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

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

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.8

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC §1.8, Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals. The purpose of the proposed repeal is to correct an email address and make minor technical corrections.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to an existing activity: requirements relating to the Department review of submissions by political subdivisions of properties designated for camping by homeless individuals.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The repeal does not require additional future legislative appropriations.

4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The repeal will not expand, limit, or repeal an existing regulation.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the changed section would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 25, 2025 through August 25, 2025, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston at brooke.boston@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, August 25, 2025.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repeal affects no other code, article, or statute.

§1.8. Plan Requirements, Process and Approval Criteria for Properties Designated for Camping by Political Subdivisions for Homeless Individuals.

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

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

TRD-202502365
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 475-3959

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10 TAC §1.8

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC §1.8, Camping Plan Requirements and Process for Political Subdivisions. This includes a title change from the rule being repealed. The purpose of the proposed rule is to include an updated email address and make minor technical corrections.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but relates to changes to an existing activity: requirements relating to the Department review of submissions by political subdivisions of properties designated for camping by homeless individuals.

2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new section does not require additional future legislative appropriations.

4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new section is not creating a new regulation, except that they are replacing sections being repealed simultaneously to provide for revisions.

6. The new section will not expand, limit, or repeal an existing regulation.

7. The new section will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new section and determined that it will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new section does not contemplate nor authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new section as to its possible effects on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would be a more current and germane rule. There will not be economic costs to individuals required to comply with the new section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the section does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held July 25, 2025 through August 25, 2025, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston at brooke.boston@tdhca.texas.gov. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, August 25, 2025.

STATUTORY AUTHORITY. The new section is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new sections affects no other code, article, or statute.

§1.8. Camping Plan Requirements and Process for Political Subdivisions.

(a) Purpose. Subchapter PP of Chapter 2306, Texas Government Code, Property Designated by Political Subdivision for Camping by Homeless Individuals, was enacted in September 2021. §2306.1122 of the Texas Government Code, provides that a Political Subdivision may not designate a property to be used by homeless individuals to Camp unless the Department has approved a Plan as further described by Subchapter PP. This rule provides the Department's policies for such Plans, including the process for Plan submission, Plan requirements, the review process, and the criteria by which a Plan will be reviewed by the Department.

(b) Applicability.

(1) This rule applies only to the designation and use of a property designated for camping by homeless individuals that first begins that use on or after September 1, 2021, except that the rule and requirements of Subchapter PP, Chapter 2306, Texas Government Code,

do not apply to a Proposed Property to be located on/in a Public Park. Public Parks are ineligible to be used as a Camp by homeless individuals per Subchapter PP, Chapter 2306, Texas Government Code.

(2) The designation and use of a Proposed Property described by Subchapter PP, Chapter 2306, Government Code that first began before September 1, 2021, is governed by the law in effect when the designation and use first began, and the former law is continued in effect for that purpose.

(3) A Political Subdivision that designated a property to be used by homeless individuals to Camp before September 1, 2021, may apply on or after that date for approval of a Plan pursuant to this section.

(4) A Political Subdivision that authorizes camping under the authority of §48.05(d)(1), (3) or (4), Texas Penal Code, are not required to submit a Plan for those instances.

(c) Definitions.

(1) Camp--Has the meaning assigned by Section 48.05 of the Texas Penal Code.

(2) Department--The Texas Department of Housing and Community Affairs.

(3) Plan--Specifically an application drafted by a Political Subdivision, submitted to the Department by the Political Subdivision, with the intention of meeting the requirements provided for in subsection (e) of this section (relating to Threshold Plan Requirements).

(4) Plan Determination Notice--The notification provided by the Department to the Political Subdivision stating a Plan's Approval or Denial.

(5) Political Subdivision--A local government as defined in Chapter 2306, Texas Government Code.

(6) Proposed New Campers--Homeless individuals that the Political Subdivision intends to allow to Camp at the Proposed Property for which a Plan is submitted.

(7) Proposed Property--That property proposed for use for Proposed New Campers and submitted in the Plan, owned, controlled, leased, or managed by the Political Subdivision.

(8) Public Park--Any parcel of land dedicated and used as parkland, or land owned by a political subdivision that is used for a park or recreational purpose that is under the control of the political subdivision, which is designated by the political subdivision.

(d) Plan Process.

(1) Submission.

(A) Plans may be submitted at any time. Plan resubmissions may also be submitted at any time.

(B) All Plans must be submitted electronically to campingplans@tdhca.texas.gov.

(C) At least one designated email address must be provided by the Political Subdivision; all communications from the Department to the Political Subdivision regarding the Plan will be sent to that email address. No communication will be sent by traditional postal delivery methods. Up to two email contacts may be provided.

(2) Review Process.

(A) Upon receipt, Department staff will send a confirmation email receipt to the designated email address and initiate review of the Plan. The Plan will be reviewed first to determine that all information specified in subsection (e) of this section (relating to Threshold Plan Requirements) have been included and that sufficient information has been provided by which to evaluate the Plan against the Plan Criteria provided for in subsection (f) of this section (relating to Plan Criteria).

(B) If a Plan as submitted does not sufficiently meet the requirements of §2306.1123, Texas Government Code, and subsection (e) of this section, or does not provide sufficient explanation by which to assess the Plan Criteria provided for in subsection (f) of this section, staff will issue the Political Subdivision a notice of deficiency. The Political Subdivision will have five calendar days to fully respond to all items requested in the deficiency notice.

(i) For a Political Subdivision that satisfies all requested deficiencies by the end of the five calendar day period, the review will proceed.

(ii) For a Political Subdivisions that does not satisfy all requested deficiencies by the end of the five calendar day period, no further review will occur. A Plan Determination Notice will be issued notifying the Political Subdivision that its Plan has been denied and stating the reason for the denial. The Political Subdivision may resubmit a Plan at any time after receiving a Plan Determination Notice.

(C) Plan Determination Notice.

(i) Upon completion of the review by staff, the Political Subdivision will be notified that its Plan has been Approved or Denied in a Plan Determination Notice.

(ii) Not later than the 30th day after the date the Department receives a plan or resubmitted Plan, the Department will make a final determination regarding approval of the Plan and send a Plan Determination Notice to the Political Subdivision. For a Political Subdivision that had a deficiency notice issued, and that satisfied all requested deficiencies by the end of the five calendar day period, the Department will strive to still issue a final determination notice by the 30th day from the date the Plan was originally received, however the date of issuance of the Plan Determination Notice may extend past the 30th day by the number of days taken by the Political Subdivision to resolve any deficiencies.

(iii) A Political Subdivision may appeal the decision in the Plan Determination Notice using the appeal process outlined in §1.7 of this chapter (relating to Appeals Process).

(D) Reasonable Accommodations may be requested from the Department as reflected in §1.1 of this subchapter (relating to Reasonable Accommodation Requests to the Department).

(e) Threshold Plan Requirements. A Plan submitted for approval to the Department must include all of the items described in paragraphs (1) - (8) of this subsection for the property for which the Plan is being submitted:

(1) pertinent contact information for the Political Subdivision as specified by the Department in its Plan template;

(2) the physical address or if there is no physical address the legal description of the property;

(3) the estimated number of Proposed New Campers to be located at the Proposed Property;

(4) a description with respect to the property of the five evaluative factors that addresses all of the requirements described in subparagraphs (A) - (E) of this paragraph:

(A) Local Health Care. Provide:

(i) A description of the availability of local health care for Proposed New Campers, including access to Medicaid services and mental health services;

(ii) A description of the specific providers of the local health care and mental health services available to Proposed New Campers. Local health/mental health care service providers do not include hospitals or other emergency medical assistance, but contemplate access to ongoing and routine health and mental health care. Providers of such services can include, but are not limited to: local health clinics, local mental health authorities, mobile clinics that have the location in their service area, and county indigent healthcare programs;

(iii) A description or copy of a communication from the Texas Department of Health and Human Services specific to the Political Subdivision and specific to the population of homeless individuals must be provided to establish the availability of access to Medicaid services;

(iv) A map or clear written description of the geographic proximity (in miles) of each of those providers to the Proposed Property;

(v) The cost of such care and services, whether those costs will be borne by the Proposed New Campers or an alternative source, and if an alternative source, then what that source is; and

(vi) A description of any limitations on eligibility that each or any of the providers may have in place that could preclude Proposed New Campers from receiving such care and services from the specific providers.

(B) Indigent Services. Provide:

(i) A description of the availability of indigent services for Proposed New Campers. For purposes of this factor, indigent services are any services that assist individuals or households in poverty with their access to basic human needs and supports. Indigent service providers include, but are not limited to: community action agencies, area agencies on aging, mobile indigent service providers that have the location in their service area; and local nonprofit or faith-based organizations providing such indigent services;

(ii) A description of the specific providers of the services and what services they provide;

(iii) A map or clear written description of the geographic proximity (in miles) of each of those providers to the Proposed Property; and

(iv) A description of any limitations on eligibility that each or any the providers may have in place that could preclude Proposed New Campers from receiving such services from the specific providers.

(C) Public Transportation. Provide:

(i) A description of the availability of reasonably affordable public transportation for Proposed New Campers. Reasonably affordable for the purposes of this Section means the rate for public transportation for the majority of users of that public transportation; if for instance the standard bus fare in an area is $2 per ride, then that rate is considered the reasonable affordable rate for the Proposed Property; Proposed New Campers should not have to pay a rate higher than that standard fare;

(ii) A description of the specific providers of the public transportation services and their prices;

(iii) A description of the closest proximity of the property to a specified entrance to a public transportation stop or station, with a sidewalk or an alternative pathway identified by the Political Subdivision for pedestrians, including a map of the closest stop and public transportation route shown in relation to the Proposed Property;

(iv) A description of the route schedule of the closest proximate public transportation route; and

(v) If public transportation is available upon demand at the property location, identification of any limitations on eligibility that each or any of the providers may have in place that could preclude Proposed New Campers from receiving such transportation services from that specific on-demand provider.

(D) Law Enforcement Resources. Provide:

(i) A description of the local law enforcement resources in the area;

(ii) The description should include a brief explanation of which local law enforcement patrol beat covers the Proposed Property;

(iii) A description of local law enforcement resources and local coverage in several other census tracts or law enforcement beats/areas with similar demographics to that of the beat/area of the Proposed Property to provide a comparative picture;

(iv) a description of any added resources for the area or proposed specifically for the property, and how proximate those resources are; and

(v) any explanation of reduced (or lower than typical of similar demographic areas) local law enforcement coverage in the area.

(E) Coordination with Local Mental Health Authority. Provide:

(i) a description of the steps the Political Subdivision has taken to coordinate with the Local Mental Health Authority to provide services for any Proposed New Campers; and

(ii) a description must include documentation of meetings or conversations, dates when they occurred, any coordination steps resulting from the conversations, and whether any ongoing coordination is intended for the Proposed Property.

(5) The Political Subdivision must provide evidence that establishes that the property is not a Public Park. Evidence must include documentation addressing the definition of a Public Park as defined in subsection (c)(8) of this section.

(6) Plans should be limited in length. Plans in excess of 15 pages of text, not including documentation and attachments, will not be reviewed.

(7) The Political Subdivision must include documentation that the site will include basic human sanitation services including toilets, sinks, and showers. Such facilities may be temporary fixtures such as portable or mobile toilets, sinks and showers.

(8) Any Plan that is a resubmission of a denied Plan, submitted again for the same Proposed Property, must include a short summary at the front of the Plan explaining what has been changed in the resubmitted Plan from the original denied Plan.

(f) Plan Criteria

(1) Approval. In no case will a Plan be approved if the Department has determined that the Proposed Property referenced in a Plan is a Public Park as defined in subsection (c)(6) of this section. Plans for other properties will be approved if the five factors are satisfied as described in subparagraphs (A) - (E) of this paragraph:

(A) Local health care, including access to Medicaid services (or other comparable health services) and mental health services, are within one mile of the Proposed Property, are accessible via pub-

lic transportation, can be provided on-site by qualified providers, or transportation is provided (which includes mobile clinics that have the location in their service area), and the Political Jurisdiction commits to a goal that such services are available at little, low or no cost for at least 50% Proposed New Campers (some limited exceptions from providers as may be described in accordance with subsection (d)(5)(A)(v) of this section will not preclude approval for this factor);

(B) There are indigent services providers that have locations within one mile of the Proposed Property, are accessible via public transportation, can provide services on-site, or transportation is provided (which includes mobile indigent service providers that have the location in their service area), and the Political Subdivision commits to a goal that such services are available for at least 50% of Proposed New Campers are expected to be eligible;

(C) The property is within 1/2 mile or less from a public transportation stop or station that has scheduled service at least several times per day for at least six days per week, or there is on demand public transportation available, and the Political Subdivision commits to a goal that at least 50% of the Proposed New Campers are eligible for that on-demand public transportation;

(D) The local law enforcement resources for the patrol zone or precinct that includes the Proposed Property are not materially less than those available in other zones or precincts of the local law enforcement entity, unless the Political Subdivision provides a specific plan for security in and around the property that the Political Subdivision has determined is appropriate for law enforcement services in that area; and

(E) the Political Subdivision has had at least one meeting to discuss initial steps and coordination with the Local Mental Health Authority, specific to this particular Proposed Property and the volume/service needs of Proposed New Campers.

(2) A Plan that meets at least four of the five factors in paragraph (1) of this subsection, may be approved if significant and sufficient mitigation is provided that delivers similarly comprehensive resources as required, to justify how the remaining factor not met will still be sufficiently addressed through some other means.

(3) Denial. An Application that does not meet all of the requirements in paragraph (1) of this subsection, or that does not meet the requirements of paragraph (2) of this subsection will be issued a Plan Determination Notice within 30 days of Plan application (which may be extended by the amount of calendar days the Political Subdivision took to respond to deficiencies) reflecting denial.

(g) Information Sharing. When the Department receives a complaint under §1.2 of this subchapter (relating to Department Complaint System to the Department) or information that a Political Subdivision is allowing camping by homeless individuals on a property that is not the subject of a Plan approved under this section, the Department will refer such information to the Office of the Attorney General, for possible action under Chapter 364, Local Government Code, or other law.

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

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

TRD-202502366

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 475-3959

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

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

SUBCHAPTER F. CUSTOMER SERVICE AND PROTECTION

16 TAC §24.167

The Public Utility Commission of Texas (commission) proposes an amendment to 16 Texas Administrative Code (TAC) §24.167 (relating to Discontinuance of Service). Unedited §24.167 specifies "{p}ayment by check which has been rejected for insufficient funds …" which leaves other forms of payment unaddressed. Similarly, the tariff forms have a "returned check charge" line item, but do not specify what happens if a customer's credit card or debit card payment is declined. The proposal for publication removes the word "check" in reference to rejected payments to clarify that other forms of rejected payments are included.

Growth Impact Statement

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

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

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

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

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

(5) the proposed rule will not, in effect, create a new regulation, because it is replacing a similar regulation;

(6) the proposed rule will not repeal an existing regulation;

(7) the same number of individuals will be subject to the proposed rule's applicability as were subject to the applicability of the rule it is being proposed to replace; and

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

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

Public Benefits

Ms. Eaves has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section is clarity on the types of permitted payment methods and rejected payments. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Ms. Eaves has determined that the economic costs to persons required to comply with the proposed rule will vary on an individual basis.

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by August 22, 2025.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by August 22, 2025. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to modify the proposed rule on adoption. All comments should refer to Project Number 58270.

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

Statutory Authority

The amendment is proposed under Texas Water Code (TWC) §13.001, which provides the commission jurisdiction over a water and sewer utility; §13.004, which provides the commission with jurisdiction over certain water supply or sewer service corporations; §13.041(b), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross reference to statutes: Texas Water Code §13.001, 13.004, and 13.041(b).

§24.167. Discontinuance of Service.

(a) Disconnection with notice.

(1) (No change.)

(2) Reasons for disconnection. Utility service may be disconnected after proper notice for any of the following reasons:

(A) failure to pay a delinquent account for utility service or failure to comply with the terms of a deferred payment agreement.

(i) Payment [~~by check~~] which has been rejected for insufficient funds, closed account, or for which a stop payment order has been issued is not deemed to be payment to the utility.

(ii) - (iii) (No change.)

(B) - (F) (No change.)

(b) - (h) (No change.)

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

Filed with the Office of the Secretary of State on July 10, 2025.

TRD-202502321
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 936-7322

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CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER J. COSTS, RATES AND TARIFFS

DIVISION 1. RETAIL RATES

16 TAC §§25.235 - 25.237

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §25.235 (relating to Fuel Costs-General), §25.236 (relating to Recovery of Fuel Costs), and §25.237 (relating to Fuel Factors.

The proposed amendments will implement Public Utility Regulatory Act (PURA) §36.203 as revised by House Bill (HB) 2073 during the Texas 88th Regular Legislative Session. The amended rules will make procedural changes to fuel factor proceedings used by non-ERCOT utilities and create an interim fuel adjustment process for those utilities and reduce the maximum time period covered by fuel reconciliations from three years to two

years. Additional changes include revisions to notice requirements for fuel proceedings and the addition of a protest procedure in which certain entities can challenge an interim fuel adjustment or fuel factor. The proposed amendments also update the commission-prescribed fuel reconciliation filing package to conform with current electronic filing practice, revise or remove outdated terms, and require utilities to provide copies of monthly fuel cost report the utility filed in the past 24-month period covered by the fuel reconciliation. The proposed amendments will also amend the title of 16 TAC §25.235 to 16 TAC §25.235, relating to Fuel Costs.

Growth Impact Statement

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

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

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

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

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

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

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

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

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

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

Public Benefits

Ms. Givens has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be expedited processes to ensure more timely cost recovery for non-ERCOT utilities. There will not be any probable economic costs to persons required to comply with the rules under Texas Government Code §2001.024(a)(5).

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by August 26, 2025. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by August 26, 2025. Comments should be organized in a manner consistent with the organization of the proposed rules and questions for comment. The commission invites specific comments regarding the effects of the proposed rule, including the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission also requests any data, research, or analysis from any person required to comply with the proposed rules or any other interested person. The commission will consider the information submitted by commenters and the costs and benefits of implementation in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 58210.

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

In addition to comments on the proposed rule text, the commission requests comments on the following questions concerning the proposed rules and the new procedures established by HB 2073 (88R):

Existing §25.236(a)(9) authorizes a utility to retain 10% of the margins from an off-system energy sales transaction if certain criteria are met.

1. Should this percentage be adjusted? Why or why not?

2. Should the provision be revised to distinguish separate margins (expressed as a percentage) that an electric utility may retain from off-system sales that are respectively applicable to electric utilities that are dispatched in a power market operated by an independent system operator (ISO) outside of ERCOT and those that are not? (i.e., An electric utility being dispatched by an outside-ERCOT ISO may retain X% of margins from off-system sales, an electric utility that is not dispatched by an outside-ERCOT ISO may retain Y% of margins from off-system sales.)

PURA §36.203(b)(3)(A) requires commission rules to ensure any material balance of amounts under-collected or over-collected for eligible electric fuel and purchased power costs is refunded or surcharged to customers through an interim fuel adjustment not later than the 90th day after the date the balance is accrued unless an exception applies.

3. What is the proper threshold for determining a "material balance" for purposes of an interim fuel adjustment? (The proposed rule contains a 4.0% materiality threshold identical to the threshold used in §25.237 for fuel factors.)

4. Given the 90-day deadline for recovery under §36.203(b)(3)(A), what time period is appropriate to reasonably expect an electric utility to be capable of filing an interim fuel adjustment application? (i.e., Taking into account the time necessary for a utility to close their books and make a true-up determination regarding whether deferred fuel balances places the utility in a state of material over- or under-recovery.)

5. At what point does a utility determine that it incurs ("accrues") a fuel balance for purposes of an interim fuel adjustment? (i.e., Given the lag time in providing monthly fuel reports to the commission and based on a utility's accounting practices, what is the method for determining when a material under-recovery or over-recovery has accrued?)

6. Given the introduction of the interim fuel adjustment by HB 2073 (88R), should §25.237(f), which concerns emergency revisions to a fuel factor, be deleted or revised? (i.e., Does an interim fuel adjustment eliminate the need for emergency revisions to the fuel factor?)

PURA §36.203(e) authorizes a customer of the electric utility, a municipality with original jurisdiction over the utility, or Office of Public Utility Counsel (OPUC) to "protest" a fuel factor or interim fuel adjustment. The statute establishes several limitations on such protests, such as the prohibition on prudence of costs being raised as an issue, not requiring a hearing per PURA §36.203(d) unless one of the criteria of PURA §36.203(g) are met, and the additional restrictions on fuel factor protests under PURA §36.203(f).

7. Procedurally, how should a "protest" of a fuel factor or interim fuel adjustment be treated at the commission given the foregoing statutory limitations? Under HB 2073, a person that files a "protest" in the context of a fuel factor or interim fuel adjustment could be classified as a more constrained form of "intervenor" in the proceeding under commission rules. Specifically, an "intervenor" as defined in 16 TAC §22.2(25), relating to Definitions is a party to the proceeding and may accordingly, per 16 TAC §22.102(b), relating to Classification of Parties, "have the right to present a direct case, cross-examine all witnesses, conduct discovery, make oral or written legal arguments, and otherwise fully participate in any proceeding." This contrasts with the far more limited "protestor" defined in 16 TAC §22.2(37) that is not a party to the case and may only submit oral or written comments if allowed by the presiding officer per 16 TAC §22.102(c)). However, given the foregoing statutory boundaries on protests of fuel factors and interim fuel adjustments and the requirement that, for interim fuel adjustments, a material balance be collected from or refunded to customers no later than the 90th day after the date the balance accrues. In the context of these proceedings, consider the following questions.

a. Is a protest in fuel factor proceeding or of an interim fuel adjustment meant to equate to a motion to intervene? Or should filing a protest mean that the person is automatically a party to the (assuming that person is a customer of the electric utility, a municipality with original jurisdiction over the utility, or OPUC)?

b. What rights should a person that files a "protest" in a fuel factor proceeding or an in interim fuel adjustment have? (i.e., right to present a direct case, cross-examine witnesses, conduct discovery, etc.)

c. Given the time constraints surrounding refunds or collections, should the rights afforded to a person that files a "protest" in an interim fuel adjustment be different than those afforded to a person that files a "protest" in a fuel factor proceeding?

d. Should an interim fuel adjustment be eligible for administrative approval under 16 TAC §22.32, relating to Administrative Review, regardless of whether a protest is filed? (Assuming no hearing is required under PURA §36.203(g) and the commission does not otherwise deem a hearing to be necessary).

8. Please provide any additional feedback regarding the statutory deadlines and commission procedures surrounding fuel factor proceedings and interim fuel adjustments.

Statutory Authority

The amendments are proposed under Public Utility Regulatory Act (PURA) §14.001, which grants the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by this title that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §14.052, which requires the commission to adopt and enforce rules governing practice and procedure before the commission and, as applicable, practice and procedure before the State Office of Administrative Hearings; PURA §36.201 which, outside of certain circumstances, prohibits the commission from establishing a rate or tariff that authorizes an electric utility to automatically adjust and pass through to the utility's customers a change in the utility's fuel or other costs; PURA §36.203 which authorizes the commission to establish a utility's fuel factor and adjust that fuel factor through an interim fuel adjustment.

Cross Reference to Statute: Public Utility Regulatory Act §14.001, 14.002, 14.052, 36.201, and 36.203.

§25.235. Fuel Costs[~~--General~~].

(a) Purpose. The commission will set an electric utility's rates at a level that will permit the electric utility a reasonable opportunity to earn a reasonable return on its invested capital and to recover its reasonable and necessary expenses, including the cost of fuel and purchased power. The commission recognizes in this connection that it is in the interests of both electric utilities and their ratepayers to adjust charges in a timely manner to account for changes in certain fuel and purchased-power costs. In accordance with [~~Pursuant to the~~] Public Utility Regulatory Act (PURA) §36.203 this section establishes a procedure for setting and revising fuel factors and a procedure for regularly reviewing the reasonableness of the fuel expenses recovered through fuel factors.

(b) Notice of fuel proceedings. In addition to the notice required by the Administrative Procedure Act (APA) to be given by the commission, the electric utility is required to give notice of a fuel proceeding at the time the petition is filed. The term "rate class" as used in this subsection means all customers taking service under the same tariffed rate or schedule, or a group of seasonal agricultural customers as identified by the electric utility.

(1) Method of notice. Notice of fuel proceedings must be posted to the utility's website and provided to the OPUC by electronic mail. Notice must also be provided [~~will be given~~] by the electric utility as follows, as applicable:

(A) Notice in all proceedings involving refunds or [~~,~~] surcharges (interim fuel adjustments), or a proposal to change the fuel factor under §25.237 of this title (relating to Fuel Factor), must [~~shall~~] be by either:

(i) one-time publication in a newspaper having general circulation in each county of the service area of the electric utility; or

(ii) by individual notice to each customer, and by individual notice to all parties [~~that participated~~] in the electric utility's prior fuel reconciliation proceeding.[~~;~~]

(B) Notice in all fuel reconciliation proceedings must [~~shall~~] be by:

(i) publication once each week for two consecutive weeks in a newspaper having general circulation in each county of the service area of the electric utility; and

(ii) by individual notice to each customer and to all parties [~~that participated~~] in the electric utility's prior fuel reconciliation proceeding.

(2) Contents of notice.

(A) All notices required by this section must [~~shall~~] provide the following information:

(i) the date the petition or application was filed;

(ii) a general description of the customers, customer classes (for fuel factors) or rate classes (for interim fuel adjustments), and territories affected by the petition or application;

(iii) the relief requested;

(iv) a statement substantially similar to the following: [~~the statement,~~] "Persons with questions or who want more information on this petition or application may contact (utility name) at (utility address) or call (utility toll-free telephone number) during normal business hours. A complete copy of this petition or application is available for inspection at the address listed above or at the following website [direct link to notice on the utility's website]"; and

(v) a statement substantially similar to the following: [~~the statement,~~] "Persons who wish to formally participate in this proceeding, or who wish to express their comments concerning this petition or application should contact the Public Utility Commission of Texas, Consumer Protection Division [~~Office of Customer Protection~~], P.O. Box 13326, Austin, Texas 78711-3326, or call (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals may contact the commission through [~~with text telephones (TTY) may call (512) 936-7136 or use~~] Relay Texas (toll-free) at 1-800-735-2989."

(B) (No change.)

(C) Notices to revise fuel factors or an interim fuel adjustment for a refund or surcharge [~~, to refund, or to surcharge~~] must contain a statement substantially similar to the following: [~~the statement that,~~] "these changes will be subject to final review by the commission in the electric utility's next reconciliation," unless, in the case of refunds or surcharges, the change is a result of a reconciliation proceeding.

(D) Notices to reconcile fuel expenses must also state the period for which final reconciliation is sought.

(E) Notices for an interim fuel adjustment must indicate, for each rate class:

(i) whether the adjustment is for a refund or surcharge;

(ii) the amount of the refund or surcharge;

(iii) the period for which the refund or surcharge is applicable (i.e., January to March);

(iv) if the adjustment is for a surcharge, whether the surcharge would or is anticipated to result in a total bill increase of 10 percent or more for an average customer in any rate class compared to the total bill in the month before implementation; and

(v) the time period and manner in which the surcharge or refund will be implemented.

[~~(3) Proof of notice may be demonstrated by appropriate affidavit. In fuel proceedings initiated by a person other than an electric utility, the notice required in this subsection must be provided in accordance with a schedule ordered by the presiding officer.~~]

(c) Reports; confidentiality of information. Matters related to submitting reports and confidential information will be handled as follows:

(1) The commission will monitor each electric utility's actual and projected fuel-related costs and revenues on a monthly basis. Each electric utility must [~~shall~~] maintain and provide to the commission, in a format specified by the commission, monthly reports containing all information required to monitor monthly fuel-related costs and revenues, including generation mix, fuel consumption, fuel costs, purchased power quantities and costs, and system and off-system sales revenues.

(2) (No change.)

(3) The electric utility must [~~shall~~] prepare a confidentiality disclosure agreement to be included as part of the fuel reconciliation petition. The format for the agreement must [~~shall~~] be the same as that contained in the commission approved rate filing package. In addition to the agreement itself, Attachment 1 of the agreement must [~~shall~~] present a complete listing of the information required to be filed which the electric utility alleges is confidential. Upon request and execution of the confidentiality agreement, the electric utility must [~~shall~~] provide any information which it alleges is confidential. If the electric utility fails to file a confidentiality agreement, the deadline for a commission final order in the case is tolled until a protective order is entered or a confidentiality agreement is filed. Use of the confidentiality disclosure agreement does not constitute a finding that any information is proprietary and/or confidential under law, or alter the burden of proof on that issue. The form of agreement contained in the commission approved rate filing package does not bind the examiner or the commission to accept the language of the agreement in the consideration of any subsequent protective order that may be entered.

(4) (No change.)

§25.236. Recovery of Fuel Costs.

(a) Eligible fuel expenses. Eligible fuel expenses include expenses properly recorded in the Federal Energy Regulatory Commission Uniform System of Accounts, numbers 501, 502, 503, 509, 518, 536, 547, and 555, as modified in this subsection, as of April 1, 2025 [~~2013~~], and the items specified in paragraph (8) of this subsection. Any later amendments to the System of Accounts are not incorporated into this subsection. Subject to the commission finding special circumstances under paragraph (7) of this subsection, eligible fuel expenses are limited to:

(1) - (6) (No change.)

(7) Upon demonstration that such treatment is justified by special circumstances, an electric utility may recover as eligible fuel expenses fuel or fuel related expenses otherwise excluded in paragraphs (1) - (6) of this subsection. In determining whether special circumstances exist, the commission will [~~shall~~] consider, in addition to other factors developed in the record of the reconciliation proceeding, whether the fuel expense or transaction giving rise to the ineligible fuel expense resulted in, or is reasonably expected to result in, increased reliability of supply or lower fuel expenses than would otherwise be the case, and that such benefits received or expected to be received by ratepayers exceed the costs that ratepayers otherwise would have paid or otherwise would reasonably expect to pay.

(8) Eligible fuel expenses are prohibited from being [~~shall not be~~] offset by revenues by affiliated companies for the purpose of equalizing or balancing the financial responsibility of differing levels of investment and operation costs associated with transmission assets. In addition to the expenses designated in paragraphs (1) - (7) of this subsection, unless otherwise specified by the commission, eligible fuel expenses may [~~shall~~] be offset by:

(A) revenues from steam sales included in Accounts 504 and 456 to the extent expenses incurred to produce that steam are included in Account 503;

(B) revenues from off-system sales in their entirety, except as permitted in paragraph (9) of this subsection; and

(C) revenues from disposition of allowances properly recorded in Account 411.8.

(9) (No change.)

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

(1) Materially or material--the cumulative amount of over- or under-recovery, including interest, is greater than or equal to 4.0% of the annual actual fuel cost figures on a rolling 12-month basis, as reflected in the utility's monthly fuel cost reports as filed by the utility with the commission.

(2) Rate class--all customers taking service under the same tariffed rate or schedule, or a group of seasonal agricultural customers as identified by the electric utility.

(c) Reconciliation of fuel expenses.

(1) Each electric utility must file petitions for reconciliations on a periodic basis such that a petition:

(A) contains at least one year and no more than two years of reconcilable data; and

(B) is filed no later than 180 days after the end of the period to be reconciled.

(2) To the extent a reconciliation results in a material change to the electric utility's under-collected or over-collected fuel balance, that change may be incorporated into an interim fuel adjustment under subsection (f) of this section as directed by the commission through the issuance of a written order.

[~~(b) Reconciliation of fuel expenses. Electric utilities shall file petitions for reconciliation on a periodic basis so that any petition for reconciliation shall contain a maximum of three years and a minimum of one year of reconcilable data and will be filed no later than six months after the end of the period to be reconciled.~~]

(d) [~~(c)~~] Petitions to reconcile fuel expenses. In addition to the commission prescribed reconciliation application, a fuel reconciliation petition filed by an electric utility must be accompanied by a summary and supporting testimony that includes the following information:

(1) a summary of significant, atypical events that occurred during the reconciliation period that affected the economic dispatch of the electric utility's generating units, including but not limited to transmission line constraints, fuel use or deliverability constraints, unit operational constraints, and system reliability constraints;

(2) a general description of typical constraints that limit the economic dispatch of the electric utility's generating units, including but not limited to transmission line constraints, fuel use or deliverability constraints, unit operational constraints, and system reliability constraints;

(3) the reasonableness and necessity of the electric utility's eligible fuel expenses and its mix of fuel used during the reconciliation period;

(4) a summary table that lists all the fuel cost elements which are covered in the electric utility's fuel cost recovery request, the dollars associated with each item, and where to find the item in the prefiled testimony;

(5) tables and graphs which show generation (MWh), capacity factor, fuel cost (cents per kWh and cents per MMBtu), variable cost and heat rate by plant and fuel type, on a monthly basis; and

(6) a summary and narrative of the next-day and intra-day surveys of the electricity markets and a comparison of those surveys to the electric utility's marginal generating costs.

(e) [~~(d)~~] Fuel reconciliation proceedings. The burden [~~Burden~~] of proof and scope of a fuel reconciliation proceeding are as follows:

(1) In a proceeding to reconcile fuel factor revenues and expenses, an electric utility has the burden of proving [~~showing~~] that:

(A) its eligible fuel expenses during the reconciliation period were reasonable and necessary expenses incurred to provide reliable electric service to retail customers;

(B) if its eligible fuel expenses for the reconciliation period included an item or class of items supplied by an affiliate of the electric utility, the prices charged by the supplying affiliate to the electric utility were reasonable and necessary and no higher than the prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons or corporations for the same item or class of items; and

(C) it has properly accounted for the amount of fuel-related revenues collected in accordance with [~~pursuant to~~] the fuel factor during the reconciliation period.

(2) The scope of a fuel reconciliation proceeding includes any issue related to determining the reasonableness of the electric utility's fuel expenses during the reconciliation period and reviewing whether the electric utility has materially over- or under-recovered its reasonable fuel expenses through interim fuel adjustments under subsection (f) of this section. An electric utility has the burden of proof in a fuel reconciliation proceeding to establish the reasonableness of its fuel expenses and the materiality of any over- or under-recovery.

(f) Interim fuel adjustments. An electric utility must apply for an interim fuel adjustment in the time frame specified by subsection (i)(2)(A) of this section if the utility is in a state of material under-collection or over-collection of the utility's reasonably stated eligible fuel and purchased power costs.

(1) Adjustment factor. If it is determined in the interim fuel adjustment proceeding that the utility is in a state of material under-collection or over-collection, except as provided for under subsection (g)(7) of this section, each rate class must be credited or assessed a refund or surcharge, as applicable, using an adjustment factor. The adjustment factor will be applied to the kilowatt-hour usage of each rate class over the refund or surcharge period.

(A) The adjustment factor will, for the applicable period be determined by dividing the amount of refund or surcharge properly allocated to each rate class by projected kilowatt-hour usage for the applicable rate class during the period in which the refund or surcharge will be made.

(B) Notwithstanding subparagraph (A) of this paragraph, each retail customer who receives service at transmission voltage levels, each wholesale customer, and any groups of seasonal agricultural customers as identified by the electric utility must be given a one-time credit or assessed a surcharge made on a monthly basis over a period not to exceed 12 months through a bill charge, based on the actual refund or surcharge balance for the individual customers.

(2) Refunds and surcharges. Refunds and surcharges must be issued and recovered by the electric utility, as applicable, in the following manner for each rate class:

(A) All refunds must be made through a bill credit and be issued no later than 90 days the refund balance is accrued. A refund may be made by check to a municipally-owned utility if requested by that utility.

(B) All surcharges must be assessed on a monthly basis and paid by customers no later than 90 days from the date the surcharge balance is accrued except in the following circumstances:

(i) If an interim fuel adjustment would or is anticipated to result in a total bill increase of 10 percent or more for an average customer in any rate class compared to the total bill in the month before implementation, the surcharge must be collected over a time period ending not later than a date ordered by the commission. Such a time period must be at least 90 days after the date the balance is accrued.

(ii) If the commission determines that a utility has an under-collected balance that is the result of extraordinary electric fuel and purchased power costs that are unlikely to continue, the commission may approve a surcharge in an interim fuel adjustment proceeding that would defer recovery to occur over a period exceeding 90 days from the date the surcharge balance is accrued.

(3) The prudence of costs will not be considered in an interim fuel adjustment. The prudence of costs may only be reviewed in a fuel reconciliation proceeding under subsection (e) of this section or another appropriate proceeding.

[(e) Refunds. All fuel refunds and surcharges shall be made using the following methods.]

[(1) Interest shall be calculated on the cumulative monthly ending under- or over-recovery balance at the rate established annually by the commission for overbilling and underbilling in §25.28 (e) and (d) of this title (relating to Bill Payment and Adjustments). Interest shall be calculated based on principles set out in subparagraphs (A)-(E) of this paragraph.]

[(A) Interest shall be compounded annually by using an effective monthly interest factor.]

[(B) The effective monthly interest factor shall be determined by using the algebraic calculation $x = (1 + i)^{(1/12)} - 1$; where i = commission-approved annual interest rate, and x = effective monthly interest factor.]

[(C) Interest shall accrue monthly. The monthly interest amount shall be calculated by applying the effective monthly interest factor to the previous month's ending cumulative under/over recovery fuel and interest balance.]

[(D) The monthly interest amount shall be added to the cumulative principal and interest under/over recovery balance.]

[(E) Interest shall be calculated through the end of the month of the refund or surcharge.]

[(2) Rate class as used in this subparagraph shall mean all customers taking service under the same tariffed rate schedule, or a group of seasonal agricultural customers as identified by the electric utility.]

(g) Interest calculations for fuel proceedings.

(1) For a fuel proceeding under subsection (e) or (f) of this section, interest must be calculated for each rate class on the cumulative monthly ending under- or over-recovery balance for that rate class at the rate established annually by the commission for overbilling and underbilling in §25.28(c) and (d) of this title (relating to Bill Payment and Adjustments). Interest must be calculated for each rate class based on principles set out in subparagraphs (A) - (E) of this paragraph:

(A) Interest must be compounded by using an effective monthly interest factor.

(B) The effective monthly interest factor must be determined by using the algebraic calculation $x = (1 + i)^{(1/12)} - 1$; where i = commission-approved annual interest rate, and x = effective monthly interest factor.

(C) Interest accrues on a monthly basis. The monthly interest amount is calculated by applying the effective monthly interest factor to the previous month's ending cumulative under- or over-recovery balance.

(D) The monthly interest amount must be added to the cumulative principal and interest under- or over-recovery balance.

(E) In calculating the amounts to be refunded or surcharged, interest must be calculated through the end of the month of the refund or surcharge.

(2) [(3)] Unless otherwise ordered by the commission in an electric utility's fuel reconciliation proceeding, in calculating rate class fuel balances, the total of the utility's eligible electric fuel and purchased power costs for a calendar month must be allocated among jurisdictions based on the actual historical calendar month kilowatt-hour usage, adjusted for line losses using the same commission-approved loss factors that were used in the electric utility's applicable fixed or interim fuel factor. The resulting monthly Texas retail jurisdiction costs must be allocated among rate classes based on the actual historical calendar month kilowatt-hour usage, [Interclass allocations of refunds and surcharges, including associated interest, shall be developed on a month-by-month basis and shall be based on the historical kilowatt-hour usage of each rate class for each month during the period in which the cumulative under- or over-recovery occurred,] adjusted for line losses using the same commission-approved loss factors that were used in the electric utility's applicable fixed or interim fuel factor.

(3) [(4)] Intraclass allocations of refunds and surcharges [shall] depend on the voltage level at which the customer receives service from the electric utility. Retail customers who receive service at transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers as identified by the electric utility must

[~~shall~~] be given refunds or assessed surcharges based on their individual actual historical kilowatt-hour usage recorded during each month of the period in which the cumulative under- or over-recovery occurred, adjusted for line losses where [~~if~~] necessary. All other customers must [~~shall~~] be given refunds or assessed surcharges based on the historical kilowatt-hour usage of their rate class.

[~~(5) Unless otherwise ordered by the commission, all refunds shall be made through a one-time bill credit and all surcharges shall be made on a monthly basis over a period not to exceed 12 months through a bill charge. However, refunds may be made by check to municipally-owned electric utility systems if so requested. Retail customers who receive service at transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers as identified by the electric utility shall be given a one-time credit or assessed a surcharge made on a monthly basis over a period not to exceed 12 months through a bill charge. All other customers shall be given a credit or assessed a surcharge based on a factor which will be applied to their kilowatt-hour usage over the refund or surcharge period. This factor will be determined by dividing the amount of refund or surcharge allocated to each rate class by forecasted kilowatt-hour usage for the class during the period in which the refund or surcharge will be made.~~]

[~~(6) A petition to surcharge or refund a fuel under- or over-recovery balance not associated with a proceeding under subsection (d) of this section shall be processed in accordance with the filing schedules in §25.237(d) of this title (relating to Fuel factors) and the deadlines in §25.237(e) of this title.~~]

(i) [~~(f)~~] Procedural schedule.

(1) Procedural schedule for fuel reconciliation proceedings. Upon the filing of a petition to reconcile fuel expenses [~~in a separate proceeding~~], the presiding officer will [~~officers shall~~] set a procedural schedule that will enable the commission to issue a final order in the proceeding within one year after a materially complete petition was filed. However, if two or more [~~the deadlines result in a number of~~] electric utilities file petitions to reconcile fuel expenses [~~filing cases~~] within 45 days of each other, the presiding officers will [~~shall~~] schedule the cases in a manner to allow the commission to accommodate the workload of the cases irrespective of whether the [~~such~~] procedural schedule enables the commission to issue a final order in each of the cases within one year after a materially complete petition is filed.

(2) Procedural schedule for interim fuel adjustments.

(A) A utility seeking an interim fuel adjustment to surcharge or refund a fuel under- or over-recovery balance must file its interim fuel adjustment application within five working days from the date the material fuel under- or over-recovery balance accrues.

(B) Upon the filing of a petition for an interim fuel adjustment to surcharge or refund a material fuel under- or over-recovery balance, the presiding officer will set a procedural schedule that will enable the commission to issue a final order in the proceeding no later than 75 days from the date the surcharge or refund balance is accrued.

(C) Notwithstanding subparagraph (B) of this paragraph, a final order for an interim fuel adjustment may be issued later than 75 days from the date a surcharge balance is accrued if:

(i) the presiding officer determines that the interim fuel adjustment sought would result in a total bill increase of 10 percent or more for an average customer in any rate class as described under subsection (f)(2)(B)(i) of this section or if the utility has a material under-collected balance that is the result of extraordinary electric fuel and purchased power costs as described under subsection (f)(2)(B)(ii) of this section; or

(ii) a hearing is required for a protest of an interim fuel adjustment under subsection (h) of this section.

(3) Procedural schedule for protest of interim fuel adjustment. A protest of an interim fuel adjustment may be processed and reviewed in a manner deemed administratively efficient by the presiding officer to ensure that any refunds or surcharges are refunded or collected in accordance with the deadline established under subsection (f) of this section, as applicable.

§25.237. Fuel Factors.

(a) Use and calculation of fuel factors. An electric utility's fuel costs will be recovered from the electric utility's customers by the use of a fuel factor that will be charged for each kilowatt-hour (kWh) consumed by the customer.

(1) An electric utility may determine its fuel factor in dollars per kilowatt-hour in accordance with [~~pursuant to~~] either subparagraph (A) or (B) of this paragraph. Fuel factors must account for system losses and for the difference in line losses corresponding to the voltage at which the electric service is provided. An electric utility may have different fuel factors for different times of the year to account for seasonal variations. A different method of calculation may be allowed upon a showing of good cause by the electric utility.

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

(2) An electric utility may initiate a change to its fuel factor as follows:

(A) In accordance with [~~Pursuant to~~] subsection (a)(1)(A) of this section, an electric utility may petition to adjust its fuel factor as often as once every four months according to the schedule set out in subsection (d) of this section.

(B) In accordance with [~~Pursuant to~~] subsection (a)(1)(B) of this section, an electric utility may petition to adjust its fuel factor in accordance with its approved fuel factor formula no sooner than four months after the filing of its most recent fuel factor adjustment petition.

(C) - (D) (No change.)

(3) Fuel factors are temporary rates, and the electric utility's collection of revenues by fuel factors is subject to the following adjustments:

(A) The reasonableness of the fuel costs that an electric utility has incurred will be periodically reviewed in a reconciliation proceeding, as described in §25.236 of this title, and any disallowed costs resulting from a reconciliation proceeding will be reflected in the calculation of the utility's recoverable fuel and over- or under- [~~over/(under)~~] collections.

(B) To the extent that there are variations between the fuel costs incurred and the revenues collected, it may be necessary [~~or convenient~~] to refund material over-collections [~~overcollections~~] or surcharge material under-collections through an interim fuel adjustment under §25.236 of this title in the time and manner required by that section [~~surcharge undercollections~~]. Refunds or surcharges may be made without changing an electric utility's fuel factor. [~~Nothwithstanding §25.236(e)(6) of this title, an electric utility may petition for a surcharge any time it has materially undercollected its fuel costs and projects that it will continue to be in a state of material undercollection. Notwithstanding §25.236(e)(6) of this title, an electric utility shall petition to make a refund any time it has materially overcollected its fuel costs and projects that it will continue to be in a state of material overcollection.~~]

(C) The terms "materially" ["~~Materially~~"] or "material," as used in this section, mean [~~shall mean~~] that the cumulative amount of over- or under-recovery, including interest, is greater than or equal to 4.0% of the annual actual fuel cost figures on a rolling 12-month basis, as reflected in the utility's monthly fuel cost reports as filed by the utility with the commission.

(b) Petitions to revise fuel factors.

(1) An electric utility using the fuel factor methodology established in accordance with [~~set forth under~~] subsection (a)(1)(A) of this section may file a petition requesting revised fuel factors in accordance with [~~pursuant to~~] subsection (a)(2)(A) of this section during the first five working [~~business~~] days of the months specified in subsection (d) of this section. A copy of the complete petition package must [~~shall~~] be served on each party in the utility's most recent fuel reconciliation and on OPUC [~~the Office of Public Utility Counsel~~]. Service must [~~shall~~] be accomplished in accordance with §22.74 of this title (relating to Service of Pleadings and Documents) [~~by email if possible~~]. Each complete fuel factor filing package must [~~shall~~] include the [~~commission-prescribed fuel factor~~]application, a tariff sheet reflecting the proposed fuel factors, and supporting testimony that includes the following information:

(A) For each month of the period in which the fuel-factor has been in effect and has not been reconciled up to the most recent month for which information is available,

(i) the revenues collected in accordance with [~~pursuant to~~] fuel factors by customer class;

(ii) any other items that to the knowledge of the electric utility have affected fuel factor revenues and eligible fuel expenses; and

(iii) the difference, by customer class, between the revenues collected in accordance with [~~pursuant to~~] fuel factors and the eligible fuel expenses incurred.

(B) (No change.)

(2) An electric utility using the fuel factor formula methodology established in accordance with [~~set forth under~~] subsection (a)(1)(B) of this section may file a petition requesting revised fuel factors in accordance with [~~pursuant to~~] subsection (a)(2)(B) of this section at least 15 days prior to the first billing cycle in the billing month in which the proposed fuel factors are requested to become effective. A copy of the complete petition package must [~~shall~~] be served on each party in the utility's most recent fuel reconciliation and on OPUC [~~the Office of Public Utility Counsel~~]. Service must [~~shall~~] be accomplished in accordance with §22.74 of this title (relating to Service of Pleadings and Documents) [~~by email if possible~~]. Each complete fuel factor filing package must [~~shall~~] include:

(A) a tariff sheet reflecting the proposed fuel factors;

(B) workpapers (in native Excel format with formulas intact; and proof and verification of natural gas prices, including copies of data used to calculate the natural gas prices) supporting the calculation of the revised fuel factors;

(C) - (D) (No change.)

(c) Fuel factor revision proceeding. Burden of proof and scope of proceeding are as follows:

(1) In a proceeding to revise fuel factors in accordance with [~~pursuant to~~] subsection (a)(1)(A) of this section, an electric utility has the burden of proving that:

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

(2) The scope of a fuel factor revision proceeding under subsection (a)(1)(B) of this section is limited to the issue of whether the petitioning electric utility has appropriately calculated its proposed fuel factors. In a proceeding to revise fuel factors in accordance with [~~pursuant to~~] subsection (a)(1)(B) of this section, an electric utility has the burden of proving that:

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

(3) The prudence of costs will not be considered in a fuel factor proceeding. The prudence of costs may only be reviewed in a fuel reconciliation proceeding under §25.236 of this title or another appropriate proceeding.

(d) Schedule for filing petitions to revise fuel factors. A petition to revise fuel factors or to initiate or revise a fuel factor formula may be filed with any general rate proceeding.

(1) Otherwise, except as provided by subsection (f) of this section which addresses emergencies, petitions by an electric utility to revise fuel factors in accordance with [~~pursuant to~~] subsection (a)(1)(A) of this section may only be filed in accordance with the following schedule:

(A) February, June, and October: El Paso Electric Company;

(B) March, July, and November: Entergy Texas, Inc.;

(C) April, August, and December: Southwestern Public Service Company;

(D) May, September, and January: Southwestern Electric Power Company; and

(E) March, July, and November: any other electric utility not named in this subsection that uses one or more fuel factors.

(2) Petitions by an electric utility to revise fuel factors in accordance with [~~pursuant to~~] subsection (a)(1)(B) of this section may be filed in any month except December.

(e) Procedural schedules.

(1) Upon the filing of a petition to revise fuel factors in accordance with [~~pursuant to~~] subsection (a)(1)(A) of this section, the presiding officer will [~~shall~~] set a procedural schedule that will enable the commission to issue a final order in the proceeding as follows:

(A) (No change.)

(B) within 90 days after the petition was filed, if a hearing is requested within 30 days of the petition. If a hearing is requested, the hearing will be held no earlier than the first working [~~business~~] day after the 45th day after the application was filed.

(2) Upon the filing of a petition to revise fuel factors in accordance with [~~pursuant to~~] subsection (a)(1)(B) of this section, the presiding officer will [~~shall~~] set a procedural schedule as follows:

(A) the presiding officer will [~~shall~~] issue an order approving the proposed fuel factors on an interim basis no later than 12 days after the date the petition was filed, if no objection to interim approval is filed within 10 days after the date the petition was filed;

(B) if no hearing is requested within 30 days after the petition was filed, the presiding officer will [~~shall~~], after submission of proof of notice by the electric utility, issue an order approving the fuel factors without hearing or action by the commission; and

(C) if a hearing is requested within 30 days after the petition was filed, the hearing will be held no earlier than the first working [~~business~~] day after the 45th day after the petition was filed and a final

order will be issued within 90 days after the petition was filed, subject to submission of proof of notice by the electric utility.

(f) Emergency revisions to the fuel factor. If fuel curtailments, equipment failure, strikes, embargoes, sanctions, or other reasonably unforeseeable circumstances have caused a material under-recovery of eligible fuel costs, the electric utility may file a petition with the commission requesting an emergency interim fuel factor. Such emergency requests must [~~shall~~] state the nature of the emergency, the magnitude of change in fuel costs resulting from the emergency circumstances, and other information required to support the emergency interim fuel factor. The commission will [~~shall~~] issue an interim order within 30 days after such petition is filed to establish an interim emergency fuel factor. If within 120 days after implementation, the emergency interim factor is found by the commission to have been excessive, the electric utility must [~~shall~~] refund all excessive collections with interest calculated on the cumulative monthly ending material under- or over-recovery [~~overrecovery~~] balance in the manner and at the rate established by the commission for overbilling and underbilling in §25.28(c) and (d) of this title (relating to Bill Payment and Adjustments Billing). If, after full investigation, the commission determines that no emergency condition existed, a penalty of up to 10% of such over-collections may also be imposed on investor-owned electric utilities.

(g) Protest of fuel factor.

(1) Only a customer of the utility, a municipality with original jurisdiction over the utility, or OPUC are eligible to protest a fuel factor under this section.

(2) A protest of a fuel factor is prohibited from raising the prudence of costs as an issue and is limited to the sole issue identified under paragraph (3) of this subsection.

(3) The presiding officer will review a protest of a fuel factor solely to determine whether the utility's fuel factor reasonably reflects costs the utility will incur such that that the utility will not substantially under-collect or over-collect the utility's reasonably stated fuel and purchased power costs on an ongoing basis.

(4) If the presiding officer determines that a fuel factor is anticipated to result in a substantial under- or over-collection of costs by the utility, the presiding officer will adjust the utility's fuel factor to address the under-collection or over-collection in a manner consistent with this section.

(5) The presiding officer may hold a hearing on a protest of a fuel factor at his or her discretion and may consider any evidence that is appropriate and in the public interest.

(6) A protest of a fuel factor may be processed and reviewed in a manner deemed administratively efficient by the presiding officer.

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

Filed with the Office of the Secretary of State on July 10, 2025.

TRD-202502324
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 936-7322

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PART 8. TEXAS RACING COMMISSION

CHAPTER 307. PROCEEDINGS BEFORE THE COMMISSION

SUBCHAPTER C. PROCEEDINGS BY STEWARDS AND RACING JUDGES

16 TAC §307.67

PREAMBLE

The Texas Racing Commission (TXRC) proposes rule amendments in Texas Administrative Code, Title 16, Part 8, Chapter 307, Subchapter C, Proceedings by Stewards, and Racing Judges, §307.67. Appeal to the Commission. The purpose of this rule amendment is to change the procedures, timeline and fine required by a licensee when appealing a ruling to the Commission.

A. ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL ECONOMY

There are no anticipated economic costs to persons required to comply with the proposed rule amendments. There is no effect on local economy for the first five years that the proposed rule amendments will be in effect; therefore, no local employment impact statement is required under Texas Government Code §§2001.022 and 2001.024(a)(6).

B. FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNTIES

Amy F. Cook, Executive Director, has determined that the proposed rule amendment will have no direct adverse economic impact on small businesses, micro-businesses, or rural communities. Accordingly, the preparation of an economic impact statement and a regulatory flexibility analysis, as specified in Texas Government Code § 2006.002, is not required.

C. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.0221.

Pursuant to Texas Government Code §2001.0221, Texas Racing Commission provides the following government growth impact statement for the proposed rule amendments. For each year of the first five years that the proposed rule amendments will be in effect, the Texas Racing Commission has determined the following:

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

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

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

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

(5) the proposed rule amendments are new rules and therefore create new regulations;

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

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

(8) the proposed rule amendments will not positively or adversely affect the state's economy.

D. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEXAS GOVERNMENT CODE §2007.043.

Amy F. Cook, Executive Director, has determined that no private real property interests are affected by the proposed rule amendments, and the proposed rule amendments do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rule amendments do not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

E. LOCAL EMPLOYMENT IMPACT STATEMENT REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(6).

Amy F. Cook, Executive Director, has determined that the proposed rule amendments are not expected to have any fiscal implications for state or local government as outlined in Texas Government Code §2001.024(A)(6).

F. COST-BENEFIT ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(5).

Amy F. Cook, Executive Director has determined that the proposed rule amendments are expected to improve the positive economic impact, health, and safety of licensed horse racing in Texas by reducing the impact of unlicensed racing.

G. FISCAL NOTE ANALYSIS REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(4).

Amy F. Cook, Executive Director has determined that no significant fiscal impact is associated with the proposed rule amendment.

H. LEGAL REVIEW REQUIRED BY TEXAS GOVERNMENT CODE §2001.024(A)(3).

Amy F. Cook, Executive Director certifies that a legal review has been completed and the proposal is within agency's legal authority to adopt under §2025.001 of the Texas Occupations Code.

REQUESTS FOR PUBLIC COMMENTS

Comments on the proposal may be submitted to the Texas Racing Commission Executive Director, Amy F. Cook, via webpage comment form at https://www.txrc.texas.gov/texas-rules-of-racing or through the agency customer service desk at customer.service@txrc.texas.gov, or by calling the customer service phone number at (512) 833-6699. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

STATUTORY AUTHORITY. The amendments are proposed under Texas Occupations Code §2025.001.

CROSS REFERENCE TO STATUTE. Texas Occupations Code §2025.001.

§307.67. Appeal to the Commission.

(a) Right to Appeal. A person aggrieved by a ruling of the stewards [~~or racing judges~~] may appeal to the Commission. A person who fails to file an appeal by the deadline and in the form required by this section waives the right to appeal the ruling.

(b) Filing Procedure.

