

# ADOPTED RULES

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

## TITLE 1. ADMINISTRATION

### PART 3. OFFICE OF THE ATTORNEY GENERAL

#### CHAPTER 53. MUNICIPAL SECURITIES

##### SUBCHAPTER A. APPROVAL OF MUNICIPAL SECURITIES BY ATTORNEY GENERAL

###### 1 TAC §53.2, §53.16

The Office of the Attorney General (OAG) adopts amendments to §53.2 and §53.16 in Title 1 of the Texas Administrative Code (TAC), relating to the form of records and submission and approval of public finance transcripts, without changes to the proposed text as published in the December 12, 2025, issue of the *Texas Register* (50 TexReg 7963). The rules will not be republished.

###### EXPLANATION AND JUSTIFICATION OF RULES

During the 89th Regular Session (2025), the Legislature passed House Bill 4395 (H.B. 4395), effective January 1, 2026. H.B. 4395 amends Chapter 1202 of the Texas Government Code by adding Section 1202.0035, which requires (1) issuers of public securities to submit bond transcripts, including public securities, records or proceedings, credit agreements, and amendments thereto, to the OAG electronically and accompanied by an electronic signature, and (2) the OAG to deliver certain records related to the approval of those securities to the Texas Comptroller of Public Accounts (Comptroller) electronically and accompanied by an electronic signature. H.B. 4395 also requires the OAG to advise the proper legal authorities of the new statutory requirements and any other procedural changes to the submission and registration of public securities by December 1, 2025.

The adopted amendments to §53.2 and §53.16 establish the Texas Transcript Repository (TTR) system developed by the Comptroller in coordination with the Public Finance Division of the OAG (Division) as the database to which issuers will be required to submit and which will house records of proceedings (or transcripts) and related records. The adopted amendments also establish procedures and requirements for submission to the TTR system and make other changes consistent with the transition from paper to electronic records.

###### SECTION-BY-SECTION SUMMARY

The adopted amendments to §53.2 establish the TTR database, maintained by the Comptroller, as the location where issuers must file records of proceedings (or transcripts) and specify related formatting requirements. The adopted amendments eliminate formatting and submission requirements related to paper transcript submissions, renumber the subsections accordingly,

and update language to align with plain language standards. The adopted amendments require that the transcripts be filed in an electronic format and accompanied by an electronic signature. Adopted §53.2 clarifies that "transcript" and "record of proceedings" are functionally interchangeable. It also requires each transcript to be submitted as a series of files in Portable Document Format (PDF), and each file name must begin with a unique sequential number followed by the title or a description of the document. Adopted §53.2(2) requires each transcript to contain a table of contents that lists, for each document, the title or description and the unique number from the file name assigned to that document. Adopted new §53.2(4) requires each line of each document to be entirely legible. Adopted new §53.2(5) requires the text of each document to be searchable. Adopted new §53.2(6) requires issuers to email the Division proof of payment of the required filing fee and, when appropriate, a table showing voted bond authorization in a specified format.

Adopted amendments to §53.16 conform references to the Division across the section. Adopted §53.16(a) clarifies that "transcript" and "record of proceedings" are functionally interchangeable. Adopted §53.16(e) requires all outstanding requirements for final approval and the final versions of documents originally submitted in unexecuted or uncertified form to be submitted in an electronic format and accompanied by an electronic signature via the TTR system. Adopted §53.16(f) provides that the Division will notify the Comptroller of approval of public securities. The adopted amendments eliminate submission requirements related to paper or fax submissions, renumber the subsections accordingly, and update language to align with plain language standards. Adopted §53.16(k) replaces the return of transcripts process with a cancellation for transcripts on file with the Division for six months with no action.

###### PUBLIC COMMENTS

The proposed amendments were published in the December 12, 2025, issue of the *Texas Register* (50 TexReg 7963). The public comment period was subsequently extended (51 TexReg 419) and closed on February 10, 2026. The OAG received one set of comments, submitted by Bracewell LLP. The public comments are summarized below.

###### Comment: §53.2(4) Legibility Requirement

Bracewell objected to the requirement that each line of each document must be entirely legible. Bracewell explained that transcripts often include documents created by third parties or historical documents, and it may be impossible for an issuer to provide an entirely legible version of every line of every document.

OAG Response: The OAG recognizes that complete legibility of every historical line in older archival materials is not always feasible. However, the OAG declines to make changes in response to this comment. For historical or third-party documents

that cannot be provided with each line entirely legible, the issuer may request a waiver under 1 TAC §53.21 upon a showing of good cause. This existing waiver authority provides appropriate flexibility for the rare instances in which a document is necessary but only partially legible.

Comment: Proposed §53.2(5) Searchable Text Requirement

Bracewell requested that the requirement that the text of each document must be searchable be limited only to documents produced by the issuer and contemporaneous with the current transaction. Bracewell argued that some older or third-party documents cannot be made searchable, and that attempting to render them searchable may degrade legibility or result in the creation of a document different from the original.

OAG Response: The OAG declines to make changes in response to this comment. The requirement that documents be submitted in a searchable format is essential to the efficient review of transcripts and reflects established submission practices. For older or third-party documents that cannot be made searchable without compromising legibility or altering the original content, the issuer may request a waiver under 1 TAC §53.21 upon a showing of good cause. The existing waiver process provides adequate flexibility to address the circumstances described in the comment.

Comment: §53.2(6)(B) Excel Table of Voted Authorization

Bracewell requested deletion of §53.2(6)(B), stating that the information is already required under §53.3(a)(2)(J) and therefore imposes a duplicative administrative burden.

OAG Response: The OAG declines to delete §53.2(6)(B). While §53.3(a)(2)(J) requires disclosure of voted authorization information in the authorizing document, that provision applies only to information appearing in the transcript itself (e.g., recitals in a bond order). Section 53.2(6)(B) serves a separate and necessary administrative function. It requires that the same information be emailed to the OAG in Excel format at the time a transcript is submitted. Because documents uploaded to TTR must be PDF files, the Excel format submission allows OAG staff to efficiently verify calculations and confirm remaining authorization. The requirement therefore serves a distinct purpose and is not duplicative.

#### STATUTORY AUTHORITY

The amendments to 1 TAC Chapter 53 are adopted pursuant to Texas Government Code §1202.0035, which requires electronic submission and delivery of public securities and related records.

#### CROSS-REFERENCE TO STATUTE.

These rules clarify Texas Government Code §§1202.003-1202.0035. No other rule, regulation, or law is affected by the adopted rule amendments.

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

Filed with the Office of the Secretary of State on May 4, 2026.

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For further information, please call: (512) 475-3210

## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 74. CURRICULUM REQUIREMENTS

##### SUBCHAPTER AA. COMMISSIONER'S RULES ON COLLEGE AND CAREER READINESS

###### 19 TAC §74.1005

The Texas Education Agency adopts an amendment to §74.1005, concerning college and career funding and reimbursements. The amendment is adopted with changes to the proposed text as published in the January 16, 2026 issue of the *Texas Register* (51 TexReg 268) and will be republished. The adopted amendment updates language concerning college and career related assessment reimbursements as required by House Bill (HB) 2 and HB 120, 89th Texas Legislature, Regular Session, 2025, and makes technical edits for clarification and consistency.

REASONED JUSTIFICATION: Texas Education Code (TEC), §48.106, establishes a weighted annual allotment for approved career and technical education (CTE) courses, and TEC, §48.155 and §48.156, establish college preparation assessments and certification examinations for which school districts may receive reimbursements.

Section 74.1005 describes the eligibility of school districts and charter schools to receive CTE weighted funding under TEC, §48.106. The rule also details school district eligibility for reimbursements for college preparation assessments and certification examinations, as allowed under TEC, §48.155 and §48.156.

HB 2 and HB 120, 89th Texas Legislature, Regular Session, 2025, updated provisions related to allotments and reimbursements. To implement the legislation, the following changes have been made.

The adopted amendment removes New Tech Network campuses from eligibility for allotment funding, adds a career readiness assessment to the list of assessments for which districts may receive reimbursement, and increases the number of industry-based certification (IBC) examinations eligible for reimbursement per student.

Additional technical edits were made for clarification and consistency throughout the rule.

The following changes were made to the rule at adoption based on public comment. Subsection (c)(1)(C) was revised to align with subsection (c)(5) and clarifies that a district is eligible for reimbursement for a student's first and second industry-based certification examinations, consistent with the statutory limit of up to two reimbursable examinations per student. The term "re-

quired" was added before "primary assessments(s)" in subsection (c)(4)(A) to make clear that all required assessments are eligible for reimbursement.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began January 16, 2026, and ended February 16, 2026. Following is a summary of public comments received and agency responses.

**Comment:** An administrator and The Commit Partnership noted that §74.1005(c)(1)(C) did not accurately reflect the limitation outlined in §74.1005(c)(5), which permitted reimbursement for up to two industry-based certification examinations per student. The commenters recommended that the language be updated to clarify that both the first and second examinations reported would be eligible for reimbursement, ensuring consistency between the provisions and preventing confusion regarding eligibility and reporting.

**Response:** The agency agrees and has revised §74.1005(c)(1)(C) to align with §74.1005(c)(5) by clarifying that a district is eligible for reimbursement for a student's first and second industry-based certification examinations, consistent with the statutory limit of up to two reimbursable examinations per student.

