families (TANF) Applicant child care as referenced in §809.46 of this subchapter;

(C) SNAP E&T child care as referenced in §809.47 of this subchapter; and

(D) Transitional child care as referenced in §809.48 of this subchapter.

(2) The second priority group is served subject to the availability of funds and includes, in the order of priority:

(A) children who need to receive protective services child care as referenced in §809.49 of this subchapter;

(B) children of a qualified veteran or qualified spouse as defined in §801.23 of this title;

(C) children of a foster youth as defined in §801.23 of this title;

(D) children experiencing homelessness as defined in §809.2 of this chapter and described in §809.52 of this subchapter;

(E) children of parents on military deployment as defined in §809.2 of this chapter whose parents are unable to enroll in military-funded child care assistance programs;

(F) children of teen parents as defined in §809.2 of this chapter; [~~and~~]

(G) children with disabilities as defined in §809.2 of this chapter; and

(H) children of a child care worker as defined in §809.2 of this chapter.

(3) The third priority group includes any other priority adopted by the Board.

(b) A Board shall not establish a priority group under subsection (a)(3) of this section based on the parent's choice of an individual provider or provider type.

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

Filed with the Office of the Secretary of State on August 19, 2025.

TRD-202502990
Les Trobman
General Counsel
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Earliest possible date of adoption: October 5, 2025
For further information, please call: (737) 301-9662

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT
SUBCHAPTER F. ADVISORY COMMITTEES

43 TAC §1.84, §1.88

The Texas Department of Transportation (department) proposes the amendments to §1.84, Statutory Advisory Committees, and §1.88, Duration of Advisory Committees.

EXPLANATION OF PROPOSED AMENDMENTS

The department's rules provide, in accordance with Government Code, §2110.008, that each of the commission's or department's advisory committees created by statute or by the commission or department is abolished on December 31, 2023. The commission has reviewed the need to continue the existence of those advisory committees beyond that date. The commission recognizes that the continuation of some of the existing advisory committees is necessary for improved communication between the department and the public and this rulemaking extends the duration of specified advisory committees for that purpose.

Amendments to §1.84, Statutory Advisory Committees, delete the references to and information about the Urban Air Mobility Advisory Committee because the statute creating that advisory committee, Transportation Code, §21.004, expired January 1, 2023. The amendments add provisions relating to the new Advanced Air Mobility Advisory Committee, created under Transportation Code, Section 21.0045, which was added by S.B. 2144, Acts of the 88th Legislature, Regular Session.

Amendments to §1.88, Duration of Advisory Committees, extend the dates on which the various advisory committees will be abolished.

FISCAL NOTE

Stephen Stewart, Chief Financial Officer, has determined, in accordance with Government Code, §2001.024(a)(4), that for each of the first five years in which the proposed rules are in effect, there will be no fiscal implications for state or local governments as a result of the department's or commission's enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Brandye Hendrickson, Deputy Executive Director, has determined that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed rules and therefore, a local employment impact statement is not required under Government Code, §2001.022.

PUBLIC BENEFIT

Ms. Hendrickson has determined, as required by Government Code, §2001.024(a)(5), that for each year of the first five years in which the proposed rules are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be improved accuracy of the rules and improved communication between the department and the public.

COSTS ON REGULATED PERSONS

Ms. Hendrickson has also determined, as required by Government Code, §2001.024(a)(5), that for each year of that period there are no anticipated economic costs for persons, including a state agency, special district, or local government, required to comply with the proposed rules and therefore, Government Code, §2001.0045, does not apply to this rulemaking.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

There will be no adverse economic effect on small business, micro-business, or rural communities, as defined by Government Code, §2006.001, and therefore, an economic impact statement and regulatory flexibility analysis are not required under Government Code, §2006.002.

GOVERNMENT GROWTH IMPACT STATEMENT

Erika Kemp has considered the requirements of Government Code, §2001.0221 and anticipates that the proposed rules will have no effect on government growth. She expects that during the first five years that the rule would be in effect:

(1) it would not create or eliminate a government program;

(2) its implementation would not require the creation of new employee positions or the elimination of existing employee positions;

(3) its implementation would not require an increase or decrease in future legislative appropriations to the agency;

(4) it would not require an increase or decrease in fees paid to the agency;

(5) it would not create a new regulation;

(6) it would not expand, limit, or repeal an existing regulation;

(7) it would not increase or decrease the number of individuals subject to its applicability; and

(8) it would not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

Ms. Hendrickson has determined that a written takings impact assessment is not required under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §1.84 and §1.88, may be submitted to Rule Comments, General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "Advisory Committees." The deadline for receipt of comments is 5:00 p.m. on October 6, 2025. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments and repeal are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.117, which provides the commission with the authority to establish, as it considers necessary, advisory committees on any of the matters under its jurisdiction, and Government Code, §2110.008, which provides that a state agency by rule may designate the date on which an advisory committee will automatically be abolished.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Government Code, Chapter 2110, and Transportation Code, §§21.003, 21.0045, 201.114, 201.117, 201.623, and 455.004.