(1) An appeal must be in writing in a form prescribed by the executive director. [~~secretary.~~] An appeal from a ruling of the stewards [~~or racing judges~~] must be filed not later than 5:00 p.m. of the third calendar day after the day the person is informed by the stewards of the ruling. [~~or racing judges~~]. An appeal from the modification of a penalty by the executive director [~~secretary~~] must be filed not later than 5:00 p.m. of the fifth calendar day after the person is informed of the penalty modification. The appeal must be post marked by the fifth day after the person is informed of the penalty modification and mailed to: Texas Racing Commission, 1801 N. Congress, Suite 7.600, Austin, Texas 78701. [~~filed at the main Commission offices in Austin or with the stewards or racing judges at a Texas pari-mutuel racetrack where a live race meet is being conducted. The appeal must be accompanied by a cash bond in the amount of $150, to defray the costs of the court reporter and transcripts required for the appeal. The bond must be in the form of a cashier's check or money order.~~]

(2) Record of Stewards'[~~/Judges'~~] hearing. On notification by the executive director [~~secretary~~] that an appeal has been filed, the stewards [~~or racing judges~~] shall forward to the Commission the record of the proceeding being appealed. A person appealing a stewards' [~~or judges'~~] ruling may request a copy of the record of the hearing. [~~and the executive secretary may assess the cost of making to the copy to the requestor.~~]

(c) Hearing Procedure. A hearing on an appeal from a ruling by the stewards [~~or racing judges~~] is a contested case and shall be conducted by SOAH in accordance with the Rules regarding contested cases. In an appeal, the appellant has the burden to prove that the stewards' [~~or racing judges'~~] decision was clearly in error.

(d) Effect of Appeal on Fine Payment. If a person against whom a fine has been assessed appeals the ruling that assesses the fine, the person shall pay the fine in accordance with the Rules. The executive director shall place the fine amount into the agency suspense account until such time that the appeal is final. If the appeal is disposed of in favor of the appellant, the executive director [~~Commission~~] shall refund the amount of the fine.

(e) Effect of Appeal on Purse Payment. If a ruling that affects the outcome of a race is appealed, the portion of the purse that is involved in the appeal shall be withheld and not distributed. The stewards [~~or racing judges~~] may distribute the portion of the purse that is not involved in or affected by the outcome of the appeal.

(f) Effect of Appeal on Horse Eligibility. If an appeal involves the official order of finish in a horse race, all horses finishing first or declared to be the winner by the stewards carry all penalties of eligibility until the winner is determined through the final resolution of the appeal.

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

Filed with the Office of the Secretary of State on July 3, 2025.

TRD-202502242
Amy F. Cook
Executive Director
Texas Racing Commission
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER P. LOWER-DIVISION ACADEMIC COURSE GUIDE MANUAL ADVISORY COMMITTEE

19 TAC §1.195

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter P, §1.195, concerning the Lower-Division Academic Course Guide Manual Advisory Committee. Specifically, this amendment will continue the Lower-Division Academic Course Guide Manual Advisory Committee for four more years.

The Lower-Division Academic Course Guide Manual Advisory Committee provides the Coordinating Board with advice and recommendations. The amendment is proposed under Texas Government Code, §2110.008, which requires the Coordinating Board by rule to provide for a different abolishment date for advisory committees to continue in existence.

Rule 1.195, Duration, is amended to change the Lower-Division Academic Course Guide Manual Advisory Committee abolishment date from October 31, 2025, to no later than October 31, 2029.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the extension of the Lower-Division Academic Course Guide Manual Advisory Committee by four years. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rule will not require the creation or elimination of employee positions;

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

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

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

(6) the rule will not limit an existing rule;

(7) the rule will not change the number of individuals subject to the rule; and

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

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at AHAcomments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Government Code, Section 2110.008, which provides the Coordinating Board with the authority to provide for a different abolishment date for advisory committees to continue in existence.

The proposed amendment affects Texas Administrative Code, Chapter 1, Subchapter P.

§1.195. Duration.

The committee shall be abolished no later than October 31, 2029 [~~2025~~], in accordance with Texas Government Code, Chapter 2110. It may be reestablished by the Board.

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

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

TRD-202502380
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 427-6182

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CHAPTER 2. ACADEMIC AND WORKFORCE EDUCATION

SUBCHAPTER O. APPROVAL PROCESS AND REQUIRED REPORTING FOR SELF-SUPPORTING DEGREE PROGRAMS

19 TAC §2.357, §2.358

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter O, §2.357 and §2.358, concerning Approval Process and Required Reporting for Self-Supporting Degree Programs. Specifically, this amendment will remove the requirement that public institutions of higher education report self-supporting courses to the Coordinating Board.

Texas Education Code, §61.0512(c), assigns the Coordinating Board the responsibility to ensure that proposed academic programs have adequate financing from legislative appropriations or other funding sources. Public institutions of higher education finance self-supporting programs solely through student tuition and fees, without reliance on state funds. These institutions must report student enrollment, semester credit hours, graduates, and fees charged for each self-supporting course, certificate, degree program, or degree track offered. This amendment reduces the requirement for institutions to report each self-supporting course, reducing administrative reporting burdens.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be reducing administrative reporting requirements for public institutions of higher education that offer self-supported courses, certificates, and degree programs. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

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

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at AHAcomments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 61.0512(c), which provides the Coordinating Board with the authority to ensure proposed academic programs have adequate financing.

The proposed amendment affects Texas Education Code, §61.0512(c).

§2.357. Reporting of Approved Self-Supporting Courses, Certificates and Degree Programs.

Each institution shall report the following to the Coordinating Board in the manner prescribed by the Board [~~CBM 00X Reporting Manual~~]:

(1) Enrollments, courses, number of semester credit hours, and graduates associated with each self-supporting course, certificate, degree program or degree program track offered by the institution; and

(2) Fees charged to students for self-supporting courses in accordance with general institutional accounting practices.

§2.358. Effective Dates.

(a) Sections 2.350 - 2.356 of this subchapter are effective May 15, 2025.

(b) Section 2.357 of this subchapter is effective January 1 [~~November 1~~], 2025.

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

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

TRD-202502382
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 427-6182

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CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER C. TEXAS SUCCESS INITIATIVE

19 TAC §4.52

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter C, §4.52, concerning Texas Success Initiative. Specifically, this amendment excludes students who are public officers and employees from the statutory requirements Texas Success Initiatives.

The Coordinating Board is authorized to adopt rules as necessary by Texas Education Code, §51.334. The revisions implement statutory amendments passed by the 89th Texas Legislature. Specifically, this amendment will update Coordinating Board rules to accurately reflect changes made by Senate Bill (SB) 2786, 89th Texas Legislature, Regular Session. SB 2786, amended Texas Education Code, §51.332, to exclude students who are public officers or employees from the assessment requirements of the Texas Success Initiative (TSI).

Rule 4.52, Applicability, is amended to add three categories of students to whom TSI and college readiness requirements do not apply: emergency medical technicians, fire protection personnel, and peace officers.

Dr. Jennielle Strother, Assistant Commissioner for Student Success, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Jennielle Strother, Assistant Commissioner for Student Success, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be to accurately reflect statute following adoption of Senate Bill 2786, 89th Texas Legislature, Regular Session. The rules implement the statute to reduce the cost and testing of the categories of public service personnel who are no longer governed by these requirements. There is a reduction in costs to students who are no longer required to pay to test. There will be a small reduction in revenue to the test administrators. These reduction result from the implementation of the statute.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

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

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will reduce the number of individuals subject to the rule; and

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

Comments on the proposal may be submitted to Dr. Jennielle Strother, Assistant Commissioner for Student Success, P.O. Box 12788, Austin, Texas 78711-2788, or via email at StudentSuccess@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 51.334, which provides the Coordinating Board with the authority to adopt rules as necessary to implement the program.

The proposed amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter C.

§4.52. Applicability.

(a) Except as set out in subsection (b) of this section, this subchapter applies to each entering undergraduate student not otherwise exempt under §4.54 of this subchapter (relating to Exemption).

(b) This subchapter does not apply to the following students, and an institution shall not require these students to demonstrate college readiness pursuant to this subchapter. The following figure contains the full list of student categories to whom this subchapter does not apply.
Figure: 19 TAC §4.52(b)
[~~Figure: 19 TAC §4.52(b)~~]

(1) A student who has earned an associate or baccalaureate degree from an institution of higher education;

(2) A student who transfers to an institution of higher education from a private or independent institution of higher education or an accredited out-of-state institution of higher education and who has satisfactorily completed college-level coursework in the corresponding subject area, as transcribed or otherwise determined by the receiving institution;

(3) A student who is enrolled in a certificate program of one year or less at a public junior college, a public technical institute, or a public state college;

(4) A student enrolled in high school who is a non-degree-seeking student as defined in §4.53(8) of this subchapter (relating to Definitions);

(5) A student who is serving on active duty as a member of the armed forces of the United States, the Texas National Guard, or as a member of a reserve component of the armed forces of the United States; [~~or~~]

(6) A student who on or after August 1, 1990, was honorably discharged, retired, or released from active duty as a member of the armed forces of the United States or the Texas National Guard or service as a member of a reserve component of the armed forces of the United States; or[~~,~~]

(7) A student who is:

(A) certified as an emergency medical technician under Chapter 773, Health and Safety Code; and

(B) employed by a political subdivision;

(8) A student who is included as fire protection personnel by Section 419.021, Government Code; or

(9) A student who is elected, appointed, or employed to serve as a peace officer described by Article 2A.001, Code of Criminal Procedure, or other law.

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

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

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 427-6537

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SUBCHAPTER P. PROGRAM OF STUDY INSTITUTIONAL REQUIREMENTS

19 TAC §§4.250 - 4.254

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter P, §§4.250 - 4.254, concerning Program of Study Institutional Requirements. Specifically, the new section will reconstitute institutional guidance to higher education institutions regarding Program of Study processes for Certificate 1 credentials, replacing Chapter 26, Subchapter A - P, which is repealed in a separate rulemaking.

Rule 4.250, Authority and Purpose, indicates that the Coordinating Board is authorized to adopt rules and establish policies and procedures for the development, adoption, implementation, funding, and evaluation of career and technical education Program of Study Curricula under Texas Education Code, §61.8235. It indicates that this subchapter covers Program of Study structures and policies for Level 1 Certificates for the purpose of encouraging statewide credit portability for degree completion and supporting recognition and credit transfer for dual-credit achievement.

Rule 4.251, Definitions, provides definitions of words and terms used in the subchapter.

Rule 4.252, General Provisions, provides language concerning semester credit hour career and technical education Program of Study Level 1 certificates, including alignment with accreditor standards and the recording of those credits on student transcripts.

Rule 4.253, Program of Study Credit Transfer, provides language concerning recognition of credit in the cases of lateral transfer (higher education institution to higher education institution) and dual credit transfer (dual credit high school to higher education institution).

Rule 4.254, Effective Date of Rules, establishes an effective date of subchapter rules of November 1, 2025.

Tina Jackson, Assistant Commissioner for Workforce Education, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Tina Jackson, Assistant Commissioner for Workforce Education, has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be improved rule clarity to higher education institutions regarding Program of Study processes. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

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

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Tina Jackson, Assistant Commissioner for Workforce Education, P.O. Box 12788, Austin, Texas 78711-2788, or via email at RulesComments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under Texas Education Code), Section 61.8235, which provides the Coordinating Board with the authority to adopt rules and establish policies and procedures for the development, adoption, implementation, funding, and evaluation of career and technical education Program of Study Curricula.

The proposed new section affects Texas Education Code, Sections 28.009 and 130.008.

§4.250. Authority and Purpose.

(a) The Board is authorized to adopt rules and establish policies and procedures for the development, adoption, implementation, funding, and evaluation of career and technical education Program of Study Curricula, under Texas Education Code, §61.8235.

(b) The purpose of this subchapter is to provide for the development and implementation of career and technical education Program of Study structures and policies for Level 1 Certificates, which consist of at least 15 semester credit hours and no more than 42 semester credit hours and are designed for a student to complete in one calendar year or less, that encourage statewide credit portability for degree completion and support recognition and credit transfer for dual-credit achievement.

§4.251. Definitions.

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

(1) Career Cluster--Commissioner-approved organizing unit that is the basis for the development of programs of study.

(2) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including agency staff.

(3) Commissioner--The Texas Commissioner of Higher Education.

(4) Credential--A grouping of subject matter courses or demonstrated mastery of specified content which entitles a student to documentary evidence of completion. This term encompasses certificate programs, degree programs, and other kinds of formal recognition such as short-term workforce credentials or a combination thereof.

(5) Equivalent Course Credit--Credit awarded to a student, in recognition that a course from one two-year institution is comparable to a course at another two-year institution, that allows the student to fulfill credential completion requirements.

(6) Program of Study Curriculum--The block of courses that progress in content specificity by beginning with all aspects of a career cluster, including career and technical education standards, which address relevant career and technical education content and that incorporate entry and exit points.

(7) Program of Study Foundation Courses--A set of core career and technical education courses that compose the Program of Study Curriculum in a Level 1 Certificate.

(8) Program of Study Level 1 Certificate--The credential conferred to a student upon successful completion of the Program of Study Curriculum. A Program of Study Level 1 Certificate consists of at least 15 semester credit hours and no more than 42 semester credit hours and is designed for a student to complete in one calendar year or less.

(9) Public Two-Year Institution--Any community, technical, or state college as defined in Texas Education Code, §61.003.

(10) Workforce Education Course Manual--An online database composed of the Coordinating Board's statewide inventory of approved career and technical education courses available for institutions to use in industry-recognized credentials, certificates, and applied associate degree programs.

§4.252. General Provisions.

(a) This subchapter applies specifically to semester credit hour career and technical education Program of Study Level 1 Certificates and does not apply to academic programs and associate degree programs.

(b) Institutional policies regarding acceptance of credit for credit-by-examination, and other credit-earning instruments must be consistent with the institution's accreditor's guidelines and must treat transfer and intra-institutional students in the same manner.

(c) Nothing in this subchapter limits the authority of an institution of higher education to establish its own admissions standards or grading policies, provided they are consistent with this subchapter and apply equally to both transfer and intra-institutional students.

(d) A public two-year institution shall comply with the institution's approved institutional credit transfer policy in the determination to award credit for successful completion of one or more Program of Study Foundation Courses.

(e) A public two-year institution shall post the institution's approved institutional credit transfer policy in a prominent place on its website for reference by prospective students.

(f) A public two-year institution shall include each Program of Study Foundation Course that a student has successfully completed on the student's transcript, as recommended by the Texas Association of Collegiate Registrars and Admissions Officers.

(g) A public two-year institution shall include each Program of Study Foundation Course that a student successfully completed prior to enrolling at the institution and for which the institution awarded equivalent course credit on the student's transcript.

(h) The Coordinating Board shall maintain a public website that includes all approved Program of Study Curricula.

§4.253. Program of Study Credit Transfer.

(a) A postsecondary student enrolled in a Program of Study Level 1 Certificate who laterally transfers from a public two-year institution to another public two-year institution that offers a similar program, regardless of whether the institution has adopted the Program of Study Level 1 Certificate, shall receive equivalent course credit from the institution to which the student transferred for each Program of Study Foundation Course that the student had successfully completed in the Program of Study Curriculum.

(b) A secondary student who successfully completes one or more Program of Study Foundation Courses in a Program of Study Curriculum while enrolled in dual-credit and who subsequently enrolls in a public two-year institution that offers a similar course or courses, regardless of whether the institution has adopted the Program of Study Level 1 Certificate, shall receive equivalent course credit from the institution.

(c) Unless otherwise prohibited by the institution's accreditor:

(1) A postsecondary student who transfers and receives equivalent course credit may complete the Program of Study Level 1 Certificate at the receiving institution by completing only the remaining Program of Study Foundation Courses and semester credit hours that are required in the Program of Study Curriculum.

(2) A secondary student who enrolls in a Program of Study Level 1 Certificate and receives equivalent course credit may complete the Program of Study Level 1 Certificate at the institution by completing only the remaining Program of Study Foundation Courses and semester credit hours that are required in the Program of Study Curriculum.

§4.254. Effective Date of Rules.

This subchapter is effective January 1, 2026.

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

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

TRD-202502384
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 427-6209

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SUBCHAPTER Q. APPROVAL OF OFF-CAMPUS AND SELF-SUPPORTING COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

19 TAC §§4.270 - 4.279

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter Q, §§4.270 - 4.279, concerning Approval of Off-Campus and Self-Supporting Courses and Programs for Public Institutions. Specifically, this repeal will remove existing rules that will be replaced with new rules in Chapter 2, Subchapter P.

The Coordinating Board is authorized by Texas Education Code, §61.0512(g), which states that institutions may offer off-campus credit courses only with prior approval from the Coordinating Board and Texas Education Code, §51.661, which authorizes the Coordinating Board to adopt state uniform service regions for Higher Education.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be improved rule clarity of the approval and reporting requirements for institutions while ensuring compliance with state and federal regulations. The repealed rules in Chapter 4, Subchapter Q, will be replaced with new rules in Chapter 2, Subchapter P. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

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

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at AHAcomments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Section 61.0512(g), which states that institutions may offer off-campus credit courses only with prior approval from the Coordinating Board and Texas Education Code, Section 51.661, which authorizes the Coordinating Board to adopt state uniform service regions for Higher Education.

The proposed repeal affects Texas Education Code, Sections 61.0512(g) and 51.661.

§4.270. Purpose.

§4.271. Authority.

§4.272. Definitions.

§4.273. General Provisions.

§4.274. Standards and Criteria for Institutions.

§4.275. Standards and Criteria for Off-Campus and Self-Supporting Programs.

§4.276. Standards and Criteria for Off-Campus and Self-Supporting Courses.

§4.277. Standards and Criteria for Off-Campus and Self-Supporting Courses Faculty.

§4.278. Functions of Regional Councils.

§4.279. Formula Funding General Provisions.

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

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 427-6182

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SUBCHAPTER Z. UNIFORM STANDARDS FOR PUBLICATION OF COST OF ATTENDANCE AND FINANCIAL AID INFORMATION

19 TAC §§4.390 - 4.393

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter Z, §§4.390 - 4.393, concerning Uniform Standards for Publication of Cost of Attendance and Financial Aid Information. Specifically, this new section will establish the authority and purpose, definitions, and substantive requirements of institutions relating to the publication of cost of attendance and financial aid information on their websites. The substance of this new subchapter consists of the reconstituted Chapter 21, Subchapter PP, which is repealed in a separate rulemaking.

The Coordinating Board is authorized by Texas Education Code, §61.0777, to adopt rules relating to uniform standards.

Rule 4.390, Authority and Purpose, notes the statutory authority for the subchapter's rules and outlines the purpose of the provisions of the subchapter. It is the reconstituted and simplified §21.2220.

Rule 4.391, Definitions, establishes definitions for relevant words and terms in the subchapter. It is the reconstituted §21.2221, with definitions removed that are unnecessary or duplicative with §4.3, which contains definitions that apply throughout Chapter 4.

Rule 4.392, Publication of Cost of Attendance and Financial Aid Information, establishes the substantive requirements relating to institutions of higher education publishing cost of attendance and financial aid information on their websites. Compared with existing §21.2222, this rule provides greater detail regarding what information institutions must publish relating to cost of attendance and student financial aid, improving overall transparency for students and families.

Rule 4.393, Net Price Information, establishes the substantive requirements relating to the Coordinating Board's Net Price Calculator tool and the related institutional reporting requirements, previously addressed by other sections of §21.2222. Subsection (a) sets forth the requirements in Texas Education Code, §61.0777(f), and subsection (b) establishes institutional requirements for reporting information that is used by the tool to make accurate calculations for students.

Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the improved public transparency regarding the cost of higher education and availability of student financial aid through clarified institutional requirements. There are no anticipated economic

costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

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

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Dr. Charles Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at SFAPPolicy@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under Texas Education Code, Section §61.0777, which provides the Coordinating Board with the authority to adopt rules relating to the provisions of that section.

The proposed new section affects Texas Administrative Code, Title 19, Part 1, Chapter 4.

§4.390. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, §61.0777.

(b) Purpose. The purpose of this subchapter is to prescribe uniform standards intended to ensure that information regarding the cost of attendance at institutions of higher education is available to the public in a manner that is consumer-friendly and readily understandable to prospective students and their families.

§4.391. Definitions.

In addition to the words and terms defined in §4.3 of this chapter (relating to Definitions), the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including agency staff.

(2) First-Time Entering Full-Time Student--A student who has no prior postsecondary experience (except as noted below) attending any institution for the first time at the undergraduate level and who enrolls for 15 credit hours per semester for two consecutive semesters. This includes students enrolled in academic or occupational programs. It also includes students enrolled in the fall term who attended college for the first time in the prior summer term, and students who entered with advanced standing (college credits earned before graduation from high school).

(3) Net Price of Attendance--The total cost of attendance less the student's estimated merit-based and need-based grant aid. The net price of attendance may be a range.

(4) Total Cost of Attendance--An institution's estimate of the expenses incurred by a typical financial aid recipient in attending a particular institution of higher education. It includes direct educational costs (tuition and fees) as well as indirect costs (room and board, books and supplies, transportation, personal expenses, and other allowable costs for financial aid purposes).

§4.392. Publication of Cost of Attendance and Financial Aid Information.

(a) Each institution of higher education that offers an undergraduate degree or certificate program shall prominently display on the institution's website the total cost of attendance for a first-time entering full-time student in accordance with the uniform standards prescribed by subsection (b) of this section.

(b) Uniform Standards for Cost of Attendance Information. In publishing the total cost of attendance as required by subsection (a) of this section, an institution shall include:

(1) A definition or explanation of total cost of attendance that includes, at a minimum, all aspects specified in the definition of that term in §4.391 of this subchapter (relating to Definitions);

(2) Notice that the total cost of attendance provided is an estimate, and that students may experience higher or lower costs due to individual circumstances;

(3) An explanation of the relationship between total cost of attendance and a student's financial aid opportunities; and

(4) Inclusion of, or a link to, the information required by subsection (c) of this section.

(c) Financial Aid Information. Each institution of higher education shall provide consumer-friendly and readily understandable information regarding student financial aid opportunities. This information shall include, at a minimum:

(1) A link to access the Free Application for Federal Student Aid (FAFSA) and Texas Application for State Financial Aid (TASFA);

(2) Information, or links to information, regarding merit-based and need-based federal and state financial aid programs that could reasonably be available to a student at the institution;

(3) If applicable, information regarding the priority deadline established under §22.6 of this title (relating to Applying for State Financial Aid), including the deadline for the applicable year and an explanation of the deadline's purpose and function that meets or exceeds the information included in §22.6(a)(2) of this title; and

(4) A link to the program or tool described by §4.393(a) of this subchapter (relating to Net Price Information).

(d) The institution shall consider the uniform standards prescribed by subsection (b) of this section when providing information regarding the cost of attendance for nonresident students, graduate students, or students enrolled in professional programs.

§4.393. Net Price Information.

(a) The Coordinating Board shall provide on its website a program or similar tool that will compute for a person the estimated net price of attendance for a first-year entering full-time student attending an institution of higher education.

(b) Each institution of higher education, as defined in §4.3 of this chapter (relating to Definitions), shall provide the Coordinating Board, at least annually but also upon request, any information necessary for the Coordinating Board to calculate the net price of attendance for a first-time entering full-time student. The Coordinating Board will specify the necessary information for this purpose in guidance provided to institutions and published on its website.

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

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6365

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CHAPTER 6. HEALTH EDUCATION, TRAINING, AND RESEARCH FUNDS SUBCHAPTER A. FAMILY PRACTICE RESIDENCY PROGRAM

19 TAC §§6.1 - 6.10

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 6, Subchapter A, §§6.1- 6.10, concerning the Family Practice Residency Program. Specifically, this repeal will remove existing rules that will be replaced with new rules in Chapter 10, Subchapter B.

The proposed repeal of Chapter 6, Subchapter A, is part of an effort to consolidate grant program rules in Chapter 10, Grant Programs. The Coordinating Board is authorized by Texas Education Code, §§61.501- 61.506, to administer the Family Practice Residency Program.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be improved rule clarity by consolidating all grant program related rules into Chapter 10. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

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

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Elizabeth Mayer, Assistant Commissioner for Academic and Health Affairs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at AHAcomments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Sections 61.501- 61.506, which provides the Coordinating Board with the authority to administer the Family Practice Residency Program.

The proposed repeal affects Texas Education Code, §§6.501 - 61.506.

§6.1. Purpose.
§6.2. Authority.
§6.3. Definitions.
§6.4. Types of Grants.
§6.5. Award of Family Practice Residency Grants.
§6.6. Review of Family Practice Residency Grant Applications.
§6.7. Requirements for a Family Residency Operational Grant.
§6.8. Requirements for a Support Grant.
§6.9. Requirements for a Rural Rotation Reimbursement Grant.
§6.10. Requirements for a Public Health Rotation Reimbursement Grant.

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

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

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 427-6182

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CHAPTER 10. GRANT PROGRAMS SUBCHAPTER SS. TEXAS RESKILLING AND UPSKILLING THROUGH EDUCATION (TRUE) GRANT PROGRAM

19 TAC §§10.890 - 10.898

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 10, Subchapter SS, §§10.890 - 10.898, concerning the Texas Reskilling and Upskilling Through Education (TRUE) Grant Program. Specifically, this new section will consolidate grant program related rules in Chapter 10 and will replicate the legislative intent and necessary language found in Chapter 13, Subchapter N, which is repealed in a separate rulemaking.

The proposed new subchapter will establish processes for the TRUE Grant Program's organization and implementation. The

Coordinating Board is authorized by Texas Education Code, Chapter 61, Subchapter T-2, §61.882(b), to adopt rules to carry out the purpose of this program.

Rule 10.890, Authority, identifies the section of the Texas Education Code that grants the Coordinating Board authority over the TRUE Grant Program.

Rule 10.891, Purpose, sets out the purpose of the subchapter as a whole, to establish processes for the TRUE Grant Program's organization and implementation.

Rule 10.892, Definitions, lists definitions broadly applicable to all sections of subchapter N. The definitions establish a common understanding of the meaning of key terms used in the rules.

Rule 10.893, Eligibility, identifies eligible entities that may apply for the TRUE grant as specified by statute. The TRUE Grant Program has three categories of eligible entities: (1) lower-division institution of higher education; (2) consortium of lower-division institutions of higher education; or (3) local chamber of commerce, trade association, or economic development corporation that partners with a lower-division institution of higher education or a consortium of lower-division institutions of higher education.

Rule 10.894, Application Procedures, identifies TRUE grant application procedures so that grant applicants understand high level requirements and refer to the TRUE Grant Program Request for Applications (RFA) for specifics. Grant application procedures described include the number of applications eligible entities may submit, the process of submitting applications to the Coordinating Board, the importance of adhering to grant program requirements, and the requirement for proper authorization and timely submission of applications.

Rule 10.895, Awards, identifies the size and provision of TRUE grant awards. TRUE Grant Program available funding is dependent on the legislative appropriation for the program for each biennial state budget. Consequently, award levels and estimated number of awards will be specified in the program's RFA. This section also provides reference on the establishment of processes for application approval and award sizes.

Rule 10.896, Review Criteria, provides TRUE grant application review procedures. This section describes how the Coordinating Board will utilize specific requirements and award criteria described in a TRUE Grant Program RFA to review applications. Award criteria will include, but may not be limited to, consideration of key factors and preferred application attributes described in the RFA.

Rule 10.897, Reporting Criteria, describes TRUE grant reporting requirements. The Coordinating Board will request data on TRUE Grant Program funded credential programs as well as data on students enrolled in those programs. Student level data will enable the Coordinating Board to track student enrollment, credential completion, and employment data through state education and workforce databases.

Rule 10.898, General Information, indicates general information concerning the cancellation or suspension of TRUE grant solicitations and the use of the Notice of Grant Award (NOGA).

Tina Jackson, Assistant Commissioner for Workforce Education, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Tina Jackson, Assistant Commissioner for Workforce Education, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the consolidation of grant program related rules in Chapter 10. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

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

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Tina Jackson, Assistant Commissioner for Workforce Education, P.O. Box 12788, Austin, Texas 78711-2788, or via email at RulesComments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under Texas Education Code, Chapter 61, Subchapter T-2, Section 61.882(b), which provides the Coordinating Board with the authority to adopt rules requiring eligible entities awarded a Texas Reskilling and Upskilling Through Education (TRUE) grant to report necessary information to the Coordinating Board.

The proposed new section affects Texas Administrative Code, Title 19, Part 1, Chapter 10, Subchapter SS.

§10.890. Purpose.

The purpose of this subchapter is to establish the Texas Reskilling and Upskilling Through Education (TRUE) Program to strengthen the Texas workforce and build a stronger Texas economy. Awards will be made to eligible entities for creating, redesigning, or expanding workforce training programs and delivering education and workforce training.

§10.891. Authority.

The authority for this subchapter is found in Texas Education Code, Chapter 61, Subchapter T-2, §§61.882(b)1-886, which provides the Coordinating Board with the authority to administer the TRUE Program in accordance with the subchapter and rules adopted under the subchapter.

§10.892. Definitions.

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

(1) Eligible Entity--A lower-division institution of higher education; a consortium of lower-division institutions or higher education; or a local chamber of commerce, trade association, or economic development corporation that partners with a lower-division institution of higher education or a consortium of lower-division institutions of higher education per Texas Education Code, §61.881(1).

(2) Lower-Division Institution of Higher Education--A public junior college, public state college, or public technical institute per Texas Education Code, §61.881(1).

(3) Necessary Information--Data and reporting on student enrollment, credential completion, and employment outcomes for students in TRUE funded programs per Texas Education Code, §61.883(a)(6).

(4) Program--The Texas Reskilling and Upskilling Through Education (TRUE) Grant Program.

§10.893. Eligibility.

Eligible entities may apply for a grant under the TRUE Grant Program.

§10.894. Grant Application Procedures.

(a) Unless otherwise specified in the RFA, eligible entities may submit a maximum of two applications: one as a single recipient and the other as a member of a consortium.

(b) To qualify for funding consideration, an eligible entity must submit an application to the Coordinating Board, and each application must:

(1) Be submitted electronically in a format and location specified in the RFA;

(2) Adhere to the grant program requirements contained in the RFA; and

(3) Be submitted with proper authorization on or before the day and time specified by the RFA.

§10.895. Awards.

(a) The amount of funding available to the program is dependent on the legislative appropriation for the program for each biennial state budget. Award levels and estimated number of awards will be specified in the RFA.

(b) TRUE Grant Program awards shall be subject to approval pursuant to §1.16 of this title (relating to Contracts, Including Grants, for Materials and/or Services).

(c) The Commissioner may adjust the size of the award to best fulfill the purpose of the RFA.

§10.896. Review Criteria.

(a) The Coordinating Board shall select applicants for funding based on requirements and award criteria provided in the RFA. Award criteria in a RFA shall at a minimum include consideration of the following key factors:

(1) Projects that lead to postsecondary industry certifications or other workforce credentials required for high-demand occupations;

(2) Projects that are developed and provided in consultation with employers who are hiring in high-demand occupations;

(3) Projects that create pathways to employment for students and learners;

(4) Projects with at least one eligible entity located in each region of the state to the extent practicable;

(5) Projects that ensure that each training program matches regional workforce needs, are supported by a labor market analysis of job postings and employers hiring roles with the skills developed by the program; and do not duplicate existing program offerings except as necessary to accommodate regional demand; and

(6) Coordinating Board staff shall select at least three reviewers for the applications.

(b) Projects may be given preference that:

(1) Represent a consortium of lower-division institutions of higher education;

(2) Prioritize training to displaced workers;

(3) Offer affordable training programs to students; or

(4) Partner with local chambers of commerce, trade associations, economic development corporations, and local workforce boards to analyze job postings and identify employers hiring roles with the skills developed by the training programs.

§10.897. Reporting Criteria.

(a) Interim and Final Reporting for the TRUE Grant Program. Grantees must file program and expenditure reports and student reports if applicable to the Coordinating Board during the grant period and at its conclusion as required by the RFA. Grantees shall provide information that includes, but is not limited to, the following:

(1) Characteristics of the credential programs that are being worked on by the project;

(2) Status of the grant project activities;

(3) Budget expenditures by budget category;

(4) Student level data for students receiving financial aid funded by the grant as applicable;

(5) Student enrollment data as applicable; and

(6) Any other information required by the RFA.

(b) Ongoing Data Collection and Reporting for the TRUE Grant Program. Grantees shall submit necessary information concerning student enrollment, credential completion, and employment outcomes for students in TRUE funded programs per Texas Education Code, §61.883(a)(6).

(c) The Coordinating Board will request an updated list of TRUE developed and funded credential programs with required data points from grant holders annually at the end of June of each year following the end of the grant period.

(d) The Coordinating Board will request a roster with required data points for all students enrolled in the listed credential program or programs funded through TRUE from grant holders annually at the end of June of each year following the end of the grant period.

§10.898. General Information.

(a) Cancellation or Suspension of Grant Solicitations. The Board and Commissioner retain the right to reject all applications and cancel a grant solicitation at any point.

(b) Notice of Grant Award (NOGA). Before release of funds, the successful applicants must sign a NOGA issued by the Coordinating Board.

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

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 12. OPPORTUNITY HIGH SCHOOL DIPLOMA PROGRAM

SUBCHAPTER A. OPPORTUNITY HIGH SCHOOL DIPLOMA PROGRAM

19 TAC §12.5

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 12, Subchapter A, §12.5, concerning Opportunity High School Diploma Program. Specifically, this amendment will provide additional detail and assessments to the list of approved assessments and documentation for the program.

This amendment is proposed under Texas Education Code, §130.458, which provides the Coordinating Board with the authority to adopt rules as necessary to implement the Opportunity High School Diploma Program. The assessments listed in Figure 1 are required to be used by any two-year institution that is approved to offer the diploma program in determining a student's prior learning and successful program completion. The list was established following: an analysis of assessments used in alternative high school diploma program across the nation, the determination of cut scores for high school completion in each core competency, consultation with two-year institutions on potential content gaps in the assessments and potential action to remedy gaps, and consultation with the Texas Workforce Commission.

Rule 12.5, Program Requirements, is amended to update Figure 19 TAC in subsection (d)(4) to include new approved assessments and update documentation to measure competency mastery.

Lee Rector, Associate Commissioner for Workforce Education, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Lee Rector, Associate Commissioner for Workforce Education, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the increased detail for public junior colleges approved to offer the Opportunity High School Diploma around approved assessments and documentation to determine student achievement. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

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

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Lee Rector, Associate Commissioner for Workforce Education, P.O. Box 12788, Austin, Texas 78711-2788, or via email at RulesComments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 130.458, which provides the Coordinating Board with the authority to adopt rules as necessary to implement the Opportunity High School Diploma Program.

The proposed amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 12, Subchapter A.

§12.5. Program Requirements.

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

(d) Prior Learning and Program Completions. A public junior college approved to offer this program shall determine each student's competence in each of the five core program competencies set out in subsection (c) of this section prior to enrolling the student in the program of instruction and upon the student's completion of the program of instruction.

(1) The program of instruction assigned to each student will be based on the student's prior learning and assessments of the student's competencies for each of the five core program competencies set out in subsection (c) of this section. An institution may determine that a student has satisfied required learning outcomes for one or more core program competencies based on the student's prior learning.

(2) An institution may use any of the following methods as documentation of a student's prior learning in the five core program competencies:

(A) transcripted high school grades;

(B) transcripted college credit;

(C) achievement on a national standardized test such as the SAT or ACT;

(D) credit earned through military service as recommended by the American Council on Education; or

(E) demonstrated success on pre-program assessments.

(3) The Commissioner shall identify, consider, and approve assessments, in consultation with the Texas Workforce Commission, to be used by a public junior college to determine a student's successful achievement of the five core program competencies and completion of the program.

(4) Assessments approved by the Commissioner are listed in Figure 1.

Figure: 19 TAC §12.5(d)(4)

[~~Figure: 19 TAC §12.5(d)(4)~~]

(5) A public junior college that is approved to offer the program shall use an approved assessment to evaluate each student's competence in the five core program competencies as required under subsection (c) of this section.

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

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

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Nichole Bunker-Henderson
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CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER N. TEXAS RESKILLING AND UPSKILLING THROUGH EDUCATION (TRUE) GRANT PROGRAM

19 TAC §§13.400 - 13.408

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter N, §§13.400 - 13.408, concerning Texas Reskilling and Upskilling through Education (TRUE) Grant Program. Specifically, this repeal will allow the relocation of this subchapter to Chapter 10, Subchapter SS.

The proposed repeal of Chapter 13, Subchapter N, is part of an effort to consolidate grant program rules in Chapter 10, Grant Programs. The Coordinating Board is authorized by Texas Education Code, Chapter 61, Subchapter T-2, §61.882(b), to adopt rules to carry out the purpose of this program.

Tina Jackson, Assistant Commissioner for Workforce Education, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Tina Jackson, Assistant Commissioner for Workforce Education, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be improved rule clarity by consolidating all grant program related rules into Chapter 10. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

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

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Tina Jackson, Assistant Commissioner for Workforce Education, P.O. Box 12788, Austin, Texas 78711-2788, or via email at RulesComments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Education Code, Chapter 61, Subchapter T-2, Section 61.882(b), which provides the Coordinating Board with the authority to adopt rules requiring eligible entities awarded a Texas Reskilling and Upskilling Through Education (TRUE) grant to report necessary information to the Coordinating Board.

The proposed repeal affects Texas Administrative Code, Title, 19, Part 1, Chapter 13, Subchapter N, Sections 13.400 - 13.408.

§13.400. Purpose.
§13.401. Authority.
§13.402. Definitions.
§13.403. Eligibility.
§13.404. Grant Application Procedures.
§13.405. Awards.
§13.406. Review Criteria.
§13.407. Reporting Criteria.
§13.408. General Information.

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

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Nichole Bunker-Henderson
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Texas Higher Education Coordinating Board
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CHAPTER 15. RESEARCH FUNDS
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §15.1, §15.10

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 15, Subchapter A, §15.1 and §15.10, concerning General Provisions. Specifically, this repeal will conform with the repeal of the Texas Research Incentive Program (TRIP) in statute, in accordance with the provisions of Senate Bill (S.B.) 2066, 89th Texas Legislature, Regular Session.

Subchapter A, General Provisions, contains definitions and rules related to TRIP. Rule 15.1, defines the Commissioner and Coordinating Board or Board. Rule 15.10, establishes the purpose and authority of the program; provides definitions of terms; describes the distribution of matching grants, application requirements, returned gifts; and outlines the application review and certification processes. Prior to its repeal, Texas Education Code, §62.124, authorized the Board to adopt rules for the administration of the program.

With the enactment of S.B. 2066, the governing statute related to the TRIP program is repealed; therefore the TRIP-related rules will be repealed.

Andy MacLaurin, Assistant Commissioner for Funding and Resource Planning, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Andy MacLaurin, Assistant Commissioner for Funding and Resource Planning, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be to accurately reflect statue following adoption of Senate Bill 2066, 89th Texas Legislature, Regular Session. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

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

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Andy MacLaurin, Assistant Commissioner for Funding and Resource Planning, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Funding@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed in accordance with changes made by Senate Bill 2066, 89th Texas Legislature, Regular Session, which repeals the TRIP program.

The proposed repeal affects Texas Education Code, Sections 62.121, 62.122, 62.123, and 62.124.

§15.1. Definitions.

§15.10. Texas Research Incentive Program (TRIP).

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

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Nichole Bunker-Henderson
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CHAPTER 21. STUDENT SERVICES

The Texas Higher Education Coordinating Board (Coordinating Board) proposes repeal of Texas Administrative Code, Title 19, Part 1, Chapter 21: Subchapter A, §21.8, General Provisions; Subchapter C, §§21.45 - 21.49, Student Indebtedness; Subchapter I, §§21.213 - 21.219, Exemption Program for Children of Professional Nursing Program Faculty and Staff; Subchapter L, §§21.309 - 21.316, Exemption Program for Clinical Preceptors and Their Children; Subchapter Q, §§21.518 - 21.526, Exemption for Peace Officers Enrolled in Law Enforcement or Criminal Justice Courses; Subchapter U, §§21.634 - 21.642, The Good Neighbor Scholarship Program; Subchapter Z, §§21.786 - 21.792, Exemption for Firefighters Enrolled in Fire Science Courses; Subchapter AA, §§21.901 - 21.910, Reciprocal Educational Exchange Program; Subchapter BB, §§21.931 - 21.938, Programs for Enrolling Students from Mexico; Subchapter EE, §§21.990 - 21.994, Texas National Student Exchange Program; Subchapter II, §§21.1080 - 21.1089, Educational Aide Exemption Program; Subchapter PP, §§21.2220 - 21.2222, Provisions for Uniform Standards for Publication of Cost of Attendance Information; Subchapter SS, §§21.2260 - 21.2263, Waiver Programs for Certain Nonresident Persons; and Subchapter TT, §§21.2270 - 21.2276, Exemption Program for Dependent Children of Persons Who Are Members of Armed Forces Deployed on Combat Duty. Specifically, the repeal will allow the relocation of the rules to more appropriate locations in Coordinating Board rules.

The Coordinating Board is authorized by Texas Education Code, §§51.930, 52.335, 54.213, 54.2031, 54.231, 54.331, 54.353, 54.3531, 54.355, 54.356, 54.363, 56.0035, and 61.0777, to adopt rules relating to the provisions of these sections.

Rule 21.8, Definition of Student Financial Need, is repealed. Because rules for any programs that are impacted by student financial need are removed from Chapter 21, and other chapters already include rule definitions for "financial need" that align with the provisions of the section, the rule is not to be relocated.

Chapter 21, Subchapter C, is repealed. The provisions of that subchapter, as revised, are relocated to the newly created Chapter 24, Subchapter C, Annual Student Loan Debt Disclosure.

Chapter 21, Subchapter PP, is repealed. The provisions of that subchapter, as revised, are relocated to the newly created Chapter 4, Subchapter Z, Uniform Standards for Publication of Cost of Attendance Information.

Chapter 21, Subchapters I, L, Q, U, Z, AA, BB, EE, II, SS, and TT are repealed. The provisions of these subchapters, as revised, are relocated to the newly created Chapter 13, Subchapter P, Tuition Exemptions and Waivers.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the improved rule clarity and navigability through consolidation of rules for similar programs. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

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

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rules; and

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

Comments on the proposal may be submitted to Dr. Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, P.O. Box 12788, Austin, Texas 78711-2788, or via email at SFAPPolicy@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §21.8

The repeal is proposed under Texas Education Code, Section 56.0035, which provides the Coordinating Board with the authority to adopt rules relating to the provisions of that chapter.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter A, §21.8.

§21.8. Definition of Student Financial Need.

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

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SUBCHAPTER C. STUDENT INDEBTEDNESS

19 TAC §§21.45 - 21.49

The repeal is proposed under Texas Education Code, Section 52.335, which provides the Coordinating Board with the authority to adopt rules relating to the annual student loan debt disclosure.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter C, §§21.45 - 21.49.

§21.45. Authority and Purpose.

§21.46. Student Loan Debt Disclosure Annual Notification; Effective Date.

§21.47. Definitions.

§21.48. Student Loan Debt Disclosure Procedure.

§21.49. Student Loan Debt Disclosure Required Elements.

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

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SUBCHAPTER I. EXEMPTION PROGRAM FOR CHILDREN OF PROFESSIONAL NURSING PROGRAM FACULTY AND STAFF

19 TAC §§21.213 - 21.219

The repeal is proposed under Texas Education Code, Section 54.355, which provides the Coordinating Board with the authority to adopt rules as necessary relating to the program.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter I, §§21.213 - 21.219.

§21.213. Authority and Purpose.

§21.214. Definitions.

§21.215. Tuition Exemption.

§21.216. Eligible Students.

§21.217. Proration of Exemption.

§21.218. Application Process.

§21.219. Hardship Provisions.

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

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SUBCHAPTER L. EXEMPTION PROGRAM FOR CLINICAL PRECEPTORS AND THEIR CHILDREN

19 TAC §§21.309 - 21.316

The repeal is proposed under Texas Education Code, Section 54.356, which provides the Coordinating Board with the authority to adopt rules as necessary relating to the program.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter L, §§21.309 - 21.316.

§21.309. Authority and Purpose.

§21.310. Definitions.

§21.311. Tuition Exemption.

§21.312. Eligible Preceptors.

§21.313. Eligible Children.

§21.314. Discontinuation of Eligibility.

§21.315. Value of the Exemption.

§21.316. Application Process.

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

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SUBCHAPTER Q. EXEMPTION FOR PEACE OFFICERS ENROLLED IN LAW ENFORCEMENT OR CRIMINAL JUSTICE COURSES

19 TAC §§21.518 - 21.526

The repeal is proposed under Texas Education Code, Section 54.3531, which provides the Coordinating Board with the authority to adopt rules as necessary relating to the program.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter Q, §§21.518 - 21.526.

§21.518. Authority and Purpose.

§21.519. Definitions.

§21.520. Tuition and Laboratory Fees Exemption.

§21.521. Eligible Peace Officers.

§21.522. Eligible Courses.

§21.523. Excess Hours.

§21.524. Degree and Certificate Programs and Courses Eligible for the Exemption.

§21.525. Report to Legislature.

§21.526. Hardship Provisions.

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

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SUBCHAPTER U. THE GOOD NEIGHBOR SCHOLARSHIP PROGRAM

19 TAC §§21.634 - 21.642

The repeal is proposed under Texas Education Code, Section 54.331, which provides the Coordinating Board with the authority to adopt rules as necessary relating to the program.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter U, §§21.634 - 21.642.

§21.634. Authority and Purpose.

§21.635. Definitions.

§21.636. Eligible Institutions.

§21.637. Eligible Students.

§21.638. Selection Procedures.

§21.639. Award Amount.

§21.640. Continuation Awards.

§21.641. Hardship Provisions.

§21.642. Dissemination of Information and Rules.

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

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SUBCHAPTER Z. EXEMPTION FOR FIREFIGHTERS ENROLLED IN FIRE SCIENCE COURSES

19 TAC §§21.786 - 21.792

The repeal is proposed under Texas Education Code, Section 54.353, which provides the Coordinating Board with the authority to adopt rules as necessary relating to the program.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter Z, §§21.786 - 21.792.

§21.786. Authority and Purpose.
§21.787. Definitions.
§21.788. Tuition and Laboratory Fee Exemption.
§21.789. Eligible Firefighters.
§21.790. Excess Hours.
§21.791. Degree and Certificate Programs and Courses Eligible for the Exemption.
§21.792. Hardship Provisions.

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

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SUBCHAPTER AA. RECIPROCAL EDUCATIONAL EXCHANGE PROGRAM

19 TAC §§21.901 - 21.910

The repeal is proposed under Texas Education Code, Section 54.231, which provides the Coordinating Board with the authority to adopt rules as necessary relating to the program.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter AA, §§21.901 - 21.910.

§21.901. Authority and Purpose.
§21.902. Definitions.
§21.903. Eligible Institution.
§21.904. Eligible Persons.
§21.905. Tuition Rate to be Paid.
§21.906. Reciprocity.
§21.907. Assurances.
§21.908. Formula Funding.
§21.909. Transcripts for Courses Taken Abroad.
§21.910. Reporting Requirements.

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

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SUBCHAPTER BB. PROGRAMS FOR ENROLLING STUDENTS FROM MEXICO

19 TAC §§21.931 - 21.938

The repeal is proposed under Texas Education Code, Section 54.231, which provides the Coordinating Board with the authority to adopt rules as necessary relating to the program.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter BB, §§21.931 - 21.938.

§21.931. Authority, Scope, and Purpose.
§21.932. Definitions.
§21.933. Eligible Institutions.
§21.934. Eligible Students for the Pilot Program.
§21.935. Eligible Students for the Border County Program.
§21.936. Tuition Rate to be Paid.
§21.937. Numbers of Students Eligible to Participate in the Programs.
§21.938. Reporting Requirements.

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

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For further information, please call: (512) 427-6365

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SUBCHAPTER EE. TEXAS NATIONAL STUDENT EXCHANGE PROGRAM

19 TAC §§21.990 - 21.994

The repeal is proposed under Texas Education Code, Section 51.930, which provides the Coordinating Board with the authority to adopt rules as necessary relating to the program.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter EE, §§21.990 - 21.994.

§21.990. Authority and Purpose.
§21.991. Definitions.
§21.992. Eligible Students.

§21.993. Tuition Charges.

§21.994. Testing Waiver.

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

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6365

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SUBCHAPTER II. EDUCATIONAL AIDE EXEMPTION PROGRAM

19 TAC §§21.1080 - 21.1089

The repeal is proposed under Texas Education Code, Section 54.363, which provides the Coordinating Board with the authority to adopt rules as necessary relating to the program.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter II, §§21.1080 - 21.1089.

§21.1080. Authority and Purpose.

§21.1081. Definitions.

§21.1082. Institutions.

§21.1083. Eligible Students.

§21.1084. The Application.

§21.1085. Award Amounts.

§21.1086. Allocations for Institutions.

§21.1087. Exemption from Student Teaching.

§21.1088. Hardship Provisions.

§21.1089. Dissemination of Information and Rules.

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

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Nichole Bunker-Henderson
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Texas Higher Education Coordinating Board
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SUBCHAPTER PP. PROVISIONS FOR UNIFORM STANDARDS FOR PUBLICATION OF COST OF ATTENDANCE INFORMATION

19 TAC §§21.2220 - 21.2222

The repeal is proposed under Texas Education Code, Section 61.0777, which provides the Coordinating Board with the authority to adopt rules relating to the publication of cost of attendance information.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter PP, §§21.2220 - 21.2222.

§21.2220. Authority and Purpose.

§21.2221. Definitions.

§21.2222. Internet Access to Cost Information.

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

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Nichole Bunker-Henderson
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SUBCHAPTER SS. WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §§21.2260 - 21.2263

The repeal is proposed under Texas Education Code, Section 54.213, which provides the Coordinating Board with the authority to adopt rules relating to the competitive scholarship waiver.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter SS, §§21.2260 - 21.2263.

§21.2260. Purpose.

§21.2261. Definitions.

§21.2262. Effective Date of this Subchapter.

§21.2263. Competitive Scholarships.

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

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Nichole Bunker-Henderson
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Texas Higher Education Coordinating Board
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SUBCHAPTER TT. EXEMPTION PROGRAM FOR DEPENDENT CHILDREN OF PERSONS WHO ARE MEMBERS OF ARMED FORCES DEPLOYED ON COMBAT DUTY

19 TAC §§21.2270 - 21.2276

The repeal is proposed under Texas Education Code, Section 54.2031, which provides the Coordinating Board with the authority to adopt rules as necessary relating to the program.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter TT, §§21.2270 - 21.2276.

§21.2270. Authority and Purpose.

§21.2271. Definitions.

§21.2272. Tuition Exemption for Children of Military Service Members Who Are Deployed.

§21.2273. Eligibility Requirements.

§21.2274. Impact on Admissions.

§21.2275. Reimbursement of Foregone Tuition.

§21.2276. Hardship Provisions.

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

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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PART 9. TEXAS INNOVATIVE ADULT CAREER EDUCATION GRANT PROGRAM ADMINISTRATOR

CHAPTER 400. GRANT ADMINISTRATION

19 TAC §§400.1 - 400.7

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 9, Chapter 400, §§400.1 - 400.7, concerning Grant Administration. Specifically, this repeal will remove sections superseded by rules adopted by the Coordinating Board in April 2024 which are now in Part 1, Chapter 10, Subchapter RR, of this title.

Rules related to the Texas Innovative Adult Career Education Grant Program were adopted in Texas Administrative Code, Title 19, Part 1, following the transfer of grant administration from Austin Community College to the Coordinating Board, as authorized by House Bill 8, 88th Texas Legislature, Regular Session.

Dr. Jennielle Strother, Assistant Commissioner of Student Success, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Dr. Jennielle Strother, Assistant Commissioner for Student Success, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is to repeal rules superseded by new Part 1, Chapter 10, Subchapter RR, rules adopted by the Coordinating Board in April 2024. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

(2) implementation of the rules will not require the creation or elimination of employee positions;

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

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

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

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

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

Comments on the proposal may be submitted to Dr. Jennielle Strother, Assistant Commissioner for Student Success, P.O. Box 12788, Austin, Texas 78711-2788, or via email at studentsuccess@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Section 136.007, which provides the Coordinating Board with the authority to adopt rules relating to the administration of the program.

The proposed repeal affects Texas Administrative Code, Title 19, Part 9, Chapter 400, Sections 400.1 - 400.7.

§400.1. Definitions.

§400.2. Program Advisory Board.

§400.3. Purpose of the Grant.

§400.4. Eligibility.

§400.5. General Guidelines.

§400.6. Evaluation.

§400.7. Reporting Requirements.

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

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Nichole Bunker-Henderson
General Counsel
Texas Innovative Adult Career Education Grant Program Administrator
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For further information, please call: (512) 427-6537

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TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. ELIGIBILITY

SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.51

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.51 concerning Educational Definitions.

Background, Justification and Summary.

Some schools use the term "upper level accounting or business courses" and others use the term "upper division accounting or business courses. This proposed amendment makes it clear that both are accepted as having the same meaning in the Board's rules.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

These proposed rule amendments clarify that the use of the terms upper level accounting or upper division accounting or business courses is considered the same for the purposes of these rules.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 25, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.51. Educational Definitions.

(a) The following words and terms extracted from rules promulgated by the Texas Higher Education Coordinating Board, shall have the following meanings for this chapter, unless the context clearly indicates otherwise.

(1) "Accelerated courses" means courses delivered in shortened semesters which are expected to have the same number of contact hours and the same requirement for out-of-class learning as courses taught in a normal semester.

(2) "Contact hour" means a time unit of instruction used by institutions of higher education consisting of 60 minutes, of which 50 minutes must be direct instruction.

(3) "Non-traditionally-delivered course" means a course that is offered in a non-traditional way and does not meet the definition of contact hours.

(4) "Semester" means and normally shall include 15 weeks for instruction and one week for final examination or a total of 16 weeks instruction and examination combined.

(5) "Semester credit hour" means a unit of measure of instruction consisting of 60 minutes, of which 50 minutes must be direct instruction, over a 15-week period in a semester system or a 10-week period in a quarter system.

(6) "Traditionally-delivered three semester-credit-hour course" or "traditional course" means a course containing 15 weeks of instruction (45 contact hours) plus a week for final examinations so that such a course contains 45-48 contact hours depending on whether there is a final exam.

(b) The following words and terms shall have the following meanings.

(1) "Recognized community college" means a Texas community college or campus of the community college that holds the designation 'Qualifying Educational Credit for the CPA Examination' awarded by the board.

(2) "Extension and correspondence school" means a program within an institution that offers courses that are not equivalent to courses offered in an academic department at the institution and the courses are not listed on an official transcript from the institution. (3) "Institution" or "Institution of Higher Education" means any U.S. public or private senior college or university which confers a baccalaureate or higher degree to its students completing a program of study required for the degree.

(4) "Independent study" means academic work selected or designed by the student with the pre-approval of the appropriate department or a college or university under faculty supervision. This work typically occurs outside of the regular classroom structure.

(5) "Internship" means faculty pre-approved and appropriately supervised short-term work experience, usually related to a student's major field of study, for which the student earns academic credit.

(6) "Proprietary organization" means a CPA review course provider.

(7) "Quarter credit hour" is the unit of measurement based upon an institution of higher education system that divides the academic year into three equal sessions of 10 to 11 weeks. A quarter credit hour represents proportionately less work than a semester hour because of the shorter session and is counted as 2/3 of a semester credit hour for each hour of credit.

(8) "Reporting institution" means the institution of higher education in the state that serves as the clearinghouse for educational institutions of higher education in Texas. Currently, the University of Texas-Austin is the reporting institution for the state of Texas.

(9) "SACS" means the Southern Association of Colleges and Schools-Commission on Colleges.

(10) "THECB" means the Texas Higher Education Coordinating Board.

(11) "Transcript," "Official Transcript" or "Official Educational Document" means a document prepared by an institution that contains a record of the academic coursework offered by an academic department that a student has taken, grades and credits earned, and degrees awarded. The document is printed on paper bearing a watermark specific to the institution and is embossed with the institution's seal, date and the signature of the Registrar who is responsible for certifying coursework and degrees. The document may be provided electronically from the institution or its authorized agent.

(12) "UCPAE" means the Uniform Certified Public Accountant Examination prepared and graded by the American Institute of Certified Public Accountants.

(13) "Upper Division Accounting Course" or "Upper Level Accounting Course" means at a minimum junior and senior year course work that requires the successful completion of introductory or basic course work before it can be taken.

(14) "Upper Division Business Course" or "Upper Level Business Course" means at a minimum junior and senior year course work that requires the successful completion of introductory or basic course work before it can be taken.

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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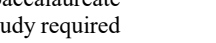

22 TAC §511.52

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.52 concerning Recognized Institutions of Higher Education.

Background, Justification and Summary

The proposed amendment is a grammatical change.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

This proposed rule amendment grammatically reads better by referring to "The" Higher Learning Commission.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Ac-

countancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 25, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.52. Recognized Institutions of Higher Education.