**Comment:** ACT, Inc., explained that earning the ACT WorkKeys National Career Readiness Certificate requires three tests--Applied Math, Workplace Documents, and Graphic Literacy--which are not optional and must all be taken. ACT, Inc., asked that these required tests be counted as "primary assessments" for reimbursement, since the current wording about "subject area tests" could cause confusion and lead districts to think these essential assessments are not eligible.

**Response:** The agency agrees that specifying required assessments will make the rule clearer and has added the term "required" before "primary assessments(s)" in §74.1005(c)(4)(A).

**Comment:** The Commit Partnership requested clarification regarding the application of the \$150 per student allotment under TEC, §48.106, for students enrolled in Pathways in Technology Early College High School (P-TECH) or Rural Pathway Excellence Partnership (R-PEP) programs, specifically when these pathways are delivered outside the student's home district. The Commit Partnership requested clarification regarding whether the allotment is generated by and allocated to the student's home district, regardless of the physical location of program delivery, to ensure consistent funding practices.

**Response:** The agency offers the following clarification. Eligibility for the P-TECH or R-PEP allotment is based on the district where the student is enrolled regardless of the physical location of program delivery. Implementation details relevant to funding and documentation will be addressed through Public Education Information Management System guidance and do not require inclusion in rule.

**STATUTORY AUTHORITY.** The amendment is adopted under TEC, §29.190(a-1), as amended by HB 2 and HB 120, 89th Texas Legislature, Regular Session, 2025, which establishes that a student may not receive more than two subsidies if the student passes a certification examination to qualify for a license or certificate that is an industry certification for purposes of TEC, §39.053(c)(1)(B)(v), administered while the student is enrolled in a school district; TEC, §39.0261(a)(3), as amended by HB 2 and HB 120, 89th Texas Legislature, Regular Session, 2025, which permits high school students in the spring of the 11th grade

or during the 12th grade to select and take once, at state cost, one of the valid, reliable, and nationally norm-referenced assessment instruments used by colleges and universities as part of their undergraduate admissions processes; the assessment instrument designated by the Texas Higher Education Coordinating Board; or a nationally recognized career readiness assessment instrument that measures foundational workforce skills approved by commissioner rule; TEC, §48.106, as amended by HB 2 and HB 120, 89th Texas Legislature, Regular Session, 2025, which specifies certain students for whom a district is entitled to \$150 in addition to the amount under TEC, §48.106(a); and TEC, §48.156, as amended by HB 2 and HB 120, 89th Texas Legislature, Regular Session, 2025, which entitles a school district to reimbursement for the amount of a subsidy paid by the district for not more than two certification examinations per student.

**CROSS REFERENCE TO STATUTE.** The amendment implements TEC, §§29.190(a-1), 39.0261(a)(3), 48.106, and 48.156, as amended by HB 2 and HB 120, 89th Texas Legislature, Regular Session, 2025.

*§74.1005. College and Career Funding and Reimbursements.*

(a) Applicability. The provisions of this section apply to school districts and open-enrollment charter schools.

(b) Eligibility for funding.

(1) A district is eligible to receive funding under Texas Education Code (TEC), §48.106(a), for students in Grades 7-12 who take an approved career and technical education (CTE) course designated with an "H" in the CTE Course column of the Texas Education Data Standards, Section 4, Service-ID (CO22) code table.

(2) A district is eligible to receive funding under TEC, §48.106(a)(2)(A), for an advanced CTE course identified as Level 3 or Level 4 in a statewide CTE program of study.

(3) A district is eligible to receive funding under TEC, §48.106(a)(2)(B), for a campus that has been designated by the Texas Education Agency (TEA) as a Pathways in Technology Early College High School (P-TECH) for the current school year or a student who completes a course of study in a P-TECH program or a Rural Pathway Excellence Partnership program.

(c) Eligibility for reimbursement.

(1) A district is eligible to receive a certification examination reimbursement for a certification identified on the TEA list of industry-based certifications (IBCs) for public school accountability, pursuant to §74.1003 of this title (relating to Industry-Based Certifications for Public School Accountability).

(A) A district is eligible to receive the certification examination reimbursement for students in Grades 9-12 who pass an examination beginning in the 2019-2020 school year.

(B) Examinations must be taken between September 1 and August 31 of any school year.

(C) A district is eligible for reimbursement for a student's first and second examinations reported in the Texas Student Data System Public Education Information Management System with an associated dollar amount.

(2) A district is eligible to receive a reimbursement for a college preparation assessment administered under TEC, §39.0261(a)(3)(A), for fees paid by the district for the state negotiated rate for the SAT® or ACT® for students in spring of their junior year or during their senior year.

(A) Assessment reimbursement only includes the standard SAT® and ACT® test. Additional costs such as writing tests, subject area tests, or late fees are not eligible for reimbursement.

(B) A student must take the assessment between January of Grade 11 and August 31 of the year the student graduates.

(3) A district is eligible to receive a reimbursement for a college preparation assessment administered under TEC, §39.0261(a)(3)(B), for fees paid by the district for the Texas Success Initiative Assessment for students in spring of their junior year or during their senior year.

(A) Assessment reimbursement includes both the reading and mathematics portions of the examination. Neither portion is eligible for reimbursement on its own, and additional costs such as writing tests and late fees are not eligible for reimbursement.

(B) A student must take the assessment between January of Grade 11 and August 31 of the year the student graduates.

(4) A district is eligible to receive reimbursement for a nationally recognized career readiness assessment administered under TEC, §39.0261(a)(3)(C), for fees paid by the district for the assessment for students in spring of their junior year or during their senior year.

(A) Assessment reimbursement only includes the required primary assessments(s) associated with the TEA-identified nationally recognized career readiness assessment. Additional costs such as subject area tests or late fees are not eligible for reimbursement.

(B) A student must take the assessment between January of Grade 11 and August 31 of the year the student graduates.

(5) A district may only be reimbursed under this subsection for up to two IBC examinations per student and one college preparation assessment or one career readiness assessment per student.

(6) A district must submit reimbursement requests and data in accordance with instructions provided by TEA within the published timeline.

(d) Final decisions. Reimbursement decisions are final and may not be appealed.

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

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For further information, please call: (512) 475-1497



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 226. MOBILE FOOD VENDORS

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of

State Health Services (DSHS), adopts new §226.1, concerning Purpose, Local Preemption, and Applicability; §226.2, concerning Definitions; §226.3, concerning Management and Personnel; §226.4, concerning Mobile Food Vendor Licensing; §226.6, concerning Mobile Food Vendor Requirements; and §226.8, concerning Mobile Food Vendor Inspections.

Sections 226.1 - 226.4, 226.6, and 226.8 are adopted with changes to the proposed text as published in the February 20, 2026, issue of the *Texas Register* (51 TexReg 1013). These rules will be republished.

#### BACKGROUND AND JUSTIFICATION

The new sections are necessary to comply with Texas Health and Safety Code (HSC) Chapter 437B, established by House Bill (HB) 2844, 89th Legislature, Regular Session, 2025, which requires the department to implement a statewide licensing and inspection program for mobile food vendors (MFVs). The statute also preempts local regulation in any way that conflicts with HSC Chapter 437B.

#### COMMENTS

The 31-day comment period ended on March 23, 2026.

During this period, DSHS received 101 comments regarding the proposed rules from 19 commenters. DSHS received comments from Guadalupe County Fire Marshal's Office, City of Amarillo Environmental Health, City of Universal City, Hunt County Health Department, Williamson County Health Department, Hays County Development Services, Texas Propane Gas Association, Tarrant County Public Health, Austin Public Health, City of San Antonio Metro Health, City of Wichita Falls, Grayson County, Harris County, Texas Association of City and County Health Officials, Houston Health Department, Texas Environmental Health Association, Texas Restaurant Association, and one individual commenter. A summary of comments relating to the rules and DSHS responses follows.

Comment: A commenter recommended that DSHS require in §226.8 that MFVs submit to a fire code inspection in every local jurisdiction in which they operate.

Response: DSHS disagrees and declines to make the change. HSC §437B.004(4)(H) prohibits DSHS from adopting a rule that requires an MFV to submit to more than one fire inspection in a 12-month period.

Comment: A commenter expressed full support for the rules as written.

Response: DSHS agrees and no revision is made to the rules in response to this comment.

Comment: A commenter requested that DSHS define "department."

Response: DSHS notes that "department" is already defined in §226.2(3) of the proposed rules. No revision is made to the rule in response to this comment.

Comment: A commenter requested that DSHS clarify in rule the ability of a local authority not in a collaborative agreement to address complaints and violations under HSC §437B.201.

Response: DSHS disagrees and declines to make the change. HSC §437B.003 preempts a local authority's power to regulate in a manner that conflicts with HSC Chapter 437B. There is already explicit language in HSC §437B.201(c) that allows any local authority, collaborating or not, to investigate a foodborne

illness (FBI) complaint connected to an MFV and recommend suspension or revocation to the department.

Comment: A commenter requested rule clarification between local "static display" and "itinerant vendor" ordinances and the prohibition on requiring constant motion contained in HSC §437B.004(4)(G).

Response: DSHS disagrees and declines to make the change. The language in HSC §437B.004 restricts what DSHS may put in the MFV rules but does not affect the ability of a local authority to adopt ordinances that do not conflict with HSC Chapter 437B. Furthermore, HSC §437B.101 requires MFVs to comply with all state and local laws in respective jurisdictions, including fire code, location restrictions, and zoning codes.