§1.84. Statutory Advisory Committees.

(a) Aviation Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §21.003, the Aviation Advisory Committee provides a direct link for general aviation users' input into the Texas Airport System. The committee provides a forum for exchange of information concerning the users' view of the needs and requirements for the economic devel-

opment of the aviation system. The members of the committee are an avenue for interested parties to utilize to voice their concerns and have that data conveyed for action for system improvement. Additionally, committee members are representatives of the department and its Aviation Division, able to furnish data on resources available to the Texas aviation users.

(2) Membership. The commission will appoint nine members to staggered terms of three years with three members' terms expiring August 31 of each year. A majority of the members of the committee must have five years of successful experience as an aircraft pilot, an aircraft facilities manager, or a fixed-base operator. A member may not serve more than three consecutive terms on the committee.

(3) Duties. The committee shall:

(A) periodically review the adopted capital improvement program;

(B) advise the commission on the preparation and adoption of an aviation facilities development program;

(C) advise the commission on the establishment and maintenance of a method for determining priorities among locations and projects to receive state financial assistance for aviation facility development;

(D) advise the commission on the preparation and update of a multi-year aviation facilities capital improvement program; and

(E) perform other duties as determined by order of the commission.

(4) Meetings. The committee shall meet once a calendar year and such other times as requested by the Aviation Division Director.

(5) Rulemaking. Section 1.83 of this subchapter (relating to Rulemaking) does not apply to the Aviation Advisory Committee.

(b) Public Transportation Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §455.004, the Public Transportation Advisory Committee provides a forum for the exchange of information between the department, the commission, and committee members representing the transit industry and the general public. Advice and recommendations expressed by the committee provide the department and the commission with a broader perspective regarding public transportation matters that will be considered in formulating department policies.

(2) Membership. Members of the Public Transportation Advisory Committee shall be appointed and shall serve pursuant to Transportation Code, §455.004.

(3) Duties. The committee shall:

(A) advise the commission on the needs and problems of the state's public transportation providers, including recommending methods for allocating state public transportation funds if the allocation methodology is not specified by statute;

(B) comment on proposed rules or rule changes involving public transportation matters during their development and prior to final adoption unless an emergency requires immediate action by the commission;

(C) advise the commission on the implementation of Transportation Code, Chapter 461; and

(D) perform other duties as determined by order of the commission.

(4) Meetings. The committee shall meet as requested by the commission or the division designated under §1.82(f) of this subchapter (relating to Statutory Advisory Committee Operations and Procedures).

(5) Public transportation technical committees.

(A) The Public Transportation Advisory Committee may appoint one or more technical committees to advise it on specific issues, such as vehicle specifications, funding allocation methodologies, training and technical assistance programs, and level of service planning.

(B) A technical committee shall report any findings and recommendations to the Public Transportation Advisory Committee.

(c) Port Authority Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §55.006, the purpose of the Port Authority Advisory Committee is to provide a forum for the exchange of information between the commission, the department, and committee members representing the maritime port industry in Texas and others who have an interest in maritime ports. The committee's advice and recommendations will provide the commission and the department with a broad perspective regarding maritime ports and transportation-related matters to be considered in formulating department policies concerning the Texas maritime port system.

(2) Membership. Members shall be appointed pursuant to Transportation Code, §55.006. Members appointed by the commission serve staggered three-year terms unless removed sooner at the discretion of the commission.

(3) Duties. The committee shall:

(A) prepare a maritime port mission plan, in accordance with Transportation Code, §55.008 and submit the plan to the governor, lieutenant governor, speaker of the house of representatives and commission not later than December 1 of each even-numbered year;

(B) review each project eligible to be funded under Transportation Code, Chapter 55, and make recommendations for approval or disapproval to the department; and

(C) advise the commission and the department on matters relating to port authorities.

(4) Meeting. The committee shall meet at least semiannually and such other times as requested by the commission, the executive director, or the executive director's designee. The chair may request the department to call a meeting.