(a) The board recognizes institutions of higher education that offer a baccalaureate or higher degree, that either:

(1) are accredited by one of the following organizations:

(A) Middle States Commission on Higher Education (MSCHE);

(B) Northwest Commission on Colleges and Universities (NWCCU);

(C) The Higher Learning Commission (HLC);

(D) New England Commission of Higher Education (NECHE);

(E) Southern Association of Colleges and Schools, Commission on Colleges (SACS); and

(F) WASC Senior College and University Commission; or

(2) provide evidence of meeting equivalent accreditation requirements of SACS.

(b) The board is the final authority regarding the evaluation of an applicant's education and has received assistance from the reporting institution in the State of Texas, the University of Texas at Austin, in evaluating:

(1) an institution of higher education;

(2) organizations that award credits for coursework taken outside of a traditional academic environment and shown on a transcript from an institution of higher education;

(3) assessment methods such as credit by examination, challenge exams, and portfolio assessment; and

(4) non-college education and training.

(c) The following organizations and assessment methods may not be used to meet the requirements of this chapter:

(1) American Council on Education (ACE);

(2) Prior Learning Assessment (PLA);

(3) Defense Activity for Non-Traditional Education Support (DANTES);

(4) Defense Subject Standardized Test (DSST); and

(5) StraighterLine.

(d) The board may accept courses completed through an extension school, a correspondence school or continuing education program provided that the courses are offered and accepted by the board approved educational institution for a business baccalaureate or higher degree conferred by that educational institution.

(e) Except as provided in subsection (d) of this section, extension and correspondence schools or programs and continuing education courses do not meet the criteria for recognized institutions of higher education.

(f) The requirements related to recognized community colleges are provided in §511.54 of this chapter (relating to Recognized Texas Community Colleges).

(g) The board may recognize a community college that offers a baccalaureate degree in accounting or business, provided that the applicant is admitted to a graduate program in accounting or business offered at a recognized institution of higher education that offers a graduate or higher degree.

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

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J. Randel (Jerry) Hill
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22 TAC §511.53

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.53 concerning Evaluation of International Education Documents.

Background, Justification and Summary

The amendment proposes to relocate Board Rule §511.59 to Rule §511.56 for a better fit, eliminates Board Rule §511.60 which is outdated and no longer effective, and revises Board Rule §511.59 to provide for the 120-semester credit hour pathway to certification.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no

estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The proposed amendment reduces the costs and time for a candidate to become certified and provides the public with the benefit of needed accounting services.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 25, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.53. Evaluation of International Education Documents.

(a) It is the responsibility of the board to confirm that education obtained at colleges and universities outside of the United States (international education) is equivalent to education earned at board-recognized institutions of higher education in the U.S.

(b) The board shall use, at the expense of the applicant, the services of the University of Texas at Austin, Graduate and International Admissions Center, to validate, review, and evaluate international education documents submitted by an applicant to determine if the courses taken and degrees earned are substantially equivalent to those offered by the board-recognized institutions of higher education located in the U.S. The evaluation shall provide the following information to the board:

(1) Degrees earned by the applicant that are substantially equivalent to those conferred by a board-recognized institution of higher education in the U.S. that meets §511.52 of this chapter (relating to Recognized Institutions of Higher Education);

(2) The total number of semester hours or quarter hour equivalents earned that are substantially equivalent to those earned at U.S. institutions of higher education [~~and that meet §511.59 of this chapter (relating to Definition of 120 Semester Hours to take the UCPAE)~~];

(3) The total number of semester hours or quarter hour equivalents earned in accounting coursework that meets §511.57 of this chapter (relating to Courses in an Accounting Concentration to take the UCPAE [~~Qualified Accounting Courses to take the UCPAE) or §511.60 of this chapter (relating to Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE)~~];

(4) An analysis of the title and content of courses taken that are substantially equivalent to courses listed in §511.57 [~~or §511.60~~] of this chapter; and

(5) The total number of semester hours or quarter hour equivalents earned in business coursework that meets §511.58 of this chapter (relating to [~~Definitions of~~] Related Business Subjects to take the UCPAE).

(c) The University of Texas at Austin, Graduate and International Admissions Center, may use the American Association of Collegiate Registrars and Admissions Officers (AACRAO) material, including the Electronic Database for Global Education (EDGE), in evaluating international education documents.

(d) Other evaluation or credentialing services of international education are not accepted by the board.

(e) Credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirements of this chapter:

(1) American College Education (ACE);

(2) Prior Learning Assessment (PLA);

(3) Defense Activity for Non-Traditional Education Support (DANTES);

(4) Defense Subject Standardized Test (DSST); and

(5) StraighterLine.

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

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J. Randel (Jerry) Hill
General Counsel
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22 TAC §511.54

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.54 concerning Recognized Texas Community Colleges.

Background, Justification and Summary

The amendment proposes to eliminate the no longer effective Board Rule §511.60, incorporates the statutory language "Courses in an Accounting Concentration to take the UCPAE" for certification, and to incorporate the three semester hour ethics course offered at community colleges for individuals studying to become certified through the 120-hour pathway.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

These proposed rule amendments recognize the three semester hour ethics course offered by community colleges for the purpose of certification by applicants through the 120-hour pathway or the 150-hour pathway to certification.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 25, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.54. Recognized Texas Community Colleges.

(a) An applicant who has completed a baccalaureate or higher degree from a board recognized institution of higher education based on the requirements of §511.52 of this chapter (relating to Recognized Institutions of Higher Education), may enter into a course of study at a board recognized Texas community college to complete the educational requirements of §§511.57 and [,] 511.58[, ~~and 511.60~~] of this chapter (relating to Courses in an Accounting Concentration to take the UCPAE [~~Qualified Accounting Courses to take the UCPAE~~], and [~~Definitions of~~] Related Business Subjects to take the UCPAE[, ~~and~~

~~Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE~~]).

(b) The board recognizes and accepts Texas community colleges that meet board standards for a comprehensive academic program based on the educational requirements of §§511.57 and [,] 511.58[, ~~and 511.60~~] of this chapter.

(c) Effective August 1, 2015, the standards include at a minimum all, but are not limited to, the following:

(1) The Texas community college must be accredited by SACS.

(2) Academic accounting and business courses recognized as meeting §§511.57 and [,] 511.58[, ~~and 511.60~~] of this chapter are deemed by the board as equivalent to upper level coursework at an institution of higher education and must contain a rigorous curriculum that is similar to courses offered in a baccalaureate degree program at a university. Accounting, business, and ethics courses must be developed by a group of full time accounting faculty members and approved by the board prior to offering to students. Modifications to an approved course must be reconsidered by the board prior to offering to students.

(3) Academic courses meeting §§511.57 and [,] 511.58[, ~~and 511.60~~] of this chapter must be taken after completing a baccalaureate degree.

(4) The Texas community college must offer no fewer than:

(A) 30 [~~27~~] semester hours of academic accounting courses meeting §511.57 [~~or §511.60~~] of this chapter;

(B) 21 [~~24~~] semester hours of academic business courses meeting §511.58 of this chapter; and

(C) a board-approved three semester hour ethics course meeting §511.59 of this chapter (relating to Qualifications for Issuance of a Certificate with not Fewer than 120 Semester Hours) or §511.164 of this chapter (relating to Qualifications for Issuance of a Certificate with not Fewer than 150 Semester Hours [~~Definition of 150 Semester Hours to Qualify for Issuance of a Certificate~~]).

(5) The Texas community college designates an accounting faculty member(s) who is responsible for:

(A) managing the comprehensive academic program at all campuses;

(B) selecting and training qualified faculty members to teach the program courses and regularly evaluating their effectiveness in the classroom;

(C) establishing and maintaining a rigorous program curriculum;

(D) establishing and maintaining a process for advising and guiding students through the program; and

(E) providing annual updates to the board on the status of the academic program.

(6) Faculty members at a community college recognized and accepted by the board must have the following credentials to teach academic courses meeting §§511.57 and [,] 511.58[, ~~and 511.60~~] of this chapter:

(A) Doctorate or master's degree in the teaching discipline; or

(B) Master's degree with a concentration in the teaching discipline (a minimum of 18 graduate semester hours in the teaching discipline).

(7) At least three-fourths of the faculty members who are responsible to teach academic courses meeting §511.57 [~~or §511.60~~] of this chapter must hold a current CPA license.

(8) Faculty members will comply with the established educational definitions in §511.51 of this chapter (relating to Educational Definitions).

(9) The Texas community college will provide ongoing professional development for its faculty as teachers, scholars, and CPA practitioners.

(10) The Texas community college will make available to students a resource library containing current online authoritative literature to support the academic courses meeting §§511.57 and [,] 511.58[, ~~and 511.60~~] of this chapter, and will incorporate the online authoritative literature in accounting courses.

(d) A community college recognized and accepted by the board under this provision must be reconsidered by the board on the fifth-year anniversary of the approval. Information brought to the attention of the board by a student or faculty member of the Texas community college that indicates non-compliance with the standards may cause the board to accelerate reconsideration.

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

Filed with the Office of the Secretary of State on July 14, 2025.

TRD-202502476
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 305-7842

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22 TAC §511.56

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.56 concerning Educational Qualifications under the Act to take the UCPAE.

Background, Justification and Summary

The amendment proposes to publish the criteria for certification through July 31, 2026 and the criteria for the additional pathway created in the Public Accountancy Act effective August 1, 2026.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The proposed amendment clarifies to the public when applicants wishing to obtain certification through the new pathway with 120 semester credit hours takes effect.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is

not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 25, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.56. Educational Qualifications under the Act to take the UCPAE.

(a) An applicant for the UCPAE under the current Act shall meet the following educational requirements [~~at the time of filing the initial application to take the examination and~~] in order to qualify to take the examination:

(1) hold a baccalaureate or graduate degree conferred by an institution of higher education as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education) recognized by the board; and

(2) complete no fewer than 120 semester hours or quarter-hour equivalents of courses[~~, as defined by §511.59 of this chapter (relating to Definition of 120 Semester Hours to take the UCPAE) and~~] consisting of:

(A) effective through July 31, 2026, no fewer than 21 semester hours or quarter-hour equivalents of upper level accounting courses as defined by §511.57 of this chapter (relating to Courses in an Accounting Concentration to take the UCPAE); [~~Qualified Accounting Courses to take the UCPAE) or §511.60 of this chapter (relating to Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE); and~~]

(B) effective August 1, 2026, no fewer than 24 semester hours or quarter-hour equivalents of upper level accounting courses as defined by §511.57 of this chapter; and

(C) [~~(B)~~] no fewer than 21 [~~24~~] semester hours or quarter-hour equivalents of upper level related business courses, as defined by §511.58 of this chapter (relating to [~~Definitions of~~] Related Business Subjects to take the UCPAE).

(b) An individual holding a baccalaureate degree conferred by a board-recognized institution of higher education, as defined by §511.52 of this chapter, and who has not completed the requirements of this section shall meet the requirements by taking coursework in one of the following ways:

(1) complete upper level or graduate courses at a board-recognized institution of higher education as defined in §511.52 of this chapter that meets the requirements of subsections (a)(2)(A) and (a)(2)(B) of this section; or

(2) enroll in a board-recognized community college as defined in §511.54 of this chapter (relating to Recognized Texas Community Colleges) and complete board approved accounting or business courses that meet the requirements of subsections (a)(2)(A) and (a)(2)(B) of this section. Only specified accounting and business courses that are approved by the board will be accepted as not all courses offered at a community college are accepted.

(c) The following courses, courses of study, certificates, and programs may not be used to meet the 120-semester hour requirement:

(1) remedial or developmental courses offered at an institution of higher education; and

(2) credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirements of this chapter:

(A) American College Education (ACE);

(B) Prior Learning Assessment (PLA);

(C) Defense Activity for Non-Traditional Education Support (DANTES);

(D) Defense Subject Standardized Test (DSST); and

(E) StraighterLine.

(d) The hours from a course that has been repeated will be counted only once toward the requirements of subsection (a)(2) of this section.

(e) [~~(b)~~] An applicant for the UCPAE who met the educational requirements of the Act that were in effect at the time of taking the initial examination shall continue to be examined under those requirements unless the applicant chooses to meet the current education requirements of the Act.

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

Filed with the Office of the Secretary of State on July 14, 2025.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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22 TAC §511.57

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.57 concerning Qualified Accounting Courses to take the UCPAE.

Background, Justification and Summary

The amendment proposes to eliminate the no longer effective Board Rule §511.60 and incorporates the dates for existing criteria for certification and the added criteria for the new pathway toward certification.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The proposed amendment helps the public understand the criteria for certification prior to August 1, 2026 and the effective date of the additional criteria beginning on August 1, 2026.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 25, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.57. Courses in an Accounting Concentration to Take the UCPAE [~~Qualified Accounting Courses to take the UCPAE~~].

(a) Effective through July 31, 2026, an [~~An~~] applicant shall meet the board's accounting course requirements in one of the following ways:

(1) Hold a baccalaureate or higher degree from a board-recognized institution of higher education as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education) and present official transcript(s) from board-recognized institution(s) that show degree credit for no fewer than 21 semester credit hours of upper

division accounting courses as defined in subsections (d) and (e)[, ~~(f) and (g)~~] of this section; or

(2) Hold a baccalaureate or higher degree from a board-recognized institution of higher education as defined by §511.52 of this chapter, and after obtaining the degree, complete the requisite 21 semester credit hours of upper division accounting courses, as defined in subsections (d) and (e)[, ~~(f) and (g)~~] of this section, from four-year degree granting institutions, or accredited community colleges, provided that all such institutions are recognized by the board as defined by §511.52 or §511.54 of this chapter (relating to Recognized Texas Community Colleges).

(b) Credit for hours taken at board-recognized institutions of higher education using the quarter system shall be counted as 2/3 of a semester credit hour for each hour of credit received under the quarter system.

(c) The board will accept no fewer than 21 semester credit hours of accounting courses from the courses listed in subsections (d) and (e)[, ~~(f) and (g)~~] of this section. The hours from a course that has been repeated will be counted only once toward the required 21 semester hours. The courses must meet the board's standards by containing sufficient accounting knowledge and application to be useful to candidates taking the UCPAE. A board-recognized institution of higher education must have accepted the courses for purposes of obtaining a baccalaureate or higher degree or its equivalent, and they must be shown on an official transcript.

~~[(d) Upper level accounting coursework recognized by the board and in effect prior to January 1, 2024, may be found in §511.60 of this chapter (relating to Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE).]~~

(d) The [~~(e) Effective January 1, 2024, the~~] subject-matter content should be derived from the UCPAE Blueprint. A minimum of 12 semester hours with at least three semester hours in each of the following accounting course content areas is required:

(1) financial accounting and reporting for business organizations or intermediate accounting;

(2) financial statement auditing;

(3) taxation; and

(4) accounting information systems or accounting data analytics.

(e) A [~~(f) Effective January 1, 2024, a~~] minimum of 9 hours in any of the following accounting course content areas is required:

(1) up to 6 semester credit hours of additional financial accounting and reporting for business organizations or intermediate accounting;

(2) advanced accounting;

(3) accounting theory;

(4) managerial or cost accounting (excluding introductory level courses);

(5) auditing and attestation services;

(6) internal accounting control and risk assessment;

(7) financial statement analysis;

(8) accounting research and analysis;

(9) up to 9 semester credit hours of taxation (including tax research and analysis);

(10) financial accounting and reporting for governmental and/or other nonprofit entities;

(11) up to 9 semester credit hours of accounting information systems, including management information systems ("MIS"), provided the MIS courses are listed or cross-listed as accounting courses, and the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting;

(12) up to 9 semester credit hours of accounting data analytics, provided the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting; business data analytics may be considered provided the courses are listed or cross-listed as accounting courses, and the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting; (while data analytics tools may be taught in the courses, application of the tools should be the primary objective of the courses);

(13) fraud examination;

(14) international accounting and financial reporting;

(15) mergers and acquisitions;

(16) financial planning;

(17) at its discretion, the board may accept up to three semester hours of credit of accounting course work with substantial merit in the context of a career in public accounting, provided the course work is predominantly accounting or auditing in nature but not included in paragraphs (1) - (16) of this subsection. For any course submitted under this provision, the Accounting Faculty Head or Chair must affirm to the board in writing the course's merit and content; and

(18) at its discretion, the board may accept up to three semester credit hours of independent study in accounting selected or designed by the student under faculty supervision. The curriculum for the course shall not repeat the curriculum of another accounting course that the student has completed.

(f) [~~(g)~~] The following types of introductory courses do not meet the accounting course definition in subsections (d) and (e) [~~and (f)~~] of this section:

(1) elementary accounting;

(2) principles of accounting;

(3) financial and managerial accounting;

(4) introductory accounting courses; and

(5) accounting software courses.

(g) [~~(h)~~] Any CPA review course offered by an institution of higher education or a proprietary organization shall not be used to meet the accounting course definition.

(h) [~~(i)~~] CPE courses shall not be used to meet the accounting course definition.

(i) [~~(j)~~] An ethics course required in §511.164 of this chapter (relating to Qualifications for Issuance of a Certificate with not Fewer than 150 Semester Hours) [~~§511.58(d) of this chapter (relating to Definitions of Related Business Subjects to take the UCPAE) shall not be used to meet the accounting course definition in subsections (e) and (f) of this section~~].

(j) [~~(k)~~] Accounting courses completed through an extension school of a board recognized educational institution may be accepted

by the board provided that the courses are accepted for a business baccalaureate or higher degree conferred by that educational institution.

(k) [~~(l)~~] The board may review the content of accounting courses and determine if they meet the requirements of this section.

(l) [~~(m)~~] Credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirements of this chapter:

(1) American College Education (ACE);

(2) Prior Learning Assessment (PLA);

(3) Defense Activity for Non-Traditional Education Support (DANTES);

(4) Defense Subject Standardized Test (DSST); and

(5) Straighterline.

(m) Effective August 1, 2026, to take the UCPAE, a minimum of 12 semester hours of upper level accounting courses, with at least three semester hours from each of subparagraphs (1) through (4) of this subsection, must be completed at a board-recognized institution of higher education and shown on an official transcript from the institution:

(1) financial accounting and reporting for business organizations or intermediate accounting;

(2) financial statement auditing;

(3) taxation; and

(4) accounting information systems or accounting data analytics.

(n) In addition to subsection (m) of this section, a minimum of 12 hours in any of the following upper level accounting course content areas must be completed at a board-recognized institution of higher education and shown on an official transcript from the institution, provided the course was not used to meet subsection (a) of this section:

(1) financial accounting and reporting for business organizations or intermediate accounting;

(2) advanced accounting;

(3) accounting theory;

(4) managerial or cost accounting (excluding introductory level courses);

(5) auditing and attestation services;

(6) internal accounting control and risk assessment;

(7) financial statement analysis;

(8) accounting research and analysis;

(9) taxation (including tax research and analysis);

(10) financial accounting and reporting for governmental and/or other nonprofit entities;

(11) accounting information systems, including management information systems ("MIS"), provided the MIS courses are listed or cross-listed as accounting courses, and the institution of higher education accepts these courses as satisfying the accounting course requirements for graduation with a degree in accounting;

(12) accounting data analytics;

(13) fraud examination;

(14) international accounting and financial reporting;

(15) mergers and acquisitions;

(16) financial planning; and

(17) up to three semester credit hours of independent study in accounting selected or designed by the student under faculty supervision. The curriculum for the course shall not repeat the curriculum of another accounting course that the student has completed.

(o) The board may review the content of accounting courses to determine if they meet the requirements of subsections (m) and (n) of this section, and to determine if courses contain sufficient accounting knowledge and application to be useful to candidates taking the UCPAE.

(p) A course that was repeated will be counted only once to meet the requirements of subsections (m) and (n) of this section.

(q) Credit for hours taken at board-recognized institutions of higher education using the quarter system shall be counted as 2/3 of a semester credit hour for each hour of credit received under the quarter system.

(r) The board may accept up to three semester hours of credit of accounting course if:

(1) the course work has substantial merit in the context of a career in public accounting;

(2) the course work is predominantly accounting or auditing in nature but not included in subsections (m) and (n) of this section; and

(3) the merit and content of the course submitted under this subsection is affirmed by the Accounting Faculty Head or Chair at the educational institution where the course was completed.

(s) The following types of courses do not meet the accounting course definition in subsections (m), (n) and (r) of this section:

(1) elementary accounting;

(2) principles of accounting;

(3) financial and managerial accounting;

(4) introductory accounting courses;

(5) accounting software courses;

(6) any CPA review course offered by an institution of higher education or a proprietary organization;

(7) CPE courses; and

(8) an ethics course required in §511.59 of this chapter (relating to Qualifications for Issuance of a Certificate with not Fewer than 120 Semester Hours) or §511.164 of this chapter (relating to Qualifications for Issuance of a Certificate with not Fewer than 150 Semester Hours).

(t) Accounting courses completed through an extension school of a board-recognized educational institution may be accepted by the board provided that the courses are accepted for a business baccalaureate or higher degree conferred by that educational institution.

(u) Credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirements of this chapter:

(1) American College Education (ACE);

(2) Prior Learning Assessment (PLA);

(3) Defense Activity for Non-Traditional Education Support (DANTES);

(4) Defense Subject Standardized Test (DSST); and

(5) Straighterline.

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

Filed with the Office of the Secretary of State on July 14, 2025.

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22 TAC §511.58

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.58 concerning Definitions of Related Business Subjects to take the UCPAE.

Background, Justification and Summary

The amendment proposes to require at least 21 hours of upper level courses to sit for the UCPAE with no more than six credit hours in any of the listed subjects and a course that is repeated may only be counted as once toward the 21-hour requirement.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

These proposed rule amendments notifies the public of the criteria for certification regarding the 21 hours of upper level courses required to sit for the UCPAE.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 25, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.58. [~~Definitions of~~] Related Business Subjects to take the UCPAE.

(a) Related business courses are those business courses that a board recognized institution of higher education accepts for a business baccalaureate or higher degree by that educational institution.

(b) The board will accept no fewer than 21 credit hours of upper level courses (for the purposes of this subsection, economics and statistics at any college level will count as upper level courses) as related business subjects, taken at a recognized educational institution shown on official transcripts or accepted by a recognized educational institution for purposes of obtaining a baccalaureate degree or its equivalent, in the following areas. No more than 6 credit semester hours taken in any of the following subject areas may be used to meet the minimum hour requirement:

(1) business law, including study of the Uniform Commercial Code;

(2) economics;

(3) management;

(4) marketing;

(5) business communications;

(6) statistics and quantitative methods;

(7) information systems or technology;

(8) finance and financial planning;

(9) data analytics, data interrogation techniques, cyber security and/or digital acumen in the accounting context;

(10) upper level business or accounting internship; and

(11) other areas related to accounting.

[(b) An individual who holds a baccalaureate or higher degree from a recognized educational institution as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education) may take related business courses from four-year degree granting institutions, or recognized community colleges, provided that all such institutions are recognized by the board as defined by §511.52 or §511.54 of this chapter (relating to Recognized Texas Community Colleges). Related business courses taken at a recognized community college are only the courses that the board has reviewed and approved to meet this section.]

(c) The board may review the content of business courses and determine if they meet the requirements of this section.

[(c) The board will accept no fewer than 24 semester credit hours of upper level courses (for the purposes of this subsection, economics and statistics at any college level will count as upper division courses) as related business subjects (without repeat), taken at a recognized educational institution shown on official transcripts or accepted by a recognized educational institution for purposes of obtaining a baccalaureate degree or its equivalent, in the following areas.]

[(1) No more than 6 credit semester hours taken in any of the following subject areas may be used to meet the minimum hour requirement:]

[(A) business law, including study of the Uniform Commercial Code;]

[(B) economics;]

[(C) management;]

[(D) marketing;]

[(E) business communications;]

[(F) statistics and quantitative methods;]

[(G) information systems or technology; and]

[(H) other areas related to accounting.]

[(2) No more than 9 credit semester hours taken in any of the following subject areas may be used to meet the minimum hour requirement:]

[(A) finance and financial planning; and]

[(B) data analytics, data interrogation techniques, cyber security and/or digital acumen in the accounting context, whether taken in the business school or in another college or university program, such as the engineering, computer science, information systems, or math programs (while data analytic tools may be used in the course, application of the tools should be the primary objective of the course).]

[(d) The board requires that a minimum of 2 upper level semester credit hours in accounting communications or business communications with an intensive writing curriculum be completed. The semester hours may be obtained through a standalone course or offered through an integrated approach. If the course content is offered through integration, the university must advise the board of the course(s) that contain the accounting communications or business communications content. The course may be used toward the 24 semester credit hours of upper level business courses listed in subsection (c)(1) of this section.]

(d) [(e)] Credit for hours taken at recognized institutions of higher education using the quarter system shall be counted as 2/3 of a semester hour for each hour of credit received under the quarter system.

(e) A course that was repeated will be counted only once to meet the requirements of this section.

(f) Related business courses completed through and offered by an extension school, correspondence school, or continuing education program of a board recognized educational institution may be accepted by the board, provided that the courses are accepted for a business baccalaureate or higher degree conferred by that educational institution.

[(g) The board may review the content of business courses and determine if they meet the requirements of this section.]

(g) [(h)] Credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirements of this chapter:

(1) American College Education (ACE);

(2) Prior Learning Assessment (PLA);

(3) Defense Activity for Non-Traditional Education Support (DANTES);

(4) Defense Subject Standardized Test (DSST); and

(5) StraighterLine.

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §511.59

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.59 concerning Definitions of 120 Semester Hours to take the UCPAE.

Background, Justification and Summary

The amendment proposes to establish the criteria for certification with the 120-hour pathway effective August 1, 2026. It requires 27 upper level hours of accounting courses and a three-semester

hour board-approved standalone course in accounting or business ethics taken at a board-recognized educational institution.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

These proposed rule amendments assist the public in understanding the minimum requirements for certification under the 120-hour pathway to certification.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 25, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.59. Qualifications for Issuance of a Certificate with not Fewer than 120 Semester Hours [~~Definitions of 120 Semester Hours to take the UCPAE~~].

(a) Effective August 1, 2026, an initial applicant who meets the education requirements of §§511.56, 511.57 and 511.58 of this chapter (relating to Educational Qualifications under the Act to take the UCPAE, Courses in an Accounting Concentration to take the UCPAE, and Related Business Subjects to take the UCPAE), and elects to take the UCPAE may qualify for CPA certification by completing the requirements in subsections (b) and (c) of this section.

(b) An applicant for CPA certification under this section shall complete the following additional education requirements:

(1) additional upper level accounting courses as defined by §511.57 of this chapter equals or exceeds 27 semester hours or quarter-hour equivalents of upper level accounting courses; and

(2) a three-semester hour board-approved standalone course in accounting or business ethics. The course must be taken at a board-recognized educational institution and should provide students with a framework of ethical reasoning, professional values, and attitudes for exercising professional skepticism, and other behavior in the best interest of the public and profession. The ethics course shall:

(A) include the ethics rules of the AICPA, the SEC, and the board;

(B) provide a foundation for ethical reasoning, including the core values of integrity, objectivity, and independence; and

(C) be taught by an instructor who has not been disciplined by the board for a violation of the board's rules of professional conduct, unless that violation has been waived by the board.

(c) The work experience shall be not fewer than two years of full time, non-routine accounting experience as defined by §§511.122 and 511.123 of this chapter (relating to Acceptable Work Experience and Reporting Work Experience) and supervised by a CPA as defined by §511.124 of this chapter (relating to Acceptable Supervision).

~~[(a) To be eligible to take the UCPAE, an applicant must hold at a minimum a baccalaureate degree, conferred by a board-recognized institution of higher education as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education), and have completed the board-recognized coursework identified in this section:]~~

~~[(1) no fewer than 21 semester hours or quarter-hour equivalents of upper level accounting courses as defined by §511.57 of this~~

~~chapter (relating to Qualified Accounting Courses) or §511.60 of this chapter (relating to Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE);~~]

[~~(2) no fewer than 24 semester hours or quarter-hour equivalents of upper level related business courses, as defined by §511.58 of this chapter (relating to Definitions of Related Business Subjects to take the UCPAE); and~~]

[~~(3) academic coursework at an institution of higher education as defined by §511.52 of this chapter, when combined with paragraphs (1) and (2) of this subsection meets or exceeds 120 semester hours.~~]

[~~(b) An individual holding a baccalaureate degree conferred by a board-recognized institution of higher education, as defined by §511.52 of this chapter, and who has not completed the requirements of this section shall meet the requirements by taking coursework in one of the following ways:~~]

[~~(1) complete upper level or graduate courses at a board recognized institution of higher education as defined in §511.52 of this chapter that meets the requirements of subsection (a)(1) and (2) of this section; or~~]

[~~(2) enroll in a board recognized community college as defined in §511.54 of this chapter (relating to Recognized Texas Community Colleges) and complete board approved accounting or business courses that meet the requirements of subsection (a)(1) and (2) of this section. Only specified accounting and business courses that are approved by the board will be accepted as not all courses offered at a community college are accepted.~~]

[~~(c) The following courses, courses of study, certificates, and programs may not be used to meet the 120-semester hour requirement:~~]

[~~(1) any CPA review course offered by an institution of higher education or a proprietary organization;~~]

[~~(2) remedial or developmental courses offered at an educational institution; and~~]

[~~(3) credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirements of this chapter:~~]

[~~(A) American College Education (ACE);~~]

[~~(B) Prior Learning Assessment (PLA);~~]

[~~(C) Defense Activity for Non-Traditional Education Support (DANTES);~~]

[~~(D) Defense Subject Standardized Test (DSST); and~~]

[~~(E) StraighterLine.~~]

[~~(d) The hours from a course that has been repeated will be counted only once toward the required 120 semester hours.~~]

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

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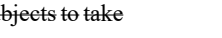

22 TAC §511.60

The Texas State Board of Public Accountancy (Board) proposes the repeal of §511.60 concerning Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE.

Background, Justification and Summary

The repeal deletes Board Rule §511.60 which automatically expired by board rule on January 1, 2024.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the repeal.

Public Benefit

The proposed repeal makes it clear to the public that the rule is no longer applicable to certification.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the repeal and a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed repeal will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the repeal does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the repeal is in effect, the proposed repeal: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule repeal.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Ac-

countancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 25, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses. If the proposed repeal is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the repeal, describe and estimate the economic impact of the repeal on small businesses, offer alternative methods of achieving the purpose of the repeal; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed repeal is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

§511.60. Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE.

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

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Texas State Board of Public Accountancy
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SUBCHAPTER H. CERTIFICATION

22 TAC §511.164

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.164 concerning Definition of 150 Semester Hours to Qualify for Issuance of a Certificate.

Background, Justification and Summary

These revisions propose to clarify the criteria for certification with 150 approved semester hours and the criteria effective beginning August 1, 2026.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment. It also describes acceptable work experience.

Public Benefit

The public will have better clarity as what criteria is acceptable for certification prior to August 1, 2026 and what is acceptable following August 1, 2026.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 25, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board

may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§511.164. Qualification for Issuance of a Certificate with not Fewer than 150 Semester Hours [~~Definition of 150 Semester Hours to Qualify for Issuance of a Certificate~~].

(a) To qualify for the issuance of a CPA certificate, an applicant must hold at a minimum a baccalaureate degree, conferred by a board-recognized institution of higher education as defined by §511.52 of this chapter (relating to Recognized Institutions of Higher Education), and have completed the board-recognized coursework identified in paragraphs (1), or (2), and (3)- (6) of this section:

(1) effective through July 31, 2026, no fewer than 27 semester hours or quarter-hour equivalents of upper level accounting courses as defined by §511.57 of this chapter (relating to Courses in an Accounting Concentration to take the UCPAE) to include a minimum of two semester credit hours in research and analysis; [~~Qualified Accounting Courses to take the UCPAE) or §511.60 of this chapter (relating to Qualified Accounting Courses Prior to January 1, 2024 to take the UCPAE) to include a minimum of two semester credit hours in research and analysis;~~]

(2) Effective August 1, 2026, no fewer than 30 semester hours or quarter-hour equivalents of upper level accounting courses as defined by §511.57 of this chapter;

(3) [~~(2)~~] no fewer than 21 [~~24~~] semester hours or quarter-hour equivalents of upper level related business courses, as defined by §511.58 of this chapter (relating to [~~Definitions of~~] Related Business Subjects to take the UCPAE);

(4) [~~(3)~~] a three semester hour board-approved standalone course in accounting or business ethics. The course must be taken at a board-recognized educational institution and should provide students with a framework of ethical reasoning, professional values, and attitudes for exercising professional skepticism and other behavior in the best interest of the public and profession. The ethics course shall:

(A) include the ethics rules of the AICPA, the SEC, and the board;

(B) provide a foundation for ethical reasoning, including the core values of integrity, objectivity, and independence; and

(C) be taught by an instructor who has not been disciplined by the board for a violation of the board's rules of professional conduct, unless that violation has been waived by the board; [~~and~~]

(5) although not required to meet subsection (a)(6) of this section, the board may accept not more than six hours or quarter hour equivalents of upper level CPA review coursework completed at an institution of higher education; and

(6) [~~(4)~~] academic coursework at an institution of higher education as defined by §511.52 of this chapter, when combined with paragraphs (1) - (5) [~~(3)~~] of this subsection meets or exceeds 150 semester hours[~~, of which 120 semester hours meets the education requirements defined by §511.59 of this chapter (relating to Definition of 120 Semester Hours to take the UCPAE)~~]. An applicant who has met paragraphs (1) - (4) [~~(3)~~] of this subsection may use a maximum of 9 total semester credit hours of undergraduate or graduate independent study and/or internships as defined in §511.51(b)(4) or §511.51(b)(5) of this chapter (relating to Educational Definitions) to meet this paragraph. The courses shall consist of:

(A) a maximum of three semester credit hours of independent study courses; and

(B) a maximum of six semester credit hours of accounting/business course internships.

(b) The following courses, courses of study, certificates, and programs may not be used to meet the 150 semester hour requirement:

[~~(1) any CPA review course offered by an institution of higher education or a proprietary organization;~~]

(1) [~~(2)~~] remedial or developmental courses offered at an educational institution; and

(2) [~~(3)~~] credits awarded for coursework taken through the following organizations and shown on a transcript from an institution of higher education may not be used to meet the requirement of this chapter:

(A) American College Education (ACE);

(B) Prior Learning Assessment (PLA);

(C) Defense Activity for Non-Traditional Education Support (DANTES);

(D) Defense Subject Standardized Test (DSST); and

(E) StraighterLine.

(c) The hours from a course that has been repeated will be counted only once toward the required semester hours.

(d) The work experience shall be not fewer than one year of full time non-routine accounting experience as defined by §§511.122 and 511.123 of this chapter (relating to Acceptable Work Experience and Reporting Work Experience) and supervised by a CPA as defined by §511.124 of this chapter (relating to Acceptable Supervision).

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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CHAPTER 512. CERTIFICATION BY RECIPROCITY

22 TAC §512.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §512.1 concerning Certification as a Certified Public Accountant by Reciprocity.

Background, Justification and Summary

The National Qualifications Appraisal Services (NQAS) of NASBA has had the responsibility to determine if another jurisdiction has substantially equivalent licensing requirements as Texas. That responsibility has been removed from the Texas *Public Accountancy Act* during the recent legislative session by SB 522. The proposed revisions to *§512.1* reflect that legislative revision.

In the absence of NQAS, language is provided that a candidate for reciprocity must comply with all requirements for licensing by reciprocity except the requirement of passing the CPA exam again.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

These proposed rule revisions reflect changes to the *Public Accountancy Act* and will update the public on the legislative changes.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 25, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§512.1. Certification as a Certified Public Accountant by Reciprocity.

(a) The certificate of a "certified public accountant" shall be granted by reciprocity to an applicant who is qualified under §901.259 of the Act (relating to Certification Based on Reciprocity) or §901.260 of the Act (relating to Certificate Based on Foreign Credentials) and lacks a history of dishonest or felonious acts and any criminal activity that might be relevant to the applicant's qualifications as provided for in §901.253 of the Act (relating to Background Investigation). The applicant must provide in the application for reciprocity the names of all the jurisdictions in which the applicant is or has been certified and/or licensed and all disciplinary actions taken or pending in those jurisdictions.

(b) Each applicant shall submit to the Department of Public Safety a complete and legible set of fingerprints from a vendor approved by the Department of Public Safety in conjunction with the application for the purpose of obtaining criminal history record information.

(c) An applicant from a domestic jurisdiction demonstrates that he meets the requirements for certification by reciprocity by:

(1) satisfying at least one of the following conditions:

~~[(A) the applicant holds a certificate or license to practice public accountancy from a domestic jurisdiction that has been determined by the board pursuant to §512.2 of this chapter (relating to NASBA Verified Substantially Equivalent Jurisdictions) as having substantially equivalent requirements for certification; or]~~

~~[(B) the applicant holds a certificate or license to practice public accountancy from a domestic jurisdiction that has not been determined by NASBA and the board to have substantially equivalent certification requirements but has had his education, examination and experience verified as substantially equivalent to those required by the UAA by NASBA; or]~~

(A) [(C)] the applicant meets all requirements for issuance of a certificate in this state other than the requirement providing the grades necessary to pass the uniform CPA examination; [set forth in the Act; or]

(B) [(D)] the applicant met the requirements in effect for issuance of a certificate in this state on the date the applicant was issued a certificate or license by another domestic jurisdiction; or

(C) [(E)] after passing the UCPAE, the applicant has completed at least four years of experience practicing public accountancy within the ten year period immediately preceding the date of application in this state; and

(2) meeting CPE requirements applicable to certificate holders contained in Chapter 523 of this title (relating to Continuing Professional Education).

(d) An applicant from a foreign jurisdiction demonstrates that he meets the requirements for certification by reciprocity by:

(1) holding a credential that has not expired or been revoked, suspended, limited or probated, and that entitles the holder to issue reports on financial statements issued by a licensing authority or professional accountancy body of another country that:

(A) regulates the practice of public accountancy and whose requirements to obtain the credential have been determined by the board to be substantially equivalent to the requirements of education, examination and experience contained in the Act; and

(B) grants credentials by reciprocity to applicants certified to practice public accountancy by this state;

(2) receiving that credential based on education and examination requirements that were comparable to or exceeded those required by the Act at the time the credential was granted;

(3) completing an experience requirement in the foreign jurisdiction that issued the credential that is comparable to or exceeds the experience requirement of the Act or has at least four years of professional accounting experience in this state;

(4) passing an international qualifying examination (IQEX) covering national standards that has been approved by the board; and

(5) passing an examination that has been approved by the board covering the rules of professional conduct in effect in this state.

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

Filed with the Office of the Secretary of State on July 14, 2025.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §512.2

The Texas State Board of Public Accountancy (Board) proposes the repeal of §512.2 concerning NASBA Verified Substantially Equivalent Jurisdictions.

Background, Justification and Summary

The Board is proposing the language in §512.2 that addresses the role of the National Qualifications Appraisal Services to be repealed since that responsibility has been removed by the Texas Legislature.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the repeal.

Public Benefit

The adoption of the proposed repeal will make it clear to the public that a non-CPA owner must be a Texas resident in order to have an ownership in a CPA firm.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the repeal and a Local Employment Impact Statement is not required because the proposed repeal will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed repeal will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the repeal does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the repeal is in effect, the proposed repeal: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed repeal.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the repeal is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 25, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed repeal will have an adverse economic effect on small businesses. If the proposed repeal is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the repeal, describe and estimate the economic impact of the repeal on small businesses, offer alternative methods of achieving the purpose of the repeal; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed repeal is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The repeal is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed repeal.

§512.2. NASBA Verified Substantially Equivalent Jurisdictions.

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

Filed with the Office of the Secretary of State on July 14, 2025.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 305-7842

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22 TAC §512.4

The Texas State Board of Public Accountancy (Board) proposes an amendment to §512.4 concerning Application for Certification by Reciprocity.

Background, Justification and Summary

With the removal of the responsibility of determining the substantial equivalency of out of state regulatory programs from the National Qualifications Appraisal Services, language is being removed from §512.4 to reflect that legislative directive.

Language is also added to require the verification of the education, and experience of an out of state licensee as well as the status of the license from the licensee's regulatory authority. This is the result of removing NQAS responsibility.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will provide the public with the news standards for licensing by reciprocity.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 25, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§512.4. Application for Certification by Reciprocity.

(a) An applicant seeking certification by reciprocity must apply for certification on a form prescribed by the board. The application must be accompanied by the requisite fee and shall include written authorization from the applicant empowering the board to obtain all information concerning the applicant's qualifications and present standing.

(b) An applicant for certification by reciprocity from a domestic jurisdiction [~~that has not been approved as being substantially equivalent by both NASBA and the board~~] must submit the following along with the completed application form and requisite fee to be processed:

(1) verification of the education and experience required from the domestic jurisdiction of origin upon applicant's certification [~~an interstate exchange of information form documenting the credits under the domestic jurisdiction of origin~~];

(2) verification of license status in any domestic jurisdiction where the applicant is or has been licensed as a CPA;

(3) [~~(2)~~] an executed oath of office stating support of the Constitutions of the United States and of the State of Texas and their laws and the rules of the board;

(4) [~~(3)~~] evidence of completion of an examination on the board's Rules of Professional Conduct;

(5) [~~(4)~~] evidence of completion of 120 credits of CPE during the last three years, including a board-approved four-credit ethics course; in compliance with Chapter 523 of this title (relating to Continuing Professional Education);

(6) [~~(5)~~] evidence of completion of the board's procedure to investigate the background of applicants in accordance with the established fingerprint process that accesses the Federal Bureau of Investigation (FBI) database and the Texas Department of Public Safety - Crime Records division files in order to ensure the applicant lacks a history of dishonest or felonious acts and for the board to be aware of any criminal activity that might be relevant to the applicant's qualifications; and

(7) [~~(6)~~] any other information requested by the board.

[~~(c) An applicant for certification by reciprocity from a domestic jurisdiction that has been approved as being substantially equivalent by both NASBA and the board must submit the following along with the completed application form and requisite fee to be processed:~~]

[~~(1) a certificate of good standing as a CPA from a domestic jurisdiction approved by both NASBA and the board as being substantially equivalent;~~]

[~~(2) if requested, a certificate of verification of substantial equivalency of the domestic jurisdiction of origin from NASBA;~~]

[~~(3) an executed oath of office stating support of the Constitutions of the United States and of the State of Texas and their laws and the rules of the board;~~]

[~~(4) evidence of completion of an examination on the board's Rules of Professional Conduct;~~]

[~~(5) evidence of completion of 120 credits of CPE during the last three years, including a board-approved four-credit ethics course; in compliance with Chapter 523 of this title (relating to Continuing Professional Education);~~]

[~~(6) evidence of completion of the board's procedure to investigate the background of applicants in accordance with the established fingerprint process that accesses the Federal Bureau of Investigation (FBI) database and the Texas Department of Public Safety - Crime Records division files in order to ensure the applicant lacks a history of dishonest or felonious acts and for the board to be aware of any criminal activity that might be relevant to the applicant's qualifications; and~~]

[~~(7) any other information requested by the board.~~]

(c) [~~(d)~~] An applicant for certification by reciprocity from a foreign jurisdiction that has been approved as being substantially equivalent by both U.S. IQAB and the board must submit the following along with the completed application form and requisite fee to be processed:

(1) a certificate of good standing of credentials to practice public accountancy from the foreign jurisdiction of origin;

(2) an executed oath of office stating support of the Constitutions of the United States and of the State of Texas and their laws and the rules of the board;

(3) evidence of a passing grade on the IQEX;

(4) evidence of a passing grade on a board approved examination on the board's Rules of Professional Conduct;

(5) evidence of the completion of a board-approved four-credit ethics course;

(6) evidence of completion of the board's procedure to investigate the background of applicants in accordance with the established fingerprint process that accesses the Federal Bureau of Investigation (FBI) database and the Texas Department of Public Safety - Crime Records division files in order to ensure the applicant lacks a history of dishonest or felonious acts and for the board to be aware of any criminal activity that might be relevant to the applicant's qualifications; and

(7) any other information requested by the board.

(d) [~~(e)~~] All correspondence and supporting documentation submitted to the board shall be in English or accompanied by a certified translation into English of such documents.

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

Filed with the Office of the Secretary of State on July 14, 2025.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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CHAPTER 513. REGISTRATION

SUBCHAPTER B. REGISTRATION OF CPA FIRMS

22 TAC §513.11

The Texas State Board of Public Accountancy (Board) proposes an amendment to §513.11 concerning Qualifications for Non-CPA Owners of Firm License Holders.

Background, Justification and Summary

The Board is proposing a revision to *§513.11* to make it clear that a non-CPA firm owner must be a Texas resident. This is a statutory requirement.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will make the requirement for non-CPA ownership to be a Texas resident clear.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 25, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§513.11. Qualifications for Non-CPA Owners of Firm License Holders.

(a) A firm which includes non-CPA owners may not qualify for a firm license unless every non-CPA individual who is a Texas resident [~~an~~] owner of the firm:

(1) is actively providing personal services in the nature of management of some portion of the firm's business interests or performing services for clients of the firm or an affiliated entity;

(2) lacks a history of dishonest or felonious acts or any criminal activity that might be relevant to the applicant's qualifications; and

(3) is not a suspended or revoked licensee or certificate holder excluding those licensees that have been administratively suspended or revoked. (Administratively suspended or revoked are those actions against a licensee for Continuing Professional Education reporting deficiencies or failure to renew a license.)

(b) Each of the non-CPA individual owners who are residents of the State of Texas must also:

(1) pass an examination on the rules of professional conduct as determined by board rule;

(2) comply with the rules of professional conduct;

(3) maintain any professional designation held by the individual in good standing with the appropriate organization or regulatory body that is identified or used in an advertisement, letterhead, business card, or other firm-related communication; and

(4) provide to the board fingerprinting required in §515.1(d) of this title (relating to License) unless previously submitted to the board.

(c) A "Non-CPA Owner" includes any individual or qualified corporation who has any financial interest in the firm or any voting rights in the firm.

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

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J. Randel (Jerry) Hill
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Texas State Board of Public Accountancy
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CHAPTER 515. LICENSES

22 TAC §515.8

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.8 concerning Retired or Disability Status.

Background, Justification and Summary

A licensee taking retired status may not be associated with the practice of public accountancy. The proposed rule makes it clear, however, that a retired CPA may verify the work experience requirement of a candidate to become a CPA if the experience was received when the retired CPA was not retired.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will make it clear that verification of work experience for a candidate to become licensed may be signed by a retired CPA when the work experience was acquired prior to the CPA becoming retired.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 25, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§515.8. Retired or Disability Status.

(a) Retired status. A licensee who is at least 60 years old and has affirmed that the licensee has no association with accounting may be granted retired status at the time of license renewal. A licensee in retired status is exempt from the fingerprinting required in §515.1(d) of this chapter (relating to License). A licensee who has been granted retired status and who reenters the workforce in a position that has an association with accounting automatically loses the retired status except as provided for in subsection (a)(1) of this section, and must provide the fingerprinting required in §515.1(d) of this chapter unless previously submitted to the board.

(1) A licensee who serves without compensation on a Board of Directors, or Board of Trustees, or provides volunteer tax preparation services, participates in a government sponsored business mentoring program such as the Internal Revenue Service's Volunteer Income Tax Assistance (VITA) program or the Small Business Administration's SCORE program or participates in an advisory role for a similar charitable, civic or other non-profit organization continues to be eligible for retired status.

(2) Licensees providing such uncompensated volunteer services have the responsibility to maintain professional competence

relative to the volunteer services they provide even though exempted from CPE requirements.

(3) The board shall require licensees to affirm in writing their understanding of the limited types of activities in which they may engage while in retired status and their understanding that they have a professional duty to ensure that they hold the professional competencies necessary to offer these limited volunteer services.

(4) Licensees may only convert to retired status if they hold a license in good standing and not be subject to any sanction or disciplinary action.

(5) Compensated services do not include routine reimbursement for travel costs and meals associated with the volunteer services or de minimis per diem amounts paid to cover such expenses.

(6) A retired licensee shall place the word "retired" adjacent to the retired licensee's CPA or Public Accountant title on any business card, letterhead or any other document. A licensee may be held responsible for a third party incorrectly repeating the CPA's title and shall make reasonable efforts to assure that the word "retired" is used in conjunction with CPA. Any of these terms must not be applied in such a manner that could likely confuse the public as to the current status of the licensee. The licensee will not be required to have a certificate issued with the word "retired" on the certificate.

(7) A licensee in "retired" status is not required:

(A) to maintain CPE; and

(B) provide fingerprinting in accordance with §515.1(d) of this chapter unless the retired status is removed.

(8) A retired licensee shall not offer or render professional services that require the retired licensee's signature and use of the CPA title either with or without "retired" attached, except a retired licensee may sign the work experience form [~~providing supervision~~] of an applicant for CPA certification if the supervision occurred prior to retirement [~~to take the UCPAE may sign the work experience form~~].

(9) Upon reentry into the workforce, the licensee must notify the board and request a new license renewal notice and:

(A) pay the license fee established by the board for the period since the licensee became employed;

(B) complete a new license renewal notice; and

(C) meet the CPE requirements for the period since the licensee was granted the retired status as required by §523.113(3) of this title (relating to Exemptions from CPE).

(b) Disability status. Disability status may be granted to an individual who submits to the board a statement and an affidavit from the licensee's physician which identifies the disability and states that the individual is unable to work because of a severe ongoing physical or mental impairment or medical condition that is not likely to improve within the next 12 consecutive months. This status may be granted only at the time of license renewal.

(1) Disability status is immediately revoked upon:

(A) the CPA reentering the workforce in a position that has an association with accounting work for which the CPA receives compensation; or

(B) the CPA serving on a Board of Directors, Board of Trustees, or in a similar governance position unless the service is for a charity, civic, or similar non-profit organization.

(2) Upon reentry into the workforce under such conditions, the individual must notify the board and request a new license renewal notice and:

(A) pay the license fee established by the board for the period since the individual became employed;

(B) complete a new license renewal notice;

(C) meet the CPE requirements for the period pursuant to §523.113(3) of this title; and

(D) provide the fingerprinting required in §515.1(d) of this chapter unless previously submitted.

(c) For purposes of this section the term "association with accounting" shall include the following:

(1) working or providing oversight of accounting or supervising work performed in the areas of financial accounting and reporting; tax compliance, planning or advice; management advisory services; accounting information systems; treasury, finance, or audit; or

(2) representing to the public, including an employer, that the individual is a CPA or public accountant in connection with the sale of any services or products involving accounting services or work, as provided for in §501.52(22) of this title (relating to Definitions) including such designation on a business card, letterhead, proxy statement, promotional brochure, advertisement, or office; or

(3) offering testimony in a court of law purporting to have expertise in accounting and reporting, auditing, tax, or management services; or

(4) providing instruction in accounting courses; or

(5) for purposes of making a determination as to whether the individual fits one of the categories listed in this section the questions shall be resolved in favor of including the work as an "association with accounting."

(d) Nothing herein shall be construed to limit the board's disciplinary authority with regard to a license in retired or disabled status. All board rules and all provisions of the Act apply to an individual in retired or disability status.

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

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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CHAPTER 517. PRACTICE BY CERTAIN OUT OF STATE FIRMS AND INDIVIDUALS

22 TAC §517.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §517.2 concerning Practice by Certain Out of State Individuals.

Background, Justification and Summary

The Board proposes to:

1. delete the reference to the National Qualifications Appraisal Services, which language the legislature removed from the Act;

2. clarify that the Board will allow licensees to practice in Texas without a reciprocal license, in order to provide for "mobility", so long as the state they are licensed in has substantially the same licensing requirements as Texas;

3. reflect that if an out of state licensee held the substantially equivalent out of state license on December 31, 2024, the licensee would be permitted to practice under mobility without a reciprocal license. This protects those licensed out of state on that date, if the state they were originally licensed in, is subsequently determined to not have substantially equivalent licensing requirements.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will inform the public on the acceptance and provisions for mobility of licensees from out of state providing accounting services in Texas. It will also provide "safe harbor" recognition to out of state licensees that were licensed in their state when their state was substantially equivalent even if the state is subsequently determined to no longer be substantially equivalent.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 25, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§517.2. Practice by Certain Out of State Individuals.

(a) An individual who holds an active [a] certificate or license as a CPA issued by another state and whose principal place of business is not in this state may exercise all the privileges of certificate and license holders of this state without obtaining a certificate or license under this chapter if the individual:

(1) has passed the uniform CPA examination;

(2) has completed:

(A) a baccalaureate degree with at least 150 semester hours and a concentration in accounting or equivalent courses;

(B) a graduate degree with a concentration in accounting or equivalent courses; or

(C) a baccalaureate degree with a concentration in accounting or equivalent courses; and

(3) at the time the individual's certificate or license was issued in the other state, had completed:

(A) at least one year of work experience, if licensed under an educational pathway comparable to subparagraphs (2)(A) or (B) of this subsection; or

(B) at least two years of work experience, if licensed under an educational pathway comparable to subparagraph (2)(C) of this subsection.

[(1) NASBA's National Qualification Appraisal Service has verified that the other state has education, examination, and experience requirements for certification or licensure that are comparable to or exceed the requirements for licensure as a CPA of the AICPA/NASBA UAA and the board determines that the licensure requirements of that Act are comparable to or exceed the licensure requirements of this chapter; or]

[(2) the individual obtains from NASBA's National Qualification Appraisal Service verification that the individual's education, examination, and experience qualifications are comparable to or exceed the requirements for licensure as a CPA of the AICPA/NASBA UAA and the board determines that the licensure requirements of that Act are comparable to or exceed the licensure requirements of this chapter.]

(b) An individual who meets the requirements of subsection (a) [(a)(1) or (2)] of this section and who offers or renders professional services in person or by mail, telephone, or electronic means may practice public accountancy in this state without notice to the board.

(c) Notwithstanding any other law, the board may prohibit an individual not licensed in this state from exercising the privileges of certificate and license holders of this state if the board determines the individual does not meet the requirements of subsection (a) of this section.

(d) An individual who on December 31, 2024, held a certificate or license issued by another state and practiced under a privilege of this section in this state may exercise all the privileges of the holder of a certificate and license issued under this title without obtaining a certificate or license in this state. To the extent that the individual exercises privileges as described by this subsection, the individual is subject to this title.

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

Filed with the Office of the Secretary of State on July 14, 2025.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §523.112

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.112 concerning Required CPE Participation.

Background, Justification and Summary

The Board proposes to revise Board §*523.112* to clarify that an applicant for reinstatement must have at least 120 hours of CPE within the last 36 months from the date of the application for reinstatement with 20 of those continuing professional education (CPE) hours having been completed within the 12 months preceding the application for reinstatement.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will advise the public of the CPE requirements for reinstatement.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 25, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small busi-

nesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.112. Required CPE Participation.

(a) A licensee shall complete at least 120 CPE credits in each three-year period, and a minimum of 20 CPE credits in each one-year period.

(b) CPE, except as provided by board rule, shall be offered by board authorized CPE sponsors.

(c) CPE requirements for the issuance or renewal of a license are as follows:

(1) Licensees who have been certified or registered for less than 12 months do not have a CPE credit requirement. The first license period begins on the date of certification and ends with the last day of the licensee's birth month.

(2) To be issued a license for the first full 12-month license period, the licensee does not have a CPE requirement. CPE earned prior to the first 12-month license period will not be applied toward the three-year requirement.

(3) To be issued a license for the second full 12-month period, the licensee shall report a minimum of 20 CPE credits. The CPE credits shall be completed in the 12 months preceding the second year of licensing.

(4) To be issued a license for the third full 12-month license period, the licensee shall report a total of at least 60 CPE credits that were completed in the 24 months preceding the license period. At least 20 CPE credits of the requirement shall be completed in the 12 months preceding the third year of licensing.

(5) To be issued a license for the fourth full 12-month period, the licensee shall report a total of at least 100 CPE credits that were completed in the 36 months preceding the license period. At least 20 CPE credits of the requirement shall be completed in the 12 months preceding the fourth year of licensing.

(6) To be issued a license for the fifth and subsequent license periods, the licensee shall report a total of at least 120 CPE credits that were completed in the 36 months preceding the license period, and at least 20 CPE credits of the requirement shall be completed in the 12 months preceding the fifth year of licensing.

(d) A former licensee whose certificate or registration has been revoked for failure to pay the license fee and who makes application for reinstatement shall pay the required fees and applicable late fees and must report a total of at least 120 CPE credits that were completed in the 36 months preceding the application for reinstatement, and at least 20 CPE credits of the requirement shall be completed in the twelve months preceding the application for reinstatement [~~the minimum CPE credits missed~~].

(e) A non-resident licensee seeking renewal of a license in Texas shall be determined to have met the CPE requirement by meeting the CPE requirements for renewal of a certificate/license in the state in which the licensee's principal place of business is located.

(1) Non-resident licensees shall demonstrate compliance with the CPE renewal requirements of the state in which the licensee's principal place of business is located by signing a statement to that effect during the renewal process of this state.

(2) If a non-resident licensee's principal place of business state has no CPE requirements for renewal of a certificate/license, the non-resident licensee must comply with all CPE requirements for renewal of a certificate in Texas.

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

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J. Randel (Jerry) Hill
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Texas State Board of Public Accountancy
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22 TAC §523.113

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.113 concerning Exemptions from CPE.