Comment: Multiple commenters requested rule clarification regarding whether some MFVs may be allowed to operate with local Temporary Food Establishment permits rather than MFV licenses.

Response: DSHS disagrees and declines to make the change. HSC Chapter §437B.051(a) states: "A person may not operate as a mobile food vendor in this state unless the person holds a mobile food vendor's license issued by the department."

Comment: A commenter requested clarification of §226.3(b)(2) to specify the type of documentation needed to gain the exemption from the requirement for the presence of a Certified Food Manager (CFM).

Response: DSHS agrees and has added language in §226.3(b)(2) to specify the type of documentation.

Comment: A commenter requested clarification allowing operators to haul MFV waste back to the central preparation facility (CPF) in holding tanks.

Response: DSHS disagrees and declines to make the change. The 2017 United States Food and Drug Administration (FDA) Food Code, which also governs, states in 5-402.14 "Sewage and other liquid wastes shall be removed from a mobile food establishment at an approved waste servicing area or by a sewage transport vehicle in such a way that a public health hazard or nuisance is not created."

Comment: Multiple commenters recommended a change of §226.4(k)(2) specifically to require a pre-licensing inspection for all MFVs prior to the issuance of a renewal as well as an initial license.

Response: DSHS disagrees and declines to make the change. Requiring a pre-licensing inspection for initial applications is consistent with operations in other DSHS programs. For renewals, MFVs are still subject to routine and complaint inspections. Adding a pre-licensing inspection to the existing routine and complaint inspections for renewals could be considered an additional hardship on MFV operators.

Comment: A commenter requested that DSHS clarify enforcement actions related to imminent health situations.

Response: DSHS partially agrees but declines to make the change to the rule. DSHS will clarify these situations through policy and standard operating procedures (SOPs) for inspection staff that participate in the MFV program through collaborative agreements. Enforcement actions must be through DSHS statutory and regulatory authority.

Comment: A commenter requested that DSHS clarify enforcement actions related to unlicensed vendors for local authorities.

Response: DSHS partially agrees but declines to make the change to the rule. DSHS will clarify these situations through policy and SOPs for inspection staff that participate in the MFV program through collaborative agreements. Enforcement actions must be through DSHS statutory and regulatory authority.

Comment: A commenter requested that DSHS require a visible state-issued licensing decal that is readily identifiable from a distance.

Response: DSHS disagrees and declines to make the change. DSHS does not have the resources available to require, create, and issue physical decals for MFVs. HSC §437B.103(2) requires an MFV to display their license and inspection report in a conspicuous location for public view.

Comment: A commenter requested that DSHS modify the requirements for "readily moveable" to allow for temporary hook-ups to utilities at events where such connections are available.

Response: DSHS disagrees and declines to make the change. Situations for when utilities may be connected are covered in §226.6(b)(4). The intent is to realign MFVs to be mobile and not operate in gray areas of requirements for permanent fixed establishments and temporary establishments.

Comment: A commenter requested that DSHS modify language related to gas/propane requirements.

Response: DSHS agrees and added language to §226.6(b)(4) to prevent conflict with Texas Railroad Commission gas requirements. DSHS also altered the definition of "Fire Code" to be consistent with other requirements in the State of Texas.

Comment: A commenter requested clarification on how §226.4(c)(1)(E) will be verified by cities and counties.

Response: DSHS disagrees and declines to make the change. DSHS will require this information during the application process and will include this information in the database required by HSC §437B.060.

Comment: A commenter requested clarification on CPFs and servicing areas as certain actions can happen at separate physical locations on one property or at two separate properties. The commenter stated the requirements for a statewide mobile permit are unclear and could lead to industry confusion and increase in improper wastewater disposal that includes high grease concentrations leading to clogging of sewer lines.

Response: DSHS disagrees and declines to make the change. Wastewater and Fats, Oils, and Greases (F.O.G.) requirements fall under local requirements and are subject to HSC §437B.101. Local authorities have different requirements for these situations, and DSHS does not have the authority to restrict FOG requirements of home-rule municipalities. Section 226.6(b)(9)(F) clarifies waste removal by MFV as detailed in FDA Food Code 5-4.

Comment: A commenter requested clarification on an MFV operating with an expired permit.

Response: DSHS disagrees and declines to make the change. According to HSC §437B.051(a), a license with DSHS is required for an MFV to operate in the State of Texas. HSC §437B.055(b) states that a license expires on the first anniversary of the date of issuance. This means the MFV would be operating as an unlicensed MFV if they do not renew their license before their license expires, as prescribed in HSC §437B.056.

Comment: A commenter requested clarification for why randomized health inspection fees will not be collected until time of renewal.

Response: DSHS partially agrees but declines to make the change. DSHS will pay collaborative partners for inspection before recovering costs of routine and compliance inspections. There may be circumstances where MFVs go out of business and do not pay their inspection fees. DSHS will still be required to pay collaborative agreement partners for complete inspections.

Comment: A commenter expressed concerns about §226.6(b)(3)(A)-(B) and why beverages served from covered urns or other protected equipment were allowed in a restricted operation.

Response: DSHS agrees and altered language in §226.6(b)(3) to remove beverages sold from covered urns under restricted operations.

Comment: A commenter requested that DSHS clarify if CPF information will be on the application.

Response: DSHS notes that the department requires CPF information on applications for MFVs.

Comment: A commenter requested specialized processes be allowed under certain circumstances on food vending vehicles (FVVs) to not limit certain activities that are common on FVVs.

Response: DSHS agrees and added language to §226.6(b)(12) to allow specialized processes under specific circumstances.

Comment: A commenter requested that DSHS not verify Driver's License and Commercial Driver's License information as this is outside the purview of health departments.

Response: DSHS disagrees and declines to make the change. HSC §437B.102 requires DSHS inspection personnel to verify FVV driver requirements.

Comment: A commenter requested that DSHS change the language in §226.3(c) to require employees to obtain food handler cards prior to preparation or handling of time/temperature control for safety foods.

Response: DSHS disagrees and declines to make the change. The 30-day time frame for completing food handler training in §226.3(c), conforms with the general requirement for employees in all food establishments per §228.31(d).

Comment: A commenter requested that DSHS add a definition for "catering truck" to the rules.

Response: DSHS disagrees and declines to make the change. An operation that meets the definition of "mobile food vendor" in §226.2 will be required to obtain an MFV license from DSHS even if "catering" a private event. On the other hand, a classic "catering" operation that delivers food to a private event, with no preparation in a mobile unit, does not meet the definition and would be subject to other retail permitting by DSHS or the local authority.

Comment: A commenter requested that local authorities in collaborative agreements with DSHS be allowed to sub-contract MFV inspections to third-party inspection businesses.

Response: DSHS disagrees and declines to make the change. DSHS interprets HSC §437B.054 and §437B.153 to mean that inspections of MFVs can only be conducted by inspection staff employed by DSHS or by local authorities in collaborative agree-

ments with DSHS. HSC §437B.001(4) defines "local authority" as a governmental entity or "political subdivision of this state."

Comment: A commenter expressed misgivings regarding the efficacy of requiring MFVs to provide itineraries, or lists of projected operating locations, to the department per §226.4(c)(1)(G) and §226.8(d).

Response: DSHS disagrees and declines to make the change. DSHS understands that itineraries will be subject to change but notes that HSC §437B.154 requires MFV operators to make their prospective operating locations known to DSHS "to the best of the vendor's knowledge."

Comment: A commenter requested that DSHS define the term "conveniently located" as used in §226.6(b)(11) regarding toilet room requirements.

Response: DSHS disagrees and declines to make the change. DSHS will cover this and other similar situations in inspection SOPs.

Comment: Multiple commenters requested clarification on the department's licensing rollout process.

Response: DSHS partially agrees but declines to make the change in rule. The licensing rollout process will be communicated through the DSHS Retail website, in the Mobile Food Vendor Guide, and through operational procedures. The initial rollout process will only be applicable to the initial rollout phase in 2026 and will not apply to following years.

Comment: A commenter requested clarification on Type I MFVs and if prepackaged items would require a permit to operate.

Response: DSHS partially agrees but declines to make the change in rule. DSHS notes that Type I MFVs will be clarified further on the licensing application and on the MFV guide required under HSC §437B.059. DSHS did not previously license prepackaged MFVs, but HSC §437B.051 requires all MFVs in Texas to hold a license with DSHS in order to operate. These MFVs will usually fall into the Type I category.

Comment: A commenter recommended language that specifically requires roadside vendors to sell only meat bearing DSHS or United States Department of Agriculture marks of inspection.

Response: DSHS disagrees and declines to make the change. §226.1(c)(1)(D) and (E) require adherence to Texas Food Establishment Rules (TFER) in Texas Administrative Code Chapter 228 and the 2022 FDA Food Code. Both documents already require meat and meat products to originate from approved sources.

Comment: A commenter requested language to clarify the pushcart definition's exclusive on-unit operations and reliance on approved CPFs.

Response: DSHS disagrees and declines to make the change. HSC §437B.004(4)(D) does not allow the department to make rules requiring the association with a CPF under certain circumstances.

Comment: A commenter expressed concern with locating MFVs for inspection and proposed the need for in-person annual inspections.

Response: DSHS disagrees and declines to make the change. HSC §437B.153 requires randomized inspections for MFVs. DSHS intends to complete randomized, annual inspections of all FVVs. MFVs are required to submit itineraries and may re-

quire compliance or enforcement if they do not provide itinerary information that allows them to be located as prescribed in §226.8(d)(1)-(3).