(d) Border Trade Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §201.114, the Border Trade Advisory Committee provides a forum for the exchange of communications among the commission, the department, the governor, and committee members representing border trade interests. The committee's advice and recommendations will provide the governor, the commission, and the department with a broad perspective regarding the effect of transportation choices on border trade in general and on particular communities. The members of the committee also provide an avenue for interested parties to express opinions with regard to border trade issues.

(2) Membership. The border commerce coordinator designated under Government Code, §772.010, shall serve as the chair of the committee. The commission will appoint the other members of the committee in accordance with Transportation Code, §201.114. The commission will appoint members to staggered three-year terms

expiring on August 31 of each year, except that the commission may establish terms of less than three years for some members in order to stagger terms.

(3) Duties. The committee shall:

(A) define and develop a strategy for identifying and addressing the highest priority border trade transportation challenges;

(B) make recommendations to the commission regarding ways in which to address the highest priority border trade transportation challenges;

(C) advise the commission on methods for determining priorities among competing projects affecting border trade; and

(D) perform other duties as determined by the commission, the executive director, or the executive director's designee.

(4) Meetings. The committee shall meet at least once a calendar year. The dates and times of meetings shall be set by the committee. The committee shall also meet at the request of the department.

(5) Rulemaking. Sections 1.82(i) and 1.83 of this subchapter do not apply to the Border Trade Advisory Committee.

(e) I-27 Advisory Committee.

(1) Purpose. Created pursuant to Transportation Code, §201.623, the purpose of the I-27 Advisory Committee, as stated in subsection (b) of that section, is to provide the department with information on concerns and interests along the Ports-to-Plains Corridor, which is specified in Transportation Code, §225.069, and advise the department on transportation improvements impacting the Ports-to-Plains Corridor.

(2) Membership. Composition of the committee is provided by Transportation Code, §201.623(c) and (d). A member serves in accordance with §201.623(e). The chair and vice-chair of the committee are elected in accordance with §201.623(g).

(3) Duty. The duty of committee is to provide to the department the information and advice on the Ports-to-Plains Corridor for which it was formed.

(4) Meeting. In accordance with Transportation Code, §201.623(h), the committee shall meet at least twice each state fiscal year and at other times, as requested by the department or the chair.

(5) Compensation. In accordance with Transportation Code, §201.623(i), an advisory committee member is not entitled to receive compensation for service on the committee or reimbursement for expenses incurred in the performance of official duties as a member of the committee.

~~[(f) Advanced Air Mobility Advisory Committee.]~~

~~[(1) Purpose. Created pursuant to Transportation Code, §21.0045, the purpose of the Advanced Air Mobility Advisory Committee, as stated in subsection (b)of that section, is to assess current state law and any potential changes to state law that are needed to facilitate the implementation of advanced air mobility technology in this state.]~~

~~[(2) Membership. The committee is composed of members appointed by the commission in accordance with Transportation Code, §21.0045(c).]~~

~~[(3) Duty. Not later than November 1, 2024, the committee shall submit to the commission and the legislature a written report that includes the committee's findings and recommendations on any changes to state law that are needed to facilitate the implementation of advanced air mobility technology in this state.]~~

~~[(4) Meeting. The committee shall hold public hearings and receive comments in accordance with Transportation Code, §21.0045(d).]~~

§1.88. Duration of Advisory Committees.

(a) Except as provided by this section, each statutory advisory committee or department advisory committee is abolished on December 31, 2025 [~~2023~~].

(b) The following advisory committees are abolished on December 31, 2027 [~~2025~~]:

(1) a statutory or department advisory committee created after December 31, 2025 [~~2023~~];

(2) the Aviation Advisory Committee;

(3) the Public Transportation Advisory Committee;

(4) the Port Authority Advisory Committee;

(5) the Bicycle and Pedestrian Advisory Committee;

(6) the Freight Advisory Committee; and

(7) the Commission for High-Speed Rail in the Dallas/Fort Worth Region.

(c) A corridor segment advisory committee created under §1.87 of this subchapter (relating to Corridor Segment Advisory Committees) after December 31, 2025 [~~2023~~] is abolished on the date provided in the minute order creating the committee or if a date is not provided in the order, on the earlier of:

(1) the date of the completion of the segment for which the committee was created; or

(2) December 31, 2027 [~~2025~~].

(d) This section does not apply to the Border Trade Advisory Committee or the I-27 Advisory Committee.

~~[(e) The Advanced Air Mobility Advisory Committee is abolished on January 1, 2025, as provided by Transportation Code, §21.0045(f).]~~

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

Filed with the Office of the Secretary of State on August 21, 2025.

TRD-202503032
Becky Blewett
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Texas Department of Transportation
Earliest possible date of adoption: October 5, 2025
For further information, please call: (512) 416-2298

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