Background, Justification and Summary

The Board is recommending a revision to *§523.113* to clarify that a faculty member is not considered to be in the practice of public accountancy when the faculty member only provides instruction in accounting courses. The faculty member loses this exemption from continuing professional education (CPE) and licensing when holding out to be a CPA when providing his expertise as a CPA while not providing instruction in accounting outside of the educational course work setting.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment will help the public to understand when a license to practice public accounting may be needed.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 25, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.113. Exemptions from CPE.

The board shall not issue or renew a license to an individual who has not earned the required CPE credits unless an exemption has been granted by the board.

(1) The board may consider granting an exemption from the CPE requirement during the period for which the exemption is requested on a case-by-case basis if:

(A) a licensee completes and forwards to the board an affidavit indicating that the licensee is not employed; or

(B) a licensee completes and forwards to the board an affidavit indicating no association with accounting. The affidavit shall include, as a minimum, a brief description of the duties performed, job title, and verification by the licensee's immediate supervisor. For purposes of this section, the term "association with accounting" shall include the following:

(i) working, providing oversight of accounting, or supervising work performed in the areas of financial accounting and reporting; tax compliance, planning or advice; management advisory services; accounting information systems; treasury, finance, or audit; or

(ii) representing to the public, including an employer, that the licensee is a CPA or public accountant in connection with the sale of any services or products involving professional accounting services as defined in the Rules of Professional Conduct, §501.52(22) of this title (relating to Definitions), including such designation on a business card, letterhead, proxy statement, promotional brochure, advertisement, or office; or

(iii) offering testimony in a court of law purporting to have expertise in accounting and reporting, auditing, tax, or management services; or

~~*[(iv)* providing instruction in accounting courses; or]~~

(iv) [~~(v)~~] for purposes of making a determination as to whether the licensee fits one of the categories listed in this clause and clauses (i) - (iii) [~~(iv)~~] of this subparagraph, the questions shall be resolved in favor of including the work as having an association with accounting.

(C) a licensee not residing in Texas, who submits an affidavit to the board that the licensee does not serve Texas clients from out of state;

(D) a licensee shows reasons of health, certified by a medical doctor, that prevent compliance with the CPE requirement. A licensee must petition the board for the exemption and provide documentation that clearly establishes the period of disability and the resulting physical limitations;

(E) a licensee who is a military service member during the period for which the exemption is requested, and files a copy of orders to active military duty with the board; or

(F) a licensee shows reason which prevents compliance that is acceptable to the board.

(2) A licensee who has been granted the retired or disability status under §515.8 of this title (relating to Retired or Disability Status) is not required to report any CPE credits.

(3) A licensee who no longer meets the eligibility requirements for an exemption under this section or no longer qualifies for retired or disability status under §515.8 of this title shall be required to report sufficient CPE credits to be in compliance with §523.112 of this chapter (relating to Required CPE Participation). CPE credits shall be

earned in the technical area as described in §523.102 of this chapter (relating to CPE Purpose and Definitions) and §523.130 of this chapter (relating to Ethics Course Requirements).

(4) A faculty member of an educational institution may be exempt from CPE only when offering accounting services as a faculty member

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

Filed with the Office of the Secretary of State on July 14, 2025.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 305-7842

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22 TAC §523.118

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.118 concerning Limitations of Courses.

Background, Justification and Summary

The proposed rule revision limits the total number of hours a licensee may apply toward one certification program to 20 hours. (An example of a certification program is Certified Financial Planner). It also limits the total number of continuing professional education (CPE) credits from a certification program to no more than 50 per cent of the total CPE credits applied in a three-year reporting period.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed rule amendment clarifies for the public the number hours that may be applied to a licensee's required CPE to 20 hours per certification and to 50 percent to the total number of hours required in a three-year reporting period.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Accountancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on August 25, 2025.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151, which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.118. Limitations of Courses.

(a) A licensee may not claim more than 50 percent of the total CPE credits required from the non-technical area in a three-year reporting period.

(b) A licensee may not claim more than 50 percent of the total CPE credits required in a three-year reporting period from nano-learning programs.

(c) A licensee may claim up to 20 CPE credits for [~~not claim more than 50 percent of the total CPE credits required in a three-year reporting period from~~] the successful completion of a certification program [~~programs~~], such as a Certified Financial Planner, Certified

Internal Auditor, Certified Fraud Examiner, other related financial certifications, and/or related financial securities licenses.

(d) A licensee may claim no more than 50 percent of the total CPE credits required in a three-year reporting period from the successful completion of certification programs.

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

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J. Randel (Jerry) Hill
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 13. HEALTH PLANNING AND RESOURCE DEVELOPMENT

SUBCHAPTER G. WORKPLACE VIOLENCE AGAINST NURSES PREVENTION GRANT PROGRAM

25 TAC §§13.81 - 13.87

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes amendments to §13.81, concerning Purpose; §13.82, concerning Definitions; §13.83, concerning Grant Application Procedures; §13.84, concerning Program Funding and Award Amounts; §13.85, concerning Award Criteria and Selection for Funding; §13.86, concerning General Information; and §13.87, concerning Reporting.

BACKGROUND AND PURPOSE

The purpose of the proposal is to broaden language to ensure program rules are not more restrictive than statute. Throughout the rules, the term "Request for Applications" is replaced with the more general term "solicitation." The proposed amendments remove requirements for "short-term and long-term" performance measures and remove language related to priority selection, which will instead be defined in each solicitation. The amendments improve flexibility in implementation of the grant program and increase accessibility to grant funds for health care facilities. Additionally, amendments reflect rule writing standards and plain language expectations to ensure clarity and readability.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §13.81, concerning Purpose, deletes subsection (b) and the section is subsequently reformatted.

The proposed amendment to §13.82, concerning Definitions, replaces wording, adds "HSC" as an acronym, and revises paragraph (4) by adding new subparagraphs (A) - (D) for clarity.

The proposed amendment to §13.83, concerning Grant Application Procedures, adds the department will publish solicitations on its grant's website and replaces wording throughout for clarity.

The proposed amendment to §13.84, concerning Program Funding and Award Amounts, adds the total funding available for the program depends on the amount of money transferred to the department from the Texas Board of Nursing to fund grants.

The proposed amendment to §13.85, concerning Award Criteria and Selection for Funding, removes the requirement for "short-term and long-term" performance measures, broadens the requirement for proposed performance metrics, and replaces wording throughout for clarity. It also removes language related to priority selection, which will instead be defined in each solicitation.

The proposed amendment to §13.86, concerning General Information, clarifies the department may cancel or suspend a grant solicitation at its discretion, and removes the acronyms, NOGA and RFA.

The proposed amendment to §13.87, concerning Reporting, replaces wording, adds language to clarify reporting requirements for grant recipients, and adds the department will publish the grant awards report on the department's website.

Lastly, the amendments incorporate rule writing standards and plain language expectations.

FISCAL NOTE

Christy Havel Burton, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rules will be in effect:

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

(2) implementation of the proposed rules will not affect the number of DSHS employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to DSHS;

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

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

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

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Christy Havel Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

Participation in applying for grant funds is optional.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Dr. Varun Shetty, Chief State Epidemiologist, has determined that for each year of the first five years the rules are in effect, the public benefit will be increased flexibility in the implementation of the grant program and increased accessibility to grant funds.

Christy Havel Burton has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because application for grant funds is voluntary.

TAKINGS IMPACT ASSESSMENT

DSHS has determined that the proposal does not restrict or limit an owner's right to the owner's property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov*.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R011" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §524.0151 and Texas Health and Safety Code §1001.075, which provide that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001; and Texas Health and Safety Code §105.011(e) which provides that DSHS shall provide administrative assistance to the nursing resource section in administering the grant program and that the Executive Commissioner shall adopt rules to implement the grant program, including rules governing the submission and approval of grant requests and establishing a reporting procedure for grant recipients.

The amendments implement Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 1001 and §105.011.

§13.81. Purpose.

[~~(a)~~] The purpose of this subchapter is to implement Texas Health and Safety Code [~~,~~] §105.011. The Workplace Violence Against Nurses Prevention Grant Program authorizes the Department of State Health Services to award grant payments to fund innovative approaches [~~aimed at reducing~~] verbal and physical violence against nurses in hospitals, freestanding emergency medical care facilities, nursing facilities, and home health agencies.

[~~(b) Grant funds awarded under this subchapter may only be spent on a program intended to identify and implement efforts to reduce verbal and physical violence against nurses in hospitals, freestanding emergency medical care facilities, nursing facilities, and home health agencies.~~]

§13.82. Definitions.

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

(1) Administer--Includes the proposal, development, and implementation of a program, within the parameters of a solicitation [~~the Request for Applications~~].

(2) Department--The Texas Department of State Health Services.

(3) Health care facility--Includes [~~any of~~] the following, as defined in Texas Health and Safety Code (HSC)[~~,~~] §105.001:

(A) freestanding [~~"Freestanding~~] emergency medical care facility[~~" means a facility~~] licensed under Texas HSC [~~Health and Safety Code,~~] Chapter 254;[~~.~~]

(B) home [~~"Home~~] health agency[~~" means a home and community support services agency~~] licensed under Texas HSC [~~Health and Safety Code,~~] Chapter 142;[~~.~~]

(C) hospital [~~"Hospital" means a~~]:

(i) a general or special hospital licensed under Texas HSC [~~Health and Safety Code,~~] Chapter 241;

(ii) a private mental hospital licensed under Texas HSC [~~Health and Safety Code,~~] Chapter 577; or

(iii) a hospital that is maintained or operated by this state or an agency of this state; or[~~.~~]

(D) nursing [~~"Nursing~~] facility[~~" means an institution~~] licensed under Texas HSC [~~Health and Safety Code,~~] Chapter 242.

(4) Solicitation [~~Request for Applications (RFA)~~]--A type of [~~solicitation~~] notice in which the department announces: [~~available grant funding, sets forth the guidelines governing the program, provides evaluation criteria for submitted applications, and provides instructions for eligible entities to submit applications for such funding. The guidelines governing the program may include a letter of intent, eligibility requirements, performance expectations, budget guidelines, reporting requirements, and other standards of accountability for this program.~~]

(A) the available grant funding;

(B) the guidelines for the program;

(C) the evaluation criteria; and

(D) the instructions for submitting applications.

(5) Workplace Violence Prevention Grant Program--A grant program supporting health care facilities to protect nurses from violence [~~under which the department awards grant payments to a health care facility to administer innovative programs designed to reduce verbal and physical violence against nurses in this state~~].

§13.83. Grant Application Procedures.

The department will publish solicitations on its grant's website. Each [~~To qualify for funding consideration, each~~] eligible applicant must submit an application to the department staff listed [~~identified~~] in the solicitation to qualify for funding [~~RFA~~]. Each application must, as outlined in the solicitation:

(1) be submitted electronically in the required [~~a~~] format [~~specified in the RFA~~];

(2) adhere to the grant program requirements and [~~the~~] funding priorities [~~contained in the RFA~~]; and

(3) include [~~be submitted with~~] proper authorization and be submitted no later than [~~on or before~~] the date and time specified by the department in the solicitation [~~RFA~~].

§13.84. Program Funding and Award Amounts.

The total funding available for the program depends on the amount of money transferred to the department from the Texas Board of Nursing to fund grants. Each solicitation will specify the maximum and minimum award amounts and the maximum number of awards [~~The maximum amount of funding available to the program is dependent on the extent funding is available through fees collected under Texas Occupations Code, §301.155(c) for each biennium. Maximum and minimum award levels and maximum number of awards will be specified in each RFA~~].

§13.85. Award Criteria and Selection for Funding.

(a) The department will select applicants [~~Applicants shall be selected~~] for funding on a competitive basis.

(b) The department will only consider applicants that meet all requirements of the solicitation [~~An application must meet the requirements of the RFA and be submitted with proper authorization on or before the day and time specified by the RFA to qualify for further consideration~~].

(c) A taskforce assigned by the Nursing Advisory Committee, defined by Texas Health and Safety Code[~~,~~] §104.0155, will review and score [~~evaluate the~~] proposals. The [~~Proposals will be scored by the taskforce and the~~] taskforce will provide [~~make~~] recommendations for grant awards to the department [~~for grant awards~~].

(d) Each application must [~~shall~~]:

(1) provide a detailed explanation of the applicant's workplace violence prevention program, including:

(A) a [~~timeline for~~] development and implementation timeline;

(B) a description of the population identified to participate in the program;

(C) a detailed budget; and

(D) a description of the program's [~~detailed information related to~~] administration and support [~~for the program~~];

(2) describe [~~document~~] how the workplace violence prevention program will reduce [~~achieve the goals of reducing~~] verbal and physical violence against nurses in the applicant's health care facility; and

(3) propose performance metrics to measure program outcomes [~~for measuring short-term and long-term outcomes of the program~~], including changes [~~a measure of the change~~] in the severity and frequency of verbal and physical violence against nurses.

(e) Each solicitation will define the priority criteria for selection. [~~Priority for selection will be given to applicants that demonstrate an innovative approach to reducing verbal and physical violence against nurses that includes the following:~~]

[~~(1) evidence supporting the conceptual foundation of the proposed program;~~]

[~~(2) evidence of institutional commitment to reduce workplace violence against nurses;~~]

[~~(3) evidence of institutional support of the proposal, such as staff time, access to institutional resources, and/or funds; and~~]

[~~(4) description of a plan for long-term sustainability of the proposed program.~~]

§13.86. General Information.

(a) [~~Cancellation or Suspension of Grant Solicitations.~~] The department may [~~has the right to~~] cancel or suspend a grant solicitation at its discretion [~~or RFA for any reason~~].

(b) Successful applicants must sign a Notice of Grant Award issued by the department before receiving funds [~~Notice of Grant Award (NOGA). Before release of funds, the successful applicants must sign a NOGA issued by department staff~~].

§13.87. Reporting.

(a) Each grant recipient must submit [~~shall provide~~] reports to the department as required by the solicitation [~~RFA~~]. The reports must [~~include descriptions of the following~~]:

(1) describe activities funded through the grant;

(2) report changes [~~the change~~] in the severity and frequency of verbal and physical violence against nurses;

(3) evaluate program performance based on stated performance metrics; and

(4) detail budget expenditures.

(b) At least annually, the department's Nursing Resource Section will [~~of the Health Professions Resource Center of the department shall~~] publish a report describing the grants awarded under this subchapter, including the amount of the grants, the purpose of the grants, and the outcome reported by the grant recipient. The department will publish the report on its website.

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

Filed with the Office of the Secretary of State on July 3, 2025.

TRD-202502244
Karen Ray
Chief Counsel
Department of State Health Services
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 517-6902

♦ ♦ ♦

TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 301. LOCAL AUTHORITY RESPONSIBILITIES

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §301.301, concerning Purpose and Application; §301.303, concerning Definitions; §301.321, concerning Leadership; §301.323, concerning Environment of Care and Safety; §301.327, concerning Access to Mental Health Community Services; §301.329, concerning Medical Records System; §301.331, concerning Competency and Credentialing; §301.333, concerning Quality Management; §301.335, concerning Utilization Management; §301.351, concerning Crisis Services; §301.353, concerning Provider Responsibilities for Treatment Planning and Service Authorization; §301.355, concerning Medication Services; §301.357, concerning Additional Standards of Care Specific to Mental Health Community Services for Children and Adolescents; §301.359, concerning Telemedicine Services; §301.361, concerning Documentation of Service Provision; and §301.363, concerning Supervision; and the repeal of §301.305, concerning Responsibility for Compliance, and §301.325, concerning Rights and Protection.

BACKGROUND AND PURPOSE

HHSC proposes to amend rules in the Texas Administrative Code (TAC) Title 26, Chapter 301, Subchapter G relating to Mental Health Community Services Standards. The main purpose of this proposal is to expand the allowable educational and experiential requirements for a Qualified Mental Health Professional-Community Services (QMHP-CS) credential.

The amendments will expand the QMHP-CS criteria to include non-human services degree programs if the applicant or employee has at least one year of experience as an intern or employee in a mental health or substance use program. The proposed changes intend to increase access to behavioral health services by expanding the mental health workforce.

The proposed rules update the list of persons and entities the rules apply to by adding local behavioral health authorities (LBHAs) and removing managed care organizations to align with current practice. These changes are reflected throughout Subchapter G.

Additionally, HHSC proposes amendments to clarify statutory requirements; add, remove, and update definitions; update Medicaid-related information; update and add cross-references; and make grammatical and editorial changes for understanding, accuracy, and uniformity to make the rules easier to read and understand.

SECTION-BY-SECTION SUMMARY

Division 1, General Provisions

The proposed amendment to §301.301 updates terminology to "community mental health services." The proposed amendment also updates the list of persons and entities the chapter applies to. The proposed amendment also updates the TAC cross-references for accuracy.

The proposed amendment to §301.303 adds new definitions; revises definitions for clarification, consistency, and current terminology; aligns definitions with other rules; and removes definitions no longer needed or no longer used in Subchapter G. The definitions are renumbered as a result of these changes.

The proposed repeal of §301.305 deletes the rule as no longer necessary because it contains inaccurate requirements and repetitive information found elsewhere in this subchapter.

Division 2, Organizational Standards

The proposed amendment to §301.321 clarifies that the requirements of this section apply to LBHAs and updates terminology.

The proposed amendment to §301.323 clarifies that the local mental health authority (LMHA), LBHA, and provider must implement an infection control plan and procedures in accordance with applicable state and federal laws. The proposed amendment also reorders the subsections, removes unnecessary rule language, updates terminology, corrects for grammar, and updates TAC cross-references for accuracy.

The proposed repeal of §301.325 deletes the rule as no longer necessary because it contains redundant requirements found in applicable state and federal laws; 26 TAC Chapter 301, Subchapter C, concerning Charges for Community Services; 26 TAC Chapter 301, Subchapter M, concerning Abuse, Neglect, and Exploitation in Local Authorities and Community Centers; and 26 TAC Chapter 320, Subchapter A, concerning Rights of Individuals Receiving Mental Health Services.

The proposed amendment to §301.327 changes the title of this section from "Access to Mental Health Community Services" to "Access to Community Mental Health Services" to update for current terminology. The proposed amendment also updates terminology, corrects for grammar, and updates TAC cross-references for accuracy.

The proposed amendment to §301.329 clarifies that the maintenance of a written disaster recovery plan for information resources will ensure service continuity as required by applicable state and federal laws. The proposed amendment also removes unnecessary language and an outdated TAC cross-reference.

The proposed amendment to §301.331 clarifies in subsection (a) that this requirement applies to the competency of staff members and volunteers. The proposed amendment also revises subsection (d) to be consistent with the new QMHP-CS definition. The proposed amendment in new subsection (i) requires the LMHA, LBHA, and provider to comply with any applicable Medicaid requirements.

The proposed amendment to §301.333 updates terminology throughout the section.

The proposed amendment to §301.335 updates terminology, removes unnecessary language, and updates TAC cross-references for accuracy throughout the section.

Division 3, Standards of Care

The proposed amendment to §301.351 clarifies that the provider of crisis services must maintain documentation of the individual's name and any other identifiable health information in accordance with the Health Insurance Portability and Accountability Act. The proposed amendment also updates terminology, updates TAC cross-references for accuracy, and removes unnecessary language throughout the section.

The proposed amendment to §301.353 removes an outdated requirement in subsection (d)(1)(A) and reorders the subsequent subparagraphs. The proposed amendment also updates ter-

minology, updates TAC cross-references for accuracy, and removes unnecessary language throughout the section.

The proposed amendment to §301.355 updates terminology, removes unnecessary language, and updates a TAC cross-reference for accuracy throughout this section.

The proposed amendment to §301.357 clarifies that the uniform assessment must be administered in accordance with HHSC's utilization management guidelines. The proposed amendment also updates terminology throughout the section.

The proposed amendment to §301.359 makes editorial changes to clarify providers must provide care within the scope of the provider's credential or license.

The proposed amendment to §301.361 updates terminology, corrects for grammar, and updates TAC cross-references for accuracy throughout the section.

The proposed amendment to §301.363 clarifies and removes redundant TAC language by requiring the LMHA, LBHA, and provider to follow the rules listed in 1 TAC §353.1419 (relating to Supervision Requirements).

FISCAL NOTE

Trey Wood, HHSC's Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

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

(6) the proposed rules will expand and repeal existing regulations;

(7) the proposed rules will increase the number of individuals subject to the rules; and

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and are amended to reduce the burden or responsibilities imposed on regulated persons by the rules.

PUBLIC BENEFIT AND COSTS

Trina Ita, Deputy Executive Commissioner of Behavioral Health Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be the increase in access to behavioral health services by expanding the mental health workforce to address an increased demand for behavioral health services.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because providers will have more flexibility in hiring for the QMHP-CS position and will not incur any additional costs.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov*.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 25R004" in the subject line.

SUBCHAPTER G. COMMUNITY MENTAL HEALTH [~~COMMUNITY~~] SERVICES STANDARDS

DIVISION 1. GENERAL PROVISIONS

26 TAC §301.301, §301.303

STATUTORY AUTHORITY

The amendments are authorized by 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 §533.0345(a), which requires the executive commissioner of HHSC to by rule develop model program standards for mental health services for use by each state agency that provides or pays for mental health services; Texas Health and Safety Code §533.0356(i), which allows the executive commissioner of HHSC to adopt rules to govern the operations of local behavioral health authorities; and Texas Health and Safety Code §534.052(a), which requires the executive commissioner of HHSC to adopt rules, including standards, the executive commissioner considers necessary and appropriate to ensure the

adequate provision of community-based mental health services through an LMHA under Texas Health and Safety Code Chapter 534.

The amendments affect Texas Government Code §524.0151 and Texas Health and Safety Code §533.0345(a), §533.0356(i), and §534.052(a).

§301.301. Purpose and Application.

(a) The purpose of this subchapter is to establish performance requirements and standards for the provision of community mental health [~~community~~] services, as authorized by [~~the~~] Texas Health and Safety Code[~~,~~] §534.052.

(b) This subchapter applies to persons and entities with which the Texas Health and Human Services Commission (HHSC) [~~department~~] contracts, including local mental health authorities (LMHAs)[~~(LMHA)~~], local behavioral health authorities (LBHAs)[~~managed care organizations (MCO)~~], providers of mental health rehabilitative services, as defined in §306.305 [~~§419.453~~] of this title (relating to Definitions), and providers of mental health case management services, as defined in §306.255 [~~§412.403~~] of this title (relating to Definitions), and requires that they ensure the performance requirements and standards in this subchapter are met in the provision of community mental health [~~community~~] services.

§301.303. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.[~~:~~]

(1) Access--The ability to obtain community mental health [~~community~~] services based upon components such as availability and acceptability of services to the individual[~~,~~] or the individual's LAR [~~Legally Authorized Representative (LAR) on the individual's behalf, transportation, distance, hours of operation, language, and the cultural competency of staff members. Barriers to access may be structural, financial, or specific to the individual~~].

(2) Adolescent--An individual who is at least 13 years of age, but younger than 18 years of age.

(3) Adult--An individual who is 18 years of age or older.

[~~(4) Advanced practice nurse--A staff member who is a registered nurse approved by the Texas Board of Nursing as a clinical nurse specialist in psychiatric/mental health or nurse practitioner in psychiatric/mental health, in accordance with Texas Occupations Code, Chapter 301.~~]

(4) [~~(5)~~] Advocacy--Support for an individual or family member in expressing and resolving issues or concerns regarding access to or quality and appropriateness of services.

(5) [~~(6)~~] Appeal--A mechanism for an independent review of an adverse determination.

(6) APRN--Advanced practice registered nurse. A registered nurse licensed by the Texas Board of Nursing as provided in Texas Occupations Code Chapter 301.152.

(7) Assessment--A systematic process for measuring an individual's service needs.

(8) Child--An individual who is at least three years of age, but younger than 13 years of age.

(9) CFP--Certified family partner. A person who meets the credentialing requirements in 1 TAC §353.1415(d) (relating to Staff Member Credentialing).

(10) CFR--Code of Federal Regulations.

(11) Community mental health services--Services medically necessary to treat, care for, supervise, and rehabilitate individuals who have a mental illness or emotional disorder or a COPSD. These services include services for the prevention of and recovery from such disorders, but do not include inpatient services provided in a state facility.

(12) [~~(9)~~] Competency--Demonstrated knowledge and skilled performance of a particular activity.

(13) [~~(10)~~] Continuity of care [~~services~~]--Activities designed to [~~Services that~~] ensure an individual is provided uninterrupted services [~~are provided to an individual~~] during a transition between inpatient and outpatient services that assist the individual and LAR, if applicable, in identifying, accessing, and coordinating LMHA or LBHA services and other appropriate services and supports in the community needed by the individual, including [~~service types (e.g., inpatient services, outpatient services) or providers, in accordance with applicable rules (e.g., Chapter 412, Subchapter D of this title (relating to Mental Health Services - Admission, Continuity, and Discharge)). These activities include~~]:

(A) assisting with admissions and discharges;

(B) facilitating access to appropriate services and supports in the community, including identifying and connecting the individual with community resources, and coordinating the provision of services;

(C) participating in developing and reviewing the individual's recovery or treatment plan [~~development and reviews~~];

(D) promoting implementation of the individual's recovery or treatment plan [~~or continuing care plan~~]; and

(E) coordinating notification of continuity of care services between the individual and the individual's family and any other person providing support as authorized by the individual and LAR, if applicable [~~facilitating coordination and follow-up between the individual and the individual's family, as well as with available community resources~~].

(14) [~~(11)~~] COPSD--Co-occurring [~~or co-occurring~~] psychiatric and substance use disorders.[~~--~~] The co-occurring diagnoses of psychiatric disorders and substance use disorders.

(15) [~~(12)~~] Credentialing--A process to review and approve a staff member's educational status, experience, and licensure status, as applicable, [~~(as applicable)~~] to ensure that the staff member meets HHSC's [~~the departmental~~] requirements for service provision. [~~The process includes primary source verification of credentials, establishing and applying specific criteria and prerequisites to determine the staff member's initial and ongoing competency and assessing and validating the staff member's qualification to deliver care. Re-credentialing is the periodic process of reevaluating the staff's competency and qualifications.~~]

(16) [~~(13)~~] Crisis--A situation in which:

(A) an [~~the~~] individual presents an immediate danger to self or others; [~~or~~]

(B) an [~~the~~] individual's mental or physical health is at risk of serious deterioration; or

(C) an individual believes the individual [~~that he or she~~] presents an immediate danger to self or others, or the individual's [~~that his or her~~] mental or physical health is at risk of serious deterioration.

(17) [~~(14)~~] Crisis services--Interventions [~~Mental health community services or other necessary interventions~~] provided to an individual in crisis.

(18) [~~(15)~~] CSSP--Community [~~or community~~] services specialist.[~~--~~] A person [~~staff member~~] who, as of August 31, 2004:

(A) received:

(i) a high school diploma; or

(ii) a high school equivalency certificate issued in accordance with the law of the issuing state;

(B) had three continuous years of documented full-time experience in the provision of mental health rehabilitative services or case management services; and

(C) demonstrated competency in the provision and documentation of mental health rehabilitative or case management services in accordance with Chapter 306 [~~419~~], Subchapter F [~~L~~] of this title (relating to Mental Health Rehabilitative Services) and Chapter 306 [~~412~~], Subchapter E [~~H~~] of this title (relating to Mental Health Case Management [~~Services~~]).

[~~(16) Cultural competency--Demonstrated knowledge and skill by a staff member to effectively respond to an individual's needs through knowledge of communication, actions, customs, beliefs, and values, within the individual's racial, ethnic, religious beliefs, disability, and social groups.~~]

[~~(17) Department--Department of State Health Services (DSHS).~~]

[~~(18) Department-approved algorithm--An evidence-based process for providing psychiatric care to adults with severe and persistent mental illnesses and children and adolescents with serious emotional disturbance, consisting of consensus-derived guidelines for medication treatment, training and support for physicians, standardized documentation, and patient and family education.~~]

(19) DSM--[~~The current edition of the~~] *Diagnostic and Statistical Manual of Mental Disorders* published by the American Psychiatric Association.

(20) Emergency care services--Community mental [~~Mental~~] health [~~community~~] services or other necessary interventions directed to address the immediate needs of an individual in crisis in order to ensure [~~assure~~] the safety of the individual and others who may be placed at risk by the individual's behaviors, including[~~, but not limited to,~~] psychiatric evaluations, administration of medications, hospitalization, stabilization or resolution of the crisis.

(21) Face-to-face--A contact with an individual that occurs in person. Face-to-face does not include contacts made through the use of video conferencing or telecommunication technologies, including telemedicine.

(22) Family member--A [~~Any~~] person identified by [~~who~~] an individual [~~identifies~~] as being a member of the individual's [~~their~~] family.

[~~(23) Family partner--An experienced, trained primary caregiver (i.e., parent of an individual with a mental illness or serious emotional disturbance) who provides peer mentoring, education, and support to the caregivers of a child who is receiving mental health community services.~~]

(23) [~~(24)~~] HIPAA--The Health Insurance Portability and Accountability Act, 42 U.S.C. §1320d et seq.

(24) HHSC--The Texas Health and Human Services Commission or its designee.

[~~(25) Identifying information--The name, address, date of birth, social security number, or any information by which the identity of an individual can be determined either directly or by reference to other publicly available information. The term includes medical records, graphs, and charts that contain an individual's information; statements made by the individual either orally or in writing while receiving mental health community services; videotapes, audiotapes, photographs, and other recorded media; and any acknowledgment that an individual is receiving or has received services from a state facility, LMHA, MCO, or provider.~~]

(25) [~~(26)~~] Indicator--A defined, measurable variable used to monitor the quality or appropriateness of an important aspect of an individual's care or service or an organization's performance of related functions, processes, or outcomes. Indicators can measure activities, events, occurrences, or outcomes for which data can be collected to allow comparison with a threshold, a benchmark, or prior performance.

(26) [~~(27)~~] Individual--A person who is seeking or receiving community mental health [~~community~~] services from or through a provider.

(27) [~~(28)~~] LAR--Legally [~~or legally~~] authorized representative. [~~--~~] A person authorized by state law to act on behalf of an individual with regard to a matter described in this subchapter[~~, including, but not limited to, a parent, guardian, or managing conservator~~].

(28) LBHA--Local behavioral health authority. An entity designated as an LBHA by HHSC in accordance with Texas Health and Safety Code §533.0356(a).

[~~(29) LCDC or licensed chemical dependency counselor--A counselor licensed by the department pursuant to the Texas Occupations Code, Chapter 504.~~]

(29) [~~(30)~~] LCSW--Licensed [~~or licensed~~] clinical social worker. [~~--~~] A person [~~staff member~~] who is licensed as a clinical social worker by the Texas State Board of Social Worker Examiners in accordance with the Texas Occupations Code[~~,~~] Chapter 505.

(30) [~~(31)~~] LMFT--Licensed [~~or licensed~~] marriage and family therapist. [~~--~~] A person [~~staff member~~] who is licensed as a licensed marriage and family therapist by the Texas State Board of Examiners of Marriage and Family Therapists in accordance with Texas Occupations Code[~~,~~] Chapter 502.

(31) [~~(32)~~] LMHA--Local [~~or local~~] mental health authority. [~~--~~] An entity designated as the LMHA [~~the local mental authority~~] by HHSC [~~the department~~] in accordance with [~~the~~] Texas Health and Safety Code[~~,~~] §533.035(a).

(32) [~~(33)~~] LOC--Level [~~or level~~] of care. [~~--~~] A designation given to services delivered under HHSC's model of community [~~the department's standardized packages of~~] mental health [~~community~~] services[~~, based on the uniform assessment and the utilization management guidelines, which recommend the type, amount, and duration of mental health community services to be provided to an individual~~].

(33) [~~(34)~~] LPC--Licensed [~~or licensed~~] professional counselor. [~~--~~] A person [~~staff member~~] who is licensed as a licensed professional counselor by the Texas State Board of Examiners of Professional Counselors in accordance with Texas Occupations Code[~~,~~] Chapter 503.

(34) [~~(35)~~] LPHA--Licensed [~~or licensed~~] practitioner of the healing arts. [~~--~~] A person [~~staff member~~] who is:

(A) a physician;

(B) an LPC [~~a licensed professional counselor (LPC)~~];

(C) an LCSW [~~a licensed clinical social worker (LCSW)~~];

(D) a psychologist;

(E) an APRN [~~advanced practice registered nurse (APRN)~~];

(F) a PA [~~physician assistant (PA)~~]; or

(G) an LMFT [~~a licensed marriage and family therapist (LMFT)~~].

(35) [~~(36)~~] LVN--Licensed [~~or licensed~~] vocational nurse. [~~--~~] A person [~~staff member~~] who is licensed as a licensed vocational nurse by the Texas Board of Nursing in accordance with Texas Occupations Code[~~,~~] Chapter 301.

(36) [~~(37)~~] Management information system--An information system designed to supply [~~an LMHA or MCO with~~] information needed to plan, organize, staff, direct, and control [~~their~~] operations and clinical decision-making.

~~[(38) MCO or managed care organization--An entity that has a current Texas Department of Insurance certificate of authority to operate as a Health Maintenance Organization (HMO) in the Texas Insurance Code, Chapter 843, or as an approved nonprofit health corporation in the Texas Insurance Code, Chapter 844, and that provides mental health community services pursuant to a contract with the department.]~~

(37) [~~(39)~~] Medical necessity--The need for a service that:

(A) is reasonable and necessary for the diagnosis or treatment of a mental illness [~~health disorder~~] or a COPSD [~~co-occurring psychiatric and substance use disorder (COPSD)~~] in order to improve or maintain an individual's level of functioning;

(B) is provided in accordance with professionally accepted clinical guidelines and standards of practice in behavioral health care;

(C) is furnished in the most clinically appropriate, available setting in which the service can be safely provided;

(D) is provided at a level that is safe and appropriate for the individual's needs and facilitates the individual's recovery; and

(E) could not be omitted without adversely affecting the individual's mental or physical health or the quality of care rendered.

(38) [~~(40)~~] Medical record--An [~~The systematic,~~] organized account[~~, compiled by health care providers,~~] of information relevant to the medical services provided to an individual, including[~~. This includes~~] an individual's history, present illness, findings on examination, treatment and discharge plans, details of direct and indirect care and services, and notes on progress.

~~[(41) Mental health community services--All services medically necessary to treat, care for, supervise, and rehabilitate individuals who have a mental illness or emotional disorder or a COPSD. These services include services for the prevention of and recovery from such disorders, but do not include inpatient services provided in a state facility.]~~

(39) [~~(42)~~] Mental illness--This term has the meaning as assigned by Texas Health and Safety Code §571.003. [~~An illness, disease, or condition (other than a sole diagnosis of epilepsy, dementia, substance use disorder, mental retardation, or pervasive developmental disorder) that:~~]

~~[(A) substantially impairs an individual's thought, perception of reality, emotional process, development, or judgment; or]~~

~~[(B) grossly impairs an individual's behavior as demonstrated by recent disturbed behavior.]~~

(40) PA--Physician assistant. A person licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners in accordance with Texas Occupations Code Chapter 204.

(41) [~~(43)~~] Peer specialist [~~provider~~]--A person [~~staff member~~] who uses lived experience, in addition to skills learned in formal training, to deliver strengths-based, person-centered services to promote an individual's recovery and resiliency in accordance with 1 TAC Chapter 354, Subchapter N (relating to Peer Specialist Services).[~~:~~]

~~[(A) has received:]~~

~~*f(i)* a high school diploma; or]~~

~~*f(ii)* a high school equivalency certificate issued in accordance with the law of the issuing state;]~~

~~[(B) has at least one cumulative year of receiving mental health community services; and]~~

~~[(C) is under the direct clinical supervision of an LPHA.]~~

(42) [~~(44)~~] Physician--A person [~~staff member~~] who is:

(A) licensed as a physician by the Texas Medical Board in accordance with Texas Occupations Code [~~,~~] Chapter 155; or

(B) authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the Texas Medical Board.

~~[(45) Physician assistant--A staff member who has specialized psychiatric/mental health training and who is licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners in accordance with Texas Occupations Code, Chapter 204.]~~

(43) [~~(46)~~] Provider--A [~~Any~~] person or [~~legal~~] entity that contracts with HHSC [~~the department, an LMHA, or an MCO~~] to provide [~~mental health community~~] services under this subchapter [~~to individuals, including that part of an LMHA or MCO directly providing mental health community services to individuals. The term includes providers of mental health case management services and providers of mental health rehabilitative services~~].

(44) [~~(47)~~] Psychologist--A person [~~staff member~~] who is licensed as a psychologist by the Texas State Board of Examiners of Psychologists in accordance with Texas Occupations Code[~~,~~] Chapter 501.

(45) [~~(48)~~] QMHP-CS--Qualified mental health professional-community services. [~~or qualified mental health professional-community services--~~] A person [~~staff member~~] who is credentialed as a QMHP-CS in accordance with §301.331 of this subchapter (relating to Competency and Credentialing)[~~who has demonstrated and documented competency in the work to be performed~~] and:

(A) has completed a standardized training curriculum;

(B) has demonstrated competency in the work to be performed; and

(C) [~~(A)~~] has obtained one of the following:

(i) a bachelor's degree in one of the following disciplines from an accredited college or university: [~~with a minimum number of hours that is equivalent to a major (as determined by the LMHA or MCO in accordance with §412.316(d) of this title (relating to Competency and Credentialing)) in~~]

(I) psychology; [~~,~~]

(II) social work; [~~,~~]

(III) medicine; [~~,~~]

(IV) nursing; [~~,~~]

(V) rehabilitation; [~~,~~]

(VI) counseling; [~~,~~]

(VII) sociology; [~~,~~]

(VIII) human growth and development; [~~,~~]

(IX) physician assistant; [~~,~~]

(X) gerontology; [~~,~~]

(XI) special education; [~~,~~]

(XII) educational psychology; [~~,~~]

(XIII) early childhood education; [~~, or~~]

(XIV) early childhood intervention;

(XV) human development and family sciences;

(XVI) public health; or

(XVII) child and family welfare;

(ii) a bachelor's degree in a discipline other than those listed under clause (i) of this subparagraph from an accredited college or university with at least one year of documented experience as an intern or employee in a program that provides mental health or substance use services;

(iii) [~~(B)~~] a license as an RN [~~is a registered nurse (RN)~~]; or

(iv) a license as an LPHA.

[~~(C) completes an alternative credentialing process as determined by the LMHA or MCO in accordance with §412.316(c) and (d) of this title relating to (Competency and Credentialing).~~]

(46) [~~(49)~~] Recovery--The process of change through which an individual improves the individual's health and wellness, lives a self-directed life, and strives to reach the individual's full potential [~~by which a person becomes able or regains the ability to live, work, learn, and participate fully in his or her community~~].

(47) Re-credentialing--The periodic process of re-evaluating a staff member's competency and qualifications.

(48) [~~(50)~~] Referral--The process of identifying appropriate services and providing the information and assistance needed to access them.

[~~(51) RN or registered nurse--A staff member who is licensed as a registered nurse by the Texas Board of Nursing in accordance with Texas Occupations Code, Chapter 301.~~]

(49) [~~(52)~~] Restraint--This term has the [~~The~~] same meaning as defined in Chapter 320 [~~415~~], Subchapter C [~~F~~] of this title (relating to Interventions in Mental Health Services [~~Programs~~]).

(50) RN--Registered nurse. A person who is licensed as a registered nurse by the Texas Board of Nursing in accordance with Texas Occupations Code Chapter 301.

(51) [~~(53)~~] Routine care services--Community mental [~~Mental~~] health [~~community~~] services provided to an individual who is not in crisis.

(52) Screening--Activities to:

(A) collect triage information through interviews with an individual or collateral contact;

(B) determine if the individual's need is emergent, urgent, or routine; and

(C) determine the need for an assessment.

[~~(54) Safety monitoring--Ongoing observation of an individual to ensure the individual's safety. An appropriate staff person must be continuously present in the individual's immediate vicinity, provide ongoing monitoring of the individual's mental and physical status, and ensure rapid response to indications of a need for assistance or intervention. Safety monitoring includes maintaining continuous visual contact with frequent face-to-face contacts as needed.~~]

[~~(55) Screening Activities performed by a Qualified Mental Health Professional--Community Services (QMHP-CS) to gather triage information to determine the need for in-depth assessment. The QMHP-CS collects this information through face-to-face or telephone interviews with the individual or collateral. This service includes screenings to determine if the individual's need is emergent, urgent, or routine (which is conducted prior to the face-to-face assessment to determine the need for emergency services).~~]

(53) [~~(56)~~] Seclusion--This term has the [~~The~~] same meaning as defined in Chapter 320 [~~415~~], Subchapter C [~~F~~] of this title (relating to Interventions in Mental Health Services).

(54) SED--Serious emotional disturbance. A disorder that meets the criteria described in Texas Government Code §547.0051.

(55) [~~(57)~~] Staff member--Provider personnel, including a full-time and part-time employee, contractor, or intern, but excluding a volunteer [~~Anyone who works or provides services for an LMHA, MCO, or provider as an employee, contractor, intern, or volunteer~~].

(56) [~~(58)~~] Support services--Services [~~Mental health community services~~] delivered to an individual, the individual's LAR, or family member, as applicable, [~~member(s)~~] to assist the individual in functioning in the individual's chosen living, learning, working, and socializing environments.

(57) TAC--Texas Administrative Code.

(58) [~~(59)~~] Telemedicine--The use of health care information exchanged from one site to another via electronic communications for the health and education of the individual or provider, and for the purpose of improving patient care, treatment, and services. This definition applies only for purposes of this subchapter and does not affect, modify, or relate in any way to other rules defining the term or regulating the service, or to any statutory definitions or requirements.

(59) [~~(60)~~] Uniform assessment--An assessment tool adopted [~~developed~~] by HHSC under §301.353 of this subchapter (relating to Provider Responsibilities for Treatment Planning and Service Authorization) used for recommending an individual's LOC [~~the department that includes, but is not limited to, the Adult Texas Recommended Assessment Guidelines (TRAG), the Children and Adolescent Texas Recommended Assessment Guidelines, and the department-approved algorithms~~].

(60) [(61)] Urgent care services--Services [Mental health community services] or other necessary interventions provided to persons in crisis who do not need emergency care services, but who are potentially at risk of serious deterioration.

(61) [(62)] Utilization management exception--The authorization of additional amounts of services based on medical necessity when an [the] individual has reached the maximum service units of the individual's [their] currently authorized LOC [level of care (LOC)].

(62) [(63)] Utilization management guidelines--HHSC-developed guidelines [Guidelines developed by the department] that establish the type, amount, and duration of community mental health [community] services for each LOC.

(63) [(64)] Volunteer--A person who receives no remuneration for the provision of time, individual attention, or assistance to individuals receiving community mental health [community] services from entities or providers governed by this subchapter. [Volunteers may include:]

[(A) community members;]

[(B) family members of individuals served when not acting in their capacity as a family member;]

[(C) employees when not acting in their capacity as employees; and]

[(D) individuals served when acting on behalf of another individual.]

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

Filed with the Office of the Secretary of State on July 14, 2025.

TRD-202502493
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: August 24, 2025
For further information, please call: (737) 704-9063

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SUBCHAPTER G. MENTAL HEALTH COMMUNITY SERVICES STANDARDS
DIVISION 1. GENERAL PROVISIONS

26 TAC §301.305

STATUTORY AUTHORITY

The repeal is authorized by 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 §533.0345(a), which requires the executive commissioner of HHSC to by rule develop model program standards for mental health services for use by each state agency that provides or pays for mental health services; Texas Health and Safety Code §533.0356(i), which allows the executive commissioner of HHSC to adopt rules to govern the operations of local behavioral health authorities; and Texas Health and Safety Code §534.052(a), which requires the executive commissioner of HHSC to adopt rules, including standards, the executive commissioner considers necessary and appropriate to ensure the adequate provision of community-based mental health services through an LMHA under Texas Health and Safety Code Chapter 534.

The repeal affects Texas Government Code §524.0151 and Texas Health and Safety Code §533.0345(a), §533.0356(i), and §534.052(a).

§301.305. Responsibility for Compliance.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: August 24, 2025
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♦ ♦ ♦

SUBCHAPTER G. COMMUNITY MENTAL HEALTH [COMMUNITY] SERVICES STANDARDS
DIVISION 2. ORGANIZATIONAL STANDARDS

26 TAC §§301.321, 301.323, 301.327, 301.329, 301.331, 301.333, 301.335

STATUTORY AUTHORITY

The amendments are authorized by 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 §533.0345(a), which requires the executive commissioner of HHSC to by rule develop model program standards for mental health services for use by each state agency that provides or pays for mental health services; Texas Health and Safety Code §533.0356(i), which allows the executive commissioner of HHSC to adopt rules to govern the operations of local behavioral health authorities; and Texas Health and Safety Code §534.052(a), which requires the executive commissioner of HHSC to adopt rules, including standards, the executive commissioner considers necessary and appropriate to ensure the adequate provision of community-based mental health services through an LMHA under Texas Health and Safety Code Chapter 534.

The amendments affect Texas Government Code §524.0151 and Texas Health and Safety Code §533.0345(a), §533.0356(i), and §534.052(a).

§301.321. Leadership.

(a) Organizational planning and communication. The LMHA and LBHA [MCO] must define and implement organizational plans and systems as described in this subchapter, such as a quality management plan or utilization management plan, [(e.g., quality management plan, utilization management plan)] and ensure that there are mechanisms in place that facilitate effective communication throughout the organization to promote the provision of quality community mental health [community] services.

(b) Management of key processes and functions. The LMHA and LBHA [~~MCO~~] must define organizational and clinical processes and functions, including performance activities, as well as:

(1) allocate adequate, appropriate resources; and

(2) provide oversight for such processes and functions.

(c) Management information system. The LMHA, LBHA [~~MCO~~], and provider must ensure their management information systems provide timely, accurate, and accessible information that supports clinical, administrative, and fiscal decision-making.

(d) Consumer advocacy. The LMHA and LBHA [~~MCO~~] must encourage and support advocacy for individuals accessing community mental health [~~community~~] services.

(e) Conflict of interest and dual relationships. The LMHA and LBHA [~~MCO~~] must develop and implement policies and procedures to ensure that all staff members refrain from activities and relationships whereby personal, financial, professional, or other relationships could compromise or interfere with independent judgment creating a conflict of interest or otherwise having the potential to harm or exploit individuals and families.

(f) Collaboration with other health care agencies and community resources. The LMHA and LBHA [~~MCO~~] must demonstrate efforts to collaborate with other health care agencies and community resources to address the physical and behavioral health care needs of individuals, as well as to ensure that these needs are met.

§301.323. Environment of Care and Safety.

(a) Safe environment. The LMHA, LBHA [~~MCO~~], and provider must:

(1) ensure service delivery sites, including facilities and vehicles, [~~(including, but not limited to, facilities and vehicles)~~] are safe, sanitary, and free from hazards, including [~~but not limited to~~]:

(A) hand washing facilities and supplies in restrooms and in areas where staff have routine physical contact with individuals, such as an exam room, medication area, or laboratory [~~(e.g., exam rooms, medication areas, laboratories)~~];

(B) a utility area with necessary equipment for the safe and required cleaning or disposal of instruments, equipment, and sharps;

(C) locked areas for storing drugs, needles, syringes, hazardous materials, other potentially dangerous equipment, and toxic chemical products; and

(D) adequate prevention of exposure to tobacco smoke and other environmental pollutants; [~~.~~]

(2) ensure delivery sites are prepared to manage onsite life-threatening [~~life threatening~~] emergencies, and that each site will have:

(A) a written plan for the management of onsite medical emergencies requiring ambulance services, hospitalization, or hospital treatment;

(B) emergency resuscitative drugs, supplies, and equipment appropriate to the needs of individuals and staff qualifications;

(C) written protocols and instructions for disasters and other emergencies; and

(D) documented disaster drills appropriate for local conditions; [~~.~~]

(3) comply with the most current edition of the National Fire Protection Association's Life Safety Code, and related codes, standards, and other applicable requirements;

(4) implement an infection control plan and procedures for group residential services, clinics, and other areas where a high volume of people congregate, that address the prevention, education, management, and monitoring of significant infections in accordance with applicable state and federal laws. [~~Components addressed in the plan must include:~~]

[~~(A) prevention and management of infection in the service delivery site(s);~~]

[~~(B) reporting of reportable diseases as required by Chapter 97, Subchapter A of this title (relating to Control of Communicable Diseases);~~]

[~~(C) compliance with the Human Immunodeficiency Virus Services Act (Texas Health and Safety Code, §85.001 et seq.), the Communicable Disease Prevention and Control Act (Texas Health and Safety Code, §81.001 et seq.), and other applicable laws (e.g., the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq.; and the Rehabilitation Act of 1973, 29 U.S.C. §701 et seq.);~~]

[~~(D) identification of illnesses and conditions for which an individual's participation in mental health community services is safely allowed;~~]

[~~(E) identification of illnesses and conditions for which an individual's participation in mental health community services is restricted and the procedures for minimizing exposure and facilitating an individual's transfer to a more appropriate setting;~~]

[~~(5) implement safeguards regarding hazardous equipment and weather; and~~]

[~~(6) implement procedures for the disposal of biohazardous wastes that minimize the risks of contamination, injury, and disease transmission.~~]

(b) Sufficient staff. The provider must have sufficient [~~number of~~] qualified and competent staff members on duty to ensure the safety of individuals and adequacy of community mental health [~~community~~] services, including responding to crises during the provision of community mental health [~~community~~] services.

[~~(c) Compliance with state and federal law. The provider must comply with all applicable state and federal law and regulations, including those relating to:~~]

[~~(1) blood borne pathogens;~~]

[~~(2) food borne pathogen exposure controls; and~~]

[~~(3) tuberculosis exposure controls.~~]

(c) [~~(d)~~] Use [~~Limited use~~] of restraint or seclusion.

[~~(1)~~] [~~Restraint.~~] In outpatient settings, a provider may only use restraint or seclusion as described in Chapter 320, Subchapter C of this title (relating to Interventions in Mental Health Services). [~~if the intervention is:~~]

[~~(A) necessary to address a behavioral health emergency, as defined in Chapter 415, Subchapter F of this title (relating to Interventions in Mental Health Programs); and~~]

[~~(B) performed according to the department's rules described in Chapter 415, Subchapter F of this title.~~]

[~~(2) Seclusion. Seclusion is prohibited in outpatient settings with the exception of partial hospitalization programs for children~~

~~or adolescents. A provider may only use seclusion in those programs if the conditions in paragraph (1)(A) - (B) of this subsection are met.~~]

§301.327. Access to Community Mental Health [~~Community~~] Services.

(a) Adequate provider network. The LMHA and LBHA [~~MCO~~] must maintain a provider network that is adequate and qualified to provide all community mental health [~~community~~] services that the LMHA and LBHA [~~MCO~~] are required to provide under a contract with HHSC [~~the department~~].

(b) Crisis screening and response system. The LMHA and LBHA [~~MCO~~] must have a crisis screening and response system in operation 24 hours a day, every day of the year, that is available to individuals throughout its contracted service delivery area. The telephone system to access the crisis screening and response system must include a toll-free crisis hotline number and be easily accessible and well publicized. Calls to the crisis hotline must be answered by a hotline staff member who is trained in compliance with this subchapter. The hotline must have teletypewriter (TTY) capabilities or other assistive technology that is available and effective.

(c) Telephone access. In addition to the crisis screening and response system described in subsection (b) of this section, the LMHA and LBHA [~~MCO~~] must ensure the availability of a telephone system and call center that allows individuals to contact the LMHA or LBHA [~~MCO~~] through a toll-free number that must:

(1) operate without using telephone answering equipment at least on business days during normal business hours, except on national holidays, due to uncontrollable interruption of service, or with prior approval of HHSC [~~the department~~];

(2) have sufficient staff to operate efficiently;

(3) collect, document, and store detailed information, including special needs information, on all telephone inquiries and calls;

(4) during times other than those described in paragraph (1) of this subsection provide electronic call answering methods that include an outgoing message providing the crisis hotline telephone number, in languages relevant to the service area, for callers to leave a message; and

(5) return routine calls before the end of the next business day for all messages left after hours.

(d) Timely services based on need. The LMHA or LBHA [~~local behavioral health authority (LBHA), as defined at Texas Health and Safety Code §533.0356~~] must arrange mental health services for an individual within the following time frames.

(1) Crisis services.

(A) Hotline calls. For all calls to the toll-free crisis hotline:

(i) a staff member must answer each call within 30 seconds, on average, at least 95 percent of the time;

(ii) the LMHA, LBHA, or their subcontractors must train a staff member in crisis screening to conduct a crisis hotline screening as provided in the LMHA's [~~LMHAs'~~] and LBHA's [~~LBHAs'~~] contract with HHSC [~~the Texas Health and Human Services Commission~~]; and

(iii) if the staff member determines the call is a potential crisis, a staff member trained in crisis screening, in accordance with clause (ii) of this subparagraph, must begin a telephone screening no later than one minute after the determination is made.

(B) Emergency care services. If a staff member determines during a screening that an individual is experiencing a crisis that may require emergency care services, the staff member trained in crisis screening, in accordance with subparagraph (A)(ii) of this paragraph, must:

(i) take immediate action to address the emergency situation to ensure the safety of all parties involved;

(ii) activate the immediate screening and assessment processes as described in §301.351 of this subchapter (relating to Crisis Services); and

(iii) provide or obtain community mental health [~~community~~] services or other necessary interventions to stabilize the crisis.

(C) Urgent care services. If the screening indicates that an individual needs urgent care services, a QMHP-CS must within eight hours of the initial incoming hotline call or notification of a potential crisis situation:

(i) perform a face-to-face assessment; and

(ii) provide or obtain community mental health [~~community~~] services or other necessary interventions to stabilize the crisis.

(2) Routine care services. If the screening indicates that an individual needs routine care services, a QMHP-CS must perform a uniform assessment within 14 days after the screening. If the assessment indicates an LOC for routine care services, the individual must begin receiving services immediately. When the provision of the service package is not possible because services are at capacity, the individual must be referred to an available practitioner appropriate to meet the individual's needs or be placed on a waiting list for services, subject to the following exceptions:

(A) individuals eligible for Medicaid who are determined to be in need of mental health case management services [~~Mental Health Case Management~~], under Chapter 306, Subchapter E of this title (relating to Mental Health Case Management), or mental health rehabilitative services [~~Mental Health Rehabilitative Services~~], under Chapter 306, Subchapter F of this title (relating to Mental Health Rehabilitative Services), cannot be placed on a waiting list and must be served; and [.]

(B) individuals eligible for Medicaid who are determined to need services other than mental health case management services [~~Mental Health Case Management~~], under Chapter 306, Subchapter E of this title, and mental health rehabilitative services [~~Mental Health Rehabilitative Services~~], under Chapter 306, Subchapter F of this title, must be referred to appropriate, available practitioners of that service. Only if an appropriate Medicaid practitioner is not available may the individual be placed on a waiting list. All efforts undertaken to refer Medicaid individuals must be documented.

(e) Communication with individuals. The LMHA, LBHA [~~MCO~~], and provider must ensure effective communication with the individual and LAR, if applicable, [~~(if applicable)~~] in an understandable format as appropriate to meet the needs of individuals, which may require using:

(1) interpretative services;

(2) translated materials; or

(3) a staff member who can communicate effectively with [~~respond to the cultural (e.g., customs, beliefs, actions, and values) and language needs of~~] the individual and LAR, if applicable [~~(if applicable)~~].

(f) Service information. The LMHA and LBHA [~~MCO~~] must proactively disseminate to an individual and LAR, if applicable, [~~individuals and their LAR (if applicable)~~] information about mental illness and the LMHA's or LBHA's community [~~MCO's~~] mental health [~~community~~] services in a format and language that is easily understood and based on the demographics for any group comprising more than 10 percent of the population in the local service area. Information about mental illness and the LMHA's or LBHA's [~~MCO's~~] community services must be in a format and language that is accessible [~~easily understood~~] by individuals with a disability, such as deafness, hard of hearing, and blindness[~~(e.g., deafness, hard of hearing, and blindness)~~].

(g) Access to emergency medical and crisis services. The LMHA and LBHA [~~MCO~~] must develop procedures providers can [~~for its providers'~~] use to access [~~in accessing~~] emergency medical and crisis services for individuals.

(h) Continuity of care [~~services~~]. The LMHA and LBHA [~~MCO~~] must ensure that individuals:

(1) are provided continuity of care [~~services~~] as defined by this chapter [~~the department~~]; and

(2) are informed of whom to contact regarding continuity of care and the coordination of services for the individual [~~their services~~], in accordance with Chapter 306[~~412~~], Subchapter D of this title (relating to Mental Health Services--Admission, Discharge, [~~Continuity,~~] and Continuity of Care [~~Discharge~~]).

(i) Referral for physical health services. If a uniform [~~nursing or medical~~] assessment indicates physical health needs outside the scope of the provider's competency, credentialing, or capacity to treat, the LMHA and LBHA [~~MCO~~] must make and document appropriate referrals to other healthcare providers and provide adequate follow up at subsequent visits to confirm access to the referrals.