Comment: A commenter expressed public safety concerns with new MFV requirements and supports stronger standards and enforcement statewide.

Response: DSHS disagrees and declines to make the change. DSHS is tasked with creating rules as prescribed by HB 2844 and HSC Chapter 437B.

Comment: A commenter proposed a section that would allow jurisdictions access to posted layouts, menus, conditions approved by the state, and floor plans.

Response: DSHS disagrees and declines to make the change. DSHS does not require plan reviews, floor plans, or detailed layout information. DSHS requires submission of menus, plumbing information, and other vehicle information with submission of applications. The pre-licensing inspection will verify these requirements.

Comment: Multiple commenters requested proper use of MFV and FVV in instances where the terms were used interchangeably.

Response: DSHS agrees and added language to further clarify the terms. Language regarding FVV and MFV was realigned to meet statutory intent in multiple parts throughout in §§226.2, 226.6, and 226.8.

Comment: A commenter requested clarification on licensure requirements regarding owners and FVVs.

Response: DSHS disagrees and declines to make the change. HSC §437B.053(d) allows an applicant to submit one application for multiple FVVs. Each FVV would have its own license with a consistent owner/entity over each FVV.

Comment: A commenter requested the allowance of American National Standards Institute - Conference for Food Protection (ANSI-CFP) accredited food protection manager certifications, in addition to department-accredited courses, to broaden compliant training options.

Response: DSHS disagrees and declines to make the change. HSC §437B.104 requires MFVs to comply with all laws and rules regarding food safety, including food safety and manager certifications required under HSC Chapter 438. The State of Texas recognizes both ANSI-CFP accredited and DSHS accredited food manager and food handler training programs.

Comment: A commenter requested language requiring documented verification of approvals, such as approver, date, and conditions, that must be retained in official records for accountability, audits, and enforcement.

Response: DSHS disagrees and declines to make the change. DSHS maintains records and histories for MFVs through their Licensing and Operations branches. As required in the FDA Food Code and referenced in TFER, the MFV is required to maintain a copy of their last inspection. Their license and inspection report would provide documentation of approval.

Comment: A commenter requested DSHS to define inspection and enforcement authority delegated to local jurisdictions operating under cooperative or collaborative agreements.

Response: DSHS disagrees and declines to make the change. Inspection authority is defined in the definition for "Regulatory

authority." Enforcement authority is only granted to the department.

Comment: A commenter requested language that explicitly authorizes local jurisdictions to require MFVs to report to designated locations for inspection.

Response: DSHS agrees and added language. DSHS added "food vending vehicle" to §226.8(c), which states that the regulatory authority may require an MFV to appear at a location chosen by the regulatory authority. DSHS also added new §226.8(d)(3) to clarify locations for inspection related to compliance inspections.

Comment: Multiple commenters requested the department establish a minimum inspection frequency or maintain a documented risk-based inspection schedule.

Response: DSHS disagrees and declines to make the change. MFVs shall be inspected using an "ongoing, randomized" approach according to HSC §437B.153. Annual inspections will be an increase from DSHS's current MFV inspection frequency, and increased inspection frequency will be limited based on funding due to the reimbursement process.

Comment: A commenter requested language that prohibits discharge of wastewater in unapproved locations.

Response: DSHS disagrees and declines to make the change. Section 226.1(c)(2) and 226.6(c)(3)(f) provide clarification on local laws and regulations. The FDA Food Code also already prohibits this activity, and additional regulations would be unnecessary.

Comment: Multiple commenters requested clarification on local government authority regarding water, wastewater, right-of-way, zoning, land use, parking, traffic management, grease disposal, and fire regulations.

Response: DSHS disagrees and declines to make the change. HSC §437B.101 states that "A mobile food vendor shall comply with all state and local laws in the jurisdiction in which the mobile food vendor operates, including all fire codes, location restrictions, and zoning codes."

Comment: A commenter requested the tightening of CPF exemption by requiring verifiable access to lawful water sources and approved waste disposal systems.

Response: DSHS partially disagrees and declines to make the change. Section 226.6(c)(3) includes the requirement of approved potable water source and wastewater disposal methods. Section 226.8(c)(4) also includes the records required to be kept by the MFV regarding their servicing area.

Comment: A commenter requested complaint fees to be waived if the complaint is unfounded.

Response: DSHS partially agrees but declines to make the change in the rule. DSHS will address this in SOPs and may group similar complaints into one investigation to lessen the potential burden of fraudulent complaints.

Comment: Multiple commenters requested fee reduction and incentive programs for MFVs and for DSHS to reassess fee structure in a couple of years.

Response: DSHS partially disagrees and declines to make the change. DSHS needs to fund the MFV Implementation Program. Since no funds were appropriated for this program, reduction

in fees and incentive programs would not be reasonable at this time.

Comment: A commenter requested initial licensing fees to be prorated.

Response: DSHS disagrees and declines to make the change. DSHS initial licensing rollout plan allows a business-friendly approach of allowing operators to continue to operate if they have applied for a DSHS MFV license in June or July. Whenever their initial pre-licensing inspection is completed, their application will be fully processed, and they will be issued a license that is good for one year from that process date.

Comment: Multiple commenters requested clarification on the collaborative agreement process and the ability of local authorities to address safety concerns.

Response: DSHS disagrees and declines to make the change. HSC §437B.153 allows DSHS to enter collaborative agreements with local authorities to conduct inspections. The collaborative agreement process will be managed through yearly contracts and SOPs. The process will be standardized for all agencies participating in a collaborative agreement.

Comment: Multiple commenters requested clarification that temporary, code-compliant utility connections on private property do not, by themselves, negate mobility.

Response: DSHS disagrees and declines to make the change. DSHS has clarified what constitutes readily movable and aligns MFVs with the intention of maintaining mobility. Units that lose or greatly limit their mobility may not fall within the definition of an MFV.

Comment: A commenter requested language to be added to set more objective mobility criteria around operable wheels, axles, current registration, or evidence that the unit has become effectively permanent.

Response: DSHS agrees and has added clarification language to the rule. Section 226.6(b)(4)(B) has been edited to include criteria around permanent connections.

Comment: A commenter requested movement demonstrations of FVVs be limited.

Response: DSHS disagrees and declines to make the change. FVVs must be readily movable. DSHS does not intend on making FVVs demonstrate movability unnecessarily.

Comment: A commenter requested language be added that operators provide location information "to the best of their knowledge."

Response: DSHS disagrees and declines to make the change. HSC §437B.154 requires that location information be made available to the department.

Comment: A commenter requested requiring reasonable contact attempts and inspection scheduling before enforcement actions and penalties, if a unit cannot be located.

Response: DSHS disagrees and declines to make the change. DSHS will be working to coordinate with MFVs as their itineraries change, but it is the MFV's responsibility to communicate changes in the itinerary to the department. DSHS will provide policies and procedures around attempted visits at itinerary-specified locations and subsequent contact attempts with the MFV.

Comment: A commenter expressed concerns about HB 2844 creating costly permits and grey areas that allow for additional permitting from local authorities. The commenter expressed concerns that the regulations do not reflect the operational realities of food trucks and instead impose excessive financial burdens on small business owners.

Response: DSHS disagrees and declines to make a change. DSHS licensing fees are required to implement a statewide licensing and inspection program for MFVs. HSC Chapter 437B does not allow local authorities to regulate or require permitting of MFVs in any way that conflicts with HSC Chapter 437B.

Minor editorial changes were made to use the acronyms "FVV" for "food vending vehicle," "MFV" for "mobile food vendor," and "CPF" for "central preparation facility" throughout the rules, as appropriate.

Additionally, DSHS made minor editorial changes to the rules to improve clarity, readability, and to correct an error as follows.

DSHS revised §226.3(a) by adding "United States" to improve clarity since it is the first mention in the rule.

DSHS revised: §226.6(b)(12) by replacing obligatory words "may" and "must" to clarify authority and corrected a clerical error replacing "CFPs" with "CPF."

DSHS revised §226.8(g) by adding two statutory references from HSC Chapter 437B.

## SUBCHAPTER A. GENERAL PROVISIONS

### 25 TAC §226.1, §226.2

#### STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, Texas Health and Safety Code (HSC) §1001.075, which authorizes the executive commissioner of HHSC to adopt rules for the administration of Texas Health and Safety Code Chapter 1001, and Texas Health and Safety Code Chapters 437 and 437B.

#### §226.1. Purpose, Local Preemption, and Applicability.

(a) Purpose. The purpose of this chapter is to implement Texas Health and Safety Code (HSC) Chapter 437B, Mobile Food Vendors (MFVs).

(b) Local preemption. A local authority may not adopt a rule or enforce requirements that conflict with this chapter.

(c) Applicability of other statutes, rules, and regulations.

(1) MFVs must comply with all relevant laws and rules applicable to the preparation, holding, and service of food products in, and from food vending vehicles (FVV), including:

(A) Texas HSC Chapter 431 (Texas Food, Drug, and Cosmetic Act);

(B) Texas HSC Chapter 437 (Regulation of Food Service Establishments, Retail Food Stores, Mobile Food Units, and Roadside Food Vendors);

(C) Texas HSC Chapter 437B (Mobile Food Vendors);

(D) Chapter 228 of this title (relating to Retail Food Establishments); and

(E) the United States Food and Drug Administration (FDA) 2022 Food Code (Food Code).

(2) MFVs must comply with all laws, ordinances, or orders passed by a municipality, county, or public health district in which the MFV operates, as long as the laws, ordinances, and orders do not conflict with Texas HSC Chapter 437B.

§226.2. *Definitions.*

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

(1) Applicant--A person who sends an application to the department for a license to operate as a mobile food vendor (MFV) under this chapter.

(2) Central preparation facility (CPF)--A facility approved by the regulatory authority for preparing, storing, serving, vending, or packaging food and for servicing the food vending vehicle (FVV) or other retail food establishments, such as outfitter operations. A commissary is a central preparation facility.

(3) Department--Texas Department of State Health Services.

(4) Fire Code--The National Fire Protection Association (NFPA) standards.

(5) Food--A raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.

(6) Food Code--United States Food and Drug Administration (FDA) 2022 Food Code.

(7) Food service establishment--A food establishment as defined in §228.2 of this title (relating to Definitions).

(8) Food vending vehicle (FVV)--Any vehicle that is a self-enclosed food service establishment (including catering trucks, trailers, and roadside vendors) or pushcart that operates to store, prepare, display, serve, or sell food as a food service establishment and is designed to be readily movable. An FVV may be self- or otherwise-propelled, or vehicle-mounted. An FVV does not include a stand or a booth.

(9) License holder--A person who holds an MFV license issued under this chapter.

(10) Local authority--A municipality, county, public health authority, special purpose district or authority, or any other political subdivision of this state.

(11) Mobile food vendor (MFV)--Any person who dispenses food or beverages from an FVV for immediate service or consumption. An MFV may cook, cool, hold, prepare, reheat, or conduct other activities allowed by the Food Code to fulfill food orders for immediate consumption. An MFV may not perform food manufacturer or food wholesaler activities on an FVV under Texas Health and Safety Code (HSC) Chapter 431. An MFV does not include any operation that is not readily moveable. MFVs are divided into three categories:

(A) Type I--an MFV that dispenses only non-time and temperature control for safety (TCS) prepackaged food and does not sell TCS beverages, or an MFV that otherwise poses a low risk of harm to the public as determined by the department;

(B) Type II--an MFV that dispenses prepackaged TCS foods or food that requires limited handling and preparation, or TCS foods that are prepared to order and served for immediate consumption; processes may include preparing, cold holding, thawing, and/or reheating of commercially processed and/or packaged products for immediate consumption; and

(C) Type III--an MFV that prepares, cooks, holds, and serves food from an FVV; processes may include hot holding, cold holding, thawing, cooking, cooling, reheating, or conducting other activities allowed by the Food Code.

(12) Person--An individual, business, partnership, organization, corporation, or association.

(13) Prepackaged food--Commercially labeled and processed food that is already in a package to stop direct contact with the food during distribution by the manufacturer, food facility, or other approved source. Prepackaged does not include food only wrapped or placed in a carry-out container by a food employee, at the consumer's request.

(14) Pushcart--A non-self-propelled FVV limited to serving foods requiring a limited amount of preparation as authorized by the regulatory authority and readily movable by one or two people. A pushcart is classified as an FVV. A pushcart does not include non-self-propelled units owned and operated within a retail food store. This type of vehicle requires the support of a central preparation facility.

(15) Readily moveable--Able to easily move without delay or difficulty; free of alterations, attachments, additions, placement, or change in, under, or upon the FVV that prevent or otherwise reduce the ability to easily move without delay or difficulty. Readily moveable also includes any other requirements set forth by the regulatory authority.

(16) Regulatory authority--The department. The department may enter into a collaborative agreement to allow a local authority to inspect on the department's behalf. When such an agreement is in place, the local authority has full authority to conduct health inspections as the department's representative.

(17) Roadside food vendor--A person who operates an FVV from a temporary location adjacent to a public road or highway. Food is not prepared or processed by a roadside food vendor. A roadside food vendor is classified as an MFV.

(18) Servicing area--A location that an FVV visits to fill the potable water tank with potable water from an approved source and to empty grease, cooking waste, and sewage from the wastewater tank into a wastewater collection system as allowed by law and approved by the regulatory authority.

(19) TCS--Time/temperature control for safety.

(20) TCS food--Time and temperature control for safety food, as defined in Food Code §1-201.10.

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

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## SUBCHAPTER B. MANAGEMENT AND PERSONNEL

## 25 TAC §226.3

### STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, Texas Health and Safety Code (HSC) §1001.075, which authorizes the executive commissioner of HHSC to adopt rules for the administration of Texas Health and Safety Code Chapter 1001, and Texas Health and Safety Code Chapters 437 and 437B.

#### §226.3. *Management and Personnel.*

(a) Except as specified in subsection (b) of this section, a certified food protection manager must be present at the food establishment during all hours of operation as required in the United States Food and Drug Administration (FDA) 2022 Food Code (Food Code) §2-101.11 and §2-102.12.

(b) Food establishments deemed by the regulatory authority to pose minimal risk of causing or contributing to foodborne illness based on the nature of the operation and extent of food preparation are exempt from the requirements in subsection (a) of this section. The exemption includes:

(1) a Type I mobile food vendor (MFV); or

(2) other MFVs that do not prepare or handle unpackaged TCS food.

(c) All employees involved in the preparation and service of food products, except for certified food protection managers, must successfully complete an accredited food handler training course within 30 days of employment.

(d) MFVs must display a sign or poster notifying food employees to report any symptoms or medical diagnoses related to diseases that can be spread through food. The sign or poster must be displayed where all employees can easily see the sign or poster.

(e) Driver requirements.

(1) A person who drives a motorized food vending vehicle (FVV) must possess a valid driver's license as required by Texas Transportation Code Chapter 521.

(2) A person who drives a motorized FVV must hold a current commercial driver's license if required by Texas Transportation Code Chapter 522.

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

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## SUBCHAPTER C. LICENSING

### 25 TAC §226.4

### STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, Texas Health and Safety Code (HSC) §1001.075, which authorizes the executive commissioner of HHSC to adopt rules for the administration of Texas Health and Safety Code Chapter 1001, and Texas Health and Safety Code Chapters 437 and 437B.

#### §226.4. *Mobile Food Vendor Licensing.*

(a) A mobile food vendor (MFV) must have a current MFV license from the department to operate as an MFV in Texas. An MFV must have a separate license for each food vending vehicle (FVV) operated by the MFV.

(b) An MFV license is valid for one year from the date of issuance and must be renewed annually. The license is non-transferable.

(c) Application requirements.

(1) An MFV must apply for a license from the department using the form the department prescribes. The application must include:

(A) the applicant's name, address, email address, and telephone number;

(B) the name, address, email address, and telephone number for any associated entity or organization represented by the applicant, along with copies of documents showing proof of that relationship;

(C) the primary residences and business addresses of the applicant for the 12 months before the application date;

(D) the following documentation:

(i) a description of the processes to be used in the operation (e.g., prepackaged, non-TCS foods only, cook-serve, cook-cool-reheat-serve, etc.); and

(ii) a copy of the menu or a list of all food and beverage products to be prepared, sold, or served;

(E) a statement regarding whether the applicant has ever been denied an MFV license, or had an MFV license suspended or revoked by any governmental entity, and the reason for any denial, suspension, or revocation;

(F) the following for each motorized FVV for which the applicant is applying:

(i) the vehicle: license number, description, identification number, and registration;

(ii) proof of vehicle insurance;

(iii) proof of vehicle weight as issued by Texas Department of Transportation; and

(iv) a copy or proof of any additional commercial vehicle licenses or permits required by this state; and

(G) a list of the locations at which the vendor intends to operate, to the best of the vendor's knowledge. The MFV may provide the department with a list of locations by providing a link to the MFV's social media page or website. If the vendor does not provide the list of operating locations on a social media page or website, the MFV shall submit the list of operating locations to the department in the form and manner the department prescribes.

(2) The applicant must provide a notarized written statement that all information provided under paragraph (1) of this subsection is true and correct.

(3) The applicant may submit one application for all FVVs that require licensing under this subchapter. A separate licensing fee is required for each FVV.

(4) If an applicant does not submit a complete and accurate application, the license may be denied or delayed.

(5) Intentional submission of false information or omission of requested information on an application may result in denial, delay, or revocation of a license.

(d) Before a license is issued, each proposed FVV must be inspected by the regulatory authority. The inspection must confirm that:

(1) each FVV is safe for preparation, handling, and selling food; and

(2) each vendor complies with all applicable laws and rules.

(e) An applicant must pay fees for each FVV:

(1) a non-refundable application fee, as follows:

(A) \$300 for each Type I MFV;

(B) \$600 for each Type II MFV; and

(C) \$850 for each Type III MFV;

(2) a pre-licensing health inspection fee, as follows:

(A) \$400 for each Type II MFV; and

(B) \$500 for each Type III MFV;

(3) an inspection fee for health inspections, as follows:

(A) \$400 for each Type II MFV; and

(B) \$500 for each Type III MFV; and

(4) an inspection fee for compliance inspections and complaint investigations, as follows:

(A) \$300 for each Type I MFV;

(B) \$400 for each Type II MFV; and

(C) \$500 for each Type III MFV.

(f) A fee for randomized health inspections of Type II and Type III MFVs, per subsection (e)(3) of this section, must be paid at the time of initial or renewal application.