§301.329. Medical Records System.

(a) Maintenance of medical records. The LMHA, LBHA [~~MCO~~], and [~~the~~] provider must ensure:

(1) protection against unauthorized access, disclosure, modification or destruction of medical records, whether accidental or deliberate;

(2) the availability, integrity, utility, authenticity, and confidentiality of information within the medical record;

(3) a current, organized, legible, and comprehensive records system that:

(A) conforms to good professional practice;

(B) permits effective clinical review and audit; and

(C) facilitates prompt and systematic retrieval of information;

(4) a medical records system [~~with sufficient redundancy~~] to ensure access to individual records; and

(5) compliance with applicable federal and state laws, rules, and regulations, including HIPAA and[~~,~~] 42 CFR Part 2[~~, and the requirements described in Chapter 414, Subchapter A of this title (relating to Protected Health Information)~~].

(b) Disaster recovery plan. The LMHA, LBHA [~~MCO~~], and [~~the~~] provider must maintain a written disaster recovery plan for information resources that will ensure service continuity as required by applicable state and federal laws.

§301.331. Competency and Credentialing.

(a) Competency of staff members and[~~, including~~] volunteers. The LMHA, LBHA [~~MCO~~], and provider must implement a process to ensure the competency of staff members prior to providing services that, at a minimum:

(1) ensures services are provided by staff members who are operating within the scope of their license, job description, or contract specification;

(2) ensures that the community mental health [~~community~~] services provided by peer specialists [~~providers~~] are limited to mental health rehabilitative, supported employment, supported housing, parent support group, and CFP [~~family partner~~] services; [~~and~~]

(3) defines competency-based expectations for each position as follows:

(A) required competencies must be included for all staff members, including adequate, accurate knowledge of:

(i) the nature of serious [~~severe and persistent~~] mental illness, as defined in §306.305 of this title (relating to Definitions), and SEDs [~~serious emotional disturbances~~];

(ii) HHSC's utilization management guidelines [~~the recovery and resiliency model of mental illness and serious emotional disturbance~~];

(iii) the dignity and rights of an individual, as described in Chapter 320 [~~404~~], Subchapter A [~~E~~] of this title (relating to Rights of Individuals [~~Persons~~] Receiving Mental Health Services);

(iv) identifying, preventing, and reporting abuse, neglect, and exploitation, in accordance with [~~Chapter 414,~~] Subchapter M [~~L~~] of this chapter [~~title~~] (relating to Abuse, Neglect, and Exploitation in Local Authorities and Community Centers);

(v) individual client privacy and confidentiality, as described in HIPAA [~~Chapter 414, Subchapter A of this title (relating to Protected Health Information)~~] and other relevant state and federal laws affecting confidentiality of medical records, including [~~Title~~] 42 CFR Part 2 and Texas Health and Safety Code Chapter 611;

(vi) interacting with an individual who has a physical disability such as a hearing or visual impairment;

(vii) responding to an individual's language and cultural needs [~~through knowledge of customs, beliefs, and values of various, racial, ethnic, religious, and social groups~~];

(viii) exposure control of bloodborne [~~blood borne~~] pathogens;

(ix) identification of an individual as being in a crisis and accessing emergency or urgent care services;

(x) proper documentation of services provided; and

(xi) planning and training for responding to severe weather, disasters, and bioterrorism;

(B) critical competencies must be included for positions in which a staff member's primary job duties are related to individual service contacts and interactions, including [~~and include, but are not limited to,~~] adequate and accurate knowledge of:

(i) cardiopulmonary [~~cardio pulmonary~~] resuscitation (CPR);

(ii) first aid;

(iii) safe management of verbally and physically aggressive behavior;

(iv) utilization of assistive technology such as communication devices with individuals who are deaf or hard of hearing; and

(v) seizure response and assessment;

(C) specialty competencies must be included for positions in which a staff member performs specialized services and tasks and include adequate and accurate knowledge of specialized services and tasks, such as:

(i) the requirements of this subchapter;

(ii) age appropriate clinical assessment including the uniform assessment;

(iii) age appropriate engagement techniques, such as motivational interviewing[(e.g., motivational interviewing)];

(iv) use of telemedicine equipment;

(v) HHSC's [the] utilization management guidelines;

(vi) developing and implementing an individualized treatment plan;

(vii) appropriate actions to take in a crisis, such as screening, intervention, management, and, if applicable, suicide or homicide precautions [(e.g., screening, intervention, management and if applicable, suicide/homicide precautions)];

(viii) services for co-occurring psychiatric and substance use disorders described in Chapter 306 [411], Subchapter A [N] of this title (relating to Standards for Services to Individuals with Co-Occurring Psychiatric and Substance Use Disorders (COPSD));

(ix) accessing resources within the local community;

(x) strategies for effective advocacy and referral for an individual;

(xi) infection control;

(xii) recognition, reporting, and recording of side effects, contraindications, and drug interactions of psychoactive medication;

(xiii) age appropriate rehabilitative approaches;

(xiv) proficiency in specimen collection;

(xv) the peer-provider or consumer-operated service model;

(xvi) assessment and intervention with children, adolescents, and families; and

(xvii) clinical specialties directly related to the services to be performed; [.]

(D) crisis hotline competencies must be included for positions in which a staff member routinely answers the crisis hotline and include adequate and accurate knowledge of:

(i) the nature of serious [severe and persistent] mental illness, as defined in §306.305 of this title (relating to Definitions), SEDs, [and serious emotional disturbances] and COPSD;

(ii) behavioral health crisis situations;

(iii) operating a telephone system to access behavioral health crisis screening and response;

(iv) age appropriate crisis intervention and response;

(v) utilization of assistive technology such as communication devices with individuals who are deaf or hard of hearing;

(vi) advocacy for treatment in the most clinically appropriate, available environment; and

(vii) applicable privacy laws, rules, and regulations including those described in HIPAA, [Chapter 414, Subchapter A of this title (relating to Protected Health Information) and in Title] 42 CFR Part 2, and Texas Health and Safety Code Chapter 611; and [.]

(E) telemedicine competencies must be included for positions in which a staff member's job duties are related to assisting with telemedicine services and include adequate and accurate knowledge of:

(i) operation of the telemedicine equipment; and

(ii) how to use the equipment to adequately present the individual; and [.]

(4) requires staff members to demonstrate competencies in the following manner:

(A) all staff members must demonstrate required competencies before contact with individuals, confidential information, or protected health information and periodically throughout the staff member's tenure of employment or association with the LMHA, LBHA [MCO], or provider;

(B) all staff members in positions that require critical competencies must demonstrate the critical competencies before contact with individuals and periodically throughout the staff member's or volunteer's tenure of employment or association with the LMHA, LBHA [MCO], or provider;

(C) all staff members in positions that require specialty competencies must demonstrate the specialty competencies before providing the specialized services [service(s)] or performing the specialized tasks [task(s)] and periodically throughout the staff member's or volunteer's tenure of employment or association with the LMHA, LBHA [MCO], or provider; and

(D) all staff members in positions that require crisis hotline competencies must demonstrate those competencies before providing crisis hotline services and at least annually throughout the staff member's or volunteer's tenure of employment or association with the LMHA, LBHA [MCO], or provider.

(b) Competency of crisis services providers. The LMHA and LBHA [MCO] must develop and implement policies and procedures governing the provision of crisis services to ensure that providers with which they contract or employ for the provision of crisis services are trained in:

(1) crisis access and age appropriate assessment and intervention services;

(2) advocacy for the most clinically appropriate, available environment; and

(3) community referral resources.

(c) Credentialing and appeals. Before providing services, the LMHA and LBHA [MCO] must:

(1) implement a timely credentialing and re-credentialing process for all its licensed staff members, peer specialists [providers], CFPs [family partners], and every QMHP-CS and CSSP;

(2) ensure that documentation verifying a staff member's credentialing and re-credentialing is maintained in the staff member's personnel records;

(3) have a process for staff members to appeal credentialing and re-credentialing decisions; and

(4) require providers to:

(A) use the LMHA's or LBHA's [~~MCO's~~] credentialing and re-credentialing and appeals processes for all of the provider's licensed staff, QMHP-CSs, CSSPs, peer specialists [~~providers~~], CFPs [~~family partners~~], and utilization management job functions; or

(B) implement a credentialing and re-credentialing process for all of the provider's licensed staff members [~~staff~~], QMHP-CSs, CSSPs, peer specialists [~~providers~~], CFPs [~~family partners~~], and utilization management job functions that meets the LMHA's or LBHA's [~~MCO's~~] credentialing and re-credentialing criteria and have a process for those staff members to appeal credentialing and re-credentialing decisions.

(d) Requirements [~~Additional requirements~~] for credentialing as a QMHP-CS. For credentialing as a QMHP-CS who is not an RN or an LPHA [~~a registered nurse~~], the credentialing and re-credentialing process described in subsection (c) of this section must include:

(1) verifying the requirements listed in §301.303(45)(A) - (C)(i) and (ii) of this subchapter (relating to Definitions) [~~determining the minimum number of coursework hours that is equivalent to a major and whether a combination of coursework hours in the specified areas is acceptable~~];

[~~(2) reviewing the individual's coursework;~~] and

(2) [~~(3)~~] justifying and documenting the credentialing decisions. [~~; or~~]

[~~(4) completing an alternative credentialing process identified by the department.~~]

(e) Requirements [~~Additional requirements~~] for credentialing as a CSSP. For credentialing as a CSSP, the credentialing and re-credentialing process described in subsection (c) of this section must include:

(1) verifying a high school diploma or high school equivalent certificate issued in accordance with the law of the issuing state;

(2) verifying three continuous years of documented full-time experience in the provision of mental health case management or rehabilitative services before [~~prior to~~] August 31, 2004;

(3) reviewing the staff member's provision and documentation of mental health case management or rehabilitative services; and

(4) certifying, justifying, and documenting the credentialing decisions.

(f) Requirements [~~Additional requirements~~] for credentialing as a peer specialist [~~provider~~]. For credentialing as a peer specialist [~~provider~~], the credentialing and re-credentialing process described in subsection (c) of this section must include the peer specialist qualifications described in 1 TAC Chapter 354, Subchapter N (relating to Peer Specialist Services). [~~or the alternative credentialing by an organization recognized by the department must, at minimum, include:~~]

[~~(1) verifying a high school diploma or high school equivalent certificate issued in accordance with the law of the issuing state;~~]

[~~(2) verifying at least one cumulative year of receiving mental health community services for a disorder that is treated in the target population for Texas;~~]

[~~(3) demonstration of competency in the provision and documentation of mental health rehabilitative services, supported employment, or supported housing; and~~]

[~~(4) justifying and documenting the credentialing decisions.~~]

(g) Requirements [~~Additional requirements~~] for utilization management job functions. For credentialing as a staff member who performs utilization management job functions, the credentialing and re-credentialing process described in subsection (c) of this section must include:

(1) the staff member's job description indicating the performance of utilization management functions;

(2) if the staff member is not the utilization management physician, the staff member's job description indicating the staff member does not [~~they neither~~] provide services or [~~nor~~] supervise service providers;

(3) documenting licenses;

(4) documenting training and supervision received; and

(5) justifying and documenting credentialing decisions.

(h) Maintaining documented personnel information. The LMHA, LBHA [~~MCO~~], and provider must maintain personnel files for each staff member that include:

(1) a current, signed job description for each staff member;

(2) documented, periodic performance reviews;

(3) copies of current credentials and training; and

(4) criminal background checks.

(i) The LMHA, LBHA, and provider must also comply with any applicable Medicaid requirements.

§301.333. Quality Management.

(a) Quality management plan. The LMHA and LBHA [~~MCO~~] must develop a written quality management plan that includes:

(1) the quality management program description and work plan;

(2) measurable objective indicators to detect the need for improvement;

(3) procedures and timelines for taking appropriate action when problems are identified; and

(4) approval by the LMHA or LBHA [~~MCO~~] governing body.

(b) Quality management program. The LMHA and LBHA [~~MCO~~] must implement a quality management program that includes:

(1) a structure that ensures the program is implemented system-wide;

(2) allocation of adequate resources for implementation;

(3) oversight by professionals with adequate and appropriate experience in quality management;

(4) activities and processes that address identified clinical and organizational problems including fidelity and data integrity;

(5) periodic reporting of quality management program activities to its governing body, providers and other appropriate staff members and community stakeholders such as peer and family organizations;

(6) processes to systematically monitor, analyze, and improve performance of provider services and outcomes for individuals;

(7) review of the provider's treatment to determine:

(A) whether the provider has a plan for compliance with [~~it is consistent with the department's approved~~] evidenced-based practices [~~and the fidelity manual~~]; and

(B) the accuracy of assessments and treatment planning;

(8) ongoing monitoring of the quality of crisis services, access to services, service delivery, and continuity of care [~~services~~];

(9) provision of technical assistance to providers related to quality oversight necessary to improve the quality and accountability of provider services;

(10) use of reports and data from HHSC [~~the department~~] to inform performance improvement activities and assessment of unmet needs of individuals, service delivery problems, and effectiveness of authority functions for the local service area;

(11) mechanisms to measure, assess, and reduce incidents of abuse, neglect, and exploitation and to improve individuals' rights protection processes;

[~~(12) mechanisms to improve individuals' rights protection processes;~~]

(12) [~~(13)~~] risk management processes such as competency determinations, and the management and reporting of incidents and deaths; and

(13) [~~(14)~~] coordination of activities and information management with the utilization management [~~(UM)~~] program, including participation in utilization management [~~UM~~] oversight activities.

(c) The LMHA and LBHA [~~MCO~~] must establish an integrated system to sufficiently monitor the quality management program for effectiveness on a regular basis and update the quality management plan as needed.

§301.335. Utilization Management.

(a) Utilization management plan. The LMHA and LBHA [~~MCO~~] must develop a written utilization management plan that includes:

(1) the utilization management program plan description and work plan;

(2) requirements relating to the utilization management committee credentials, job functions, meetings, and training;

(3) how the utilization management program's effectiveness in meeting goals will be evaluated;

(4) how improvements will be made on a regular basis;

(5) the oversight and control mechanisms to ensure that utilization management [~~UM~~] activities meet required standards when the LMHA and LBHA delegate utilization management activities to a subcontractor [~~they are delegated to an administrative services organization or a DSHS-approved entity~~]; and

(6) approval by the LMHA or LBHA [~~MCO~~] governing body.

(b) Utilization management program. The LMHA and LBHA [~~MCO~~] must implement a utilization management program under the direction of a psychiatrist licensed in Texas as required by its contract with HHSC [~~the department~~], and in accordance with HHSC's [~~the~~] utilization management guidelines, as updated and amended.

(c) Authorization of services. The LMHA and LBHA [~~MCO~~] must ensure that it has an [~~a timely~~] authorization system in place to ensure medically necessary services are delivered without delay and with prior authorization, except that the delivery of crisis services does not require prior authorization but rather must be authorized after service [~~subsequent to~~] delivery. The LMHA and LBHA [~~MCO~~] will review requests for authorization of services, determine if services should be authorized and if so which services to authorize. Services must be authorized using HHSC's [~~the department's~~] utilization management guidelines and based on the uniform assessment, diagnosis, additional clinical information submitted by the requestor, and clinical judgment. The determination and documentation of services to be authorized will occur according to the following timeframes:

(1) crisis intervention services--within two business days of the date of service;

(2) inpatient services--immediately [~~within sufficient time~~] to ensure medically necessary services are delivered without delay;

(3) all other community mental health [~~community~~] services, including outpatient and add-on services upon receipt but no later than three business days and prior to service delivery; and

(4) reauthorization for continuing services according to established timeframes in the utilization management guidelines, as updated and amended.

(d) Appeal and Medicaid fair hearing procedures. The LMHA and LBHA [~~MCO~~] must implement procedures to give notice of the right to a timely and objective appeal process for all individuals receiving community mental health services, in accordance with §301.155 [~~§401.464~~] of this chapter [~~title~~] (relating to Notification and Appeals Process). For individuals eligible for Medicaid, the LMHA and LBHA [~~MCO~~] must implement procedures that provide notice of the right to request a fair hearing, as described in 1 TAC [~~Title 1,~~] Chapter 357, Subchapter A (relating to Uniform Fair Hearing Rules [~~for the Medicaid, TANF, and Food Stamp Programs~~]), to an individual whose service or benefits are denied, reduced, suspended, or terminated. [~~The procedures regarding notice of the right to a Medicaid fair hearing must comply with department policy, which may be included in contract provisions.~~]

(e) Waiting list maintenance requirements. The LMHA and LBHA must comply with [~~the department's policy on~~] waiting list maintenance requirements as described[~~, which may be included in contract provisions and is subject to the requirements set forth~~] in §301.327(d)(2) [~~§412.314(d)(2)~~] of this subchapter [~~title~~] (relating to Access to Community Mental Health [~~Community~~] Services).

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

Filed with the Office of the Secretary of State on July 14, 2025.

TRD-202502495
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: August 24, 2025
For further information, please call: (737) 704-9063

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SUBCHAPTER G. MENTAL HEALTH COMMUNITY SERVICES STANDARDS
DIVISION 2. ORGANIZATIONAL STANDARDS

26 TAC §301.325

STATUTORY AUTHORITY

The repeal is authorized by 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 §533.0345(a), which requires the executive commissioner of HHSC to by rule develop model program standards for mental health services for use by each state agency that provides or pays for mental health services; Texas Health and Safety Code §533.0356(i), which allows the executive commissioner of HHSC to adopt rules to govern the operations of local behavioral health authorities; and Texas Health and Safety Code §534.052(a), which requires the executive commissioner of HHSC to adopt rules, including standards, the executive commissioner considers necessary and appropriate to ensure the adequate provision of community-based mental health services through an LMHA under Texas Health and Safety Code Chapter 534.

The repeal affects Texas Government Code §524.0151 and Texas Health and Safety Code §533.0345(a), §533.0356(i), and §534.052(a).

§301.325. Rights and Protection.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: August 24, 2025
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SUBCHAPTER G. COMMUNITY MENTAL HEALTH [~~COMMUNITY~~] SERVICES STANDARDS

DIVISION 3. STANDARDS OF CARE

26 TAC §§301.351, 301.353, 301.355, 301.357, 301.359, 301.361, 301.363

STATUTORY AUTHORITY

The amendments are authorized by 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 §533.0345(a), which requires the executive commissioner of HHSC to by rule develop model program standards for mental health services for use by each state agency that provides or pays for mental health services; Texas Health and Safety Code §533.0356(i), which allows the executive commissioner of HHSC to adopt rules to govern the operations of local behavioral health authorities; and Texas Health and Safety Code §534.052(a), which requires the executive commissioner of HHSC to adopt rules, including standards, the executive commissioner considers necessary and appropriate to ensure the adequate provision of community-based mental health services through an LMHA under Texas Health and Safety Code Chapter 534.

The amendments affect Texas Government Code §524.0151 and Texas Health and Safety Code §533.0345(a), §533.0356(i), and §534.052(a).

§301.351. Crisis Services.

(a) Coordinating provision of crisis services. The LMHA and LBHA [~~MCO~~] must develop and implement policies and procedures governing the provision of crisis services that:

(1) identify providers' roles and responsibilities in responding to a crisis;

(2) describe the coordination of crisis services to be required among providers of crisis services, law enforcement, the judicial system, and other community entities; and

(3) comply with Chapter 306 [~~419~~], Subchapter F [~~L~~] of this title (relating to Mental Health Rehabilitative Services).

(b) Immediate screening and assessment.

(1) Screening and assessment. All providers of crisis services must be available 24 hours a day, every day of the year, to perform immediate screenings and assessments of individuals in crisis, including assessments to determine risk of deterioration and immediate danger to self or others. Crisis assessments cannot be delegated to law enforcement officials.

(2) QMHP-CS assessment. Individuals experiencing a crisis, as determined by a QMHP-CS screening, must be assessed face-to-face or via telemedicine by someone who is at least credentialed as a QMHP-CS within one hour after the individual presents to the provider in a crisis, either via the crisis hotline or a face-to-face encounter [~~(e.g., walk-in)~~]. The QMHP-CS must provide ongoing crisis services until the crisis is resolved or the individual is placed in a clinically appropriate environment.

(c) LPHA consultation. An LPHA must always be available for consultation with the QMHP-CS.

(d) Physician assessment. If the individual requires emergency care services, as determined by the QMHP-CS's assessment of risk of deterioration and danger as described in subsection (b) of this section, then the provider of crisis services must have a physician, preferably a psychiatrist, perform a face-to-face or telemedicine assessment of the individual as soon as possible, but not later than 12 hours after the QMHP-CS's assessment to determine the need for emergency services.

(e) Documenting crisis services. The provider of crisis services must maintain documentation of the crisis services, including:

(1) the date the service was provided;

(2) the beginning and end time of the crisis contact;

(3) the individual's name and any other identifiable health [~~identifying~~] information, as defined by HIPAA [~~of the individual to whom the service was provided (if given)~~];

(4) the location where the service was provided;

(5) the behavioral description of the presenting problem, including: [~~;~~]

(A) [~~(6)~~] lethality, such as suicide or violence[~~(e.g., suicide, violence)~~];

(B) [~~(7)~~] substance use [~~or abuse~~]; and

(C) [~~(8)~~] trauma, abuse, or neglect;

(6) [~~(9)~~] the outcome of the crisis [~~(e.g., individual in hospital, individual with friend and scheduled to see doctor at 9:00 a.m. the following day)~~];

(7) [~~(10)~~] the names and titles of staff members involved;

(8) [~~(11)~~] all actions, including rehabilitative interventions and referrals to other agencies, [~~(including rehabilitative interventions and referrals to other agencies)~~] used by the provider to address the problems presented;

(9) [~~(12)~~] the response of the individual, and if appropriate, the response of the LAR and family members;

(10) [~~(13)~~] the signature of the staff member providing the service and a notation as to whether the staff member is an LPHA or a QMHP-CS;

(11) [~~(14)~~] any pertinent event or behavior relating to the individual's treatment which occurs during the provision of the service; and

(12) [~~(15)~~] follow up activities, which may include referral to another provider.

(f) Communication of crisis contacts. If an individual who is currently receiving mental health services has experienced a crisis and has been assessed in accordance with subsection (b) of this section, the provider of crisis services must communicate in writing [~~(e.g., e-mail or fax)~~] the details of the crisis contact to the provider of ongoing mental health services to ensure that the individual receives continuity of care and treatment and include such communication in the medical record. This crisis contact communication:

(1) may not disclose any substance use-related [~~abuse-related~~] information unless disclosed in compliance with federal law as described in 42 CFR Part 2;

(2) must take place no later than the next business day after conclusion of the crisis contact; and

(3) may disclose mental health information for the purpose of continuity of care and treatment without the individual's consent if disclosure is made in accordance with:

(A) Texas Health and Safety Code[~~,~~] §533.009 (relating to Exchange of Patient and Client Records), when the provider of ongoing services is part of HHSC's [~~the department's~~] service delivery system; or

(B) in accordance with Texas Health and Safety Code[~~,~~] §611.004(a)(7) [~~(relating to the Authorized Disclosure of Confidential Information other than in Judicial or Administrative Proceeding)~~], when the provider of ongoing services is not part of HHSC's [~~the department's~~] service delivery system.

§301.353. Provider Responsibilities for Treatment Planning and Service Authorization.

(a) Assessment and documentation. At the first routine face-to-face or telemedicine contact with an individual seeking routine care services, as described in §301.327(d)(2) [~~§412.314(d)(2)~~] of this subchapter [~~title~~] (relating to Access to Community Mental Health [~~Community~~] Services[~~,~~]) a QMHP-CS with appropriate supervision and training must perform an assessment of the individual. The assessment must be documented and must include:

(1) the individual's identifiable health [~~identifying~~] information, as defined by HIPAA;

(2) completion of the appropriate uniform assessment [~~assessment(s)~~] and assessment guideline calculations;

(3) present status and relevant history, including education, employment, housing, legal, military, developmental, and current available social and support systems;

(4) co-occurring mental illness, emotional disturbance, substance use [~~abuse~~], chemical dependency, or developmental disorder;

(5) relevant past and current medical and psychiatric information, which may include trauma history;

(6) information from the individual and LAR, if applicable, [~~(if applicable)~~] regarding the individual's strengths, needs, natural supports, description of [~~describe~~] community participation, responsiveness to previous treatment, as well as preferences for and objections to specific treatments;

(7) if the individual is an adult without an LAR, the needs and desire of the individual for family member involvement in treatment and community mental health [~~community~~] services;

(8) the identification of the LAR's or family members' need for education and support services related to the individual's mental illness or emotional disturbance and the plan to facilitate the LAR's or family members' receipt of the needed education and support services;

(9) recommendations and conclusions regarding treatment needs; and

(10) date, signature, and credentials of staff member completing the assessment.

(b) Diagnostics. The diagnosis of a mental illness must be:

(1) rendered by an LPHA, acting within the scope of his/her license, who has interviewed the individual, either face-to-face or via telemedicine;

(2) based on the DSM;

(3) documented in writing, including the date, signature, and credentials of the person making the diagnosis; and

(4) supported by and included in the assessment.

(c) Provision of services. The LMHA, LBHA [~~MCO~~], and provider must require each provider to implement procedures to ensure that individuals are provided community mental health [~~community~~] services based on:

(1) HHSC's [~~the department's~~] uniform assessment and utilization management guidelines;

(2) medical necessity as determined by an LPHA; and

(3) health management needs as determined by a physician, PA [~~physician assistant~~], or RN [~~registered nurse~~].

(d) Prerequisites to provision of services.

(1) Routine care services. For routine care services, before providing community mental health [~~community~~] services to an individual, the provider must:

~~[(A) obtain authorization from the department or its designee for the type(s), amount, and duration of mental health community services to be provided to the individual in accordance with the appropriate uniform assessment and utilization management guidelines;]~~

(A) [~~(B)~~] obtain a determination of medical necessity from an LPHA; and

(B) [~~(C)~~] in collaboration with the individual and [~~their~~] LAR, if applicable[~~(if applicable)~~], develop a treatment plan for the individual that includes a list of the types [~~type(s)~~] of community mental

health [~~community~~] services [~~authorized in accordance with subparagraph (A) of this paragraph~~].

(2) Crisis services. For crisis services, as described in §301.351 [~~§412.321~~] of this subchapter [~~title~~] (relating to Crisis Services), a provider must deliver services in accordance with the utilization management guidelines and authorization of services and timeframes described in §301.335(c) [~~§412.318(c)~~] of this subchapter [~~title~~] (relating to Utilization Management). A diagnosis is not required when services are delivered in crisis situations.

(e) Treatment [~~Content and timeframe of treatment~~] plan. The [~~Each~~] provider must develop a written treatment plan, in consultation with the individual and their LAR, if applicable[~~(if applicable)~~], within 10 business days after the date of receipt of notification from HHSC [~~the department~~] or its designee that the individual is eligible and has been authorized for routine care services.

(1) A [~~At minimum, a~~] staff member with minimum credentialing [~~credentialed~~] as a QMHP-CS is responsible for completing and signing the treatment plan. The treatment plan must reflect input from each of the disciplines of treatment to be provided to the individual based upon the assessment. The treatment plan must include:

(A) a description of the presenting problem;

(B) a description of the individual's strengths;

(C) a description of the individual's needs arising from the mental illness or SED[~~serious emotional disturbance~~];

(D) a description of the individual's co-occurring substance use or physical health disorder, if any;

(E) a description of the recovery goals and objectives based upon the assessment, and expected outcomes of the treatment in accordance with paragraph (2) of this subsection;

(F) the expected date by which the recovery goals will be achieved;

(G) a list of resources for recovery supports, such as community volunteer opportunities, family or peer organizations, 12-step programs, churches, colleges, or community education[~~(e.g., community volunteer opportunities, family or peer organizations, 12-step programs, churches, colleges, or community education)~~]; and

(H) a list of the types [~~type(s)~~] of services within each discipline of treatment that will be provided to the individual, such as psychosocial rehabilitation, medication services, substance use treatment, or supported employment [~~(e.g., psychosocial rehabilitation, medication services, substance abuse treatment, supported employment)~~], and for each type of service listed, provide:

(i) a description of the strategies to be implemented by staff members in providing the service and achieving goals;

(ii) the frequency, such as weekly, twice a month, or monthly [~~(e.g., weekly, twice a month, monthly)~~], number of units, such as 10 counseling sessions or two skills training sessions [~~(e.g., 10 counseling sessions, two skills training sessions)~~], and duration of each service to be provided, such as .5 hour or 1.5 hours [~~(e.g., .5 hour, 1.5 hours)~~]; and

(iii) the credentials of the staff member responsible for providing the service.

(2) The goals and objectives with expected outcomes required by paragraph (1)(E) of this subsection must:

(A) specifically address the individual's unique needs, preferences, experiences, and cultural background;

(B) specifically address the individual's co-occurring substance use or physical health disorder, if any;

(C) be expressed in terms of overt, observable actions of the individual;

(D) be objective and measurable using quantifiable criteria; and

(E) reflect the individual's self-direction, autonomy, and desired outcomes.

(3) The individual and LAR, if applicable, [~~(if applicable)~~] must be provided a copy of the treatment plan and each subsequent treatment plan reviewed and revised.

(f) Review of treatment plan.

(1) Each provider must:

(A) review the individual's treatment plan prior to requesting an authorization for the continuation of services;

(B) review the treatment plan in its entirety, as permitted under confidentiality laws by considering input from the individual, the individual's LAR, if applicable[~~(if applicable)~~], and each of the disciplines of treatment;

(C) determine if the plan is adequately addressing the needs of the individual; and

(D) document progress on all goals and objectives and any recommendation for continuing services, any change from current services, and any discharge from services.

(2) In addition to the required review under paragraph (1) of this subsection, a provider may review the treatment plan in the following instances:

(A) if clinically indicated; and

(B) at the request of the individual or the LAR, if applicable [~~(if applicable)~~], or the primary caregiver of a child or adolescent.

(3) Any time the treatment plan is reviewed, the provider must:

(A) meet with the individual either face to face or via telemedicine to solicit and consider input from the individual regarding a self-assessment of progress toward the recovery goals, as described in subsection (e)(1)(E) of this section;

(B) solicit and consider the input from each of the disciplines of treatment in assessing the individual's progress toward the recovery goals and objectives with expected outcomes, described in subsection (e)(1)(E) of this section;

(C) solicit and consider input from the LAR, if applicable, [~~(if applicable)~~] or primary caregiver, if the individual is a child or adolescent regarding the level of satisfaction with the services provided; and

(D) document all the input described in subparagraphs (A) - (C) of this paragraph.

(g) Revisions to the treatment plan. If, after any review of the treatment plan, the provider determines it does not adequately address the needs of the individual, the provider must appropriately revise the content of the plan.

(h) Discharge Summary. Not later than 21 calendar days after an individual's discharge, whether planned or unplanned, the provider must document in the individual's medical record:

(1) a summary, based upon input from all the disciplines of treatment involved in the individual's treatment plan, of all the services provided, the individual's response to treatment, and any other relevant information;

(2) recommendations made to the individual or their LAR, if applicable, [(~~if applicable~~)] for follow up services, if any; and

(3) the individual's last diagnosis, based on the DSM.

§301.355. Medication Services.

(a) Prescribing of psychoactive medication. The LMHA and LBHA [~~MCO~~] must ensure that psychoactive medication is prescribed in accordance with Chapter 320 [~~415~~], Subchapter D [~~A~~] of this title (relating to Prescribing of Psychoactive Medication).

(b) Medication service delivery. The LMHA, LBHA [~~MCO~~], and provider must implement written procedures to ensure safe medication-related service delivery that include[, ~~but are not limited to,~~] the following.

(1) A procedure for physician delegation of medical acts to non-physicians. The procedure must address delegation protocols to APRNs or PAs [~~advanced practice nurses and/or physician assistants~~], delegation of medical acts to nursing or [~~and/or~~] unlicensed staff members, and the frequency of physician supervision over the staff member to whom a delegation is made. The procedure must provide a method to ensure the staff members are acting within the scope of their license and are [~~is~~] qualified and trained to perform the medical act.

(2) A procedure for RNs to make assignments to LVNs or delegate to unlicensed staff members nursing acts for the care of stable individuals with common, well-defined health problems with predictable outcomes. The procedure must address the types of nursing acts that may be delegated, the method to ensure the staff member is trained and qualified to perform a delegated nursing act, and the frequency of nursing supervision of the unlicensed staff member in accordance with Texas Occupations Code[,] Chapter 301[(~~relating to the Nursing Practice Act~~)].

(3) A procedure for medication administration by licensed medical or nursing staff that addresses who may access and administer medications, timely administration, documentation of administration, and monitoring of administration, and that complies with applicable professional licensing standards and rules.

(4) A procedure for medication handling that addresses:

(A) dispensing;

(B) labeling and record keeping of sample medications;

(C) limiting access to physician stock medications;

(D) patient assistance or indigent [~~assistance/indigent~~] medication program;

(E) mechanisms to ensure safe temperature-controlled storage and transport of medication;

(F) controlled substances [~~drugs~~];

(G) disposal or destruction [~~disposal/destruction~~] of medication; and

(H) locked areas and maintaining security.

(5) A procedure by which a physician, a PA [~~physician's assistant~~], or an RN assesses and determines whether an individual can self-administer medication and whether it can be done without supervision.

(6) A procedure for training and assessing the competency of staff members to perform supervision of self-administration of medication, including:

(A) medication actions;

(B) target symptoms;

(C) understanding prescription labels;

(D) potential toxicity;

(E) side effects;

(F) adverse reactions;

(G) proper storage of medications; and

(H) reporting and documentation requirements.

(7) A procedure for providing appropriate supervision of staff members who are supervising self-administration of medication.

(8) A procedure for medication errors that defines the most common types of medication errors and provides for:

(A) the accurate documentation of medication errors;

(B) the reporting of medication errors to the physician within one hour of their occurrence;

(C) a mechanism for determining medication error trends;

(D) a mechanism for analyzing both individual medication errors and trends for quality improvement; and

(E) the reporting of medication errors, as appropriate.

§301.357. Additional Standards of Care Specific to Community Mental Health [~~Community~~] Services for Children and Adolescents.

(a) Administration of the uniform assessment. In accordance with HHSC's utilization management guidelines, the [~~The~~] uniform assessment must be administered face-to-face or via telemedicine with the individual and the LAR, if applicable, [(~~if applicable~~)] or primary caregiver as clinically appropriate according to the child's or adolescent's age, functioning, and current living situation.

(b) Age and developmentally appropriate community mental health [~~community~~] services. All community mental health [~~community~~] services delivered to children and adolescents by a provider must be, for each child and adolescent, age-appropriate, developmentally appropriate, and consistent with academic development.

(c) Separation of individuals by age. A provider that delivers community mental health [~~community~~] services to children and adolescents in group settings [(~~e.g., residential, day programs, group therapy, partial hospitalization, and inpatient~~)] must separate children and adolescents from adults. The provider must further separate children from adolescents according to age and developmental needs, unless there is a clinical or developmental justification in the medical record.

(d) Transition to community mental health [~~community~~] services for adults. The provider must develop a transition plan for each adolescent who will need community mental health [~~community~~] services as [~~for~~] adults. The transition plan must be developed in consultation with the adolescent and the LAR, if applicable, [(~~and LAR if applicable~~)] and future providers with adequate time to allow both current and future providers to transition the adolescent into adult services without a disruption in services. [~~The transition plan must include:~~]

[~~(1) a summary of the mental health community services and treatment the adolescent received as a child and adolescent;~~]

[(2) the adolescent's current status (e.g., diagnosis, medications, uniform assessment guideline calculation, and unmet needs);]

[(3) information from the adolescent and the LAR regarding the adolescent's strengths, preferences for mental health community services, and responsiveness to past interventions;]

[(4) a description of the mental health community services the adolescent will receive as an adult;]

[(5) a list of resources for other recovery supports such as volunteer opportunities, family or peer organizations, 12-step programs, churches, colleges, or community education;]

[(6) documentation that the adolescent's services continued throughout the transition without disruptions; and]

[(7) documentation of the follow up to ensure successful transition to adult services.]

§301.359. Telemedicine Services.

The LMHA, LBHA [MCO], and provider must ensure that if a provider uses telemedicine, it is implemented in accordance with written procedures and using a protocol approved by the LMHA's or LBHA's [MCO's] medical director. Procedures regarding the provision of telemedicine service must include the following requirements:

(1) clinical oversight by the LMHA's or LBHA's [MCO's] medical director or designated physician responsible for medical leadership;

(2) contraindications for telemedicine use;

(3) qualified people at the remote site to ensure the safety of the individual being served by telemedicine [at the remote site]; and

(4) use by credentialed or licensed providers who provide clinical care within the scope of the provider's [their] credential or license.

§301.361. Documentation of Service Provision.

(a) Progress note content. Except for crisis services as described in §301.351 [§412.321] of this subchapter [title] (relating to Crisis Services) and day programs for acute needs as described in Chapter 306 [419], Subchapter F [L] of this title (relating to Mental Health Rehabilitative Services), and case management services as described in Chapter 306 [412], Subchapter E [I] of this title (relating to Mental Health Case Management Services), a provider must document the provision of all other community mental health [community] services, each service encounter and include at least the following:

(1) the name of the individual to whom the service was provided, including the LAR or primary caregiver, if applicable;

(2) the type of service provided;

(3) the date the service was provided;

(4) the begin and end time of the service;

(5) the location where the service was provided;

(6) a summary of the activities that occurred;

(7) the modality of the service provision, such as individual or group [(e.g., individual, group)];

(8) the method of service provision, such as face-to-face, phone, or telemedicine [(e.g., face-to-face, phone, telemedicine)];

(9) the training methods used, if applicable, such as instructions, modeling, role play, feedback, or repetition [(e.g., instructions, modeling, role play, feedback, repetition)];

(10) the title of the curriculum being used, if applicable;

(11) the treatment plan objectives [objective(s)] that were [was] the focus of the service;

(12) the progress or lack of progress in achieving treatment plan goals;

(13) the signature of the staff member providing the service and a notation as to whether the staff member is an LPHA, a QMHP-CS, a pharmacist, a CSSP, an LVN, a peer specialist [provider] or otherwise credentialed, as required for that service; and

(14) any pertinent event or behavior relating to the individual's treatment which occurs during the provision of the service.

(b) Frequency of documentation. The documentation required in subsection (a) of this section must be made within two business days after each contact that occurs to provide community mental health [community] services.

(c) Retention. Documentation must be retained in compliance with applicable federal and state laws, rules, and regulations.

§301.363. Supervision.

The LMHA, LBHA, and provider must follow the supervision requirements in 1 TAC §353.1419 (relating to Supervision Requirements).

[(a) Clinical supervision. Clinical supervision must be accomplished by an LPHA or a QMHP-CS as follows:]

[(1) by conducting a documented meeting with the staff member being supervised at least monthly; and]

[(2) for peer providers, by conducting an additional monthly documented observation of the peer provider providing mental health community services.]

[(b) Policies and procedures. The LMHA or MCO will develop and implement written policies and procedures for supervision of all applicable levels of staff members providing services to individuals.]

[(c) Licensed staff member supervision. All licensed staff members must be supervised in accordance with their practice act and applicable rules.]

[(d) QMHP-CS supervision. A QMHP-CS's designated clinical duties must be clinically supervised by:]

[(1) a QMHP-CS; or]

[(2) an LPHA if the QMHP-CS is clinically supervising the provision of mental health community services.]

[(e) CSSP supervision. A CSSP's designated clinical duties must be clinically supervised by a QMHP-CS. The CSSP must have access to clinical consultation with an LPHA when necessary.]

[(f) Family partner supervision. A family partner is supervised by the mental health children's director, clinic director, case management supervisor, or wraparound supervisor.]

[(g) Peer provider supervision. A peer provider's designated clinical duties must be clinically supervised by an LPHA.]

[(h) Peer review. The LMHA, MCO, and provider must implement a peer review process for licensed staff members that:]

[(1) promotes sound clinical practice;]

[(2) promotes professional growth; and]

[(3) complies with applicable state laws (e.g., Medical Practice Act, Nursing Practice Act, Vocational Nurse Act) and rules.]

~~[(i) Documentation. All clinical supervision must be documented.]~~

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

Filed with the Office of the Secretary of State on July 14, 2025.

TRD-202502496
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: August 24, 2025
For further information, please call: (737) 704-9063

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CHAPTER 559. DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS
SUBCHAPTER H. INDIVIDUALIZED SKILLS AND SOCIALIZATION PROVIDER REQUIREMENTS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §§559.201, 559.203, 559.205, 559.215, 559.225, 559.227, 559.241, and 559.243; new §§559.226, 559.228, 559.253, 559.255, and 559.257; and the repeal of §559.239.

BACKGROUND AND PURPOSE

The purpose of the proposal is to integrate heightened health and safety standards--specifically addressing environmental safety concerns--bolster the rights of individuals receiving individualized skills and socialization services and implement Texas Health and Safety Code §253.0025 (established by House Bill 1009, 88th Legislature, Regular Session, 2023) regarding suspension of employees during due process for reportable conduct. The proposal also establishes alternative pathways to address infractions through administrative penalties, thereby offering providers remedial options beyond license revocation.

The proposal further seeks to clarify existing requirements governing the prevention and investigation of abuse, neglect, or exploitation and to delineate provider requirements and criteria for license issuance or renewal. Additionally, non-substantive grammatical revisions are intended to enhance clarity and coherence within the regulatory framework.

The proposal ensures the efficacy and integrity of environmental safety and the rights of individuals receiving services, establishes administrative penalties services provided under Texas Administrative Code, Title 26, Chapter 559, Subchapter H, and upholds the importance of individual welfare and regulatory compliance.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §559.201, Purpose, incorporates information regarding additional health and safety requirements.

The proposed amendment to §559.203, Definitions, adds definitions for "abuse," "actual harm," "applicant," "cause to believe," "Centers for Medicare and Medicaid Services (CMS)," "exploitation," "immediate threat," "incident," "isolated," "neglect," "pattern," "substantial violation," "widespread," and edits existing definitions for clarity and understanding. It also relocates and revises the definition of "complaint" from §559.243.

The proposed amendment to §559.205, Criteria for Licensing, updates a reference and reflects changes specific to licensing processes regarding HHSC reviewing background and qualifications and issuing temporary licenses for Day Activity and Health Services Individualized Skills and Socialization Only licensure applications.

The proposed amendment to §559.215, Criteria for Denying a License or Renewal of a License, corrects references and revises language to provide clarity and ensure providers are aware of the requirement to disclose all actions to HHSC, whether pending or final.

The proposed amendment to §559.225, General Requirements, makes non-substantive grammatical changes, relocates rule language pertaining to individual rights under proposed new §559.228, adds language necessary to satisfy Texas Health and Safety Code §253.0025 requirements regarding reportable conduct, and outlines individual information documentation requirements.

Proposed new §559.226, Environmental Safety Requirements, describes standards for the physical condition of the location where on-site individualized skills and socialization services are provided, including cleanliness, safety, accessibility, utilities, and maintenance of both interior and exterior areas to ensure the well-being of individuals receiving services.

The proposed amendment to §559.227, Program Requirements, clarifies which requirements providers must follow when providing transportation and determining appropriate settings for service delivery. It also requires an individualized skills and socialization provider to provide services that meet an individual's needs and person-centered objectives, including by following steps for when a modification or restriction of services is needed. It further provides ongoing training parameters to address timeframes and frequency of trainings. Additionally, the amendment clarifies medication record requirements.

Proposed new §559.228, Rights of Individuals, describes the rights of individuals receiving services from individualized skills and socialization providers. It sets forth individualized skills and socialization provider requirements concerning the protection of individuals' rights, including those related to informed decision-making and the filing of grievances. It further requires the development and implementation of policies and procedures to address individuals' service plans; right to live free from abuse, neglect, and exploitation; receive services in a safe and clean environment; enjoy privacy during treatment and care for personal needs; and participate in activities.

The proposed repeal of §559.239, Definitions of Abuse, Neglect, and Exploitation, removes a rule section that is no longer needed, as these definitions have been added to §559.203.

The proposed amendment to §559.241, Reporting Abuse, Neglect, Exploitation, or Incidents to HHSC, revises the title to Reporting Abuse, Neglect, or Exploitation to HHSC. The amendment clarifies reporting requirements for abuse, neglect, or exploitation to HHSC and the requirement to report the death of an individual when the death occurs while the individual is receiving services from an individualized skills and socialization provider. It further establishes language prohibiting retaliation against an individual, legally authorized representative, or service provider for filing a complaint or presenting a grievance or for providing,

in good faith, information to HHSC relating to abuse, neglect, or exploitation.

The proposed amendment to §559.243, HHSC Complaint Investigation, removes language regarding reporting Abuse, Neglect, Exploitations, or Incidents to HHSC Complaint and Incident Intake, as this language is included in revised §559.241, as well as language regarding certain internal practices of HHSC. It also deletes the definition of "complaint," as it is now located in §559.203, Definitions, and renumbers the subsections accordingly.

Proposed new §559.253, Administrative Penalties, describes the circumstances in which HHSC may impose administrative penalties on an individualized skills and socialization provider and the HHSC procedure for administrative penalties. It also describes how penalties may be applied for various violations, with factors such as severity and corrective efforts considered, and provides that administrative penalties do not preclude other disciplinary actions for the same violation.

Proposed new §559.255, Individualized Skills and Socialization Provider Compliance and Corrective Action, describes procedures an individualized skills and socialization provider must adhere to in order to maintain compliance with regulations and address corrective measures under the oversight of HHSC. It describes the processes involving follow-up surveys, notices of non-compliance, corrective plans, monitoring, and potential penalties or license actions imposed by HHSC for violations.

Proposed new §559.257, Administrative Hearings, describes the process for administrative hearings regarding administrative penalties imposed on individualized skills and socialization providers. It describes hearing procedures, findings by administrative law judges, penalty assessments or dismissals by the executive commissioner, payment requirements, and interest accrual on unpaid penalties.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, there may be an increase in revenue to state government as a result of enforcing and administering the rules as proposed.

HHSC is unable to determine the increase in state revenue because any assessed administrative penalties collected are dependent on each individualized skills and socialization provider's compliance with regulatory requirements.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will require an increase in fees paid to the agency;

(5) the proposed rules will create new regulations;

(6) the proposed rules will expand and repeal existing regulations;

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

(8) HHS system has insufficient information to determine the effect of the proposed rules on the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined there could be an adverse economic effect on small businesses or micro-businesses, or rural communities.

HHSC estimates that the number of small businesses, micro-businesses, and rural communities subject to the proposed rules is over 900. This is the number of providers licensed to provide individualized skills and socialization services. While an individualized skills and socialization provider's noncompliance with the proposed regulations may result in administrative penalties, HHSC does not have sufficient data to estimate the cost to those businesses. The penalties range from $0 to $500 for initial or repeat non-substantial violations, and $250 to $800 for initial or repeat substantial violations. It is also unknown how many administrative penalties will be collected by HHSC.

HHSC determined that alternative methods to achieve the purpose of the proposed rules for small businesses, micro-businesses, or rural communities would not be consistent with ensuring the health and safety of individuals receiving individualized skills and socialization services.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect the local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect implementation of these amendments, new sections, and repeal the public benefits will be enhanced oversight of day activity and community integration services for individuals with intellectual disabilities. The rules are anticipated to foster greater foresight and precautionary measures, thereby bolstering the protection of individual health, safety, and welfare. The public will benefit from the introduction of clearly defined terms and the inclusion of provisions pertaining to administrative penalties, which may serve as an incentive for providers to adhere to the regulations outlined in this chapter.

Trey Wood has also determined that for the first five years the rules are in effect, licensed individualized skills and socialization providers may incur costs related to compliance, should they be assessed administrative penalties.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751, or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R021" in the subject line.

DIVISION 1. INTRODUCTION

26 TAC §559.201, §559.203

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and §531.033, which provides the executive commissioner of HHSC with broad rule-making authority; and Texas Human Resources Code §32.021, which provides that HHSC adopt rules necessary for the proper and efficient operation of the Medicaid program; and §103.004, which requires the executive commissioner of HHSC to adopt rules and set standards implementing Chapter 103.

The amendments implement Texas Government Code §§531.0055, 531.021, and 531.033, and Texas Human Resources Code §§32.021, 103.004, and 103.005.

§559.201. Purpose.

(a) The purpose of this subchapter is to:

(1) establish licensing procedures, standards, and requirements for an individualized skills and socialization provider licensed as a Day Activity and Health Services (DAHS) facility in accordance with Texas Human Resources Code Chapter 103; and

(2) establish health and safety requirements for a provider licensed by the Texas Health and Human Services Commission to deliver individualized skills and socialization services, including:

(A) environmental safety;

(B) prevention and investigation of abuse, neglect, or exploitation; and

(C) general and program provider requirements.

(b) This subchapter applies to an individualized skills and socialization provider and the provision of on-site and off-site individualized skills and socialization services.

(c) This subchapter does not apply to:

(1) a DAHS facility providing services in the DAHS program; or

(2) the provision of in-home individualized skills and socialization in the Home and Community-based Services and Texas Home Living waiver programs.

§559.203. Definitions.

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

(1) Abuse--Intentional or negligent act that results in physical or emotional harm or pain to an individual by an individualized skills and socialization provider or an employee, a contractor, or a volunteer of an individualized skills and socialization provider, including;

(A) injury;

(B) confinement;

(C) intimidation;

(D) cruel punishment; or

(E) sexual abuse, including:

(i) any sexual conduct conducted by a direct provider of individualized skills and socialization services that would constitute an offense under Penal Code §21.08 (relating to Indecent Exposure); or

(ii) any sexual conduct conducted by a direct provider of individualized skills and socialization services that would constitute an offense under Penal Code, Chapter 22 (relating to Assaultive Offenses), committed by a direct provider of individualized skills and socialization services.

(2) Actual harm--A negative outcome that compromises the physical, emotional, or mental well-being of any individual receiving services from the individualized skills and socialization provider.

(3) Applicant--A person or entity seeking licensing through the Texas Health and Human Services Commission (HHSC) to provide individualized skills and socialization services.

(4) Cause to believe--An individualized skills and socialization provider knows, suspects, or receives an allegation regarding abuse, neglect, or exploitation.

(5) Centers for Medicare and Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services (HHS) that administers Medicare and Medicaid programs.

(6) [~~(1)~~] Change of ownership--An event that results in a change to the federal taxpayer identification number of the license holder [~~of a facility~~]. The substitution of a personal representative for a deceased license holder is not a change of ownership.

(7) [~~(2)~~] Community setting--A setting accessible to the general public within an individual's community.

(8) Complaint--Any allegation received by HHSC regarding abuse, neglect, or exploitation of an individual or a violation of Texas Human Resources Code Chapter 103 or a rule, standard, or order adopted under Texas Human Resources Code Chapter 103.

(9) [~~(3)~~] Day Activity and Health Services (DAHS) directory--A public list generated and maintained by [~~the~~] HHSC, listing all DAHS providers, including individualized skills and socialization providers.

(10) [~~(4)~~] Deaf Blind with Multiple Disabilities (DBMD) program--A waiver program operated by HHSC, as authorized by CMS [~~the Centers for Medicare & Medicaid Services (CMS)~~] in accordance with §1915(c) of the Social Security Act.

(11) Exploitation--An illegal or improper act or process of using resources belonging to an individual receiving services by an individualized skills and socialization provider or an employee, a contractor, or a volunteer of an individualized skills and socialization provider without informed consent from the individual or the individual's legally authorized representative (LAR) for personal or monetary benefit.

(12) [~~(5)~~] Home and Community-based Services (HCS) program--A waiver program operated by HHSC as authorized by CMS in accordance with §1915(c) of the Social Security Act.

(13) Immediate threat--A situation that causes, or is likely to cause, injury, harm, impairment, or death of an individual.

(14) [~~(6)~~] Implementation plan--In the HCS and TxHmL programs, a written document developed by a program provider outlining the outcomes, [~~and~~] objectives, frequency, and duration for each program service on the individual's IPC to be provided by the program provider.

(15) Incident--Any non-routine occurrence that has an impact on the care, supervision, or treatment of an individual receiving services, as described in accordance with HHSC guidance.

(16) [~~(7)~~] Individual--A person who applies for or is receiving services from an individualized skills and socialization provider.

(17) [~~(8)~~] Individual plan of care (IPC)--A written plan authorized by HHSC that states the type and amount of each DBMD, TxHmL, or HCS program service to be provided to the individual during an IPC year.

(18) [~~(9)~~] Individual program plan (IPP)--In the DBMD program, a written plan documented on an HHSC form and completed by an individual's case manager that describes the goals and outcomes for each DBMD program service and Community First Choice (CFC) service, other than CFC support management, included on the individual's IPC.

(19) [~~(10)~~] Individualized skills and socialization--A DBMD, TxHmL, or HCS program service described in §260.503 of this title (relating to Description of Individualized Skills and Socialization), §262.905 of this title (relating to Description of On-Site and Off-Site Individualized Skills and Socialization), or §263.2005 of this title (relating to Description of On-Site and Off-Site Individualized Skills and Socialization). The two types of individualized skills and socialization are on-site individualized skills and socialization and off-site individualized skills and socialization.

(20) [~~(11)~~] Individualized skills and socialization provider--A provider licensed as a DAHS provider by HHSC to provide individualized skills and socialization services. A provider of individualized skills and socialization services is considered an individualized skills and socialization provider once licensed.

(21) [~~(12)~~] In person or in-person--Within the physical presence of another person who is awake. In person or in-person does not include using videoconferencing or a telephone.

(22) Isolated--Describing a violation of Texas Human Resources Code Chapter 103 or a rule, standard, or order adopted under Texas Human Resources Code Chapter 103 by an individualized skills and socialization provider that affects a very limited number of individuals receiving services and that:

(A) involves a very limited number of service providers; or

(B) has only occurred occasionally.

(23) [~~(13)~~] Legally authorized representative (LAR)--A person authorized by law to act on behalf of another person regarding [~~with regard to~~] a matter described in this subchapter, including a parent, guardian, or managing conservator of a minor; a guardian of an adult; an agent appointed under a power of attorney; or a representative payee appointed by the Social Security Administration. An LAR, such as an agent appointed under a power of attorney or representative payee appointed by the Social Security Administration, may have limited authority to act on behalf of a person.

(24) [~~(14)~~] License holder--A person who holds a license as an individualized skills and socialization provider.

(25) Neglect--Failure to provide an individual receiving services with identified health and safety services necessary to avoid infliction of injury, physical or emotional harm, or pain to an individual receiving services by an individualized skills and socialization provider or an employee, contractor, or volunteer of an individualized skills and socialization provider. This includes failure to:

(A) provide services in accordance with an individual's IPC, IPP, PDP, and implementation plan, resulting in infliction of injury, physical or emotional harm, or pain; and

(B) establish effective health and safety precautions to ensure an individual is protected from infliction of injury, physical or emotional harm, or pain.

(26) [~~(15)~~] Off-site individualized skills and socialization only--An individualized skills and socialization service provider who only delivers off-site individualized skills and socialization services and does not deliver on-site individualized skills and socialization services.

(27) [~~(16)~~] On-site individualized skills and socialization location--The building or a portion of a building that is owned or leased by an individualized skills and socialization provider where on-site individualized skills and socialization service is provided.

(28) [~~(17)~~] Online licensure portal--The Texas Unified Licensure Information Portal (TULIP) system. TULIP is the online system for submitting long-term care licensure applications.

(29) Pattern--Describing repeated, but not widespread in scope, violations of Texas Human Resources Code Chapter 103 or a rule, standard, or order adopted under Texas Human Resources Code Chapter 103 by an individualized skills and socialization provider that:

(A) is found throughout the services provided by the individualized skills and socialization provider; or

(B) affects or involves one or more of the same individuals receiving services, or one or more of the same service providers.

(30) [~~(18)~~] Person-directed plan (PDP)--In the HCS and the TxHmL programs, a written plan, based on person-directed planning and developed with an applicant or individual using the HHSC person-directed plan form and discovery tool found on the HHSC website, that:

(A) describes the supports and services necessary to achieve the desired outcomes identified by the applicant, individual, or LAR and ensures the applicant's or individual's health and safety; and

(B) includes the setting for each service, which is selected by the individual or LAR from setting options.

(31) [~~(19)~~] Program provider--A person, as defined in §52.3 of this title [~~Texas Administrative Code Title 40, §49.102~~] (relating to Definitions), who has a contract with HHSC to provide DBMD, TxHmL, or HCS program services, excluding a financial management services agency.

(32) [~~(20)~~] Service provider--A person, who may be an employee, contractor, or volunteer of an individualized skills and socialization provider, who directly provides individualized skills and socialization services to an individual.