(g) Fees for complaint investigations and compliance inspections to determine corrective actions must be paid by the MFV at the time of the MFV's next license renewal application.

(h) If there are changes in the operation that require a licensing amendment as outlined in this chapter, an amendment fee is required. The amendment fee is half of the initial license application fee.

(i) For all initial and renewal license applications submitted through Texas.gov, the department is authorized to collect fees in amounts determined by the Texas Department of Information Resources to recover costs associated with using Texas.gov.

(j) A person filing a renewal license application after the expiration date must pay an additional \$100 as a late fee. The license holder must submit a renewal application and license fees before the expiration date of the license.

(k) Renewal, transferability, and substitution of vehicle.

(1) MFV licenses must be renewed on an annual basis, within 12 months of the date of issuance.

(2) To renew a license, the MFV must submit a renewal application and all required fees, as outlined in subsections (c), (e), (f), and (g) of this section, to the department before the current license expires. A pre-licensing inspection and related fee is not required for a renewal application unless the application includes a change of category or the FVV has been replaced.

(3) An MFV license issued under this subchapter cannot be transferred to another person or business. Only the person or business named on the license is permitted to operate as the MFV.

(4) When an FVV is replaced with another vehicle, the license holder must provide the department all information required by subsection (c)(1)(F) of this section for a motorized vehicle. The replacement vehicle must be inspected as stated in subsection (d) of this section.

(5) Any person receiving MFV business assets must apply for a new MFV license before operating as an MFV. This includes situations such as change of ownership of an FVV, change of ownership of an MFV, or acquisition of a new FVV.

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

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## SUBCHAPTER D. REQUIREMENTS

### 25 TAC §226.6

#### STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, Texas Health and Safety Code (HSC) §1001.075, which authorizes the executive commissioner of HHSC to adopt rules for the administration of Texas Health and Safety Code Chapter 1001, and Texas Health and Safety Code Chapters 437 and 437B.

#### §226.6. *Mobile Food Vendor Requirements.*

(a) Compliance with state and local laws. Mobile food vendors (MFVs) must comply with all state and local laws that do not conflict with this chapter or Texas Health and Safety Code (HSC) Chapter 437B. This includes fire codes, location rules, and zoning codes in the jurisdictions where the MFV operates.

(b) MFV provisions.

(1) MFVs must adhere to Food Code §8-304.11, Responsibilities of the Permit Holder.

(2) General. Except as otherwise provided in this paragraph and in paragraph (3) of this subsection, the regulatory authority may waive or change physical facility requirements in this section if a public health hazard is not likely to occur. The following requirements may not be waived:

- (A) paragraphs (8) - (10) of this subsection;
- (B) subsection (c)(3) of this section; and
- (C) Food Code Subparts 3-401, 3-402, 3-403, 3-404, and 3-501.

(3) Restricted operation. An MFV that only serves food prepared and packaged in individual servings that is stored and transported on a food vending vehicle (FVV) as required by this chapter, is not required to comply with:

- (A) water and sewage system requirements; and
  - (B) cleaning and sanitizing equipment and utensil requirements if cleaning and sanitizing equipment is available at the central preparation facility (CPF).
- (4) Readily movable.

(A) There shall be no alteration, removal, attachments, additions, placement, or change in, under, around, or on the FVV that prevents or otherwise reduces mobility.

(B) An FVV may connect to a utility only when filling the potable water tank, emptying the wastewater tank, or temporarily connecting to an electrical source. The vehicle must not be permanently or remain connected to:

- (i) a water supply hose during operation, except when filling the potable water tank;
- (ii) an external sewage or water disposal system during operation, except when emptying the wastewater tank;
- (iii) an external electrical source, if it is the only means for powering the FVV; or
- (iv) an external gas source, if it is the only means for operating the FVV.

(C) The regulatory authority may require an MFV to move the FVV as often as required to a location designated by the regulatory authority to demonstrate the FVV is readily moveable. The FVV must be fully functional and free of any temporary utility connection, including electricity, water, and wastewater, at any location while operating or any location designated by the regulatory authority. An FVV must always be readily movable.

(5) Single-service articles. An MFV must provide only single-service articles for use by the consumer.

(6) Equipment, numbers, and capacities.

(A) Cooling, heating, and holding capacities. Equipment used for cooling and heating food, and holding cold and hot food, must be sufficient in number and capacity to provide food temperatures as specified under the Food Code Chapter 3 - Food. If capacity is insufficient for a process on an FVV or a CPF, then that process may not occur on the FVV or a CPF.

(B) Manual warewashing and sink compartment requirements.

(i) A sink with at least three compartments must be available for manually washing, rinsing, and sanitizing equipment and utensils, as required by Food Code Paragraph 4-301.12(A).

(ii) Sink compartments must be large enough to completely cover the largest equipment and utensils with water, as required by Food Code Paragraph 4-301.12(B).

(C) Handwashing sinks. At least one handwashing sink must be present inside the FVV with employee access for easy use. The handwashing sink must have soap and drying devices, as required by Food Code §6-301.11 and §6-301.12. MFVs that only sell prepackaged food are not required to have an operational handwashing sink.

(7) FVV water system requirements. The FVV water systems must meet all material, design, and operation requirements in Food Code Part 5-3.

(8) The drinking water tank. The FVV drinking water tank must meet all requirements specified in Food Code §5-303.13.

(A) A fill hose and water holding tank must be labeled as "Potable Water."

(B) A holding tank must be tested for contamination by collecting a sample upon request by the regulatory authority.

(9) Sewage and other liquid waste.

(A) Liquid waste from operating an FVV must be stored in a retention tank that is permanently installed for holding waste.

(B) A leak-proof sewage holding tank in an FVV must meet the requirements of Food Code §5-401.11 for capacity and drainage.

(C) All connections on the vehicle that are used for servicing FVV waste disposal facilities must be a different size or type than the connections used for supplying potable water to the FVV. All connections must form a tight and complete seal.

(D) Liquid waste must not be released from the retention tank while the FVV is moving.

(E) A waste retention tank must be flushed in accordance with Food Code §5-402.15.

(F) FVV waste must be removed in accordance with Food Code Part 5-4.

(G) Liquid waste holding tanks must be labeled "Wastewater."

(10) FVV water and wastewater exemption. Roadside vendors that only sell prepackaged food do not have to comply with the water and wastewater requirements in this chapter.

(11) Toilet room requirements. Toilet rooms must be conveniently located and accessible to employees at all times during operations.

(12) Specialized processes. Specialized processing methods, as outlined in Food Code §3-502.11 and §3-502.12, may be conducted by an MFV on an FVV, if necessary and sufficient equipment is provided to safely carry out those processes. These processes must be conducted at a CPF if equipment is not sufficient in number and capacity.

(c) Central preparation facility (CPF).

(1) Supplies, cleaning, and servicing operations. Unless all conditions listed in paragraph (3) of this subsection are met, an MFV and FVV must operate from a CPF or another fixed food establishment. An MFV and FVV must report to this location as required by the regulatory authority for supplies, cleaning, and servicing operations.

(2) Construction. The CPF or other fixed food establishment that serves as the base of operation for an MFV must meet con-

struction and operation standards in accordance with Food Code Chapter 6 - Physical Facilities.

(3) CPF exemption. An MFV and FVV may operate without a CPF or commissary if all requirements of this paragraph are met. Each requirement must be checked during inspection. Requirements include the following.

(A) Equipment for cooling and heating food, and holding cold and hot food, must be sufficient in number and capacity on the FVV to provide food temperatures as specified in Food Code Chapter 3 - Food.

(B) All food stored on the FVV must be kept in a way that prevents cross contamination and contamination from other sources as described in Food Code Chapter 3 - Food.

(C) Food equipment, utensils, and single-service articles must be stored on the FVV in a way that prevents contamination. Storage practices must comply with requirements in Food Code Chapter 3 - Food and Chapter 4 - Equipment, Utensils, and Linens.

(D) FVV warewashing compartments must be large enough to completely cover the largest equipment and utensils with water, as required by Food Code Paragraph 4-301.12(B).

(E) Potable water for the FVV must come from an approved source as outlined in Chapter 228, Subchapter E of this title (relating to Water, Plumbing, and Waste) and Food Code Part 5-1. Potable water cannot be taken from an untested water well or from a private residence.

(F) Sewage and other liquid waste must be removed from the FVV at a facility approved for waste servicing or by a sewage transport vehicle. Removal of waste must not cause a risk to public health or create a nuisance as defined by state or local law, regulation, or ordinance.

(G) The MFV and FVV must keep records that include the physical address and letters of authorization, if needed, for approved sources of potable water and disposal locations for wastewater. The MFV must always keep the records available for review on the FVV, and the records must be applicable to the current licensing cycle and locations of operation.

(H) The MFV must keep records that show proof of loaded vehicle weight as issued by Texas Department of Transportation.

(d) Outdoor servicing area and operations, if used.

(1) Protection.

(A) An FVV servicing area must provide overhead protection for any supplying, cleaning, or servicing activity. Overhead protection is not required for areas only used for loading water or discharging sewage and other liquid waste through a closed hose system.

(B) The location for flushing and draining liquid waste in the servicing area must be separate from the area used for potable water servicing and from the area used for loading and unloading food and related supplies.

(C) A servicing area is not required when only prepackaged food is held and dispensed by the MFV or when the FVV does not have waste retention tanks.

(D) The servicing area's surface must be made of smooth, nonabsorbent material, such as concrete or machine-laid asphalt. The servicing area's surface must remain in good condition, always clean, and be graded to drain.

(E) Potable water servicing equipment must be installed in the servicing area as required by the Plumbing Code, as defined in §228.2 of this title (relating to Definitions). The equipment must be stored and handled in a way that keeps both the water and the equipment from becoming contaminated.

(2) Construction exemption. Walls and ceilings in the servicing area do not have to meet the requirements in Food Code §6-201.11.

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

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Cynthia Hernandez

General Counsel

Department of State Health Services

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For further information, please call: (512) 834-6753



## SUBCHAPTER E. INSPECTIONS

### 25 TAC §226.8

#### STATUTORY AUTHORITY

The new section is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, Texas Health and Safety Code (HSC) §1001.075, which authorizes the executive commissioner of HHSC to adopt rules for the administration of Texas Health and Safety Code Chapter 1001, and Texas Health and Safety Code Chapters 437 and 437B.

§226.8. *Mobile Food Vendor Inspections.*

(a) Mobile food vendor (MFV) categories. The department assigns each MFV to a category based on the type of food served and how the food is prepared. Each category of MFV is described in the definition of "mobile food vendor (MFV)" in §226.2 of this chapter.

(b) Reclassification. When an MFV wants to sell food or beverages that require a different category than initially approved, the MFV must inform the department about the specific food or beverages to be sold. The regulatory authority may conduct a health inspection to decide if a new category is needed.

(c) Health inspection. The regulatory authority may require an MFV, and food vending vehicle (FVV), to appear at a location chosen by the regulatory authority. The FVV must be fully functional at the time of inspection, including proper operation of handwash stations, warewash equipment, refrigeration units, and wastewater disposal systems. The following documentation must be available during inspection:

(1) Certified Food Protection Manager and Food Handler Certification;

(2) central preparation facility (CPF) authorization (if required): a signed letter of authorization is required, to verify facility use, if the CPF is not owned by the mobile unit operator;

(3) CPF inspection report (if required);

(4) servicing area documentation and authorization: the MFV must keep the following records on the FVV:

(A) records that show use of an approved water source and an approved sanitary sewage system; such records may include invoices, written agreements, or other available evidence;

(B) a servicing area activity log that must show the date and time the MFV and FVV obtained potable water, properly disposed sewage and other liquid waste, or properly disposed grease or other cooking waste; and

(C) a signed letter by the department or local authority, if applicable, giving authorization to use a servicing area, if the servicing area is not owned by the MFV; and

(5) a menu of all food items to be sold.

(d) Notice of location for inspections. An MFV must provide the department, to the best of the vendor's knowledge, a list of all planned locations of operation along with an itinerary listing the dates and times the MFV plans to operate at these locations. The itinerary must be provided at least seven days before the first date listed in the itinerary. The MFV can share the itinerary on the MFV's social media or website. If the MFV does not post the itinerary on social media or the vendor's internet website, the MFV must send the itinerary to the department, in the form and way the department requires.

(1) The regulatory authority must be able to find and inspect an MFV and FVV using the provided itinerary. If an MFV cannot be located, then the regulatory authority may require an MFV and FVV to come to a location designated by the regulatory authority.

(2) If an MFV is not able to be located according to provided itinerary or does not appear for an inspection agreed upon by the regulatory authority then the MFV's license may be subject to suspension or revocation.

(3) If an MFV requires a compliance inspection, the MFV must notify the department of FVV's location to coordinate the compliance inspection within the timeframe specified by the department. If an MFV does not notify the department or coordinate the compliance inspection, the MFV's license may be subject to suspension or revocation.

(e) An MFV must allow inspection by a representative of the regulatory authority during any hours of operation to check compliance with this chapter. An MFV's refusal of inspection or cooperation with a complaint investigation may result in suspension or revocation of a license. Refusal to allow an inspection by a local authority acting under a collaborative agreement with the regulatory authority will be considered a refusal to allow the regulatory authority to inspect.

(f) The MFV must provide the required valid driver's license or commercial driver's license upon request to the regulatory authority during pre-licensing, routine health inspections, and investigations. Driver's licenses required for the operation of the FVV must be present during all hours of MFV operation.

(g) Refusal, revocation, or suspension of a license; administrative penalties.

(1) Basis. The department may refuse an application for a license or may revoke or suspend a license for violations of this chapter or for interference with a department representative in the performance of their duties under this chapter, as governed in Texas Health and Safety Code (HSC) §437B.202.

(2) Hearings. Any hearings for the refusal, revocation, or suspension of a license are governed by §§1.21, 1.23, 1.25, and 1.27

of this title (relating to Formal Hearing Procedures) or under the provisions of the Texas Government Code Chapter 2001, Administrative Procedure Act.

(3) Reinstatement. A former license holder may apply for reinstatement of a suspended license by demonstrating corrections and controls are implemented to prevent future violations. The department may reinstate the license after the department has determined the MFV no longer poses a risk to public health and safety. The department may also require employees of an MFV to successfully complete a department-accredited training course on food safety principles before reinstatement of the license.

(4) Administrative penalties. Administrative penalties in Texas Health and Safety Code §437.018 and §437B.205, and in §229.261 of this title (relating to Assessment of Administrative Penalties), may be assessed for violations of this chapter.

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

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Cynthia Hernandez

General Counsel

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## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 20. STATEWIDE PROCUREMENT AND SUPPORT SERVICES

##### SUBCHAPTER E. SPECIAL CATEGORIES OF CONTRACTING

##### DIVISION 1. STATE SUPPORT SERVICES - MAIL AND PRINTING

#### 34 TAC §20.381

The Comptroller of Public Accounts adopts amendments to §20.381, concerning policy and purpose, without changes to the proposed text as published in the January 30, 2026, issue of the *Texas Register* (51 TexReg 534). The rule will not be republished.

The comptroller amends subsection (a) to remove passive voice and unnecessary language and clarify the comptroller's role for providing interagency mail and messenger services between state agencies in Travis County.

The comptroller amends subsection (b) to remove passive voice and streamline language. The revised language provides that mail and messenger service will not deliver personal mail. In addition, the revised subsection states that mail and messenger service will not deliver packages weighing more than 70 pounds.

The comptroller amends subsection (c) to remove passive voice and simplify language, and state when the mail and messenger service will deliver state warrants.

The comptroller amends subsection (d) to remove passive voice and streamline language, and states that mail will be delivered to and from the United States Postal Service upon agreement of the state agency and the comptroller.

The comptroller amends subsection (e) to remove passive voice and unnecessary language and provides the mail and messenger service will process and meter outgoing mail for state agencies upon agreement of the state agency and the comptroller. This section is also amended to state each state agency shall pay for its own postage and obligations if there is a deficit.

The comptroller amends subsection (f) to delete passive voice and simplify language. In paragraph (1), the comptroller raises the threshold at or below which an agency may rely on a written justification of mail equipment purchases and service contracts from \$10,000 to \$25,000. In paragraph (2), the comptroller raises the corresponding threshold above which an agency must present a detailed analysis of costs and benefits for mail equipment purchases and service contracts from \$10,000 to \$25,000. The \$25,000 threshold aligns with the requirement for posting of a solicitation in Government Code, §2155.083, along with other formal procurement requirements.

The comptroller amends subsection (g) to delete passive voice and unnecessary language, and to specify how state agencies may pay for postage on a meter rented under a term contract. The subsection provides that the comptroller may establish statewide contracts for postage meter machine rentals. And the subsection provides that state agencies that use these statewide contracts may purchase and pay for postage separately, in accordance with the requirements of United States Postal Service Domestic Mail Manual.

The comptroller did not receive any comments regarding adoption of the amendment.

These amendments are adopted under Government Code, §2176.110 which provides that the comptroller shall adopt rules for state agencies to implement Government Code, Chapter 2176 regarding mail, and under Government Code, §2113.103(c) which provides that the comptroller by rule shall adopt procedures for the payment of postage by an agency renting a postage meter machine.

These amendments implement Government Code, Chapter 2176 and Government Code, §2113.103.

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

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

#### CHAPTER 374. DISCIPLINARY ACTIONS/DETRIMENTAL PRACTICE/COMPLAINT PROCESS/CODE OF ETHICS/LI-CENSURE OF PERSONS WITH CRIMINAL CONVICTIONS

##### 40 TAC §374.1

The Texas Board of Occupational Therapy Examiners adopts an amendment to 40 Texas Administrative Code §374.1, Disciplinary Actions. The amendment is adopted without changes to the proposed text as published in the March 27, 2026, issue of the *Texas Register* (51 TexReg 2018) and will not be republished.

The amendment to §374.1 corrects a typographical error to replace "4safety" with "safety" in subsection (d)(1)(B) of the section. The amendment is adopted to correct the typographical error in the provision.

No comments were received regarding adoption of the amendments.

The amendment is adopted under Texas Occupations Code §454.102, which authorizes the Board to adopt rules to carry out its duties under Chapter 454. The amendment is also adopted under §454.3025, which requires the Board by rule to adopt a schedule of administrative penalties and other sanctions that the Board may impose under this chapter, and under §454.3521, which authorizes the Board to impose an administrative penalty, not to exceed \$200 for each day a violation continues or occurs, under this chapter for a violation of this chapter or a rule or order adopted under this chapter.

No other statutes, articles, or codes are affected by the amendment.