(33) Substantial violation--A violation for which HHSC may assess an administrative penalty before giving an individualized skills and socialization provider an opportunity to correct the violation. A substantial violation is a violation that HHSC determines:

(A) represents a pattern of violation that results in actual harm;

(B) is widespread in scope and results in actual harm;

(C) is widespread in scope, constitutes a potential for actual harm, and relates to:

(i) staffing, including staff training, ratio, and health under §559.227 of this subchapter (relating to Program Requirements);

(ii) administration of medication under §559.227(m) of this subchapter; or

(iii) emergency preparedness and response under §559.229 of this subchapter (relating to Environment and Emergency Response Plan);

(D) constitutes an immediate threat to the health or safety of an individual receiving services;

(E) substantially limits the providers ability to meet identified health and safety needs of an individual;

(F) a violation described by §559.253(a)(2) - (7) of this subchapter (relating to Administrative Penalties);

(G) a violation of Texas Human Resources Code §103.011; or

(H) a second or subsequent violation of Texas Health and Safety Code §326.002, that occurs before the second anniversary of the date of the first violation.

(34) [~~(21)~~] Texas Home Living (TxHmL) program--A waiver program operated by HHSC and approved by CMS in accordance with §1915(c) of the Social Security Act.

(35) Widespread--Describing a violation of Texas Human Resources Code Chapter 103 or a rule, standard, or order adopted under Texas Human Resources Code Chapter 103 by an individualized skills and socialization provider that:

(A) is pervasive throughout the services delivered by the individualized skills and socialization provider; or

(B) represents a systematic failure by the individualized skills and socialization provider that affects or has the potential to affect a large portion of or all individuals receiving services from the individualized skills and socialization provider.

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

Filed with the Office of the Secretary of State on July 3, 2025.

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Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 438-3161

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DIVISION 2. LICENSING

26 TAC §559.205, §559.215

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and §531.033, which provides the executive commissioner of HHSC with broad rule-making authority; and Texas Human Resources Code §32.021, which provides that HHSC adopt rules necessary for the proper and efficient operation of the Medicaid program; and §103.004, which requires the executive commissioner of HHSC to adopt rules and set standards implementing Chapter 103.

The amendments implement Texas Government Code §§531.0055, 531.021, and 531.033, and Texas Human Resources Code §§32.021, 103.004, and 103.005.

§559.205. Criteria for Licensing.

(a) An entity may not establish or provide individualized skills and socialization services in Texas without a license issued by the Texas Health and Human Services Commission (HHSC) in accordance with Texas Human Resources Code, Chapter 103, and this subchapter.

(b) An individualized skills and socialization provider must be listed on the HHSC [~~HHSC's~~] Day Activity and Health Services (DAHS) directory as an individualized skills and socialization provider [~~in order~~] to provide individualized skills and socialization services.

(c) An applicant for a license must follow the application instructions and submit a completed application form, required documentation, and [~~submit a complete application form, follow the application instructions, electronically upload required documentation, and submit the~~] required license fee to HHSC through the online licensure portal.

(d) An applicant for a license must complete [~~the~~] HHSC required training to become an individualized skills and socialization provider and provide documentation that required training is complete through the application in the online licensure portal.

(e) An applicant for a license must submit to HHSC as part of the application the:

(1) name of the business entity to be licensed;

(2) tax identification number;

(3) name of the chief executive officer (CEO) or equivalent person;

(4) ownership information;

(5) address of the on-site individualized skills and socialization location or, for providers of off-site individualized skills and socialization services only, the designated place of business where records are kept;

(6) name of program providers using this entity for individualized skills and socialization services, if any;

(7) maximum number of individuals who can receive services [~~individualized skills and socialization~~] at or from this location, which will become the licensed capacity when approved;

(8) effective date the entity will be available to provide individualized skills and socialization services;

(9) attestation that the applicant has created and implemented a community engagement plan, including:

(A) a description of how the organization will meet the requirement to make off-site individualized skills and socialization available to individuals;

(B) a description of how the organization will work with contracted program providers to obtain information from the individuals' person-directed plans (PDP) and implementation plan, and use that information to inform on-site and off-site activities that are aligned with an individual's PDP; and

(C) a description of how staff will respond to an emergency or other unexpected circumstance that may occur during the provision of on-site and off-site individualized skills and socialization services to ensure the health and safety of all individuals; and

(10) any other information required by the online application instructions.

(f) HHSC may deny an application that remains incomplete after 120 days.

(g) Before issuing a license, HHSC considers the background and qualifications of:

(1) the applicant or license holder;

(2) a person with a disclosable interest;

(3) an affiliate of the applicant or license holder;

(4) an administrator;

(5) a manager; and

(6) any other person disclosed on the submitted application as defined by the application instructions.

(h) If the location where an applicant intends to provide on-site or off-site individualized skills and socialization services [~~applicant~~] is located within, on the grounds of, or physically adjacent to a prohibited setting as set forth in the rules governing the Home and Community-based Services (HCBS) waiver programs, as described in §263.2005(d) of this title (relating to Description of On-Site and Off-Site Individualized Skills and Socialization), [~~HCS Program~~] and the applicant has not been approved through heightened scrutiny process as described in §263.2005(e) of this title, HHSC will refer the application for enforcement.

(i) HHSC issues a license if it finds that the applicant or license holder, and all persons described in subsection (g) of this section, affirmatively demonstrate compliance with all applicable requirements of this subchapter, based on an on-site survey. [~~An applicant for a license must affirmatively demonstrate that the applicant meets the requirements for operation based on an on-site survey. However, through the end of HHSC fiscal year 2023, at its sole discretion, HHSC may issue a temporary initial license effective for 180 days which may be extended until such time as an applicant demonstrates that it meets the requirements for operation based on this on-site survey.~~]

(j) For DAHS Individualized Skills and Socialization Only licensure applications, HHSC may:

(1) at its sole discretion, issue a temporary initial license effective for 180 days, which may be extended until such time as an applicant demonstrates that it meets the requirements for operation based on an on-site survey; and

(2) issue a three-year license to applicants described under this subsection.

[~~(j) [HHSC issues a license if it finds that the applicant or license holder, all persons described in subsection (h) of this section, and the provider meet all applicable requirements of this subchapter, and the on-site individualized skills and socialization location, if applicable, meets all requirements of this subchapter.]~~

(k) For DAHS with Individualized Skills and Socialization licensure applications, HHSC will follow the criteria for licensure as described in §559.11 of this chapter (related to Criteria for Licensing).

[~~(k) HHSC will implement a system under which licenses issued under this subchapter expire on staggered dates. Through the end of HHSC fiscal year 2023, applicants may receive:~~]

[~~(1) a one-year license;~~]

[~~(2) a two-year license;~~]

[~~(3) a three-year license.~~]

(l) An individualized skills and socialization provider must not provide services to more individuals than the number of individuals specified on its license.

(m) An individualized skills and socialization provider must prominently and conspicuously post its license for display in a public area of the on-site individualized skills and socialization location that is readily accessible to individuals, employees, and visitors. For an off-site only individualized skills and socialization provider, the license must be displayed in a conspicuous place in the designated place of business.

(n) If any information submitted through the application process changes following licensure, the license holder must submit an application through the online licensure portal to make the changes.

§559.215. Criteria for Denying a License or Renewal of a License.

(a) The Texas Health and Human Services Commission (HHSC) may deny an initial license or renewal of a license if any person described in §559.205(g) of this division [~~§559.205(h) of this subchapter~~] (relating to Criteria for Licensing):

(1) is subject to denial or refusal as described in Chapter 560 of this title (relating to Denial or Refusal of License) during the time frames described in that chapter;

(2) substantially fails to comply with the requirements described in §559.225 of this subchapter (relating to General Requirements) and §559.227 of this subchapter (relating to Program Requirements), including:

(A) noncompliance that poses a serious threat to health and safety; or

(B) a failure to maintain compliance on a continuous basis;

(3) aids, abets, or permits a substantial violation described in paragraph (2) of this subsection about which the person had or should have had knowledge;

(4) fails to provide the required information, facts, or references;

(5) knowingly provides the following false or fraudulent information:

(A) submits false or intentionally misleading statements to HHSC;

(B) uses subterfuge or other evasive means of filing;

(C) engages in subterfuge or other evasive means of filing on behalf of another who is unqualified for licensure;

(D) knowingly conceals a material fact; or

(E) is responsible for fraud;

(6) fails to pay the following fees, taxes, and assessments when due:

(A) licensing fees as described in §559.219 of this division [~~subchapter~~] (relating to License Fees); and

(B) franchise taxes, if applicable; or

(7) has a history of any of the following actions during the five-year period preceding the date of the application:

(A) operation of a facility that has been decertified or had its contract canceled under the Medicare or Medicaid program in any state;

(B) federal or state Medicare or Medicaid sanctions or penalties;

(C) unsatisfied final judgments;

(D) eviction involving any property or space used as a facility in any state; or

(E) suspension of a license to operate a health facility, long-term care facility, or a similar facility in any state.

(b) Concerning subsection (a)(7) of this section, HHSC may consider exculpatory information provided by any person described in §559.205(g) of this division [~~§559.205(h) of this subchapter~~] and grant a license if HHSC finds that person able to comply with the rules in this chapter.

(c) HHSC does not issue a license to an applicant if the applicant has a history of any of the following actions during the five-year period preceding the date of the application:

(1) revocation of a license to operate a health care facility, long-term care facility, or similar facility in any state;

(2) debarment or exclusion from the Medicare or Medicaid programs by the federal government or a state; or

(3) a court order [~~injunction~~] prohibiting any person described in §559.205(g) of this division [~~§559.205(h) of this subchapter~~] from operating a facility.

(d) HHSC considers only [~~Only~~] final actions ~~are considered~~ for purposes of subsections (a)(7) and (c) of this section. An action is final when routine administrative and judicial remedies are exhausted. However, a provider must disclose all [~~All~~] actions to HHSC, whether pending or final[~~, must be disclosed~~].

(e) If an applicant owns multiple facilities, HHSC examines the overall record of compliance for [~~in~~] all facilities [~~will be examined~~]. An overall record poor enough to deny issuance of a new license will not preclude the renewal of licenses of individual facilities with satisfactory records.

(f) If HHSC denies a license or refuses to issue a renewal of a license, the applicant or license holder may request a hearing by following HHSC [~~HHSC's~~] rules in Texas Administrative Code (TAC), Title 1, [~~TAC~~] Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act). An administrative hearing is conducted in accordance with Texas Government Code, Chapter 2001, and 1 TAC Chapter 357, Subchapter I.

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

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Karen Ray
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Health and Human Services Commission
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For further information, please call: (512) 438-3161

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DIVISION 3. PROVIDER REQUIREMENTS

26 TAC §§559.225 - 559.228

STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and §531.033, which provides the executive commissioner of HHSC with broad rule-making authority; and Texas Human Resources Code §32.021, which provides that HHSC adopt rules necessary for the proper and efficient operation of the Medicaid program; and §103.004, which requires the executive commissioner of HHSC to adopt rules and set standards implementing Chapter 103.

The amendments and new sections implement Texas Government Code §§531.0055, 531.021, and 531.033, and Texas Human Resources Code §§32.021, 103.004, and 103.005.

§559.225. General Requirements.

(a) An individualized skills and socialization provider must:

(1) comply with the provisions of Texas Health and Safety Code (HSC), Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly, Persons with Disabilities, or Persons with Terminal Illnesses);

(2) before offering employment to any person, search the following registries to determine if the person is eligible for employment:

(A) the employee misconduct registry (EMR) established under HSC §253.007;

(B) the Texas Health and Human Services Commission (HHSC) nurse aide registry (NAR) and medication aide registry (MAR);

(C) the List of Excluded Individuals and Entities (USLEIE) maintained by the United States Department of Health and Human Services; and

(D) the List of Excluded Individuals and Entities (LEIE) maintained by HHSC Office of Inspector General;

(3) not employ a person who is listed on the:

(A) HHSC employee misconduct registry as unemployable; or

(B) HHSC nurse or medication aide registries as revoked or suspended; and

(4) provide information about the EMR to an employee in accordance with [~~26 TAC~~] §561.3 of this title (relating to Employment and Registry Information).

(b) In addition to the initial search of the EMR, LEIE, NAR, MAR, and USLEIE, an individualized skills and socialization provider must:

(1) conduct a search of the NAR, MAR, and EMR to determine if the employee is designated in those registries as unemployable at least every 12 months; [~~and~~]

(2) keep a copy of the results of the initial and annual searches of the NAR, MAR, and EMR in the employee's personnel file and make it available to HHSC upon request; and

(3) comply with all relevant federal and state standards. [~~; and~~]

[~~(4) comply with all applicable provisions of the Texas Human Resource Code (HRC), Chapter 102 (relating to Rights of the Elderly).~~]

[~~(c) An individualized skills and socialization provider must:~~]

[~~(1) provide an individual who is 55 years of age or older with a written list of the individual's rights, as outlined under HRC §102.004; and~~]

[~~(2) create policies and procedures that protect and promote the rights of the individual, including the individual's right to:~~]

[~~(A) control his or her schedule and activities related to on-site individualized skills and socialization;~~]

[~~(B) access his or her food at any time;~~]

[~~(C) receive visitors without prior notice to the individualized skills and socialization provider unless such rights are contraindicated by the individual's rights or the rights of other individuals; and~~]

[~~(D) physically access the building.~~]

(c) [~~(d)~~] An individualized skills and socialization provider must:

(1) report abuse, neglect, and exploitation [~~, and critical incidents~~] in accordance with §559.241 of this subchapter (relating to Reporting Abuse, Neglect, or Exploitation to HHSC [~~, or Critical Incidents~~]);

(2) suspend a service provider who HHSC finds has engaged in reportable conduct while the service provider exhausts any applicable appeals process, including informal and formal appeals and any hearing or judicial review, pending a final decision by an administrative law judge, and may not reinstate the service provider during any applicable appeals process;

(3) [~~(2)~~] develop and enforce [~~create~~] policies and procedures for creating and maintaining incident reports; and

(4) [~~(3)~~] ensure the confidentiality of individual records and other information related to individuals.[~~; and~~]

[~~(4) inform the individual orally and in writing of the individual's rights, responsibilities, and grievance procedures in a language the individual understands.~~]

(d) [~~(e)~~] An individualized skills and socialization provider must prominently and conspicuously post for display in a public area of the on-site individualized skills and socialization location, or designated place of business for off-site only individualized skills and socialization, that is readily available to individuals, employees, and visitors:

(1) the license issued under this chapter;

(2) a sign prescribed by HHSC that describes complaint procedures and specifies how complaints may be filed with HHSC;

(3) a notice in the form prescribed by HHSC stating that survey and related reports are available at the on-site individualized skills and socialization location for public survey and providing the HHSC [~~HHSC's~~] toll-free telephone number that may be used to obtain information concerning the individualized skills and socialization provider;

(4) a copy of the most recent survey report relating to the individualized skills and socialization provider;

(5) a brochure, letter, or website that outlines the individualized skills and socialization provider's hours of operation, holidays, and a description of activities offered; and

(6) emergency telephone numbers, including the abuse hotline telephone number.

(e) In addition to the list of individuals served as described in §559.231(f)(3) of this subchapter (relating to Surveys and Visits), an individualized skills and socialization provider must also maintain an individual information document that includes:

(1) which individualized skills and socialization services are being delivered by the individualized skills and socialization provider;

(2) the individual's name, identification, or clinical record number; and

(3) the date the individual began receiving individualized skills and socialization services.

§559.226. Environmental Safety Requirements.

(a) An individualized skills and socialization provider must ensure the facility interior of the on-site location:

(1) has furnishings that are appropriately maintained and safe for use;

(2) is clean, sanitary, and free of odors that are considered disruptive, unpleasant, or potentially offensive;

(3) is free of infestation by bugs, rodents, and other pests;

(4) has walls, ceilings, floors, and windows that are structurally sound;

(5) is free of environmental contaminants, physical hazards, and accumulated waste or trash;

(6) has bathrooms that are accessible, functional, and safe for use;

(7) has hot water available for use by individuals receiving services that:

(A) is located at sinks in the facility that may be used by individuals receiving services; and

(B) does not exceed 120 degrees Fahrenheit;

(8) includes any major appliances necessary for maintaining the health and safety of individuals that are appropriately maintained and in working order;

(9) has a secure storage area for cleaning chemicals and supplies that is located separately from any storage area for food items;

(10) has cleaning chemicals:

(A) stored in their original containers; and

(B) used in accordance with directions and warnings on the product label;

(11) has a location where perishable food is either refrigerated or otherwise stored safely; and

(12) has working smoke alarms in all main areas that:

(A) are maintained in accordance with the manufacturer's instructions;

(B) emit a distinguishable audible response that can be heard throughout the facility including classrooms, common areas, and hallways; and

(C) are used solely for the purpose of alerting individuals and service providers of a fire.

(b) An individualized skills and socialization provider must ensure the facility interior of the on-site location is serviced by a functioning heating and cooling system. The provider must:

(1) ensure the availability of an alternate method of supplying heat and cooling that meets state, local, and federal guidelines in the event the system does not work or is in repair;

(2) ensure that heating and cooling temperature settings are appropriate for maintaining a safe environment for individuals; and

(3) consider the specific health and safety needs of individuals when determining the appropriate heating and cooling temperature settings.

(c) An individualized skills and socialization provider must ensure the facility exterior of the on-site location:

(1) is free of hazards and the accumulation of waste and trash;

(2) is accessible to individuals receiving services;

(3) does not compromise the health or safety of individuals; and

(4) if applicable, has exterior furnishings that are maintained appropriately and safe for use.

§559.227. Program Requirements.

(a) Staff qualifications.

(1) An individualized skills and socialization provider must:

(A) employ an administrator;

(B) ensure the administrator meets the requirements outlined in paragraph (2) of this subsection; and

(C) have a policy regarding the delegation of responsibility in the administrator's absence.

(2) A service provider of individualized skills and socialization must be at least 18 years of age and:

(A) have a high school diploma or a certificate recognized by a state as the equivalent of a high school diploma; or

(B) have documentation of a proficiency evaluation of experience and competence to perform the job tasks that includes:

(i) a written competency-based assessment of the ability to document service delivery and observations of the individuals receiving services; and

(ii) at least three written personal references from persons not related by blood that indicate the ability to provide a safe, healthy environment for the individuals receiving services.

(3) A service provider of individualized skills and socialization who provides transportation must:

(A) have a valid driver's license; and

(B) transport individuals in a vehicle that:

(i) is insured in accordance with state law; and

(ii) meets all state registration and safety requirements.

(b) Staffing. An individualized skills and socialization provider must ensure that:

(1) an individual whose needs cannot be met by the individualized skills and socialization provider is not admitted or retained;

(2) the ratio of service providers to individuals is maintained in accordance with §260.507 of this title (relating to Staffing Ratios), §262.917 of this title (relating to Staffing Ratios for Off-Site Individualized Skills and Socialization), and §263.2017 of this title (relating to Staffing Ratios for Off-Site Individualized Skills and Socialization), during the provision of off-site individualized skills and socialization, including during transportation; and

(3) sufficient staff are on duty at all times during the provision of on-site individualized skills and socialization to ensure:

(A) the health and safety of the individuals;

(B) supervision is provided in accordance with the needs of an individual; and

(C) individualized skills and socialization services or similar services are provided in accordance with an individual's individual plan of care (IPC), individual program plan (IPP), person-directed plan (PDP), and implementation plan, as applicable.

(c) Staff responsibilities.

(1) The administrator:

(A) manages the individualized skills and socialization services and the on-site individualized skills and socialization location;

(B) ensures staff are trained;

(C) supervises staff; and

(D) maintains all records.

(2) A service provider:

(A) delivers individualized skills and socialization services;

(B) assists with recreational activities; [~~and~~]

(C) provides protective supervision through observation and monitoring; and

(D) is trained on the needs of the individual.

(d) An individualized skills and socialization provider must make both on-site and off-site individualized skills and socialization services available to an individual who receives Home and Community-based Services (HCS), Texas Home Living (TxHmL), or Deaf Blind with Multiple Disabilities (DBMD) services, unless the individu-

alized skills and socialization provider provides off-site individualized skills and socialization services only.

(e) An individualized skills and socialization provider must ensure that on-site individualized skills and socialization services:

(1) are [~~is~~] provided in a building or a portion of a building that is owned or leased by an individualized skills and socialization provider; ~~and~~

(2) promote an individual's development of skills and behavior that support the individual's independence and personal choice;

(3) [~~(2)~~] are [~~is~~] not provided in:

(A) a prohibited setting for an individual, as set forth in the rules governing Home and Community-based Services (HCBS) waiver programs; or

(B) the residence of an individual or another person [~~the HCS Program~~].

(f) An individualized skills and socialization provider must ensure that off-site individualized skills and socialization services:

(1) include activities that:

(A) integrate the individual into the community; and

(B) promote the individual's development of skills and behavior that support the individual's independence and personal choice;

(2) [~~(1)~~] are provided in a community setting chosen by the individual from among available community setting options;

(3) [~~(2)~~] include [~~includes~~] transportation necessary for the individual's participation in off-site individualized skills and socialization; and

(4) [~~(3)~~] are [~~is~~] not provided in:

(A) a building in which on-site individualized skills and socialization are provided;

(B) a prohibited setting for an individual, as set forth in the rules governing Home and Community-based Services (HCBS) waiver programs [~~the HCS Program~~], unless:

(i) provided in an event open to the public; or

(ii) the activity is a volunteer activity performed by an individual in such a setting; or

(C) the residence of an individual or another person, unless the activity is a volunteer activity performed by an individual in the residence.

(g) An individualized skills and socialization provider must:

(1) provide services [~~individualized skills and socialization~~]:

(A) that promote autonomy and positive social interaction;

(B) in accordance with:

(i) the individuals IPC, IPP, PDP, or implementation plan as applicable; and

(ii) the individuals identified health and safety needs, physicians' orders, and goals, as documented and agreed upon by the individual or the individual's legally authorized representative (LAR); and

(2) develop and implement written policies and procedures for consistent and effective monitoring and documentation of an individual's progress towards person-centered objectives related to skill development and socialization, in accordance with the individuals IPC, IPP, PDP, or implementation plan as applicable.

[~~(1) in the Deaf Blind with Multiple Disabilities (DBMD) program, in accordance with an individual's individual plan of care (IPC) and individual program plan (IPP); and~~]

[~~(2) in the Texas Home Living (TxHmL) program and Home and Community-based Services (HCS) program, in accordance with an individual's person-directed plan (PDP), IPC, and implementation plan.~~]

(h) An individualized skills and socialization provider must not require an individual to take a skills test or meet other requirements to receive off-site individualized skills and socialization services.

(i) If an individual does not want to participate in a scheduled on-site or off-site individualized skills and socialization activity, or the individual's LAR does not want the individual to participate in a scheduled on-site or off-site individualized skills and socialization [~~an~~] activity, [~~the individual scheduled for on-site individualized skills and socialization or off-site individualized skills and socialization, or the legally authorized representative (LAR) does not want the individual to participate in such activity,~~] the individualized skills and socialization provider must document the decision not to participate in the individual's record.

(j) If an individualized skills and socialization provider becomes aware that a modification or restriction to the services provided is needed based on a specific assessed need of an individual, the individualized skills and socialization provider must:

(1) inform the individual's program provider of the needed modification or restriction;

(2) obtain updated documentation from the program provider outlining the modification or restriction on the individual's person-centered service plan, which includes:

(A) for HCS and TxHmL, the individual's PDP; or

(B) for DBMD, the individual's IPP;

(3) ensure the updated person-centered service plan is received from the program provider and maintained in the individual's record, and that any updates are included on the individual information document as described in §559.225(f) of this division (relating to General Requirements) prior to the implementation of the modification or restriction;

(4) inform service providers of updates to an individual's person-centered service plan; and

(5) ensure the implementation of modifications or restrictions is in accordance with the individual's updated person-centered service plan.

(k) [~~(j)~~] An individualized skills and socialization provider must provide on-site and off-site individualized skills and socialization services in-person.

(l) [~~(k)~~] Training.

(1) Initial training.

(A) An individualized skills and socialization provider must:

(i) provide service providers with training on fire, disaster, and their responsibilities under the emergency response plan

developed in accordance with §559.229 of this division [~~subchapter~~] (relating to Environment and Emergency Response Plan) within three workdays after the start of employment and document the training in the individualized skills and socialization provider's records; and

(ii) provide service providers with a minimum of eight hours of training during the first three months after the start of employment and document the training in the records of the individualized skills and socialization provider.

(B) The training provided in accordance with subparagraph (A)(ii) of this paragraph must include:

(i) any nationally or locally recognized adult CPR course or certification;

(ii) first aid;

(iii) infection control;

(iv) overview of the population served by the individualized skills and socialization provider; and

(v) identification and reporting of abuse, neglect, or exploitation.

(2) Ongoing training.

[~~(A)~~] In addition to initial training requirements described in subsection (l)(1)(A) of this section, at least annually, an [~~An~~] individualized skills and socialization provider must:

(A) [~~(i)~~] ensure that service providers maintain current certification in CPR;

(B) [~~(ii)~~] retrain service providers [~~train~~] on their responsibilities under the emergency response plan developed in accordance with §559.229 of this division and when the service provider's responsibilities under the plan change;

(C) [~~(iii)~~] conduct training for service providers [~~train~~] on infection control policies and procedures developed in accordance with subsection (o) [~~(n)~~] of this section; and

(D) [~~(iv)~~] conduct training for service providers [~~train~~] on the identification and reporting of abuse, neglect, or exploitation.

(m) [~~(l)~~] Medications.

(1) Administration.

(A) If individuals [~~an individual~~] cannot or choose [~~chooses~~] not to self-administer ~~his or her~~ medications, an individualized skills and socialization provider must provide assistance with such medications and the performance of related tasks if:

(i) a registered nurse has assessed the need for assistance and related tasks and delegated such to the individualized skills and socialization provider in accordance with state law and rules; or

(ii) a physician has delegated the assistance and related tasks as a medical act to the individualized skills and socialization provider under Texas Occupations Code Chapter 157, as documented by the physician.

(B) An individualized skills and socialization provider must record an individual's medications, including over-the-counter medications, on the individual's medication profile record and ensure that medication labels are:[.]

(i) original and current;

(ii) easily readable;

(iii) affixed to the corresponding prescription bottle, container, or packaging; and

(iv) include the appropriate accessory and cautionary instructions and prescription expiration date when applicable.

(C) An individualized skills and socialization provider must ensure that information on the medication profile record:

(i) reflects current prescription orders as verified by the pharmacy or ordering healthcare provider; and

(ii) includes [~~The recorded information must be obtained from the prescription label and must include~~] the medication name, strength, dosage, doses received, directions for use, route of administration, prescription number, pharmacy name, and the date each medication was issued by the pharmacy.

(2) General.

(A) An individualized skills and socialization provider must immediately report to an individual's program provider any unusual reactions to a medication or treatment.

(B) When an individualized skills and socialization provider supervises or administers medications, the individualized skills and socialization provider must:

(i) maintain accurate, current, and accessible documentation of medication administration for each individual; and

(ii) document the date and time each medication was taken in accordance with recorded information on the individual's medication profile record.

(C) In the event of a medication error, or if an individual does not receive or take the medication or treatment as prescribed, the individualized skills and socialization provider must:

(i) document the date and time the medication dose should have been administered or provided to the individual; and

(ii) the name and strength of any medication missed [~~document in writing if an individual does not receive or take the medication and treatment as prescribed. The documentation must include the date and time the dose should have been taken, and the name and strength of medication missed~~].

(3) Storage.

(A) An individualized skills and socialization provider must provide a locked area for all medications, which may include:

(i) a central storage area; or

(ii) a medication cart that, when not in use, is secured in the area designated for its storage.

(B) An individualized skills and socialization provider must store an individual's medication separately from other individuals' medications within the storage area.

(C) An individualized skills and socialization provider must store medication requiring refrigeration in a locked refrigerator ~~that is~~ used only for medication storage or in a separate, permanently attached, locked medication storage box in a refrigerator.

(D) An individualized skills and socialization provider must store poisonous substances and medications labeled for "external use only" separately within the locked area.

(E) An individualized skills and socialization provider must store drugs covered by Schedule II of the Controlled Substances

Act of 1970 in a locked, permanently attached cabinet, box, or drawer that is separate from the locked storage area for other medications.

(F) An individualized skills and socialization provider must store medications in accordance with manufacturer's instructions, under sanitary conditions, and with consideration of requirements pertaining to temperature, light, moisture, ventilation, segregation, and security.

(n) [~~(m)~~] Accident, injury, or acute illness.

(1) An individualized skills and socialization provider must stock and maintain in a single location in the on-site individualized skills and socialization location first aid supplies to treat burns, cuts, and poisoning.

(2) An individualized skills and socialization provider delivering off-site individualized skills and socialization must ensure first aid supplies to treat burns, cuts, and poisoning are immediately available at all times during service provision.

(3) In the event of accident or injury to an individual requiring emergency care, or in the event of death of an individual, an individualized skills and socialization provider must:

(A) arrange for emergency care or transfer to an appropriate place for treatment, including:

(i) a physician's office;

(ii) a clinic; or

(iii) a hospital;

(B) immediately notify an individual's program provider with which the individualized skills and socialization provider contracts to provide services to the individual; and

(C) describe and document the accident, injury, or illness on a separate report containing a statement of final disposition and maintain the report on file.

(o) [~~(n)~~] An individualized skills and socialization provider must develop [~~create~~] and enforce written policies and procedures for infection control, including spread of disease to ensure staff compliance with state law, the Occupational Safety and Health Administration, and the Centers for Disease Control and Prevention.

§559.228. Rights of Individuals.

(a) An individualized skills and socialization provider must:

(1) provide each individual referenced in Texas Human Resources Code (HRC) §103.011 and the individual's legally authorized representative (LAR), as appropriate, with a written list of the individual's rights, as outlined under HRC §102.004 (relating to List of Rights); and

(2) comply with all applicable provisions of HRC Chapter 102 (relating to Rights of the Elderly).

(b) An individualized skills and socialization provider must ensure that individuals are informed of their rights and responsibilities and of grievance procedures in a language they comprehend:

(1) through the individual's preferred mode of communication; and

(2) in a manner accessible to the individual.

(c) An individualized skills and socialization provider must develop and implement written policies and procedures that protect and promote the rights of all individuals receiving services and ensure individuals can exercise their rights without interference, coercion, discrimination, or retaliation from the provider.

(d) An individualized skills and socialization provider must ensure that any deviation from the requirements of this section is based on an assessed need and documented in accordance with the requirements outlined in §559.227(j) of this division (relating to Program Requirements) prior to implementation. This includes an individual's right to:

(1) control and support personal schedules and activities;

(2) access personal food items at any time;

(3) receive visitors of the individual's choosing at any time; and

(4) physically access the building.

(e) An individualized skills and socialization provider must develop and implement policies and procedures for ensuring individuals:

(1) receive support and assistance from the individualized skills and socialization provider in addressing concerns with the program provider regarding the individual plan of care (IPC), individual program plan (IPP), person-directed plan (PDP), or implementation plan when the individual dislikes or disagrees with the services being rendered;

(2) live free from abuse, neglect, or exploitation;

(3) receive services in a safe and clean environment;

(4) receive services in accordance with the individuals IPC, IPP, PDP, and implementation plan, as applicable, through service providers who are responsive to the needs of the individual;

(5) have privacy during treatment and care of personal needs; and

(6) participate in social, recreational, and group activities.

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

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DIVISION 4. SURVEYS, INVESTIGATIONS, AND ENFORCEMENT

26 TAC §559.239

STATUTORY AUTHORITY

The repeal is authorized by Texas Government Code §531.0055, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and §531.033, which provides the executive commissioner of HHSC with broad rule-making authority; and Texas Human Resources Code §32.021, which provides that HHSC adopt rules necessary for the proper and ef-

ficient operation of the Medicaid program; and §103.004, which requires the executive commissioner of HHSC to adopt rules and set standards implementing Chapter 103.

The repeal implements Texas Government Code §§531.0055, 531.021, and 531.033, and Texas Human Resources Code §§32.021, 103.004, and 103.005.

§559.239. Definitions of Abuse, Neglect, and Exploitation.

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

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26 TAC §§559.241, 559.243, 559.253, 559.255, 559.257

STATUTORY AUTHORITY

The amendments and new sections are authorized by Texas Government Code §531.0055, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and §531.033, which provides the executive commissioner of HHSC with broad rule-making authority; and Texas Human Resources Code §32.021, which provides that HHSC adopt rules necessary for the proper and efficient operation of the Medicaid program; and §103.004, which requires the executive commissioner of HHSC to adopt rules and set standards implementing Chapter 103.

The amendments and new sections implement Texas Government Code §§531.0055, 531.021, and 531.033, and Texas Human Resources Code §§32.021, 103.004, and 103.005.

§559.241. Reporting Abuse, Neglect, or Exploitation[~~, or Incidents~~] to HHSC.

(a) Any individualized skills and socialization provider [~~staff~~] who has ~~reasonable~~ cause to believe that an individual is being or has been subjected to [~~is in a state of~~] abuse, neglect, or exploitation must report the abuse, neglect, or exploitation to the Texas Health and Human Services (HHSC) Complaint and Incident Intake Section through the online licensure portal or by telephone to 1-800-458-9858 within one hour after suspecting or learning of the alleged abuse, neglect, or exploitation.

(b) In addition to the reporting requirements described in subsection (a) of this section, an individualized skills and socialization provider must report the death of an individual when the death occurs while the individual is receiving services from an individualized skills and socialization provider to the HHSC Complaint and Incident Intake Section within one hour after learning of the [~~individual's~~] death.

(c) The following information must be reported to HHSC when making a report described in subsections (a) or (b) of this section:

(1) name, age, and address of the individual;

(2) name and address of the person responsible for the care of the individual, if available;

(3) nature and extent of the individual's condition;

(4) basis of the reporter's knowledge; and

(5) any other relevant information.

(d) Within five working days after making a report described in subsections (a) or (b) of this section, the individualized skills and socialization provider must conduct [~~ensure~~] an investigation of the incident [~~is conducted~~] and send a written investigation report on Form 3613-A, Provider Investigation Report, [~~or a form containing, at a minimum, the information required by Form 3613-A,~~] to HHSC [~~HHSC's~~] Complaint and Incident Intake.

(e) An individualized skills and socialization provider may not retaliate against an individual, legally authorized representative, or service provider for filing a complaint or presenting a grievance or for providing, in good faith, information to HHSC relating to abuse, neglect, or exploitation.

§559.243. HHSC Complaint Investigation.

[~~(a) A complaint is any allegation received by the Texas Health and Human Services Commission (HHSC) regarding abuse, neglect, or exploitation of an individual or a violation of state standards.~~]

(a) [~~(b)~~] HHSC must give the individualized skills and socialization provider notification of the complaint received and a summary of the complaint, without identifying the source of the complaint.

(b) [~~(c)~~] HHSC investigates complaints of abuse, neglect, or exploitation when the alleged victim is an individual receiving services from an individualized skills and socialization provider and:

(1) the act occurs at the on-site individualized skills and socialization location;

(2) the act occurs during the provision of off-site individualized skills and socialization services;

(3) the individualized skills and socialization provider is responsible for the supervision of the individual at the time the act occurs; or

(4) the alleged perpetrator is affiliated with the individualized skills and socialization provider.

[~~(d) Complaints of abuse, neglect, or exploitation not meeting the criteria in subsection (a) of this section must be referred to the Texas Department of Family and Protective Services.~~]

(c) [~~(e)~~] Complaint investigations must include a visit to the individualized skills and socialization provider and consultation with persons thought to have knowledge of the circumstances. If the individualized skills and socialization provider fails to admit HHSC staff for a complaint investigation, HHSC will seek a district [~~probate or county~~] court order for admission. Investigators may request from [~~of~~] the court that a peace officer accompany them.

[~~(f) In cases concluded to be physical abuse, the written report of the investigation by HHSC must be submitted to the appropriate law enforcement agency.~~]

[~~(g) In cases concluded to be abuse, neglect, or exploitation of an individual with a guardian, the written report of the investigation by HHSC must be submitted to the probate or county court that oversees the guardianship.~~]

§559.253. Administrative Penalties.

(a) The Texas Health and Human Services Commission (HHSC) may impose an administrative penalty if an individualized skills and socialization provider:

(1) fails to comply with Texas Human Resources Code (HRC) Chapter 103 or a rule, standard, or order adopted under HRC Chapter 103;

(2) makes a false statement of a material fact that the provider knows or should know is false:

(A) on an application for a license or a renewal of a license or in an attachment to the application; or

(B) with respect to a matter under investigation by HHSC;

(3) refuses to allow an HHSC representative to inspect:

(A) a book, record, or file required to be maintained by the provider; or

(B) any portion of the premises of the on-site location, or for off-site only providers, the designated place of business where records are kept;

(4) willfully interferes with the work of an HHSC representative who is preserving evidence of a violation of:

(A) HRC Chapter 103;

(B) a rule, standard, or order adopted under HRC Chapter 103; or

(C) a term of a license issued under this chapter;

(5) willfully interferes with the work of an HHSC representative or the enforcement of this chapter;

(6) fails to pay a penalty assessed under HRC Chapter 103, or a rule adopted under this chapter within 30 calendar days after the date the assessment of the penalty becomes final;

(7) fails to notify HHSC of a change of ownership in accordance with §559.211 of this subchapter (relating to Change of Ownership and Notice of Changes); or

(8) fails to submit an approved plan of correction to HHSC within 10 calendar days after receiving the final notification of assessed penalties.

(b) The range of the administrative penalty that may be imposed against the individualized skills and socialization provider each day for a violation described in subsection (a)(1) of this section is based on the scope and severity of the violation and whether it is an initial or repeated violation, as set forth in the following figure.
Figure: 26 TAC §559.253(b)

(c) HHSC imposes administrative penalties in accordance with the schedule of appropriate and graduated penalties established in this section. When determining the amount of an administrative penalty, HHSC considers:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the situation, and the hazard or potential hazard created by the situation to the health or safety of the public;

(2) the history of previous violations by a facility;

(3) the amount necessary to deter future violations;

(4) the facility's efforts to correct the violation; and

(5) any other matter that justice may require.

(d) If HHSC determines a violation is non-substantial, HHSC allows the individualized skills and socialization provider one opportunity to correct the violation to avoid an administrative penalty.

(e) If HHSC determines a violation is substantial as defined in §559.203 of this subchapter (relating to Definitions), HHSC does not allow the individualized skills and socialization provider an opportunity to correct the violation before HHSC imposes an administrative penalty.

(f) If HHSC imposes an administrative penalty for a violation as described in subsection (a) of this section, the administrative penalty begins accruing:

(1) for a substantial violation, on the date HHSC identifies the violation; or

(2) for a violation that is non-substantial, on the date of the exit conference of the post 45-day follow-up survey.

(g) An administrative penalty accrues each day until the individualized skills and socialization provider completes corrective action for that violation, as determined by HHSC.

(h) If an individualized skills and socialization provider demonstrates the corrective action is complete on the same day an administrative penalty begins accruing, HHSC imposes an administrative penalty for one day.

(i) For an administrative penalty imposed in accordance with subsection (a)(2) of this section:

(1) HHSC imposes the penalty no more than once per survey;

(2) HHSC does not allow the individualized skills and socialization provider an opportunity to correct the action before imposing the penalty; and

(3) the amount of the penalty is $500.

(j) If HHSC imposes an administrative penalty against the individualized skills and socialization provider in accordance with subsection (a)(2)- (8) of this section, HHSC does not, at the same time, impose a closing order or licensure suspension from the program provider for the same violation, action, or failure to act.

§559.255. Individualized Skills and Socialization Provider Compliance and Corrective Action.

(a) The Texas Health and Human Services Commission (HHSC) may conduct an unannounced survey or investigation in accordance with §559.231 of this division (relating to Surveys and Visits) to assess the health and safety of individuals receiving services from an individualized skills and socialization provider and make a determination regarding the provider's compliance with licensing and program requirements under this subchapter.

(b) During a survey or investigation, if HHSC determines there is an immediate threat to the health and safety of individuals due to an individualized skills and socialization provider's non-compliance with one or more regulatory requirements identified under this subchapter, HHSC notifies the individualized skills and socialization provider orally and in writing of the determination. In accordance with HHSC instructions and the requirements of this subchapter, the individualized skills and socialization provider must develop and document a plan of removal and submit the written plan to HHSC. The plan must include:

(1) a separate plan of removal for each identified area of non-compliance;

(2) a description of:

(A) immediate actions the individualized skills and socialization provider will take to ensure there is no longer a threat of harm to individuals receiving services;

(B) how the provider will identify all affected individuals;

(C) how the provider will monitor and document progress on:

(i) each action identified on the plan of removal; and

(ii) the effectiveness of the plan;

(D) actions the provider will take to ensure each identified non-compliance will not reoccur; and

(E) specific dates and times by which the individualized skills and socialization provider will complete each corrective action identified in this paragraph.

(c) HHSC notifies an individualized skills and socialization provider if a plan of removal is approved or not approved, and HHSC conducts daily visits and monitoring of the provider until HHSC determines threat of immediate harm no longer exists.

(d) If HHSC does not approve an individualized skills and socialization provider's plan of removal, the provider must resubmit a revised plan of removal to HHSC.

(e) If an individualized skills and socialization provider fails to submit a plan of removal as required, or does not implement an approved plan of removal, HHSC may deny or revoke the individualized skills and socialization provider's license.

(f) If HHSC determines the individualized skills and socialization provider complies with the regulatory requirements as indicated under this subchapter, HHSC:

(1) sends the individualized skills and socialization provider a final survey report stating that the individualized skills and socialization provider complies with the regulatory requirements;

(2) does not require any action by the individualized skills and socialization provider; and

(3) issues a license to the individualized skills and socialization provider as described in §559.205 of this subchapter (relating to Criteria for Licensing) if the survey is an initial or a re-licensing survey.

(g) If HHSC determines from an initial licensure survey, re-licensure survey, intermittent survey, or investigation that the individualized skills and socialization provider is not in compliance with a regulatory requirement:

(1) HHSC provides a final statement of violations in accordance with §559.233 of this division (relating to Determinations and Actions Pursuant to Surveys).

(2) HHSC may recommend with the final statement of violations the assessment of an administrative penalty for each violation and the amount of the administrative penalty, in which case HHSC provides:

(A) written notice to the individualized skills and socialization provider, indicating the amount of the recommended administrative penalty; and

(B) a statement of whether the violation is subject to correction in accordance with subsection (b) of this section and, if the violation is subject to correction:

(i) a statement of the date on which the individualized skills and socialization provider must file with HHSC a plan of correction for approval by HHSC;

(ii) the date on which the individualized skills and socialization provider must complete the plan of correction to avoid assessment of the administrative penalty; and

(iii) a statement that the license holder has a right to an administrative hearing on the occurrence of the violation, the amount of the penalty, or both.

(3) Within 20 calendar days after the date on which the individualized skills and socialization provider receives a written notice of the final statement of violations, the provider may:

(A) agree to the final statement of violations in writing, including the recommended administrative penalty; or

(B) submit a written request for an administrative hearing to HHSC.

(h) After HHSC receives the plan of correction as required by §559.233(f) of this division, HHSC notifies the individualized skills and socialization provider whether the plan is approved or not approved.

(1) If HHSC does not approve a plan of correction, the individualized skills and socialization provider must submit a revised plan of correction within five business days after the date of the HHSC notice that the plan of correction was not approved. After HHSC receives the revised plan of correction, HHSC notifies the individualized skills and socialization provider whether the revised plan is approved or not approved.

(2) If HHSC approves a plan of correction, HHSC notifies the individualized skills and socialization provider in writing that the plan of correction has been approved, and HHSC takes the following actions to determine if the individualized skills and socialization provider has completed the corrective action as outlined on the approved plan of correction:

(A) HHSC may request that the individualized skills and socialization provider submit evidence of corrective action; and

(B) HHSC may conduct:

(i) for a substantial violation, a follow-up survey after the date specified in the plan of correction for correcting the violation but within 45 calendar days after the survey exit conference; or

(ii) for a violation that is non-substantial, an off-site desk review or a post 45-day follow-up survey based on HHSC discretion.

(i) If an individualized skills and socialization provider does not submit a plan of correction as required by §559.233(f) of this division or a revised plan of correction required by subsection (h) of this section, or if HHSC notifies the individualized skills and socialization provider that a revised plan of correction is not approved, HHSC may impose administrative penalties in accordance with §559.253 of this division (relating to Administrative Penalties).

(j) If an individualized skills and socialization provider corrects a violation, the individualized skills and socialization provider must maintain the correction until the first anniversary of the date the correction was made.

(k) If an individualized skills and socialization provider fails to maintain a correction in accordance with subsection (j) of this section, HHSC may assess an administrative penalty equal to three times the amount of the original penalty assessed, but not collected. HHSC

does not provide the individualized skills and socialization provider an opportunity to correct the subsequent violation.

(l) If HHSC determines from a follow-up survey described in subsection (h)(2)(B)(i) of this section that the individual skills and socialization provider has completed a corrective action for a substantial violation, the administrative penalty associated with the substantial violation stops accruing on the date the corrective action was completed, as determined by HHSC.

(m) If HHSC determines from a follow-up survey described in subsection (h)(2)(B)(i) of this section that the individualized skills and socialization provider has not completed the corrective action for a substantial violation, HHSC may:

(1) continue to impose an administrative penalty and conduct a second follow-up survey to determine if the individualized skills and socialization provider completed the corrective action;

(2) impose a license suspension or closing order against the individualized skills and socialization provider; or

(3) deny or revoke the license of the individualized skills and socialization provider.

(n) If HHSC determines from a follow-up survey or off-site desk review described in subsection (h)(2)(B)(ii) of this section that the individualized skills and socialization provider has completed the corrective action for a violation that is non-substantial, HHSC does not impose an administrative penalty for the non-substantial violation.

(o) If HHSC determines from a follow-up survey or off-site desk review described in subsection (h)(2)(B)(ii) of this section that the individualized skills and socialization provider has not completed the corrective action for a violation that is non-substantial, HHSC:

(1) imposes an administrative penalty for the non-substantial violation in accordance with §559.253 of this division;

(2) notifies the individualized skills and socialization provider of the administrative penalty; and

(3) conducts a survey:

(A) after the date of the post 45-day exit conference of the follow-up survey; or

(B) after the date of the exit conference of the post 45-day follow-up survey if the program provider has submitted evidence of corrective action to HHSC during the 30-day period.

(p) If an individualized skills and socialization provider cannot resolve a dispute regarding a violation of regulations, the individualized skills and socialization provider is entitled to an informal dispute resolution (IDR) as outlined in §559.233(g) of this division.

(q) If HHSC determines that the individualized skills and socialization provider committed any of the actions described in §559.253(a) of this division, HHSC may:

(1) impose an administrative penalty against the individualized skills and socialization provider as described in §559.253 of this division;

(2) impose a non-emergency license suspension against the individualized skills and socialization provider as described in §559.247 of this division (relating to Nonemergency Suspension); or

(3) deny or revoke the license of the individualized skills and socialization provider as described in §559.215 of this subchapter (relating to Criteria for Denying a License or Renewal of a License) and §559.249 of this division (relating to Revocation).

(r) HHSC does not cite an individualized skills and socialization provider for violation of a regulatory requirement based solely on the action or inaction of a person who is not an employee, contractor, or volunteer of the individualized skills and socialization provider. HHSC may cite the individualized skills and socialization provider for violation of a regulatory requirement based on the individualized skills and socialization provider's response to the action or inaction of such a person.

§559.257. Administrative Hearings.

(a) An administrative hearing is held in accordance with Chapter 110 of this title (relating to Hearings Under the Administrative Procedure Act), Texas Government Code Chapter 2001, Subchapter I (relating to Administrative Procedure), and Texas Administrative Code, Title 1, Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(b) An administrative law judge sets a hearing date and gives notice of the hearing if an individualized skills and socialization provider is assessed an administrative penalty and requests a hearing.

(c) The requested hearing is held before an administrative law judge who makes findings of fact and conclusions of law regarding the occurrence of a violation under Texas Human Resources Code Chapter 103, a rule adopted under this chapter, or a term of a license issued under this chapter.

(d) Based on the findings of fact and conclusions of law and the recommendation of the administrative law judge, the executive commissioner or designee, by order, finds:

(1) a violation has occurred and assesses an administrative penalty; or

(2) a violation has not occurred.

(e) The executive commissioner or designee provides notice of the findings made under subsection (d) of this section to the individualized skills and socialization provider charged with a violation. If the executive commissioner finds that a violation has occurred, the executive commissioner or designee provides written notice to the provider of:

(1) the findings;

(2) the amount of the administrative penalty;

(3) the rate of interest payable on the penalty and the date on which interest begins to accrue; and

(4) the provider's right to judicial review of the order of the executive commissioner.

(f) Not later than the 30th day after the date on which the order of the executive commissioner or designee is final, the individualized skills and socialization provider assessed an administrative penalty must:

(1) pay the full amount of the penalty; or

(2) file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both.

(g) Notwithstanding subsection (e) of this section, HHSC may permit the individualized skills and socialization provider to pay an administrative penalty in installments.

(h) If an individualized skills and socialization provider does not pay an administrative penalty within the period provided by subsection (f) or (g) of this section or in accordance with the installment plan permitted by HHSC:

(1) the penalty is subject to interest; and

(2) HHSC may refer the matter to the attorney general for collection of the penalty and interest.

(i) Interest accrues:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the day after the date on which the penalty becomes due and ending on the date the penalty is paid.

(j) Accrued interest on the amount remitted by the executive commissioner or designee must be paid:

(1) at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank; and

(2) for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted to the individualized skills and socialization provider.

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

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 60. COMPLIANCE HISTORY

30 TAC §60.1, §60.2

The Texas Commission on Environmental Quality (commission or TCEQ) proposes amendments to 30 Texas Administrative Code (TAC) §60.1 and §60.2.

Background and Summary of the Factual Basis for the Proposed Rules

The commission proposes revisions to Chapter 60 to implement certain requirements of Senate Bill (SB) 1397, regarding compliance history. SB 1397, 88th Legislature, 2023, Section 13, amended Texas Water Code (TWC) §5.754 requiring the commission to consider major, moderate, and minor violations when determining repeat violators. This proposed rulemaking also addresses management recommendations adopted by the Sunset Advisory Commission that were not included in SB 1397 for the commission to review and update the agency's compliance history rating formula to ensure it accurately reflects a regulated entity's record of violations, including considerations of site complexity and cumulative violations or repeating violations; and to regularly update compliance history ratings.

Section by Section Discussion

§60.1, Compliance History

The commission proposes revisions to §60.1(a)(6) and (7) to establish the effective date of the proposed rule. The commission will continue to use the version of the rule in effect at the time the compliance history classification was calculated in accordance with §60.1(b). For example, when an application for a permit is received by the executive director, the version of Chapter 60 in effect at the time the application is received will be the version used for compliance history purposes. The commission may consider new compliance history information as it deems necessary.

The proposal amends §60.1(b) to change the compliance period for enforcement actions to be calculated from the initial enforcement screening date. The compliance history period for an enforcement action is currently based on the date of the initial mailing of the enforcement settlement offer or petition, whichever occurs first. Since complicated cases may take substantial time to develop, the compliance history period could change while the settlement offer or petition is being drafted. Changing the start of the compliance period to the initial screening of an enforcement action means the compliance history will more closely reflect the performance of the site at the time the violations were documented as opposed to several months later. This provides greater certainty to the regulated community as to how an entity is performing at the time an enforcement action begins. This also means a site's compliance history will remain the same throughout the drafting and review process of the initial proposed agreed order or the petition instead of requiring additional reviews to verify whether the compliance history has changed during the process. In addition, clarification is made on how Notices of Violation are considered consistent with changes to §60.2(f).

Proposed §60.1(c)(8) changes the language referencing the Texas Environmental, Health, and Safety Audit Privilege Act. The Act was amended by the 85th Legislature in 2017 and the proposed language recognizes this change.

§60.2, Classification

The proposal amends §60.2(a) to change the frequency that the executive director shall evaluate the compliance history of each site from annually to bi-annually. This implements a management recommendation adopted by the Sunset Advisory Commission to regularly update an entity's compliance history rating. The commission proposes that compliance histories be evaluated on March 1st and September 1st each year. Since 2002, when the rule originally established an annual review, technological advances have made it possible for the agency to increase the number of reviews per year without overburdening agency resources. Bi-annual reviews will allow for appropriate planning for announced and unannounced investigations, as well as increased oversight of unsatisfactory performers. More frequent evaluations better allow the commission to consider whether proceedings should be initiated to revoke a permit, or to amend a permit where statutes allow, of an unsatisfactory performer. The commission considered other evaluation periods and determined that evaluations more frequent than bi-annually may require shortening the appeal window to ensure appeal reviews could be completed before the next evaluation period begins.

The proposal amends §60.2(c) to change the methodology of grouping regulated entities from reliance on the North American Industry Classifications System (NAICS) to use of complexity points described in §60.2(e) as the commission has determined complexity to be a more accurate measurement criterion. In 2002, the commission determined Standard Industrial Classification (SIC) codes did not adequately capture the environmental

complexity of the regulated community. In 2012, the commission listed NAICS codes as an option for grouping. However, over time, the commission found that the self-reported NAICS codes were frequently incorrect, inaccurate, or failed to fully describe the operations of the regulated site from an environmental impact standpoint. Therefore, the commission has not been able to effectively use NAICS codes for complexity determinations. The commission proposes to use the complexity formula to establish groupings to improve accuracy and provide certainty to the regulated public as they are already familiar with the formula and its impact on a site.

The proposal amends §60.2(f) to reflect changes to the way in which the commission evaluates repeat violators as required by SB 1397. Previously, in determining whether an entity was a repeat violator, the commission evaluated only major violations of the same nature and the same environmental media that occurred during the five-year compliance period. Under the proposed rule, in accordance with SB 1397, the commission will evaluate major, moderate, and minor violations of the same nature and environmental media that occurred during the five-year compliance period.

The new formula considers "repeat violation points" for each violation of the same nature and the same environmental media documented in any final enforcement orders, court judgments, and criminal convictions that occurred at least three times during the five-year compliance period. The number of "repeat violation points" varies by classification of the violation with each minor violation receiving 2 repeat violation points, each moderate violation receiving 10 points, and each major violation receiving 50 points. The total of all repeat violation points assessed to a regulated entity is used to determine whether the regulated entity has exceeded the repeat violation point thresholds to be classified as a repeat violator. The commission has established repeat violation point thresholds based on complexity points. Regulated entities with 15 or more complexity points and 150 or more "repeat violation points" will be classified as a repeat violator, while regulated entities with less than 15 complexity points and 100 or more "repeat violation points" will also be classified as a repeat violator.

The commission proposes changing §60.2(f)(1) and (2) and adding §60.2(f)(3). Proposed §60.2(f)(1) adds moderate and minor violations to repeat violator consideration and removes the requirement that violations be documented on separate occasions. Currently, multiple violations of the same type may be consolidated into a single enforcement action. Historically, the commission has considered "separate occasion" to mean individual orders or enforcement actions. For example, if a regulated entity had two unauthorized discharges within one compliance year and the entity signed a single agreed order that contained both major violations, the commission treated it as a single major violation for purposes of the repeat violator criteria. The legislative directive of SB 1397 to include all minor, moderate, and major violations requires the removal of the "separate occasion" language to ensure all violations are considered. The change allows the commission to consider all repeat occurrences of similar violations documented during the five-year evaluation period rather than the number of orders or enforcement actions that contained similar violations.

Proposed §60.2(f)(2)(A) - (C) establishes "repeat violation point" values based on the classification of the violation. Each violation of the same nature and the same environmental media documented in any final enforcement orders, court judgments, and criminal convictions that occurred at least three times during the five-year compliance period is assessed repeat violation points based on the classification of the violation. Each minor violation receives 2 repeat violation points, each moderate violation receives 10 points, and each major violation receives 50 points. This methodology allows the commission to clearly differentiate between repeat violators with significant actual or potential environmental harm from those entities that have repeat violations with minimal actual or potential environmental harm. For example, repeating a minor violation five times during a five-year period would be equally weighted with a single moderate violation, and repeating the same moderate violation five times during a five-year period would be weighted equally to one major violation.

Proposed §60.2(f)(3) establishes repeat violation point thresholds, based on complexity points, to determine repeat violator classifications. Under the proposal, a regulated entity is a repeat violator when: the site has less than a total of 15 complexity points and 100 or more repeat violation points; or the site has 15 or more complexity points and 150 or more repeat violation points. This approach continues to use 15 complexity points as the threshold and expands the criteria for repeat violators from three major violations for higher complex entities (150 points) to a combination of minor, moderate, and major violations (total 150 points) and two major violations for less complex entities (100 points) to a combination of minor, moderate and major violations (total 100 points). These thresholds ensure that the commission continues to hold repeat violators accountable without reducing environmental protections or standards. For example, higher complex regulated entities may reach the threshold by repeating the same moderate violation fifteen times within a five-year period, repeating the same minor violation seventy-five times within a five-year period, or some combination of violation points to reach the 150-point threshold.

The proposal moves "Repeat Violator Exemption" from existing §60.2(f)(2) to proposed §60.2(f)(4).

Proposed §60.2(g)(1)(L) changes the language referencing the Texas Environmental, Health, and Safety Audit Privilege Act. The Act was amended by the 85th Legislature in 2017 and the proposed language recognizes this change.

Proposed §60.2(g)(2) changes the site rating ranges for regulated entities. Currently, there is a common set of ranges for entities of all complexities. The commission proposes creating separate classification groups based on complexity points to address the Sunset Advisory Commission's management recommendation to compare entities of similar complexity to one another. The proposed rule establishes separate ranges for higher complex entities and less complex entities. Proposed §60.2(g)(2)(A) establishes the classification rating ranges for regulated entities with a complexity point total less than 15. For a regulated entity classified as less complex, a high performer is defined as having less than 0.10 points. A satisfactory performer is defined as having 0.10 points to 60 points. An unsatisfactory performer is defined as having more than 60 points.

Proposed §60.2(g)(2)(B) establishes the classification rating ranges for regulated entities with a complexity point total of 15 or more. A high performer is defined as having less than 0.10 points. A satisfactory performer is defined as having 0.10 points to 55 points. An unsatisfactory performer is defined as having more than 55 points.

As noted by the Sunset Advisory Commission, the compliance history rule calculation methodology disproportionately impacts less complex entities. The commission recognizes that, in general, less complex entities have fewer resources and face different challenges than their higher complexity counterparts. While the higher complexity entities are generally much larger in size, they tend to have more resources, represent a much smaller group of the regulated community, and typically have a potentially larger environmental footprint. The proposed rule allows for different classification thresholds for each complexity grouping, thereby accounting for their differences.

Proposed §60.2(g)(3)(A), (B)(i) and (ii) removes the specific point value that a regulated entity will receive following the application of a mitigating factor. Should a mitigating factor be granted to a regulated entity, the entity's rating will be adjusted to the maximum rating within the satisfactory classification for the entity's complexity point group. For regulated entities with less than 15 complexity points, the rating will be adjusted to 60. For regulated entities with 15 or more complexity points, the rating will be adjusted to 55.

Proposed §60.2(i) revises how a regulated entity can review their pending compliance history rating to match current practice by removing the submission of a Compliance History Review Form and replacing it with the registration for the Advanced Review of Compliance History (ARCH).

Fiscal Note: Costs to State and Local Government

Kyle Girten, analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, fiscal implications are anticipated for TCEQ and fiscal implications may result for units of local government as a result of implementation of the proposed rule. No fiscal implications are anticipated for other units of state government.

The General Appropriations Act (HB 1, 88th Legislature) authorized six full time equivalent (FTE) employees and $315,000 in funding to implement statutory changes to TWC §5.754 in SB 1397, 88th Legislature, 2023 and directives from the Sunset Advisory Commission that relate to this rulemaking. The proposed rulemaking would require TCEQ to update its compliance history twice annually instead of once per year (§60.2), and the rulemaking would also result in the agency needing to modify its compliance history application. The agency and Advanced Review of Compliance History website would need to be updated.

Local governmental entities which are permittees that are subject to the requirements of Chapter 60 could have indirect fiscal impacts from this rulemaking. This rule applies to approximately 400,000 entities, and this number includes businesses as well as local government entities. Compliance history information must be used by TCEQ when making decisions regarding permitting, enforcement, announced investigations, and participation in innovative programs (§60.3). Should the proposed rulemaking result in a change to whether an entity is classified as a satisfactory/unsatisfactory performer or repeat violator (§60.2), such an entity may have increased or decreased costs associated with permitting or administrative penalties. Ultimately, the fiscal impact on a regulated entity is dependent on compliance or non-compliance with the applicable environmental rules and regulations.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public will benefit from having rules that are consistent with state law, specifically SB 1397 from the 88th Regular Legislative Session (2023) and directives from the Sunset Advisory Commission. The public will also benefit from having a more regularly updated record of regulated entities compliance status because the proposed rulemaking would require TCEQ to update compliance history information twice annually instead of once per year (§60.2).

Businesses which are permittees that are subject to the requirements of Chapter 60 could have indirect fiscal impacts from this rulemaking. Compliance history information must be used by TCEQ when making decisions regarding permitting, enforcement, announced investigations, and participation in innovative programs (§60.3). Should the proposed rulemaking result in a change to whether an entity is classified as a satisfactory/unsatisfactory performer or repeat violator (§60.2), such an entity may have increased or decreased costs associated with permitting or administrative penalties. Ultimately, the fiscal impact on a regulated entity is dependent on compliance or non-compliance with the applicable environmental rules and regulations.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Community Impact Statement

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect. Based on directives from the Sunset Advisory Commission, the proposed rulemaking is designed to address inequities between small and large entities. With the changes proposed in this rulemaking and the creation of separate groups based on complexity points, less complex entities will be separated from larger, higher complexity entities and compared to similarly complex sites when determining satisfactory rating classification and repeat violator status. This will allow each of the two groups to be held to separate standards which account for the unique opportunities and challenges faced by each group.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does

not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation, and it does not create, expand, repeal, or limit this regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because the proposed rule changes do not meet the definition of a "Major environmental rule" as defined in that statute. Although the intent of the proposed rule modifications are to protect the environment and reduce the risk to human health from environmental exposure, they do not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Instead, the proposed rule changes merely modify the standards for the classification of a person's compliance history by setting the number of major, moderate, and minor violations needed to be classified as a repeat violator, to review and update the agency's compliance history rating formula to ensure it accurately reflects a regulated entity's record of violations, and to update compliance history ratings more often than once per fiscal year. The requirements for establishing standards for the classification of a person's compliance history are contained in TWC, §5.754.

The proposed rule modifications are designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. Furthermore, the proposed rule modifications do not meet any of the four applicability requirements listed in §2001.0225(a). They do not exceed a standard set by federal law, because there is no comparable federal law. They do not exceed an express requirement of state law, because they are consistent with the requirements of TWC, §5.754. The proposed rule modifications do not exceed the requirements of a delegation agreement because there is no applicable delegation agreement. They are not proposed to be adopted solely under the general powers of the agency but will be adopted under the express requirements of TWC §5.754 and management recommendations adopted by the Sunset Advisory Commission.

The commission invites public comment on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the proposed rules and performed an assessment of whether the proposed rules constitute a taking under TGC, Chapter 2007. The specific purpose of the proposed rules is to implement certain requirements of Senate Bill (SB) 1397 and other legislative directives, regarding compliance history. The proposed rules will substantially advance this stated purpose by modifying the standards for the classification of a person's compliance history by setting the number of major, moderate, and minor violations needed to be classified as a repeat violator, to review and update the agency's compliance history rating formula to ensure it accurately reflects a regulated entity's record of violations, and to update compliance history ratings more often than once per fiscal year.

Promulgation and enforcement of these proposed rules will be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, the proposed rules will not burden private real property because they modify the standards for the classification of a person's compliance history by setting the number of major, moderate, and minor violations needed to be classified as a repeat violator, to review and update the agency's compliance history rating formula to ensure it accurately reflects a regulated entity's record of violations, and to update compliance history ratings more often than once per fiscal year. The subject proposed rules do not affect a landowner's rights in private real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §29.22, and found the proposed rulemaking consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rule include: 31 TAC §26.12(1), to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); 31 TAC §26.12(2), to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; 31 TAC §26.12(3), to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs; 31 TAC §26.12(5), to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone; 31 TAC §26.12(6), to coordinate agency and subdivision decision-making affecting CNRAs by establishing clear, objective policies for the management of CNRAs; 31 TAC §26.12(7), to make agency and subdivision decision-making affecting CNRAs efficient by identifying and addressing duplication and conflicts among local, state, and federal regulatory and other programs for the management of CNRAs; and 31 TAC §26.12(8), to make agency and subdivision decision-making affecting CNRAs more effective by employing the most comprehensive, accurate, and reliable information and scientific data available and by developing, distributing for public comment, and maintaining a coordinated, publicly accessible geographic information system of maps of the coastal zone and CNRAs at the earliest possible date. The commission has reviewed the proposed rule for consistency with applicable goals of the CMP and determined that the proposed rule is consistent with the intent of the applicable goals and will not result in any significant adverse effect to CNRAs.

CMP policies applicable to the proposed rule include: 31 TAC §26.19, Construction and Operation of Solid Waste Treatment, Storage, and Disposal Facilities; 31 TAC §26.20, Prevention, Response, and Remediation of Oil Spills; 31 TAC §26.21, Discharge of Municipal and Industrial Wastewater to Coastal Waters; 31 TAC §26.22, Nonpoint Source (NPS) Water Pollution;

31 TAC §26.23, Development in Critical Areas; 31 TAC §26.25, Dredging and Dredged Material Disposal and Placement; 31 TAC §26.28, Development Within Coastal Barrier Resource System Units and Otherwise Protected Areas on Coastal Barriers; and 31 TAC §26.32, Emission of Air Pollutants. This rulemaking does not relax existing standards for issuing permits related to the construction and operation of solid waste treatment, storage, and disposal facilities in the coastal zone or for governing the prevention of, response to, and remediation of coastal oil spills. This rulemaking does not relax existing commission rules and regulations governing the discharge of municipal and industrial wastewater to coastal waters, nor does it affect the requirement that the agency consult with the Department of State Health Services regarding wastewater discharges that could significantly adversely affect oyster reefs. This rulemaking does not relax the existing requirements that state agencies and subdivisions with the authority to manage NPS pollution cooperate in the development and implementation of a coordinated program to reduce NPS pollution in order to restore and protect coastal waters. Further, it does not relax existing requirements applicable to: areas with the potential to develop agricultural or silvicultural NPS water quality problems; on-site disposal systems; underground storage tanks; or Texas Pollutant Discharge Elimination System permits for stormwater discharges. This rulemaking does not relax the standards related to dredging; the discharge, disposal, and placement of dredge material; compensatory mitigation; and authorization of development in critical areas. This rulemaking does not relax existing standards for issuing permits related to development of infrastructure within Coastal Barrier Resource System Units and Otherwise Protected Areas. Rather, the intent of the rulemaking is to increase compliance with existing standards and rule requirements.

Promulgation and enforcement of this rule will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rule is consistent with these CMP goals and policies and because this rule does not create or have a direct or significant adverse effect on any coastal natural resource areas.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hold a hybrid virtual and in-person public hearing on this proposal in Austin on August 18, 2025, at 10:00 a.m. in Building D, Room 191, located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 9:30 a.m.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by August 14, 2025. To register for the hearing, please email *Rules@tceq.texas.gov* and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on August 15, 2025, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://events.teams.microsoft.com/event/d758c7a2-3f27-4605-bfe6-99749d686a8a@871a83a4-a1ce-4b7a-8156-3bcd93a08fba

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at:

https://tceq.commentinput.com/comment/search. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2024-043-060-CE. The comment period closes on August 25, 2025. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at

https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Krista Clement, Office of Compliance and Enforcement, (512) 239-1234.

Statutory Authority

The rule amendments are proposed under the authority of Texas Water Code (TWC) §5.753, concerning Standards for Evaluating and Using Compliance History, and TWC, §5.754, as amended by Senate Bill 1397, 88th Legislature, 2023, Section 13, concerning Classification and Use of Compliance History, which authorize rulemaking to establish compliance history standards, call upon the compliance history program to ensure consistency, and establish criteria for classifying a repeat violator. These provisions do not restrict the application of such classifications to be at specific intervals. Additional authority exists under TWC, §5.102, concerning General Powers, which provides the commission with the general powers to carry out its duties under the TWC; and TWC, §5.103, concerning Rules, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC and other laws of this state.

The proposed rule amendments implements TWC, §§5.102, 5.103, 5.753, and 5.754.

§60.1. Compliance History.

(a) Applicability. The provisions of this chapter are applicable to all persons subject to the requirements of Texas Water Code (TWC), Chapters 26, 27, and 32 and Texas Health and Safety Code (THSC), Chapters 361, 375, 382, and 401.

(1) Specifically, the agency will utilize compliance history when making decisions regarding:

(A) the issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit;

(B) enforcement;

(C) the use of announced investigations; and

(D) participation in innovative programs.

(2) For purposes of this chapter, the term "permit" means licenses, certificates, registrations, approvals, permits by rule, standard permits, or other forms of authorization.

(3) With respect to authorizations, this chapter only applies to forms of authorization, including temporary authorizations, that require some level of notification to the agency, and which, after receipt by the agency, requires the agency to make a substantive review of and approval or disapproval of the authorization required in the notification or submittal. For the purposes of this rule, "substantive review of and approval or disapproval" means action by the agency to determine, prior to issuance of the requested authorization, and based on the notification or other submittal, whether the person making the notification has satisfied statutory or regulatory criteria that are prerequisites to issuance of such authorization. The term "substantive review or response" does not include confirmation of receipt of a submittal.

(4) Notwithstanding [~~Regardless of the applicability of~~] paragraphs (2) and (3) of this subsection, this chapter does not apply to certain permit actions such as:

(A) voluntary permit revocations;

(B) minor amendments and nonsubstantive corrections to permits;

(C) Texas pollutant discharge elimination system and underground injection control minor permit modifications;

(D) Class 1 solid waste modifications, except for changes in ownership;

(E) municipal solid waste Class I modifications, except for temporary authorizations and municipal solid waste Class I modifications requiring public notice;

(F) permit alterations;

(G) administrative revisions; and

(H) air quality new source review permit amendments which meet the criteria of §39.402(a)(3)(A) - (C) and (5)(A) - (C) of this title (relating to Applicability to Air Quality Permits and Permit Amendments) and minor permit revisions under Chapter 122 of this title (relating to Federal Operating Permits Program).

(5) Further, this chapter does not apply to occupational licensing programs under the jurisdiction of the commission.

(6) Not later than March [~~September~~] 1, 2026 [~~2012~~], the executive director shall develop compliance histories with the components specified in this chapter. Prior to March [~~September~~] 1, 2026 [~~2012~~], the executive director shall continue in effect the standards and use of compliance history for any action (permitting, enforcement, or otherwise) that were in effect before March [~~September~~] 1, 2026 [~~2012~~].

(7) Effective March [~~September~~] 1, 2026 [~~2012~~], this chapter shall apply to the use of compliance history in agency decisions relating to:

(A) applications submitted on or after this date for the issuance, amendment, modification, or renewal of permits;

(B) inspections and flexible permitting;

(C) a proceeding that is initiated or an action that is brought on or after this date for the suspension or revocation of a permit or the imposition of a penalty in a matter under the jurisdiction of the commission; and

(D) applications submitted on or after this date for other forms of authorization, or participation in an innovative program, except for flexible permitting.

(8) If a motion for reconsideration or a motion to overturn is filed under §50.39 or §50.139 of this title (relating to Motion for Reconsideration; and Motion to Overturn Executive Director's Decision) with respect to any of the actions listed in paragraph (4) of this subsection, and is set for commission agenda, a compliance history shall be prepared by the executive director and filed with the Office of the Chief Clerk no later than six days before the Motion is considered on the commission agenda.

(b) Compliance period. The compliance history period includes the five years prior to the date the permit application is received by the executive director; the five-year period preceding the date of the initial enforcement screening [~~initiating an enforcement action with an initial enforcement settlement offer or the filing date of an Executive Director's Preliminary Report, whichever occurs first~~]; for purposes of determining whether an announced investigation is appropriate, the five-year period preceding an investigation; or the five years prior to the date the application for participation in an innovative program is received by the executive director. The compliance history period may be extended beyond the date the application for the permit or participation in an innovative program is received by the executive director, up through completion of review of the application. Notices [~~Except as used in §60.2(f) of this title (relating to Classification) for determination of repeat violator, notices~~] of violation may only be used as a component of compliance history for a period not to exceed one year from the date of issuance.

(c) Components. The compliance history shall include multimedia compliance-related information about a person, specific to the site which is under review, as well as other sites which are owned or operated by the same person. The components are:

(1) any final enforcement orders, court judgments, and criminal convictions of this state relating to compliance with applicable legal requirements under the jurisdiction of the commission. "Applicable legal requirement" means an environmental law, regulation, permit, order, consent decree, or other requirement;

(2) notwithstanding [~~regardless of~~] any other provision of the TWC, orders developed under TWC, §7.070 and approved by the commission on or after February 1, 2002;

(3) to the extent readily available to the executive director, final enforcement orders, court judgments, consent decrees, and criminal convictions relating to violations of environmental rules of the United States Environmental Protection Agency;

(4) chronic excessive emissions events. For purposes of this chapter, the term "emissions event" is the same as defined in THSC, §382.0215(a);

(5) any information required by law or any compliance-related requirement necessary to maintain federal program authorization;

(6) the dates of investigations;

(7) all written notices of violation for a period not to exceed one year from the date of issuance of each notice of violation, including written notification of a violation from a regulated person, issued on or after September 1, 1999, except for those administratively determined to be without merit;

(8) the date of letters notifying the executive director of an intended audit conducted and any violations disclosed and having received immunity under the Texas Environmental, Health, and Safety Audit Privilege Act (Audit Act), 85th Legislature, 2017, TEX.

HEALTH AND SAFETY CODE ch. 1101 [~~75th Legislature, 1997, TEX. REV. CIV. STAT. ANN. art. 4447cc (Vernon's)~~];

(9) an environmental management system approved under Chapter 90 of this title (relating to Innovative Programs), if any, used for environmental compliance;

(10) any voluntary on-site compliance assessments conducted by the executive director under a special assistance program;

(11) participation in a voluntary pollution reduction program; and

(12) a description of early compliance with or offer of a product that meets future state or federal government environmental requirements.

(d) Change in ownership. In addition to the requirements in subsections (b) and (c) of this section, if ownership of the site changed during the five-year compliance period, a distinction of compliance history of the site under each owner during that five-year period shall be made. Specifically, for any part of the compliance period that involves a previous owner, the compliance history will include only the site under review. For the purposes of this rule, a change in operator shall be considered a change in ownership if the operator is a co-permittee.

§60.2. Classification.

(a) Classifications. Effective March 1, 2026 [~~Beginning September 1, 2002~~], the executive director shall evaluate the compliance history of each site and classify each site and person as needed for the actions listed in §60.1(a)(1) of this title (relating to Compliance History). On September 1, 2026 [~~2003~~], and semi-annually thereafter, the executive director shall evaluate the compliance history of each site, and classify each site and person. For the purposes of classification in this chapter, and except with regard to portable units, "site" means all regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. Site includes any property identified in the permit or used in connection with the regulated activity at the same street address or location. A "site" for a portable regulated unit or facility is any location where the unit or facility is or has operated. Each site and person shall be classified as:

(1) a high performer, which has an above-satisfactory compliance record;

(2) a satisfactory performer, which generally complies with environmental regulations; or

(3) an unsatisfactory performer, which performs below minimal acceptable performance standards established by the commission.

(b) Inadequate information. For purposes of this rule, "inadequate information" shall be defined as no compliance information. If there is no compliance information about the site at the time the executive director develops the compliance history classification, then the classification shall be designated as "unclassified." The executive director may conduct an investigation to develop a compliance history.

(c) Groupings. Sites will be divided into groupings based on complexity [~~North American Industry Classifications Systems (NAICS) codes~~] or other information available to the executive director. The complexity calculation is described in subsection (e) of this section (relating to Classification).

(d) Major, moderate, and minor violations. In classifying a site's compliance history, the executive director shall determine whether a documented violation of an applicable legal requirement is of major, moderate, or minor significance.

(1) Major violations are:

(A) a violation of a commission enforcement order, court order, or consent decree;

(B) operating without required authorization or using a facility that does not possess required authorization;

(C) an unauthorized release, emission, or discharge of pollutants that caused, or occurred at levels or volumes sufficient to cause, adverse effects on human health, safety, or the environment;

(D) falsification of data, documents, or reports; and

(E) any violation included in a criminal conviction, which required the prosecutor to prove a culpable mental state or a level of intent to secure the conviction.

(2) Moderate violations are:

(A) complete or substantial failure to monitor, analyze, or test a release, emission, or discharge, as required by a commission rule or permit;

(B) complete or substantial failure to submit or maintain records, as required by a commission rule or permit;

(C) not having an operator whose level of license, certification, or other authorization is adequate to meet applicable rule requirements;

(D) any unauthorized release, emission, or discharge of pollutants that is not classified as a major violation;

(E) complete or substantial failure to conduct a unit or facility inspection, as required by a commission rule or permit;

(F) any violation included in a criminal conviction, for a strict liability offense, in which the statute plainly dispenses with any intent element needed to be proven to secure the conviction; and

(G) maintaining or operating regulated units, facilities, equipment, structures, or sources in a manner that could cause an unauthorized or noncompliant release, emission, or discharge of pollutants.

(3) Minor violations are:

(A) performing most, but not all, of a monitoring or testing requirement, including required unit or facility inspections;

(B) performing most, but not all, of an analysis or waste characterization requirement;

(C) performing most, but not all, of a requirement addressing the submittal or maintenance of required data, documents, notifications, plans, or reports; and

(D) maintaining or operating regulated units, facilities, equipment, structures, or sources in a manner not otherwise classified as moderate.

(e) Complexity Points. All sites classified shall have complexity points as follows:

(1) Program Participation Points. A site shall be assigned Program Participation Points based upon its types of authorizations, as follows:

(A) four points for each permit type listed in clauses (i) - (viii) of this subparagraph issued to a person at a site:

(i) Radioactive Waste Disposal;

(ii) Hazardous or Industrial Non-Hazardous Storage Processing or Disposal;

(iii) Municipal Solid Waste Type I;

(iv) Prevention of Significant Deterioration;

(v) Phase I--Municipal Separate Storm Sewer System;

(vi) Texas Pollutant Discharge Elimination System (TPDES) or National Pollutant Discharge Elimination System (NPDES) Industrial or Municipal Major;

(vii) Nonattainment New Source Review; and

(viii) Underground Injection Control Class I/III;

(B) three points for each type of authorization listed in clauses (i) - (iv) of this subparagraph issued to a person at a site:

(i) Municipal Solid Waste Type I AE;

(ii) Municipal Solid Waste Type IV, V, or VI;

(iii) Municipal Solid Waste Type IV AE; and

(iv) TPDES or NPDES Industrial or Municipal Minor;

(C) two points for each permit type listed in clauses (i) - (iii) of this subparagraph issued to a person at a site or utilized by a person at a site:

(i) Title V Federal Operating Permit;

(ii) New Source Review individual permit; and

(iii) any other individual site-specific water quality permit not referenced in subparagraph (A) or (B) of this paragraph or any water quality general permit;

(D) one point for each type of authorization listed in clauses (i) - (xiii) of this subparagraph issued to a person at a site or utilized by a person at a site:

(i) Edwards Aquifer authorization;

(ii) Enclosed Structure permit or registration relating to the use of land over a closed Municipal Solid Waste landfill;

(iii) Industrial Hazardous Waste registration;

(iv) Municipal Solid Waste Tire Registrations;

(v) Other types of Municipal Solid Waste permits or registrations not listed in subparagraphs (A) - (C) of this paragraph;

(vi) Petroleum Storage Tank registration;

(vii) Radioactive Waste Storage or Processing license;

(viii) Sludge registration or permit;

(ix) Stage II Vapor Recovery registration;

(x) Municipal Solid Waste Type IX;

(xi) Permit by Rule requiring submission of an application under Chapter 106 of this title (relating to Permits by Rule);

(xii) Uranium license; and

(xiii) Air Quality Standard Permits.

(2) Size. Every site shall be assigned points based upon size as determined by the following:

(A) Facility Identification Numbers (FINs): The total number of FINS at a site will be multiplied by 0.02 and rounded up to the nearest whole number.

(B) Water Quality external outfalls:

(i) 10 points for a site with ten or more external outfalls;

(ii) 5 points for a site with at least five, but fewer than ten, external outfalls;

(iii) 3 points for sites with at least two, but fewer than five, external outfalls; and

(iv) 1 point for sites with one external outfall;

(C) Active Hazardous Waste Management Units (AHWMUs):

(i) 10 points for sites with 50 or more AHWMUs;

(ii) 5 points for sites with at least 20, but fewer than 50, AHWMUs;

(iii) 3 points for sites with at least ten, but fewer than 20, AHWMUs; and

(iv) 1 point for sites with at least one but fewer than ten AHWMUs.

(D) Small Entities shall receive 3 points. A small entity is defined as: a city with a population of less than 5,000; a county with a population of less than 25,000; or a small business. A small business is defined as any person, firm, or business which employs, by direct payroll and/or through contract, fewer than 100 full-time employees. A business that is a wholly owned subsidiary of a corporation shall not qualify as a small business if the parent organization does not qualify as a small business.

(E) Underground Storage Tanks (USTs) and Aboveground Storage Tanks (ASTs):

(i) 4 points for sites with 11 or more USTs;

(ii) 3 points for sites with five to ten USTs;

(iii) 3 points for sites with more than 11 ASTs;

(iv) 2 points for sites with three to four USTs;

(v) 2 points for sites with three to ten, ASTs;

(vi) 1 point for sites with one to two USTs; and

(vii) 1 point for sites with one to two ASTs.

(3) Nonattainment area points. Every site located in a nonattainment area shall be assigned 1 point.

(4) The subtotals from paragraphs (1) - (3) of this subsection shall be summed.

(f) Repeat violator.

(1) Repeat violator criteria. A person may be classified as a repeat violator at a site when[, ~~on~~] multiple[, ~~separate occasions,~~] major, moderate, or minor violations of the same nature and the same environmental media occurs during the preceding five-year compliance period [~~as provided in subparagraphs (A) and (B) of this paragraph~~]. Same nature is defined as violations that have the same root citation at the subsection level. For example, all rules under §334.50 of this title (relating to Release Detection) (e.g. §334.50(a) or (b)(2) of this title) would be considered same nature. The total complexity points for a site equals the sum of points assigned to a specific site in subsection (e) of this section. [~~A person is a repeat violator at a site when:~~]

[~~(A) the site has had a major violation(s) documented on at least two occasions and has less than a total of 15 complexity points; or~~]

[~~(B) the site has had a major violation(s) documented on at least three occasions.~~]

(2) Repeat violation points. Each repeat violation will be:

(A) Assigned 2 points for each minor violation as documented in any final enforcement orders, court judgments, and criminal convictions;

(B) Assigned 10 points for each moderate violation as documented in any final enforcement orders, court judgments, and criminal convictions; and

(C) Assigned 50 points for each major violation as documented in any final enforcement orders, court judgments, and criminal convictions.

(3) A person is a repeat violator at a site when the number of repeat violation points is:

(A) Equal to or greater than 150 for sites with 15 or more complexity points; or,

(B) Equal to or greater than 100 for sites with less than 15 complexity points.

(4) [~~(2)~~] Repeat violator exemption. The executive director shall designate a person as a repeat violator as provided in this subsection, unless the executive director determines the nature of the violations and the conditions leading to the violations do not warrant the designation.

(g) Formula. The executive director shall determine a site rating based upon the following method.

(1) Site rating. For the time period reviewed, the following calculations shall be performed based upon the compliance history at the site.

(A) The number of major violations contained in:

(i) any adjudicated final court judgments and default judgments, shall be multiplied by 160;

(ii) any non-adjudicated final court judgments or consent decrees without a denial of liability shall be multiplied by 140;

(iii) any non-adjudicated final court judgments or consent decrees containing a denial of liability, adjudicated final enforcement orders, and default orders, shall be multiplied by 120;

(iv) any final prohibitory emergency orders issued by the commission shall be multiplied by 120;

(v) any agreed final enforcement orders without a denial of liability shall be multiplied by 100; and

(vi) any agreed final enforcement orders containing a denial of liability shall be multiplied by 80.

(B) The number of moderate violations contained in:

(i) any adjudicated final court judgments and default judgments shall be multiplied by 115;

(ii) any non-adjudicated final court judgments or consent decrees without a denial of liability shall be multiplied by 95;

(iii) any non-adjudicated final court judgments or consent decrees containing a denial of liability, adjudicated final enforcement orders, and default orders, shall be multiplied by 75;

(iv) any agreed final enforcement orders without a denial of liability shall be multiplied by 60; and

(v) any agreed final enforcement orders containing a denial of liability shall be multiplied by 45.

(C) The number of minor violations contained in:

(i) any adjudicated final court judgments and default judgments shall be multiplied by 45;

(ii) any non-adjudicated final court judgments or consent decrees without a denial of liability shall be multiplied by 35;

(iii) any non-adjudicated final court judgments or consent decrees containing a denial of liability, adjudicated final enforcement orders, and default orders, shall be multiplied by 25;

(iv) any agreed final enforcement orders without a denial of liability shall be multiplied by 20; and

(v) any agreed final enforcement orders containing a denial of liability shall be multiplied by 15.

(D) The total number of points assigned for all resolved violations in subparagraphs (A) - (C) of this paragraph will be reduced based on achievement of compliance with all ordering provisions. For the first two years after the effective date of the enforcement order(s), court judgment(s), consent decree(s), and criminal conviction(s), the site will receive the total number of points assigned for violations in subparagraphs (A) - (C) of this paragraph. If all violations in subparagraphs (A) - (C) of this paragraph are resolved and compliance with all ordering provisions is achieved, for each enforcement order(s), court judgment(s), consent decree(s), and criminal conviction(s) :

(i) under two years old, the points associated with the violations in subparagraphs (A) - (C) of this paragraph will be multiplied by 1.0;

(ii) over two years old, the points associated with the violations in subparagraphs (A) - (C) of this paragraph will be multiplied by 0.75;

(iii) over three years old, the points associated with the violations in subparagraphs (A) - (C) of this paragraph will be multiplied by 0.50; and

(iv) over four years old, the points associated with the violations in subparagraphs (A) - (C) of this paragraph will be multiplied by 0.25.

(E) The number of major violations contained in any notices of violation shall be multiplied by 10.

(F) The number of moderate violations contained in any notices of violation shall be multiplied by 4.

(G) The number of minor violations contained in any notices of violation shall be multiplied by 1.

(H) The number of counts in all criminal convictions:

(i) under Texas Water Code (TWC), §§7.145, 7.152, 7.153, 7.162(a)(1) - (5), 7.163(a)(1) - (3), 7.164, 7.168 - 7.170, 7.176, 7.182, 7.183, and all felony convictions under the Texas Penal Code, TWC, Texas Health and Safety Code (THSC), or the United States Code (USC) shall be multiplied by 500; and

(ii) under TWC, §§7.147 - 7.151, 7.154, 7.157, 7.159, 7.160, 7.162(a)(6) - (8), 7.163(a)(4), 7.165 - 7.167, 7.171, 7.177 - 7.181, and all misdemeanor convictions under the Texas Penal Code, TWC, THSC, or the USC shall be multiplied by 250.

(I) The number of chronic excessive emissions events shall be multiplied by 100.

(J) The subtotals from subparagraphs (A) - (I) of this paragraph shall be summed.

(K) If the person is a repeat violator as determined under subsection (f) of this section, then 500 points shall be added to the total in subparagraph (J) of this paragraph. If the person is not a repeat violator as determined under subsection (f) of this section, then zero points shall be added to the total in subparagraph (J) of this paragraph.

(L) If the total in subparagraph (K) of this paragraph is greater than zero, then:

(i) subtract 1 point from the total in subparagraph (K) of this paragraph for each notice of an intended audit conducted under the Audit Act submitted to the agency during the compliance period; or

(ii) if a violation(s) was disclosed as a result of an audit conducted under the Audit Act [~~Texas Environmental, Health, and Safety Audit Privilege Act, (Audit Act), 75th Legislature, 1997, TEX. REV. CIV. STAT. ANN. art.4447cc (Vernon's)~~]; as amended, and the site received immunity from an administrative or civil penalty for that violation(s) by the agency, then the following number(s) shall be subtracted from the total in subparagraph (K) of this paragraph:

(I) the number of major violations multiplied by 10;

(II) the number of moderate violations multiplied by 4; and

(III) the number of minor violations multiplied by 1.

(M) The result of the calculations in subparagraphs (J) - (L) of this paragraph shall be divided by the number of investigations conducted during the compliance period multiplied by 0.1 plus the number of complexity points in subsection (e) of this section. If a site does not have any investigation points and the subtotal from subsection (e)(1) - (3) of this section equals zero, then one default point shall be used. Investigations that do not document any violations will be the only ones counted in the compliance history formula. The number of investigations multiplied by 0.1 shall be rounded up to the nearest whole number. If the value is less than zero, then the site rating shall be assigned a value of zero. For the purposes of this chapter, an investigation is a review or evaluation of information by the executive director or executive director's staff or agent regarding the compliance status of a site, excluding those investigations initiated by citizen complaints. An investigation, for the purposes of this chapter, may take the form of a site assessment, file or record review, compliance investigation, or other review or evaluation of information.

(N) If the person receives certification of an environmental management system (EMS) under Chapter 90 of this title (relating to Innovative Programs) and has implemented the EMS at the site for more than one year, then multiply the result in subparagraph (M) of this paragraph by 0.90, which is (1 - 0.10) and this is the maximum reduction that can be received for an EMS. If the person receives credit for a voluntary pollution reduction program or for early compliance, then multiply the result in subparagraph (M) of this paragraph by 0.95, which is (1 - 0.05). The maximum reduction that a site's compliance history may be reduced through voluntary pollution reduction programs in this subparagraph is 0.85, which is (1 - 0.15). If site participates in both EMS and voluntary pollution reduction programs then the maximum reduction that a site's compliance history may be reduced through EMS and voluntary programs in this subparagraph is 0.75, which is (1 - 0.10 - 0.15).

(2) Point ranges. The executive director shall assign the site a classification based upon the compliance history and application of the formula in paragraph (1) of this subsection to determine a site rating, utilizing the following site rating ranges for each classification:

(A) For entities with less than 15 complexity points:

(i) [~~(A)~~] fewer than 0.10 points--high performer;

(ii) 0.10 points to 60 points--satisfactory performer; and

(iii) more than 60 points--unsatisfactory performer.

(B) For entities with 15 or more complexity points:

(i) fewer than 0.10 points--high performer;

(ii) [~~(B)~~] 0.10 points to 55 points--satisfactory performer; and

(iii) [~~(C)~~] more than 55 points--unsatisfactory performer.

(3) Mitigating factors. The executive director shall evaluate mitigating factors for a site classified as an unsatisfactory performer.

(A) The executive director may reclassify the site from unsatisfactory to satisfactory performer [~~with 55 points~~] based upon the following mitigating factors:

(i) other compliance history components included in §60.1(c)(10) - (12) of this title;

(ii) implementation of an EMS not certified under Chapter 90 of this title at a site for more than one year;

(iii) a person, all of whose other sites have a high or satisfactory performer classification, purchased a site with an unsatisfactory performer classification or became permitted to operate a site with an unsatisfactory performer classification if the person entered into a compliance agreement with the executive director regarding actions to be taken to bring the site into compliance prior to the effective date of this rule; and

(iv) voluntarily reporting a violation to the executive director that is not otherwise required to be reported and that is not reported under the Audit Act, or that is reported under the Audit Act but is not granted immunity from an administrative or civil penalty for that violation(s) by the agency.

(B) When a person, all of whose other sites have a high or satisfactory performer classification, purchased a site with an unsatisfactory performer classification or became permitted to operate a site with an unsatisfactory performer classification and the person contemporaneously entered into a compliance agreement with the executive director regarding actions to be taken to bring the site into compliance, the executive director:

(i) shall reclassify the site from unsatisfactory performer to satisfactory performer [~~with 55 points~~] until such time as the next annual compliance history classification is performed; and

(ii) may, at the time of subsequent compliance history classifications, reclassify the site from unsatisfactory performer to satisfactory performer [~~with 55 points~~] based upon the executive director's evaluation of the person's compliance with the terms of the compliance agreement.

(h) Person classification. The executive director shall assign a classification to a person by adding the complexity weighted site ratings of all the sites owned and/or operated by that person in the State of Texas. Each site that a person is affiliated to will receive a point value

based on the compliance history rating at the site multiplied by the percentage of complexity points that site represents of the person's total complexity points for all sites. Each of these calculated amounts will be added together to determine the person's compliance history rating.

(i) Notice of classifications. Notice of person and site classifications shall be posted on the commission's website after 30 days from the completion of the classification. The notice of classification shall undergo a quality assurance, quality control review period. An owner or operator of a site may review the pending compliance history rating upon request by registering for the Advanced Review of Compliance History. [~~submitting a Compliance History Review Form to the commission by August 15 each year.~~]

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

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CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes new §§115.260, 115.262, 115.264, 115.265, 115.266, and 115.269; and amended §§115.111, 115.112, 115.119, 115.122, 115.129, 115.411, 115.412, 115.415, 115.416, 115.419, 115.420, 115.421, 15.425, 115.427, 115.429, 115.440, 115.441, 115.449, 115.450, 115.451, 115.453, 115.455, 115.458-115.461, 115.463, 115.465, 115.468, and 115.469.

If adopted, these rules would be submitted to the U.S. Environmental Protection Agency (EPA) as a state implementation plan (SIP) revision.

Background and Summary of the Factual Basis for the Proposed Rules

On June 20, 2024, EPA published the reclassification of the Bexar County area, consisting of Bexar County, from moderate to serious nonattainment for the 2015 eight-hour ozone National Ambient Air Quality Standard (NAAQS) of 0.070 parts per million (ppm), effective July 22, 2024 (89 *Federal Register* (FR) 51829). The deadline for the Bexar County area to achieve attainment under the serious classification is September 24, 2027, with a 2026 attainment year. Federal Clean Air Act (FCAA), §182(b)(2) requires the commission to implement reasonably available control technology (RACT) provisions for all major sources of nitrogen oxides (NO_x) and volatile organic compounds (VOC) in the Bexar County area. FCAA, §172(c) and §182(c) require the commission to submit serious classification attainment demonstration (AD) and reasonable further progress (RFP) SIP revisions to EPA. The required serious classification SIP revisions (Non-Rule Project Nos. 2024-040-SIP-NR and 2024-041-SIP-NR), along with the two concurrently proposed rulemakings (Rule Project Nos. 2025-006-115-AI and 2025-007-117-AI) needed for implementation of required NO_x and VOC control measures, are due to EPA by January 1, 2026. This proposed rulemaking would address FCAA RACT requirements for major sources of VOC in the Bexar County area under the serious classification for the 2015 eight-hour ozone NAAQS. The proposed rulemaking also contains rule revisions to achieve sufficient VOC emissions reductions to demonstrate that the Bexar County area is making progress towards attainment and would achieve the mandated RFP reduction target for VOC.

In the Bexar County area, the emission profile presents unique challenges for reduction efforts. The county's VOC emissions are predominantly generated by nonpoint area sources, which constitute over 70% of the total emissions inventory (EI). In contrast, RACT is typically applied to point sources, which are fewer in number in Bexar County and contribute a relatively small fraction of overall VOC emissions. Nonpoint area sources offer the greatest potential for achieving significant VOC reductions in the Bexar County area. Accordingly, control strategies used to meet the RFP VOC emissions reduction requirement in this proposed rulemaking emphasize controlling area sources.

Attainment Demonstration Rulemaking Requirements

FCAA, §172(c) mandates that the commission submit an AD SIP revision to demonstrate that the Bexar County area will meet the NAAQS by its attainment date. Photochemical modeling for future years indicates that the Bexar County area will meet the 2015 ozone NAAQS by the mandated deadline using existing control strategies. The commission is neither required to propose nor is it proposing any rulemaking amendments to demonstrate attainment for the Bexar County area in this rulemaking because the modeling demonstrates attainment without the need for additional measures. A reasonably available control measures (RACM) analysis to identify additional potential control measures that could expedite attainment of the NAAQS earlier than the area's attainment date is provided in the concurrently proposed Bexar County 2015 Ozone NAAQS Serious AD SIP Revision (Non-Rule Project No. 2024-041-SIP-NR). The RACM analysis determined that no potential control measures met the criteria to be considered RACM. As a result, no rule revisions are proposed as RACM.

RACT Implementation Requirements

FCAA, §182(b)(2) requires the commission to implement RACT provisions for all major sources of VOC in the Bexar County area. EPA defines RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761, September 17, 1979). RACT requirements for moderate and higher classification ozone nonattainment areas are included in the FCAA to ensure that significant source categories at major sources of ozone precursor emissions are controlled to a reasonable extent, but not necessarily to best available control technology levels expected of new sources or to maximum achievable control technology levels required for major sources of hazardous air pollutants. Although the FCAA requires the state to implement RACT, EPA guidance provides states with the flexibility to determine the most technologically and economically feasible RACT requirements for a nonattainment area. This rulemaking proposes to implement RACT requirements for the Bexar County serious nonattainment area, targeting sources that emit 50 tons per year (tpy) or more of VOCs. The proposed rules would specifically apply to offset lithographic printing operations, bakery ovens, and VOC storage tanks. While the proposed RACT rules are intended to

fulfill SIP obligations resulting from the Bexar County area's reclassification from moderate to serious nonattainment, the rules are not expected to yield further reductions in VOC emissions. This is because RACT measures for moderate nonattainment are in effect in the area and already address all known point source emission sites. Since most non-mobile VOC emissions in the Bexar County area originate from nonpoint area sources in sectors associated with solvent utilization, such as smaller surface coating operations, RACT control strategies for major sources in this proposed rulemaking may have reduced impact and limited effectiveness. The proposed compliance date for these changes, March 1, 2026, is the start of the ozone season in Bexar County for the serious classification attainment year.

RFP Reduction Requirements

FCAA, §182(b)(1) requires the commission to demonstrate that the Bexar County area will achieve at least a 15% VOC emission reduction (15.85 tons per day (tpd)) from the 2017 baseline year. The concurrently proposed Bexar County 2015 Ozone NAAQS Serious RFP SIP Revision (Non-Rule Project No. 2024-040-SIP-NR) demonstrates that the Bexar County area will satisfy the 15% reduction requirement by using a combination of recently implemented measures and new rule changes. Recently implemented measures (Bexar County area moderate RACT Rules, Rule Project No. 2023-116-115-AI, adopted April 24, 2024) will achieve 3.75 tpd in VOC reductions. New rule changes in this proposed Bexar County area rulemaking are expected to achieve 12.13 tpd in VOC reductions. Collectively, these measures slightly exceed the 15% VOC RFP reduction requirement of 15.85 tpd. The proposed rule changes encompass several sections of Chapter 115. First, amendments are proposed to existing rules for degreasing processes within Subchapter E, Division 1 and are anticipated to result in 0.49 tpd of VOC emission reductions in the Bexar County area. Second, proposed revisions for fabric coating provisions outlined in Subchapter E, Division 2 are expected to result in 1.06 tpd of VOC emission reductions in the Bexar County area. Third, proposed revisions to coating of metal parts and products, architectural coatings, and industrial maintenance coatings provisions in Subchapter E, Division 5 are expected to result in 8.46 tpd of VOC emission reductions; along with revisions to industrial cleaning solvent provisions in Subchapter E, Division 6, which would result in 1.48 tpd of VOC emission reductions. Finally, proposed new rules in Subchapter C, Division 6, for gasoline dispensing nozzles and low permeation hoses from motor vehicle fuel dispensing facilities would result in an estimated 0.64 tpd in VOC emission reductions in the Bexar County area. The proposed compliance date for all these changes, March 1, 2026, is the start of the ozone season in Bexar County for the serious classification attainment year.

Section by Section Discussion

The commission proposes grammatical, stylistic, and other non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, establish consistency in the rules, and conform to the standards in the Texas Legislative Council Drafting Manual, September 2020. These non-substantive changes are not intended to alter the existing rule requirements in any way and are not specifically discussed in this preamble.

Among these non-substantive changes is removal of version identifiers for certain tests developed by the American Society of Testing and Materials (ASTM) in Subchapter E, Divisions 1, 2, and 5. Removal of the specific revision version will reference all test methods in these rule sections consistently. Sections affected by this change include §§115.415(1)(a), 115.420(c)(11)(S), 115.425(1)(B), 115.450(c)(9)(C) and (F), and 115.455(a)(1)(B).

SUBCHAPTER B: GENERAL VOLATILE ORGANIC COMPOUND SOURCES

DIVISION 1: STORAGE OF VOLATILE ORGANIC COMPOUNDS

Revisions in this division are proposed to fulfill major source RACT requirements.

§115.111. Exemptions

The commission proposes to establish exemption criteria in new §115.111(a)(17) for storage tanks and tank batteries storing condensate prior to custody transfer in Bexar County. To qualify for exemption from flashed gas control requirements, a storage tank or tank battery storing condensate must have a condensate throughput greater than 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis, and owners or operators must be able to show, by the test methods specified, that uncontrolled VOC emissions are less than 50 tpy for individual tanks or aggregated tank batteries. This 50 tpy threshold aligns with the VOC RACT control requirements for major sources in Bexar County and effectively narrows the scope of tanks eligible for exemption to those with even lower emissions than what was allowed at the previous 100 tpy threshold. The exemption would become available beginning March 1, 2026. The commission proposes to remove a typographical error in language from §115.111(a)(15) that inadvertently repeated rule language.

§115.112. Control Requirements

The commission proposes to amend control requirements in §115.112(e)(4)(E) to clarify that fixed roof tanks in the Bexar County area storing condensate prior to custody transfer must continue to control flashed gases if the tank's throughput is greater than 6,000 barrels a year through February 28, 2026. This is considered equivalent to a 100 tpy VOC emission rate or greater. Beginning March 1, 2026, proposed control requirements in new §115.112(e)(5)(F) specify that owners or operators of fixed roof tanks storing condensate prior to custody transfer or at a pipeline breakout station must control flashed gases for tanks with VOC emissions greater than 50 tpy. The commission proposes to amend §115.112(e)(5)(E) to require that tanks at a tank battery or pipeline breakout station must route flashed gases to a vapor control system if they emit 50 or more tons of uncontrolled VOCs annually, rather than the previous threshold of 100 tons. This 50 tpy threshold aligns with the new VOC RACT major source limit.

§115.119. Compliance Schedules

The commission proposes to revise §115.119(g) to establish March 1, 2026, as the compliance date by which owners or operators of fixed roof storage tanks in the Bexar County area that store condensate prior to custody transfer must comply with the new requirements of §115.112(e)(4)(F) and §115.112(e)(5)(E) to control flashed gases.

DIVISION 2: VENT GAS CONTROL

Revisions in this division are proposed to fulfill major source RACT requirements.

§115.122 Control Requirements

The commission proposes to revise the rule text in §115.122(a)(3)(E) to require emission control requirements from vent gas from bakeries in the Bexar County area by lowering the applicability threshold from 100 tpy to 50 tpy for major source controls. Bakeries that emit 50 tpy or more of VOC emissions would be required to achieve an 80% reduction in VOC emissions through vent gas control from affected bakery ovens. By lowering the emission threshold and implementing stricter control requirements, this proposed rule revision seeks to address the area's ozone nonattainment classification of serious as well as ensure compliance with FCAA mandates for RACT implementation in Bexar County. Owners or operators of affected vent gas streams located in the Bexar County area must comply with the emission specifications in the subsection beginning March 1, 2026, the compliance date specified in proposed new §115.129(h).

The commission proposes revisions to §115.122(a)(3)(F)(iv), to prevent bakeries from claiming emission credits if they make emission reductions in the range of 30% to 90% associated with controlling VOC emissions from bakery oven vent gases in the Bexar County area. The current rule already prevents owners or operators in Bexar County with uncontrolled VOC emissions of 100 tpy or more from claiming emission credits under Chapter 101, Subchapter H, Division 1 to prevent double counting of reductions for the purposes of the SIP. This prohibition would apply for bakeries emitting VOC at the new, lower threshold of 50 tpy necessary for RACT implementation, beginning March 1, 2026.

§115.129 Counties and Compliance Schedules

The commission proposes to add new §115.129(h) to establish a compliance deadline of March 1, 2026, by which affected bakeries in the Bexar County area must meet updated RACT requirements for 90% vent gas controls from bakery ovens. Establishing this compliance date would ensure that RACT requirements are implemented as expeditiously as practicable and would also allow newly affected bakeries sufficient time to comply before the beginning of ozone season in the attainment year for the area.

SUBCHAPTER C: VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS

DIVISION 6: GASOLINE DISPENSING FACILITIES

Revisions in this division are proposed to result in VOC reductions necessary to meet RFP requirements.

The commission proposes to add a new Subchapter C, Division 6 to minimize Bexar County area gasoline dispensing facility (GDF) VOC spillage and associated gasoline transfer emissions from storage tanks into vehicles and containers. GDF sources would need to comply with the control requirements specified in §115.262, which include the installation of enhanced conventional (ECO) nozzles and low permeation hoses on gasoline dispensing pumps. Proposed Division 6 would also contain new sections with provisions for gasoline dispensing facility applicability and definitions, monitoring and inspection, testing and certification, recordkeeping, and compliance requirements.

Affected Bexar County area gasoline dispensing facilities would need to comply by March 1, 2026. Bexar County area gasoline dispensing facility equipment that becomes subject to Division 6 after March 1, 2026, would have 60 days to comply with its requirements.

§115.260 Applicability and Definitions

The commission proposes new §115.260 to establish new GDF rules and corresponding definitions in the Bexar County area. The rules only apply to gasoline dispenser equipment and not equipment that dispenses diesel or other fuels. Newly proposed §115.260 provisions are intended to assist owners and operators in identifying Division 6 applicability and clarifying regulatory definitions. Proposed §115.260(b) defines a GDF as one that includes retail, private, and commercial gasoline dispensing operations. It defines malfunctioning equipment as equipment that is not operating according to the manufacturer's design and specifications and requires remedial action to eliminate potential gasoline leakage. Proposed §115.260(b) also includes definitions for gasoline dispenser, conventional nozzle, ECO nozzle, low permeation hose, and gasoline dispensing spillage. Informing owners, operators, commission staff, and the public of the new §115.260 terminology would reduce confusion and inconsistent interpretations, which are crucial for compliance and enforcement.

§115.262 Control Requirements

The commission proposes new section §115.262 that would require ECO nozzle and low permeation hose controls on gasoline dispensing pumps in the Bexar County area. Only California Air Resources Board (CARB)-certified ECO nozzles and low permeation hoses that satisfy the proposed control requirements in §115.262 for reduced gasoline dispensing nozzle and reduced dispensing hose permeation rate gasoline emissions would be allowed. Retrofitting gasoline dispensing pumps with ECO nozzles and low permeation hoses required by proposed §115.262 reduces fuel drips or spills and vapor permeation, thereby significantly reducing VOC emissions from hundreds of GDFs in the county. Existing gasoline dispensing pumps would have until March 1, 2026, to install these items. Newly built gasoline dispensing pumps installed after March 1, 2026, would be required to install these items as soon as practicable and within 60 days of the pump's installation. Similar to other regulations, the commission would allow a 60-day period for new sites to come into compliance while anticipating that owners or operators of new sites will install the required hardware upon opening.

The commission also proposes work practice requirements in proposed §115.262. By implementing and enforcing spill prevention procedures, training, spill clean-up and other work practice requirements, GDFs can significantly minimize spills and associated VOC emissions. Proposed new §115.262 would require malfunctioning equipment to be repaired as soon as possible and before the next monthly inspection. The proposed regulation would require a GDF owner or operator to establish a policy to prohibit vehicle top-offs, require covers on open gasoline containers, mandate signs to inform customers and employees of proper filling practices and require spills to be cleaned up as soon as possible.

§115.264 Monitoring and Inspection Requirements

The commission proposes new §115.264 to establish monthly gasoline dispensing system monitoring and inspection requirements to identify leaking or malfunctioning equipment and facilitate timely repairs. ECO nozzles, low permeation hoses, and associated gasoline dispenser equipment would be inspected to ensure they were operating as intended and did not contain holes or tears that could allow gasoline leakage. The 0.64 tpd VOC emission reductions expected to be achieved from compliance with §115.264 requirements necessitates that GDF equipment remains in good condition, meets certification standards, and remains compliant with new rule requirements.

§115.265 Testing and Certification Requirements

The commission proposes new §115.265 to establish testing and certification provisions for the ECO nozzles and low permeation hoses that would be required at the affected gasoline dispensing facilities by proposed §115.262. Proposed §115.265 would require the use of UL 330 (7th ed) - Underwriters Laboratories' Standard for Hose and Hose Assemblies for Dispensing Flammable Liquids test methods to determine compliance with the proposed §115.262(a)(1) low permeation hose maximum permeation limit of 10.0 grams per square meters per day. ECO nozzles required to be installed by proposed §115.262(a)(3) would need to meet certification and test requirements in the California Air Resources Board Certification Procedure for Enhanced Conventional Nozzles and Low Permeation Conventional Hoses for Use at Gasoline Dispensing Facilities CP-207, dated July 12, 2021, including updates and revisions.

§115.266 Recordkeeping

The commission proposes new section §115.266 recordkeeping requirements to document compliance with newly proposed Chapter 115, Subchapter C, Division 6 rules. Proposed §115.266 would require owners and operators to keep GDF equipment monthly inspection records that include the inspector's name and inspection date; component inspected; inspection result and any corrective action; and the date corrective action was completed. GDFs would need to keep records of low permeation hose and ECO nozzle certifications as well as training records, described in §115.262(b)(6). The compliance records would need to be kept in a readily accessible format for a minimum of five years. Proposed §115.266 recordkeeping would include inspection, testing, certification, maintenance activity, and training documentation to confirm compliance with these rules. Tracking these activities documents compliance with the newly proposed Subchapter C, Division 6 rules.

§115.269 Compliance Schedules

The commission proposes a compliance deadline of March 1, 2026, for Bexar County area GDF equipment that meets applicability requirements on or before this initial compliance date. Bexar County area GDF equipment that becomes subject to Division 6 after the proposed March 1, 2026, compliance date would have 60 days after becoming subject to comply with its requirements. By establishing separate compliance dates in §115.269 for existing GDF equipment and similar components that may be installed in the future, the commission can ensure fair and consistent application of emission control requirements across all the intended sources, including newly constructed ones.

SUBCHAPTER E: SOLVENT-USING PROCESSES

DIVISION 1: DEGREASING PROCESSES

Revisions in this division are proposed to generate VOC reductions for RFP requirements.

§115.411 Exemptions

The commission proposes to revise §115.411(a) to remove the Bexar County area's applicability to exemptions currently available to degreasing operations under that subsection. On March 1, 2026, degreasing operations in Bexar County subject to §115.412(d) would no longer be eligible for exemptions under §115.411(a). This proposed amendment ensures that all degreasing operations, regardless of previous exemption status, adhere to lower VOC content limits. The commission proposes a new subsection, §115.411(c), with exemptions that would apply in the Bexar County area beginning March 1, 2026. Proposed new subsection §115.411(c) mirrors exemptions in current §115.411(b) for the Dallas-Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) areas, which would allow implementation of the same lower degreasing solvent VOC content limit in the Bexar County area.

§115.412 Control Requirements

The commission proposes to add a new subsection (d) to the control requirements in §115.412 to address VOC emissions from degreasing processes in the Bexar County area. This new subsection would establish specific VOC content limits for solvents used in cold solvent cleaning, open-top vapor degreasing, and conveyorized degreasing processes where there previously were none. The new degreasing limits require the use of solvents with a VOC content of no more than 25 grams/liter. The same limit is used as a contingency measure in the DFW and HGB areas in §§115.412(b) and (c), respectively, and it is necessary to implement in the Bexar County area to help achieve the VOC emissions reductions necessary for RFP requirements.

§115.415 Testing Requirements

The commission proposes to amend §115.415(3) to implement compliance testing requirements for the degreasing operations in the Bexar County area subject to §115.412(d). Under the existing rule, degreasing solvent VOC content limits are listed for the DFW and HGB areas in §115.412(b) and (c), respectively. The proposed inclusion of new §115.412(d) under §115.415(3) would specify the test method to determine VOC content for degreasing operations in the Bexar County area, bringing the requirements in line with other nonattainment areas. Accurate compliance testing, as outlined in methods specified in §115.415(3), is crucial for verifying that VOC limits are met so that intended VOC emission reduction targets are achieved from the implemented measures.

§115.416 Recordkeeping Requirements

The commission proposes new §115.416(5) to require degreasing operation facilities in the Bexar County area to maintain sufficient records to demonstrate compliance with the VOC content limits in §115.412(d) and applicable exemptions in §115.411.

§115.419 Counties and Compliance Schedules

The commission proposes to revise the compliance schedule in subsection §115.419(h) for degreasing operations to reflect new requirements. The schedule mandates that facilities subject to the provisions of proposed §115.412(d) in the Bexar County area comply with the updated control requirements by no later than March 1, 2026. This schedule provides facilities with sufficient time to adopt the necessary control measures and make operational adjustments while ensuring that the required VOC emission reductions needed from degreasing operations are achieved in a timely manner. In addition, the commission proposes a revision to §115.419(h) to remove a typographical error ‘by but' that was a remnant of the prior rulemaking and remove ‘Bexar' from the list of counties in §115.419(a). The commission should have deleted this in the prior rulemaking when existing §115.419(h) was added. Deleting it now provides a clear description of compliance requirements.