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

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For further information, please call: (512) 305-6900



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT  
MANAGEMENT  
SUBCHAPTER B. CONTRACTS FOR  
HIGHWAY PROJECTS

43 TAC §§9.12 - 9.15, 9.17

The Texas Department of Transportation (department) adopts amendments to §§9.12 - 9.15 and §9.17, relating to Contracts for Highway Projects. The amendments to §§9.12 - 9.15 are adopted without changes to the proposed text as published in the February 13, 2026, issue of the *Texas Register* (51 TexReg 878) and will not be republished. The amendments to §9.17 are adopted with changes to the proposed text as published in the February 13, 2026, issue of the *Texas Register* (51 TexReg 878) and will be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The purpose of this rulemaking is to clarify the rules of the Texas Transportation Commission (commission) concerning qualification of bidders, submittal and acceptance of bids, and award of contracts for highway projects administered by the department.

Amendments to §9.12, Qualification of Bidders, clarify that the "date of the financial statement" for the beginning of the 12-month period of prequalification refers to the "balance sheet date" to eliminate confusion. The amendments also clarify that only independent certified public accountancy firms may provide attest services, in accordance with Texas Occupations Code, §901.451. For bidders qualifying under the Confidential Questionnaire, the rules currently grant a three-month grace period to allow bidders to prepare and submit updated financial information for the coming year's qualification. A longer grace period may be needed when a submittal is dependent on the completion of a parent company's financial information. The amendments extend the grace period to four months for all qualification levels, including qualification under the Confidential Questionnaire.

Amendments to §9.13, Notice of Letting and Issuance of Proposal Forms, standardize references to "the electronic bidding system" for clarity and consistency.

Amendments to §9.14, Submittal of Bid, clarify that, consistent with paper bid bonds, electronic bid bonds must be issued by authorized sureties, include the surety's seal, and be dated on or before the date of bid opening. The amendments also standardize references to "the electronic bidding system" for clarity and consistency.

Amendments to §9.15, Acceptance of Bids, allow a bid to be considered nonresponsive if the department discovers a discrepancy prior to contract award. Before recommending award of a contract, the department verifies information certified by the bidder. Currently, the department may consider a bid nonresponsive if the bidder fails to acknowledge a certification; however, there is no recourse short of rejecting all bids if the department discovers a discrepancy with a certification prior to award of the contract. The amendments allow the department to consider a bid to be nonresponsive in such a situation.

Amendments to §9.17, Award of Contract, authorize the department to delay its notification of contract award pending the resolution of railroad access agreements, third-party financial clearances, or other conditions that are not in the best interest of the state to address the situations in which there are requirements

that restrict the department from proceeding immediately with contract execution.

COMMENTS

The department posted the rules for comment in the February 13, 2026, issue of the *Texas Register* and received comments through March 15, 2026. The department received one comment.

The Associated General Contractors of Texas proposed a slight modification to language in §9.17(k) regarding the department's practice of delaying the release of contracts pending resolution of a railroad agreement, third party funding or concurrence, and other conditions in the best interest of the state. The department has modified the proposed language to replace the phrase "the department will delay notification" with "the department may delay notification" to support the practice of allowing a conditional release of the contract with restrictions of work areas.

STATUTORY AUTHORITY

The amendments are adopted 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, §223.004, which authorizes the commission to adopt rules to prescribe conditions under which a bid may be rejected by the department and Transportation Code, §223.014, which requires the commission to adopt rules relating to a bid guaranty.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapter 223, Subchapter A.

§9.17. *Award of Contract.*

(a) The commission may reject any and all bids opened, read, and tabulated under §9.15 and §9.16 of this subchapter (relating to Acceptance of Bids and Tabulation of Bids, respectively). It will reject all bids if:

(1) there is reason to believe collusion may have existed among the bidders;

(2) the lowest bid is higher than the department's estimate and the commission determines that re-advertising the project for bids may result in a significantly lower low bid;

(3) the lowest bid is higher than the department's estimate and the commission determines that the work should be done by department forces; or

(4) the lowest bid is determined to contain a bid error that meets the notification requirements contained in §9.16(e)(1) of this subchapter and satisfies the criteria contained in §9.16(e)(2) of this subchapter.

(b) Except as provided in subsection (c), (d), (e), or (f) of this section, if the commission does not reject all bids, it will award the contract to the lowest bidder.

(c) In accordance with Government Code, Chapter 2252, Subchapter A, the commission will not award a contract to a nonresident bidder unless the nonresident underbids the lowest bid submitted by a responsible resident bidder by an amount that is not less than the greater of:

(1) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which:

(A) the nonresident's principal place of business is located; or

(B) the nonresident is a resident manufacturer; or

(2) the amount by which a resident bidder would be required to underbid the nonresident bidder to obtain a comparable contract in the state in which a majority of the manufacturing related to the contract will be performed.

(d) For a maintenance contract for a building or a segment of the state highway system involving a bid amount of less than \$300,000, if the lowest bidder withdraws its bid after bid opening, the executive director may recommend to the commission that the contract be awarded to the second lowest bidder.

(1) For purposes of this subsection, the term "withdrawal" includes written withdrawal of a bid after bid opening, failure to provide the required insurance or bonds, or failure to execute the contract.

(2) The executive director may recommend award of the contract to the second lowest bidder if he or she, in writing, determines that the second lowest bidder is willing to perform the work at the unit bid prices of the lowest bidder; and

(A) the unit bid prices of the lowest bidder are reasonable, and delaying award of the contract may result in significantly higher unit bid prices;

(B) there is a specific need to expedite completion of the project to protect the health or safety of the traveling public; or

(C) delaying award of the contract would jeopardize the structural integrity of the highway system.

(3) The commission may accept the withdrawal of the lowest bid after bid opening if it concurs with the executive director's determinations.

(4) If the commission awards a contract to the second lowest bidder and the department successfully enters into a contract with the second lowest bidder, the department will return the lowest bidder's bid guaranty upon execution of that contract.

(e) If the lowest bidder is not a preferred bidder and the contract will not use federal funds, the department, in accordance with Transportation Code, Chapter 223, Subchapter B, will award the contract to the lowest-bidding preferred bidder if that bidder's bid does not exceed the amount equal to 105% of the lowest bid. For purposes of this subsection, "preferred bidder" means a bidder whose principal place of business is in this state or a state that borders this state and that does not give a preference similar to Transportation Code, §223.050.

(f) When additional information is required to make a final decision, the commission may defer the award or rejection of the contract until the next regularly scheduled commission meeting.

(g) Contracts with an engineer's estimate of less than \$1 million may be awarded or rejected by the executive director under the same conditions and limitations as provided in subsections (a) - (c) of this section.

(h) The commission may rescind the award of any contract prior to contract execution upon a determination that it is in the best interest of the state. The executive director may rescind the award of a contract awarded under subsection (g) of this section prior to contract execution upon a determination that it is in the best interest of the state. If a contract is rescinded under this subsection, the bid guaranty will be returned to the bidder, but no compensation will be paid to the bidder as a result of the rescission.

(i) For a contract with a DBE goal, all bidders must submit the DBE information required by §9.227 of this chapter (relating to Information from Bidders) within five calendar days after the date that the bids are opened.

(j) Prior to contract award, all low bidders must be participating or provide documentation of participation in the DHS E-Verify system within five calendar days after the date that the bids are opened.

(k) Upon the award or rejection of a contract by the commission, the department will provide the low bidder written notification of the award or rejection. When applicable, the department may delay notification of the award of a contract pending resolution of:

(1) an access agreement between the department and a railroad,

(2) an agreement between the department and a third party participating with funding or concurrence, or

(3) other conditions that are not in the best interest of the state.

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

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Becky Blewett

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Texas Department of Transportation

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For further information, please call: (512) 416-2560



## CHAPTER 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

### SUBCHAPTER B. HIGHWAY CROSSINGS BY OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

#### 43 TAC §28.11, §28.12

The Texas Department of Transportation (department) adopts amendments to §28.11, Surety Bond, and §28.12, Preparation of Contract. The amendments to §28.11 and §28.12 are adopted without changes to the proposed text as published in the February 13, 2026 issue of the *Texas Register* (51 TexReg 885) and will not be republished.

#### EXPLANATION OF ADOPTED AMENDMENTS

During the 89th Legislative Session, the legislature passed Senate Bill (S.B.) 995, which removed the requirement that the surety bond for a contract authorizing an oversize or overweight vehicle to cross a road or highway be approved by the Comptroller of Public Accounts and the Attorney General's Office.

Amendments to §28.11, Surety Bond, remove the requirement that the state treasurer and the attorney general approve the surety bond and provide that the bonds must be approved by the department to align the rule with the statute. Additional changes are made to clarify the requirements of the section; those changes do not change the substance of the section.

Amendments to §28.12, Preparation of Contract, modify subsection (e) by removing the requirement that the surety bond be approved by the attorney general and the comptroller of public accounts to align the rule with the statute and eliminating language that is redundant of that in §28.11.

#### COMMENTS

No comments on the proposed amendments were received.

#### STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §623.051, which requires the commission to adopt rules relating to the forms and procedures to be used for contracts for crossing roads.

The authority for the adopted amendments is provided by S.B. 995, 89th Regular Session, 2025. The primary author and the primary sponsor of that bill are Sen. Robert Nichols and Rep. Dennis Paul, respectively.

#### CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, Chapter 623, Subchapter C.

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

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