DIVISION 2: SURFACE COATING PROCESSES

Revisions in this division are proposed to generate VOC reductions for RFP requirements.

§115.420 Applicability and Definitions

The commission proposes to add the descriptor "Applicability" at the beginning of §115.420(a) to improve consistency with subsequent subsections §115.420(b) and §115.420(c) and parallel sections in other divisions of Chapter 115. The commission also proposes to add definitions under new §115.420(c)(4)(A) through §115.420(c)(4)(C) for "plasticizer, " "plastisol, " and "wash primer. " These new definitions would provide examples of fabric coatings that may be applied to protect or add new properties to a fabric substrate. The materials listed in §115.420(c)(4)(A) through §115.250(c)(4)(C), would help owners and operators, commission staff, and the public better understand what qualifies as a "fabric coating, "ensuring more consistent application, compliance, and enforcement of the rules. The commission proposes to update the reference in §115.420(c)(11)(S) from the outdated "Regulatory Guide 1.54" issued by the U.S. Atomic Energy Commission in June 1973 to the current Revision 3 of the guide, which was published in April 2017. The updated guide reflects the most recent requirements for protective coatings for nuclear power plants.

§115.421 Emission Specifications

The commission proposes to create new subparagraphs under existing §115.421(5) to differentiate proposed new requirements for fabric coating processes in the Bexar County area from existing requirements for other areas. Proposed subparagraph (A) would stipulate the existing requirements and areas subject to them, and proposed subparagraph (B) would require owners and operators of fabric coating processes in the Bexar County area to use coatings and wash primers containing 265 g/l (minus water and exempt solvent), which is a decrease from the existing limit of 350 g/l. The counties and areas listed under §115.421(5)(A), including Bexar County, would remain subject to the requirements in existing §115.421(5). Beginning March 1, 2026, the Bexar County area would then be subject to limits specified in §115.421(5)(B). Proposed new clauses §115.421(5)(B)(i) and §115.421(5)(B)(ii) would set limits for fabric coatings and wash primers at 265 g/l and for plastisol fabric coatings at 20 g/l (less water and exempt solvent), as applied at fabric coating operations in the Bexar County area. These proposed limits are based on South Coast Air Quality Management District (SCAQMD) Rule 1128, adopted on March 8, 1996, and approved by EPA on May 4, 1999, as documented in *Federal Register* at 64 FR 23774. The limits are proposed based on their potential to achieve greater VOC emission reductions from fabric coating operations. These reductions are necessary to meet RFP requirements in the Bexar County area.

§115.425 Testing Requirements

The commission proposes to make non-substantive changes to §115.425(1)(B) to remove version identifiers for certain tests developed by the American Society of Testing and Materials (ASTM). Removal of the specific revision version would reference all test methods in these rule sections consistently.

§115.427 Exemptions

Proposed new §115.427(3)(K) and amended §115.427(6) remove exemptions from rule requirements for low emitting fabric coating operations and aerosol coatings (spray paint), respectively, within the Bexar County area. Beginning March 1, 2026, owners or operators would be required to comply with the applicable emission specifications in §115.421 for fabric coatings. Proposed new §115.427(3)(K) and amended §115.427(6) exemptions allow for a wider range of VOC sources to be controlled to ensure that more fabric coating sources adhere to lower VOC content limits. The VOC reductions from these additional sources are necessary to help the Bexar County area meet RFP requirements. The commission also proposes to remove text in §115.427(3) in an example that references exemptions for architectural coatings. The proposed changes are intended to prevent confusion and to mirror text from a similar example in existing §115.451.

§115.429 Counties and Compliance Schedules

The commission proposes several changes in §115.429 to establish a binding deadline by which owners and operators of affected fabric coating operations must comply with particular rule provisions. Proposed amendments to §115.429(e) aim to clarify that compliance with fabric coating requirements of the division are required by the compliance date or within 60 days after becoming subject to the rule, if the compliance date has passed. The commission proposes adding new subsection §115.429(g) to establish compliance with the new fabric coating requirement in §115.421(5)(B) by March 1, 2026. The proposed amendment to §115.429(f) indicates that fabric coating operations in the Bexar County area currently subject to this division do not have to comply with the new requirement set in §115.421(5)(B) until the compliance date set in newly proposed §115.429(g).

DIVISION 4: OFFSET LITHOGRAPHIC PRINTING

Revisions in this division are proposed to fulfill major source RACT requirements and to generate VOC reductions for RFP requirements.

§115.440 Applicability and Definitions

The commission proposes to lower the major source threshold for offset lithographic facilities in the Bexar County area to comply with FCAA §§182(b)(2) and 182(f) RACT requirements. The definitions in subparagraphs §115.440(b)(8)(D) and §115.440(b)(9)(D) for both major and minor printing sources would be amended. In the existing rules, offset lithographic facilities in the Bexar County area with uncontrolled VOC emissions of 100 tpy are classified as major sources, while those below this threshold are considered minor. The proposed amendments would reduce the major source threshold to 50 tpy beginning March 1, 2026, for the Bexar County area. The definition for minor source would be revised similarly for the Bexar County area. Amendments to §115.440(b)(8)(D) and §115.440(b)(9)(D) would subject offset lithographic facilities to RACT requirements at lower thresholds of VOC and would ensure RACT requirements are implemented as required for offset lithographic printing facilities in the Bexar County area.

§115.441 Exemptions

The commission proposes changes to §115.441(b)(1) regarding the exemption for cleaning solutions used in offset lithographic printing operations in Bexar County for minor printing sources. In the existing rules, minor printing sources may exempt up to 110 gallons of cleaning solution per year from the VOC content limits in §115.442(c)(1). The proposed revision would remove this exemption for Bexar County beginning March 1, 2026. Removing the §115.441(b)(1) exemption for minor printing sources in Bexar County ensures that minor printing sources, regardless of previous exemption status, adhere to the lower VOC content limits proposed in Subchapter E, Division 6. The change is necessary to achieve the calculated VOC reductions associated with the proposed changes in Subchapter E, Division 6, which are

necessary for RFP purposes in Bexar County. This change only affects sources in Bexar County, not the DFW or HGB areas.

§115.449 Compliance Schedules

The commission proposes to add rule text in §115.449(j) to establish a compliance deadline of March 1, 2026, by which date, affected facilities in the Bexar County area must adhere to RACT requirements and comply with low VOC content limits for offset lithographic operations.

DIVISION 5: CONTROL REQUIREMENTS FOR SURFACE COATING PROCESSES

Revisions in this division are proposed to generate VOC reductions for RFP requirements.

§115.450 Applicability and Definitions

The commission proposes to broaden the scope of surface coating operations subject to Subchapter E, Division 5 rules in the Bexar County area by adding architectural coatings to the list of applicable surface coating processes in §115.450(a). Language would be added to clarify that the rule applies only to architectural coatings in a commercial context and would explicitly exclude consumer use from applicability by stating that the rule applies to coatings applied for compensation. The commission proposes to add relevant architectural coating related definitions to §115.450 to accompany the architectural coatings VOC content limits that are proposed in §115.453. To ensure that all definitions in §115.450 remain in alphabetical order when new definitions are added, existing definitions would be reordered and renumbered accordingly.

The commission proposes to add §115.450(a)(9) and §115.450(a)(10) to extend the requirements in Subchapter E, Division 5 to architectural coatings and industrial maintenance coatings in the Bexar County area.

The commission proposes new §115.450(c)(11), which would provide definitions for different types of architectural coatings with VOC limits proposed in §115.453(a)(5). These proposed definitions are based on South Coast Air Quality Management District (SCAQMD) Rule 1113, amended on February 5, 2016, and approved by EPA on December 31, 2018, as documented in *Federal Register* at 40 CFR Part 52. The added definitions include aluminum roof coatings, appurtenance, below ground wood preservatives, bituminous coating materials, bituminous roof primers, bond breakers, building envelope, building envelope coatings, colorant, concrete-curing compounds, concrete surface retarders, default coatings, driveway sealers, dry-fog coatings, faux finishing coatings, clear topcoats, decorative coatings, glazes, japans, trowel applied coatings, fire-resistive coatings, flat coatings, form release compounds, gonioapparent, graphic arts coatings, interior stains, lacquers, low-solids coatings, magnesite cement coatings, mastic coating, metallic pigmented coatings, multi-color coatings, nonflat coatings, pearlescent, pigmented, post-consumer coatings, pre-treatment wash primers, primers, reactive penetrating sealers, recycled coatings, restoration architect, roof coatings, rust preventative coatings, sacrificial anti-graffiti coatings, sanding sealers, sealers, shellacs, specialty primers, stains, stationary structures, stone consolidants, swimming pool coatings, tile and stone sealers, topcoat, tub and tile refinishing coatings, undercoaters, varnishes, waterproofing sealers, wood coatings, wood conditioners, and wood preservatives. Many of these coating variants have their own separate VOC limits in §115.453(a)(5). By providing definitions in this section, owners and operators can more easily find the appropriate VOC limit for the product they are using.

§115.451 Exemptions

The commission proposes new §115.451(a)(6) to indicate that exemptions currently provided in §115.451(a)(1)-(3) for low-emission architectural coating operations, industrial maintenance coating operations, and metal parts and products coating operations would no longer apply in the Bexar County area beginning March 1, 2026. As of that date, owners or operators would be required to comply with applicable control requirements of §115.453. These changes are necessary to achieve all the calculated VOC reductions for RFP purposes in Bexar County.

The commission proposes to create exemptions in new subsection §115.451(q) for owners or operators of architectural coating operations in the Bexar County area. This new subsection identifies specific architectural coatings by type and size that would be exempt from the VOC limits in §115.453(a)(1)(C) and (D). Exemptions would apply to emulsion type bituminous pavement sealers (regardless of container size) under the newly proposed §115.451(q)(1); specific architectural coatings in containers of one liter or less are outlined in §115.451(q)(2)(A); and specific architectural coatings in containers of eight fluid ounces or less, or those used solely for touch-up are outlined in §115.451(q)(2)(B). Small containers of coatings, which are assumed to be used to cover small areas, contribute minimally to overall VOC emissions compared to larger containers. These exemptions mirror those in SCAQMD Rule 1113 and are necessary to achieve all the calculated VOC reductions for RFP purposes.

§115.453 Control Requirements

The commission proposes to restructure existing §115.453(a)(1)(C) VOC content limit provisions for miscellaneous metal parts and products. The existing limits apply in the Bexar, DFW, and HGB areas, and new limits would be added for the Bexar County area. The existing provisions would be relocated under §115.453(a)(1)(C)(i), and would continue to apply in Bexar County until February 28, 2026. Compliance with proposed new §115.453(a)(1)(C)(ii) would be required beginning March 1, 2026, in the Bexar County area. Existing provisions for the Bexar, DFW, and HGB areas would be relocated, without changes, from existing Figure: 30 TAC §115.453(a)(1)(C) to proposed new Figure: 30 TAC §115.453(a)(1)(C)(i). Separate provisions applicable only in the Bexar County area would be added under new Figure: 30 TAC §115.453(a)(1)(C)(ii). The proposed VOC content limits in subparagraph §115.453(a)(1)(C)(ii) for the Bexar County area aim to reduce emissions from coatings used in metal parts and products operations in the Bexar County area. Existing Table 2 under Figure: 30 TAC §115.453(a)(1)(C) specifying the VOC content as "pounds of volatile organic compounds per gallon of solids" will not be included for Bexar County provisions because the limits in the existing Table 2 are considered equivalent to existing Table 1, and because coating manufacturers typically do not specify VOC content in this manner on their documentation.

The proposed new Bexar County provisions would establish VOC content limits mirroring the limits in DFW and HGB, except for several coating categories as follows: one-component prefabricated architectural coatings (air-dried) VOC content limit would be 2.3 lbs/gal; multi-component prefabricated architectural coatings (air-dried) VOC content limit would be 2.8

lbs/gal; high-performance architectural coatings (air-dried) VOC content limit 3.5 lbs/gal; high-performance architectural coatings (baked) VOC content limit would 3.5 lbs/gal; extreme high-gloss coatings (air-dried) VOC content limit would be 2.8 lbs/gal; and one-component general coatings (air-dried) VOC content limit would be 2.3 lbs/gal. The proposed metal parts and products coatings VOC content limits, in lbs/gal coating, are based on the SCAQMD Rule 1107, adopted on January 6, 2006, and approved by EPA on November 24, 2008, as documented in the *Federal Register* (73 FR 70883). This rule has been successfully used in California to reduce VOC emissions from metal parts and products, and emissions reductions achieved based on these limits in Bexar County are necessary to meet RFP requirements.

The commission proposes to add new VOC content limits for architectural coatings in the Bexar County area. The new VOC content limits are currently used in other states. The new limits are listed in proposed renumbered §115.453(a)(5). Emissions reductions achieved based on these limits in Bexar County are necessary to meet RFP requirements The commission currently has no VOC content limits for architectural coatings in the Bexar County area or other areas of Texas. Three new tables would be created in §115.453(a)(5) that would list VOC content limits for various categories of architectural coatings, including bond breakers, building envelope coatings, concrete-curing compounds for roadways and bridges, concrete surface retarder, default coatings, driveway sealer, dry-fog coatings, faux finishing coatings, fire-resistive coatings, flat and nonflat coatings, floor coatings, form release compound, graphic arts (sign) coatings, magnesite cement coatings, mastic coatings, metallic pigmented coatings, multi-color coatings, pre-treatment wash primers, primers, sealers, and undercoaters, reactive penetrating sealers, recycled coatings, roof coatings, bituminous roof primers, rust preventative coatings, sacrificial, anti-graffiti coatings, shellacs, specialty primers, stains, stone consolidants, swimming pool coatings, tile and stone sealers, tub and tile refinishing coatings, waterproofing concrete/masonry sealers, wood coatings, conditioners, and preservatives, low-solids coatings, and certain colorants added to architectural coatings. Compliance would be achieved through the application of low VOC coatings. Applicable requirements for coating systems outlined in existing §115.453(c) and applicable work practice requirements detailed in existing §115.453(d) would apply and are not proposed for revision. The provision and equation in existing §115.453(a)(5) would be renumbered as §115.453(a)(6), with no additional proposed changes.

The commission proposes to add new subsection §115.453(j) to implement control measures for industrial maintenance coatings in the Bexar County area. The new §115.453(j) industrial maintenance coatings control requirement would set a VOC content limit of 2.1 lbs/gal or 250 (g/l) of coating, excluding water and exempt solvents to be met by applying low-VOC coatings. The limits of 2.1 lbs/gal and 250 g/l are considered equivalent. There is currently no VOC content limit control requirement for industrial maintenance coatings in the Bexar County area. This measure would establish control requirements for industrial maintenance coatings in the Bexar County area similar to contingency measures that exist in §115.453(f) and §115.453(g) for the DFW and HGB areas, respectively. This measure is necessary in the Bexar County area to meet RFP requirements.

§115.455 Approved Test Methods and Testing Requirements

The commission proposes to update approved test methods and testing requirements in §115.455 for architectural coating operations in the Bexar County area. Inclusion of these updates in the proposed rule is necessary because new architectural coatings definitions make references to them. The commission proposes to add American National Standards Institute (ANSI) A137.1 Standard Specifications for Ceramic Tiles, a test method for applicable tile and stone penetrative sealers, and is referenced in proposed §115.450(c)(11)(VV)(i)(II). The commission proposes to reference The National Cooperative Highway Research Report 244 (1981) "Concrete Sealers for the Protection of Bridge Structures" test method for applicable surface chloride screening applications, and would be referenced in proposed §115.450(c)(11)(HH)(vi). The commission proposes to update the existing ASTM test methods list in §115.455(a)(1)(B) to include references to test methods C67, C97/97M, C140, C309 Class B, C373, C642, D523, D714, D3359, D3363, D4060, D4214, D4585, D6490, E96/E96M, E284, E331, E2167, and E2178 since they are included in various proposed definitions throughout §115.450. Proposed §115.450(c)(4)(A), §115.450(c)(5)(A), and §115.450(c)(6)(H), would require use of test method ASTM D523, that extreme high-gloss coatings have a reflectance of 75% or more on a 60 degree meter. Proposed §115.450(c)(9)(F) would require test method ASTM D523 to show a reflectance of at least 85% on a 60 degree meter for high gloss coatings. Test method ASTM E2178 outlines the testing methodology for building envelope coatings to have air barriers with a permeance not exceeding 0.004 cubic feet per minute per square foot under a pressure differential of 1.57 pounds per square foot and is referenced in proposed §115.450(c)(11)(H)(i). Test method ASTM E331 is used to measure water resistance of building envelope coatings with water resistive barriers and is referenced in proposed §115.450(c)(11)(H)(ii)(I). The commission proposes to add the definition of "gonioapparent" in §115.450(c)(11)(S). Gonioapparent is a term that is used to describe decorative coatings, for which VOC content limits are proposed. Test method ASTM E284 is used to measure the change in appearance with the change in the angle of illumination or angle of view of gonioapparent coatings. Test methods ASTM C67, C97/97M, or C140 would be used to verify an improvement in water repellency of at least 80% after application for reactive penetrating sealers and is referenced in proposed §115.450(c)(11)(HH)(iv). Test methods ASTM E96/E96M and ASTM D6490 are used to verify the ability of reactive penetrating sealers to provide a breathable waterproof barrier for concrete or masonry surfaces that does not prevent or substantially retard water vapor transmission and are referenced in proposed §115.450(c)(11)(HH)(v). Test method ASTM D4214 defines an excessively chalky surface for the application of proposed specialty primers to condition such surfaces and is referenced in proposed §115.450(c)(11)(QQ). Test method ASTM E2167 specifies the proper use and specifications for proposed stone consolidants, and is referenced in proposed 115.450(c)(11)(TT)(iii). Test methods ASTM C373, C97/97M, or C642 are used to demonstrate absorption as low as 0.10% for penetrating tile and stone sealers and are referenced in proposed §115.450(c)(11)(VV)(i)(I). Test method ASTM D4060 is used to demonstrate that a proposed tub and tile refinishing coating has a weight loss of 20 milligrams or less after 1,000 cycles as determined with CS-17 wheels on bonderite 1,000, as referenced in proposed §115.450(c)(11)(XX)(ii). Test methods ASTM D4585 and D714 are used to demonstrate a tub and tile refinishing coatings' ability to withstand 1,000 hours or more of exposure with few or no #8 blisters,

determined on unscribed bonderite and are referenced in proposed §115.450(c)(11)(XX)(iii). Test methods ASTM D3359 and D4585 are used to show a tube and tile refinishing coatings' adhesion rating as 4B or better after 24 hours of recovery as determined on unscribed bonderite, as referenced in proposed §115.450(c)(11)(XX)(iv). Test method ASTM D3363 is used to demonstrate a scratch hardness of 3H or harder and a gouge hardness of 4H or harder as determined on bonderite 1000, as referenced in proposed §115.450(c)(11)(XX)(i).

§115.458 Monitoring and Recordkeeping Requirements

The commission proposes to add recordkeeping requirements for the newly proposed architectural coating and industrial maintenance coating provisions for the Bexar County area. The commission is proposing to add a recordkeeping requirement for the newly proposed §115.453(j) industrial maintenance coating VOC limits and replace "or" with "and" in the last sentence of existing §115.458(b)(1), clarifying that records must be kept documenting compliance with all applicable §115.453 surface coating VOC control limits. By adding proposed new VOC content limits in §115.453(j) applicable in Bexar County, the "or" must be changed to "and" since applicable requirements would exist in §115.453(a) and (j) for some owners or operators in Bexar County. Owners or operators of architectural coating and industrial maintenance operations in the Bexar County area would be required to maintain records of solvent information such as VOC content, composition, solids content, and solvent density. Because the rule language requires records for all applicable VOC content limits, no owners or operators in the DFW or HGB areas would be required to maintain records of the industrial maintenance coating VOC content specified in proposed §115.453(j) since these coating limits would not be applicable in these areas. If, however, the contingency measures for industrial maintenance coating VOC content limits in existing §115.453(f) or (g) are triggered according to §115.459(e) or (g), respectively, affected owners or operators would be required to maintain such records because the industrial maintenance coating contingency VOC content limits would be applicable to them. Maintaining records of this information provides evidence that coatings and solvents comply with VOC content limits.

§115.459 Compliance Schedules

To provide owners and operators of metal parts and products coatings operations, architectural coating operations, and industrial maintenance surface coating operations in the Bexar County area with sufficient time to comply with new rule requirements, the commission is proposing to establish a compliance date of March 1, 2026, under §115.459(c). This deadline ensures that facilities can adjust operations and implement necessary changes while ensuring that the required VOC emission reductions needed for RFP are achieved during the attainment year.

DIVISION 6: INDUSTRIAL CLEANING SOLVENTS

Revisions in this division are proposed to generate VOC reductions for RFP requirements.

§115.460 Applicability and Definitions

The commission proposes to amend the definition of "electrical and electronic components" in §115.460(b)(7) for purposes of clarifying the Bexar County §115.461(f) exemption and §115.463(f) control requirements for the Bexar County area. The definition is different in the context of different rule provisions, and this amendment would ensure that the proper definition applies in the context of §115.461(f) and §115.463(f) requirements. The commission also proposes to amend the definition of "solvent cleaning operation" in §115.460(b)(42) for the Bexar County area §115.461(f) exemption and §115.463(f) control requirement.

§115.461 Exemptions

The commission proposes to relocate the existing §115.461(f) exemption to §115.461(g) and insert newly proposed §115.461(f) language that would prohibit the use of existing exemptions §115.461(a) through (d) in Bexar County beginning March 1, 2026. The proposed language would also update references to include the proposed renumbered §115.461(g). If adopted, newly proposed §115.461(f) would limit industrial solvent cleaning exemptions in Bexar County to the following twelve categories: 1) cleaning of solar cells, laser hardware, scientific instruments, and high-precision optics; 2) cleaning conducted with performance laboratory tests, coatings, adhesives, or inks; research and development programs; and laboratory tests in quality assurance laboratories; 3) cleaning of paper-based gaskets, and clutch assemblies where rubber is bonded to metal by means of an adhesive; 4) cleaning of cotton swabs to remove cottonseed oil before cleaning of high-precision optics; 5) medical device and pharmaceutical facilities using up to 1.5 gallons per day of solvents; 6) the cleaning of photocurable resins from stereolithography equipment and models; 7) cleaning of adhesive application equipment used for thin metal laminating operations provided the clean-up solvent used contains no more than 950 grams of VOC per liter; 8) cleaning of electronic or electrical cables provided the clean-up solvent used contains no more than 400 grams of VOC per liter; 9) touch up cleaning performed on printed circuit boards where surface mounted devices have already been attached provided that the solvent used contains no more than 800 grams of VOC per liter; 10) cleaning carried out in batch loaded cold cleaners, vapor degreasers, conveyorized degreasers, or motion picture film cleaning equipment; 11) janitorial cleaning, including graffiti removal; and 12) stripping of cured coatings, cured ink, or cured adhesives. The commission also proposes to add " and (g)" at the end of §115.461(a) to clarify that both industrial solvent activities listed in (f) and cleaning solvents in aerosol cans referenced in (g) of this section are exempt and not required to be quantified. The list of exemptions proposed for Bexar County mirror those in §115.461(e) available in the DFW and HGB areas if the industrial cleaning solvent contingency measures are triggered in those areas.

§115.463 Control Requirements

The commission proposes to add new VOC content limits for industrial cleaning solvent operations in §115.463(f) for the Bexar County area. The industrial cleaning solvent categories that would be subject include product cleaning during manufacturing processes or surface preparations for coating, adhesives, or ink applications; repair and maintenance cleaning; cleaning of coatings or adhesives application equipment; cleaning of ink application equipment; and cleaning of polyester resin application equipment. This measure is projected to reduce VOC emissions from industrial cleaning solvent operations in the Bexar County area and would align control requirements with the contingency measures in DFW and HGB by mirroring the requirements in §115.463(e). The commission also proposes to update the first sentence of §115.463(a) to clarify that sources in the DFW and HGB areas are not subject to §115.463(f), which only apply in the Bexar County area.

§115.465 Approved Test Methods and Testing Requirements

The commission proposes to amend §115.465(1) to specify testing requirements that could be used to verify the new VOC content limits proposed in §115.463(f). Existing testing methods, specified in §115.465(1)(A) through (D), could be used to verify the proposed limits in §115.463(f).

§115.468 Monitoring and Recordkeeping Requirements

The commission proposes to amend §115.468(b)(1) to add recordkeeping requirements for the newly proposed solvent cleaning provisions in the Bexar County area. The proposed amendment to §115.468(b)(1) would require owners and operators of solvent cleaning operations to maintain records documenting compliance with newly proposed §115.463(f) VOC limits. Records demonstrating compliance include testing data, MSDSs, or documentation of the standard reference texts used to determine the true vapor pressure of each VOC component.

§115.469 Compliance Schedules

The commission proposes an update to §115.469(b) to clarify that sources in the Bexar County area subject to the new Subchapter E, Division 6 industrial cleaning solvent requirements must be in compliance no later than March 1, 2026. This provides sufficient time for affected entities to implement compliant cleaning options while reducing VOC emissions prior to the ozone season of the attainment year.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for TCEQ or other state government entities during implementation of the proposed rule.

Fiscal implications are anticipated for one city government entity during implementation of the proposed rule. It is estimated that new gasoline dispensing nozzles and low permeability hoses would need to be installed at 11 city refueling stations to comply with the proposed addition of Subchapter C, Division 6. Total costs as needed to replace all gasoline nozzles and gasoline dispensing hoses with low permeability hoses is estimated at $70,000 in year one. It is estimated that there would be savings of approximately $4,000 each year in years two through five because gasoline leakage would reduce with the new hoses.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be compliance with federal law and continued protection of the environment and public health and safety combined with efficient and fair administration of VOC emission standards for Bexar County. Corrections of errors and other non-substantive changes within the rule would also benefit the public.

Costs would be incurred for affected businesses operating in Bexar County for implementation of requirements appliable to RACT. This rulemaking would lower the major source threshold from 100 tpy to 50 tpy VOC for lithographic printing operations (Subchapter E, Division 4), bakery ovens (Subchapter B, Division 2), and VOC storage tanks (Subchapter B, Division 1). Additionally, to meet the required RFP reduction target, revisions would be made as needed to implement stricter VOC limits for degreasing processes (Subchapter E, Division 1), fabric coating (Subchapter E, Division 2), coating of metal parts, architectural coatings, and industrial maintenance coatings (Subchapter E, Division 5), industrial cleaning solvent provisions (Subchapter E, Division 6), and gasoline dispensing nozzles and low permeation hoses from motor vehicle dispensing facilities (Subchapter C, Division 6). Any impacted business may be required to update their permit with TCEQ to update processes that are approved for use at their facilities, and some costs may be incurred to meet these permitting requirements. Costs specific to affected businesses are discussed below.

It is estimated that there are 37 commercial bakeries, 61 lithographic printing facilities, and 25 facilities with VOC storage tanks that would be affected by this rulemaking. Because the individuals who are responsible for the sources should have implemented RACT measures after the updates to this Chapter were made on April 24, 2024 (Rule Project No. 2023-116-115-AI), it is not anticipated that any additional costs would be incurred for these businesses. Should any commercial bakeries need to implement RACT measures, the cost per bakery is estimated at $492,000 in year one and $74,000 in years two through five, and this includes costs related to incinerator control, monitoring, testing, and recordkeeping. Should any lithographic printing facilities need to implement RACT measures, the cost per facility is estimated at $22,000 each year as needed to meet control and recordkeeping requirements. Should RACT measures need implemented for VOC storage tanks, the cost per tanks is estimated at $150,280 in the year one and $22,100 in years two through five as needed to meet control, monitoring, testing, seal inspection, and recordkeeping requirements.

The remaining businesses that would be affected are nonpoint area sources. It is estimated that there are eight facilities with degreasing processes, 25 facilities with fabric coating processes, 23 facilities with metal parts and products, five facilities with architectural coating processes, 98 facilities that use industrial maintenance coatings, 98 facilities that use industrial cleaning solvents, and up to 1,181 retail gas stations that would incur costs.

Degreasing requirements (Subchapter E, Division 1) would apply to owners or operators of cold solvent cleaning, open-top vapor degreasing, and conveyorized decreasing processes. Total costs, as needed to meet lower VOC content requirements for degreasing materials, and associated recordkeeping, reporting, monitoring, or testing requirements is estimated to total approximately $270,000 in year one and $50,000 in years two through five.

Fabric coating requirements (Subchapter E, Division 2) would apply to fabric coating and wash primers. Total costs, as needed to meet lower VOC content requirements, and associated recordkeeping, reporting, monitoring, or testing requirements is estimated to total approximately $1.3 million each year of the first five years the proposed rules are in effect.

Metal parts, architectural coatings, and industrial maintenance coatings (Subchapter E, Division 5) would apply to coating processes. For metal parts, total costs as needed to meet lower VOC content requirements, and associated recordkeeping, reporting, monitoring, or testing requirements is $3.9 million each year of the first five years the proposed rules are in effect. For architectural coatings, costs to meet lower VOC content requirements, and associated recordkeeping, reporting, monitoring, or testing requirements similarly totals $3.9 million each year. No additional expenses are anticipated for businesses that use industrial maintenance coatings because recordkeeping for current materials is assumed to be done already. For the same

reason, businesses that use industrial cleaning solvents (Subchapter E, Division 6) are not anticipated to incur any additional expenses.

Requirements related to gas stations (Subchapter C, Division 6) would apply to all retail gas stations in Bexar County. Assuming 670 gas stations are impacted, the total costs as needed to replace all gasoline nozzles and replace gasoline dispensing hoses with low permeability hoses is $4.3 million in year one. It is estimated that there would be savings of over $230,000 each year in years two through five because gasoline leakage would reduce with the new hoses.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking is not anticipated to adversely affect a local economy in a significant way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. This rulemaking applies to Bexar County, which has a large population; therefore, rural communities are not significantly impacted. Some commercial bakeries, VOC storage tanks, degreasing operations, surface coating operations, and gasoline stations in rural communities would be impacted, but no adverse impacts to these communities are anticipated.

Small Business and Micro-Business Assessment

No significant adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect. It is estimated there are seven commercial bakeries that are small businesses (four of which are micro-businesses), 61 lithographic printing facilities (53 of which are micro-businesses), 18 VOC storage tanks (all of which are micro-businesses), 11 small businesses that use fabric coating processes (all of which are micro-businesses), eight small businesses that use metal parts and product coatings (all of which are micro-businesses), 98 small businesses that use industrial maintenance coatings (88 of which are micro-businesses), and 590 gasoline stations (541 of which are micro-businesses).

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect. The proposed rules are required to represent RACT requirements that are technologically and economically feasible for regulated sources. The same compliance and reporting requirements are necessary and apply to all businesses regardless of size.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation, and it does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking does not meet the definition of a major environmental rule as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis. A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Tex. Gov't Code Ann., §2001.0225(a). Section 2001.0225 of the Texas Government Code applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The specific intent of these proposed rules is to comply with federal requirements for the implementation of control strategies necessary to attain and maintain the NAAQS for ozone mandated by 42 United States Code (USC), 7410, FCAA, §110, and required to be included in operating permits by 42 USC, §7661a, FCAA, §502, as specified elsewhere in this preamble. The proposed rulemaking addresses RACT and RFP requirements for the Bexar County 2015 eight-hour ozone nonattainment area as discussed elsewhere in this preamble. States are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. As discussed in the FISCAL NOTE portion of this preamble, the proposed rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is necessary to attain the ozone NAAQS on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

If a state does not comply with its obligations under 42 USC, §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) or mandatory sanctions under 42 USC, §7509, FCAA, §179; as well as the imposition of a federal implementation plan (FIP) under 42 USC, §7410, FCAA, §110(c). Under 42 USC, §7661a, FCAA, §502, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including enforceable emission limitations and other

control measures, means, or techniques, which are required under 42 USC, §7410, FCAA, §110. Similar to requirements in 42 USC, §7410, FCAA, §110, states are not free to ignore requirements in 42 USC, §7661a, FCAA, §502 and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Lastly, states are also subject to the imposition of sanctions under 42 USC, §7661a(d) and (i), FCAA, §502(d) and (i) for failure to submit an operating permits program, the disapproval of any operating permits program, or failure to adequately administer and enforce the approved operating permits program.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th legislative session in 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. Requiring a full RIA for all federally required rules is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the proposed rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA, and in fact creates no additional impacts since the proposed rules do not impose burdens greater than required to demonstrate attainment of the ozone NAAQS as discussed elsewhere in this preamble. For these reasons, the proposed rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*). *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).) The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard.

As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225. The proposed rulemaking implements the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble. The proposed rules were determined to be necessary to attain the ozone NAAQS and are required to be included in permits under 42 USC, §7661a, FCAA, §502 and will not exceed any standard set by state or federal law. These proposed rules are not an express requirement of state law. The proposed rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the proposed rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C. §7410, FCAA, §110. The proposed rules were not developed solely under the general powers of the agency but are authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble, including Texas Health and Safety Code, §§382.011, 382.012, and 382.017. Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invites public comment regarding the Draft RIA Determination during the public comment period. Written comments on the Draft RIA Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The commission

completed a takings impact analysis for the proposed rulemaking action under the Texas Government Code, §2007.043.

The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to meet federal requirements for the implementation of control strategies necessary to attain and maintain the NAAQS for ozone mandated by 42 United States Code (USC), 7410, FCAA, §110, and required to be included in operating permits by 42 USC, §7661a, FCAA, §502. The proposed rulemaking addresses VOC RACT and RFP requirements for the Bexar County 2015 eight-hour ozone nonattainment area as discussed elsewhere in this preamble.

States are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. If a state does not comply with its obligations under 42 USC, §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) or mandatory sanctions under 42 USC, §7509, FCAA, §179; as well as the imposition of a FIP under 42 USC, §7410, FCAA, §110(c). Under 42 USC, §7661a, FCAA, §502, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including enforceable emission limitations and other control measures, means, or techniques, which are required under 42 USC, §7410, FCAA, §110. Similar to requirements in 42 USC, §7410, FCAA, §110, regarding the requirement to adopt and implement plans to attain and maintain the national ambient air quality standards, states are not free to ignore requirements in 42 USC, §7661a, FCAA, §502 and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Lastly, states are also subject to the imposition of sanctions under 42 USC, §7661a(d) and (i), FCAA, §502(d) and (i) for failure to submit an operating permits program, the disapproval of any operating permits program, or failure to adequately administer and enforce the approved operating permits program.

The proposed rules will not create any additional burden on private real property beyond what is required under federal law, as the proposed rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C. §7410, FCAA, §110. The proposed rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 115 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. Once adopted, owners or operators of affected sites subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 115 requirements.

Announcement of Hearing

The commission will offer a public hearing on this proposal in San Antonio on August 19, 2025, at 7:00 p.m. Central Daylight Time at the Alamo Area Council of Governments (AACOG) at 2700 NE Loop 410, Suite 101. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: https://tceq.commentinput.com/comment/search. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2025-006-115-AI. The comment period closes on August 25, 2025. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Julia Segura, Air Quality Planning Section, and julia.segura@tceq.texas.gov.

SUBCHAPTER B. GENERAL VOLATILE ORGANIC COMPOUND SOURCES

DIVISION 1. STORAGE OF VOLATILE ORGANIC COMPOUNDS

30 TAC §§115.111, 115.112, 115.119

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the

commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103, and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.111. Exemptions.

(a) The following exemptions apply in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas as defined in §115.10 of this title (relating to Definitions), except as noted in paragraphs (2), (4), (6), (7), and (9) - (11) of this subsection.

(1) Except as provided in §115.118 of this title (relating to Recordkeeping Requirements), a storage tank storing volatile organic compounds (VOC) with a true vapor pressure less than 1.5 pounds per square inch absolute (psia) is exempt from the requirements of this division.

(2) A storage tank with storage capacity less than 210,000 gallons storing crude oil or condensate prior to custody transfer in the Beaumont-Port Arthur, Bexar County, or El Paso areas, is exempt from the requirements of this division. This exemption no longer applies in the Dallas-Fort Worth area beginning March 1, 2013.

(3) A storage tank with a storage capacity less than 25,000 gallons located at a motor vehicle fuel dispensing facility is exempt from the requirements of this division.

(4) A welded storage tank in the Beaumont-Port Arthur, Bexar County, El Paso, and Houston-Galveston-Brazoria areas with a mechanical shoe primary seal that has a secondary seal from the top of the shoe seal to the tank wall (a shoe-mounted secondary seal) is exempt from the requirement for retrofitting with a rim-mounted secondary seal if the shoe-mounted secondary seal was installed or scheduled for installation before August 22, 1980.

(5) An external floating roof storage tank storing waxy, high pour point crude oils is exempt from any secondary seal requirements of §115.112(a), (d), and (e) of this title (relating to Control Requirements).

(6) A welded storage tank in the Beaumont-Port Arthur, Bexar County, El Paso, and Houston-Galveston-Brazoria areas storing VOC with a true vapor pressure less than 4.0 psia is exempt from any external floating roof secondary seal requirement if any of the following types of primary seals were installed before August 22, 1980:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(7) A welded storage tank in the Beaumont-Port Arthur, Bexar County, El Paso, and Houston-Galveston-Brazoria areas storing crude oil with a true vapor pressure equal to or greater than 4.0 psia and less than 6.0 psia is exempt from any external floating roof secondary seal requirement if any of the following types of primary seals were installed before December 10, 1982:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(8) A storage tank with storage capacity less than or equal to 1,000 gallons is exempt from the requirements of this division.

(9) In the Houston-Galveston-Brazoria area, a storage tank or tank battery storing condensate, as defined in §101.1 of this title (relating to Definitions), prior to custody transfer with a condensate throughput exceeding 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(d)(4) or (e)(4)(A) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title (relating to Approved Test Methods), that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 25 tons per year on a rolling 12-month basis.

(10) In the Dallas-Fort Worth area, except Wise County, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(B) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 50 tons per year on a rolling 12-month basis. This exemption no longer applies on November 7, 2025.

(11) In the Dallas-Fort Worth area, except in Wise County, on or after November 7, 2025, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(B) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 25 tons per year on a rolling 12-month basis.

(12) In Wise County, prior to July 20, 2021, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 6,000 barrels (252,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(C)(i) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 100 tons per year on a rolling 12-month basis.

(13) In Wise County until November 7, 2025, [,] a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in

§115.112(e)(4)(C)(ii) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 50 tons per year on a rolling 12-month basis.

(14) In Wise County beginning November 7, 2025, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(D) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 25 tons per year on a rolling 12-month basis.

(15) In the Bexar County area beginning January 1, 2025, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 6,000 barrels (252,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(E) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 100 tons per year on a rolling 12-month basis [~~of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 100 tons per year on a rolling 12-month basis~~].

(16) In the Bexar County, Dallas-Fort Worth, and Houston-Galveston-Brazoria areas, beginning when compliance is achieved with Division 7 of this subchapter (relating to Oil and Natural Gas Service in Ozone Nonattainment Areas) but no later than its initial §115.183 compliance deadline, a storage tank storing crude oil or condensate that is subject to the compliance requirements of Division 7 of this subchapter is exempt from all requirements in this division.

(17) In the Bexar County area beginning March 1, 2026, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(E) of this title, to control flashed gases, if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 50 tons per year on a rolling 12-month basis.

(b) The following exemptions apply in Gregg, Nueces, and Victoria Counties.

(1) Except as provided in §115.118 of this title, a storage tank storing VOC with a true vapor pressure less than 1.5 psia is exempt from the requirements of this division.

(2) A storage tank with storage capacity less than 210,000 gallons storing crude oil or condensate prior to custody transfer is exempt from the requirements of this division.

(3) A storage tank with storage capacity less than 25,000 gallons located at a motor vehicle fuel dispensing facility is exempt from the requirements of this division.

(4) A welded storage tank with a mechanical shoe primary seal that has a secondary seal from the top of the shoe seal to the tank wall (a shoe-mounted secondary seal) is exempt from the requirement for retrofitting with a rim-mounted secondary seal if the shoe-mounted secondary seal was installed or scheduled for installation before August 22, 1980.

(5) An external floating roof storage tank storing waxy, high pour point crude oils is exempt from any secondary seal requirements of §115.112(b) of this title.

(6) A welded storage tank storing VOC with a true vapor pressure less than 4.0 psia is exempt from any external secondary seal requirement if any of the following types of primary seals were installed before August 22, 1980:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(7) A welded storage tank storing crude oil with a true vapor pressure equal to or greater than 4.0 psia and less than 6.0 psia is exempt from any external secondary seal requirement if any of the following types of primary seals were installed before December 10, 1982:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(8) A storage tank with storage capacity less than or equal to 1,000 gallons is exempt from the requirements of this division.

(c) The following exemptions apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties. The exemptions in this subsection no longer apply in Bexar County beginning January 1, 2025.

(1) A storage tank storing VOC with a true vapor pressure less than 1.5 psia is exempt from the requirements of this division.

(2) Slotted guidepoles installed in a floating roof storage tank are exempt from the provisions of §115.112(c) of this title.

(3) A storage tank with storage capacity between 1,000 gallons and 25,000 gallons is exempt from the requirements of §115.112(c)(1) of this title if construction began before May 12, 1973.

(4) A storage tank with storage capacity less than or equal to 420,000 gallons is exempt from the requirements of §115.112(c)(3) of this title.

(5) A storage tank with storage capacity less than or equal to 1,000 gallons is exempt from the requirements of this division.

§115.112. Control Requirements.

(a) The following requirements apply in the Beaumont-Port Arthur, Dallas-Fort Worth, and El Paso areas, as defined in §115.10 of this title (relating to Definitions). The control requirements in this subsection no longer apply in the Dallas-Fort Worth area beginning March 1, 2013.

(1) No person shall place, store, or hold in any storage tank any volatile organic compounds (VOC) unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in Table I(a) of this paragraph for VOC other than crude oil and condensate or Table II(a) of this paragraph for crude oil and condensate.

Figure: 30 TAC §115.112(a)(1) (No change.)

(2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating roof or external floating roof except for automatic bleeder vents (vacuum breaker vents) and rim space vents must provide a projection below the liquid surface or be equipped with a cover, seal, or lid. Any cover, seal, or lid must be in a closed (i.e., no visible gap) position at all times except when the device is in actual use.

(B) Automatic bleeder vents (vacuum breaker vents) must be closed at all times except when the roof is being floated off or landed on the roof leg supports.

(C) Rim vents, if provided, must be set to open only when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.

(D) Any roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening.

(E) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(F) For an external floating roof storage tank, secondary seals must be the rim-mounted type (the seal must be continuous from the floating roof to the tank wall). The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and storage tank wall may not be greater than 1.0 square inch per foot of tank diameter.

(3) Vapor control systems, as defined in §115.10 of this title, used as a control device on any storage tank must maintain a minimum control efficiency of 90%. If a flare is used, it must be designed and operated in accordance with 40 Code of Federal Regulations §60.18(b) - (f) (as amended through December 22, 2008 (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare.

(b) The following requirements apply in Gregg, Nueces, and Victoria Counties.

(1) No person shall place, store, or hold in any storage tank any VOC, unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in Table I(a) in subsection (a)(1) of this section for VOC other than crude oil and condensate or Table II(a) in subsection (a)(1) of this section for crude oil and condensate. If a flare is used as a vapor recovery system, as defined in §115.10 of this title, it must be designed and operated in accordance with 40 Code of Federal Regulations §60.18(b) - (f) (as amended through December 22, 2008 (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare.

(2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating roof or external floating roof, except for automatic bleeder vents (vacuum breaker vents) and rim space vents, must provide a projection below the liquid surface or be equipped with a cover, seal, or lid. Any cover, seal, or lid must be in a closed (i.e., no visible gap) position at all times, except when the device is in actual use.

(B) Automatic bleeder vents (vacuum breaker vents) must be closed at all times except when the roof is being floated off or landed on the roof leg supports.

(C) Rim vents, if provided, must be set to open only when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.

(D) Any roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening.

(E) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(F) For an external floating roof storage tank, secondary seals must be the rim-mounted type (the seal shall be continuous from the floating roof to the tank wall). The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and tank wall may not be greater than 1.0 square inch per foot of tank diameter.

(c) The following requirements apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties. The control requirements of this subsection no longer apply for sources located in Bexar County beginning January 1, 2025.

(1) No person may place, store, or hold in any storage tank any VOC, other than crude oil or condensate, unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in Table I(b) of this paragraph for VOC other than crude oil and condensate.
Figure: 30 TAC §115.112(c)(1) (No change.)

(2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(B) All tank gauging and sampling devices must be vapor-tight except when gauging and sampling is taking place.

(3) No person in Matagorda or San Patricio Counties shall place, store, or hold crude oil or condensate in any storage tank unless the storage tank is a pressure tank capable of maintaining working pressures sufficient at all times to prevent vapor or gas loss to the atmosphere or is equipped with one of the following control devices, properly maintained and operated:

(A) an internal floating roof or external floating roof, as defined in §115.10 of this title. These control devices will not be allowed if the VOC has a true vapor pressure of 11.0 pounds per square inch absolute (psia) or greater. All tank-gauging and tank-sampling devices must be vapor-tight, except when gauging or sampling is taking place; or

(B) a vapor control system as defined in §115.10 of this title.

(d) The following requirements apply in the Houston-Galveston-Brazoria area, as defined in §115.10 of this title. The requirements in this subsection no longer apply beginning March 1, 2013.

(1) No person shall place, store, or hold in any storage tank any VOC unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in either Table I(a) of subsection (a)(1) of this section for VOC other than crude oil and condensate or Table II(a) of subsection (a)(1) of this section for crude oil and condensate.

(2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating roof or external floating roof as defined in §115.10 of this title except for automatic

bleeder vents (vacuum breaker vents), and rim space vents must provide a projection below the liquid surface. All openings in an internal floating roof or external floating roof except for automatic bleeder vents (vacuum breaker vents), rim space vents, leg sleeves, and roof drains must be equipped with a deck cover. The deck cover must be equipped with a gasket in good operating condition between the cover and the deck. The deck cover must be closed (i.e., no gap of more than 1/8 inch) at all times, except when the cover must be open for access.

(B) Automatic bleeder vents (vacuum breaker vents) and rim space vents must be equipped with a gasketed lid, pallet, flapper, or other closure device and must be closed (i.e., no gap of more than 1/8 inch) at all times except when required to be open to relieve excess pressure or vacuum in accordance with the manufacturer's design.

(C) Each opening into the internal floating roof for a fixed roof support column may be equipped with a flexible fabric sleeve seal instead of a deck cover.

(D) Any external floating roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening or an equivalent control that must be kept in a closed (i.e., no gap of more than 1/8 inch) position at all times except when the drain is in actual use. Stub drains on an internal floating roof storage tank are not subject to this requirement.

(E) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(F) For an external floating roof storage tank, secondary seals must be the rim-mounted type (the seal must be continuous from the floating roof to the tank wall with the exception of gaps that do not exceed the following specification). The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and storage tank wall may not be greater than 1.0 square inch per foot of storage tank diameter.

(G) Each opening for a slotted guidepole in an external floating roof storage tank must be equipped with one of the following control device configurations:

(i) a pole wiper and pole float that has a seal or wiper at or above the height of the pole wiper;

(ii) a pole wiper and a pole sleeve;

(iii) an internal sleeve emission control system;

(iv) a retrofit to a solid guidepole system;

(v) a flexible enclosure system; or

(vi) a cover on an external floating roof tank.

(H) The external floating roof or internal floating roof must be floating on the liquid surface at all times except as specified in this subparagraph. The external floating roof or internal floating roof may be supported by the leg supports or other support devices, such as hangers from the fixed roof, during the initial fill or refill after the storage tank has been cleaned or as allowed under the following circumstances:

(i) when necessary for maintenance or inspection;

(ii) when necessary for supporting a change in service to an incompatible liquid;

(iii) when the storage tank has a storage capacity less than 25,000 gallons or the vapor pressure of the material stored is less than 1.5 psia;

(iv) when the vapors are routed to a control device from the time the floating roof is landed until the floating roof is within ten percent by volume of being refloated;

(v) when all VOC emissions from the tank, including emissions from roof landings, have been included in a floating roof storage tank emissions limit or cap approved under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); or

(vi) when all VOC emissions from floating roof landings at the regulated entity, as defined in §101.1 of this title (relating to Definitions), are less than 25 tons per year.

(3) Vapor control systems, as defined in §115.10 of this title, used as a control device on any storage tank must maintain a minimum control efficiency of 90%.

(4) For a storage tank storing condensate, as defined in §101.1 of this title, prior to custody transfer, flashed gases must be routed to a vapor control system if the liquid throughput through an individual tank or the aggregate of tanks in a tank battery exceeds 1,500 barrels (63,000 gallons) per year.

(5) For a storage tank storing crude oil or condensate prior to custody transfer or at a pipeline breakout station, flashed gases must be routed to a vapor control system if the uncontrolled VOC emissions from an individual storage tank, or from the aggregate of storage tanks in a tank battery, equal or exceed 25 tons per year on a rolling 12-month basis. Uncontrolled emissions must be estimated by one of the following methods; however, if emissions determined using direct measurements or other methods approved by the executive director under subparagraph (A) or (D) of this paragraph are higher than emissions estimated using the default factors or charts in subparagraph (B) or (C) of this paragraph, the higher values must be used.

(A) The owner or operator may make direct measurements using the measuring instruments and methods specified in §115.117 of this title (relating to Approved Test Methods).

(B) The owner or operator may use a factor of 33.3 pounds of VOC per barrel (42 gallons) of condensate produced or 1.6 pounds of VOC per barrel (42 gallons) of oil produced.

(C) For crude oil storage only, the owner or operator may use the chart in Exhibit 2 of the United States Environmental Protection Agency publication *Lessons Learned from Natural Gas Star Partners: Installing Vapor Recovery Units on Crude Oil Storage Tanks,* October 2003, and assuming that the hydrocarbon vapors have a molecular weight of 34 pounds per pound mole and are 48% by weight VOC.

(D) Other test methods or computer simulations may be allowed if approved by the executive director.

(e) The control requirements in this subsection apply in the Bexar County, Houston-Galveston-Brazoria, and Dallas-Fort Worth areas, except as specified in §115.119 of this title (relating to Compliance Schedules) and in paragraph (3) of this subsection. Beginning on the applicable compliance date specified in §115.183 of this title (relating to Compliance Schedules), the requirements in this subsection no longer apply to storage tanks storing crude oil or condensate that are subject to Division 7 of this subchapter (relating to Oil and Natural Gas Service in Ozone Nonattainment Areas).

(1) No person shall place, store, or hold VOC in any storage tank unless the storage tank is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere or is in compliance with the control requirements specified in Table 1 of this paragraph for VOC other than crude oil and condensate or Table 2 of this paragraph for crude oil and condensate.

Figure: 30 TAC §115.112(e)(1) (No change.)

(2) For an external floating roof or internal floating roof storage tank subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal floating roof or external floating roof must provide a projection below the liquid surface. Automatic bleeder vents (vacuum breaker vents) and rim space vents are not subject to this requirement.

(B) All openings in an internal floating roof or external floating roof must be equipped with a deck cover. The deck cover must be equipped with a gasket in good operating condition between the cover and the deck. The deck cover must be closed (i.e., no gap of more than 1/8 inch) at all times, except when the cover must be open for access. Automatic bleeder vents (vacuum breaker vents), rim space vents, leg sleeves, and roof drains are not subject to this requirement.

(C) Automatic bleeder vents (vacuum breaker vents) and rim space vents must be equipped with a gasketed lid, pallet, flapper, or other closure device and must be closed (i.e., no gap of more than 1/8 inch) at all times except when required to be open to relieve excess pressure or vacuum in accordance with the manufacturer's design.

(D) Each opening into the internal floating roof for a fixed roof support column may be equipped with a flexible fabric sleeve seal instead of a deck cover.

(E) Any external floating roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening or an equivalent control that must be kept in a closed (i.e., no gap of more than 1/8 inch) position at all times except when the drain is in actual use. Stub drains on an internal floating roof storage tank are not subject to this requirement.

(F) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(G) For an external floating roof storage tank, secondary seals must be the rim-mounted type. The seal must be continuous from the floating roof to the tank wall with the exception of gaps that do not exceed the following specification. The accumulated area of gaps that exceed 1/8 inch in width between the secondary seal and storage tank wall may not be greater than 1.0 square inch per foot of storage tank diameter.

(H) Each opening for a slotted guidepole in an external floating roof storage tank must be equipped with one of the following control device configurations:

(i) a pole wiper and pole float that has a seal or wiper at or above the height of the pole wiper;

(ii) a pole wiper and a pole sleeve;

(iii) an internal sleeve emission control system;

(iv) a retrofit to a solid guidepole system;

(v) a flexible enclosure system; or

(vi) a cover on an external floating roof tank.

(I) The external floating roof or internal floating roof must be floating on the liquid surface at all times except as allowed under the following circumstances:

(i) during the initial fill or refill after the storage tank has been cleaned;

(ii) when necessary for preventive maintenance, roof repair, primary seal inspection, or removal and installation of a secondary seal, if product is not transferred into or out of the storage tank, emissions are minimized, and the repair is completed within seven calendar days;

(iii) when necessary for supporting a change in service to an incompatible liquid;

(iv) when the storage tank has a storage capacity less than 25,000 gallons;

(v) when the vapors are routed to a control device from the time the storage tank has been emptied to the extent practical or the drain pump loses suction until the floating roof is within 10% by volume of being refloated;

(vi) when all VOC emissions from the storage tank, including emissions from floating roof landings, have been included in an emissions limit or cap approved under Chapter 116 of this title prior to March 1, 2013; or

(vii) when all VOC emissions from floating roof landings at the regulated entity are less than 25 tons per year.

(3) A control device used to comply with this subsection must meet one of the following conditions at all times when VOC vapors are routed to the device.

(A) A control device, other than a vapor recovery unit or a flare, must maintain the following minimum control efficiency:

(i) 90% in the Houston-Galveston-Brazoria area until the date specified in clause (ii) of this subparagraph;

(ii) 95% in the Houston-Galveston-Brazoria area beginning July 20, 2018;

(iii) 95% in the Dallas-Fort Worth area; and

(iv) 95% in the Bexar County area.

(B) A vapor recovery unit must be designed to process all vapor generated by the maximum liquid throughput of the storage tank or the aggregate of storage tanks in a tank battery and must transfer recovered vapors to a pipe or container that is vapor-tight, as defined in §115.10 of this title.

(C) A flare must be designed and operated in accordance with 40 Code of Federal Regulations §60.18(b) - (f) (as amended through December 22, 2008 (73 FR 78209)) and be lit at all times when VOC vapors are routed to the flare.

(4) For a fixed roof storage tank storing condensate prior to custody transfer, flashed gases must be routed to a vapor control system if the condensate throughput of an individual tank or the aggregate of tanks in a tank battery exceeds;

(A) in the Houston-Galveston-Brazoria area, 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis;

(B) in the Dallas-Fort Worth area, except Wise County, 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis until November 7, 2025, upon which date, the requirements in subparagraph (D) of this paragraph apply;

(C) in Wise County:

(i) 6,000 barrels (252,000 gallons) per year on a rolling 12-month basis, until July 20, 2021; and

(ii) 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis until November 7, 2025, upon which date, the requirements in subparagraph (D) of this paragraph apply;

(D) in the Dallas-Fort Worth area, 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis beginning November 7, 2025, as specified in §115.119(f) of this title; and

(E) in the Bexar County area beginning January 1, 2025, through February 28, 2026, 6,000 barrels (252,000 gallons) per year on a rolling 12-month basis.

(F) in the Bexar County area beginning March 1, 2026, 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis.

(5) For a fixed roof storage tank storing crude oil or condensate prior to custody transfer or at a pipeline breakout station, flashed gases must be routed to a vapor control system if the uncontrolled VOC emissions from an individual storage tank, or from the aggregate of storage tanks in a tank battery, or from the aggregate of storage tanks at a pipeline breakout station, equal or exceed:

(A) in the Houston-Galveston-Brazoria area, 25 tons per year on a rolling 12-month basis;

(B) in the Dallas-Fort Worth area, except Wise County: 50 tons per year on a rolling 12-month basis until November 7, 2025, upon which date, the requirements in subparagraph (D) of this paragraph apply;

(C) in Wise County:

(i) 100 tons per year on a rolling 12-month basis, until July 20, 2021;

(ii) 50 tons per year on a rolling 12-month basis beginning July 20, 2021, as specified in §115.119(f) of this title, until November 7, 2025, upon which date, the requirements in subparagraph (D) of this paragraph apply;

(D) in the Dallas-Fort Worth area, 25 tons per year on a rolling 12-month basis beginning November 7, 2025 as specified in §115.119(f) of this title; and

(E) in the Bexar County area 100 tons per year on a rolling 12-month basis prior to March 1, 2026, and 50 tons per year beginning March 1, 2026.

(6) Uncontrolled emissions from a fixed roof storage tank or fixed roof storage tank battery storing crude oil or condensate prior to custody transfer or at a pipeline breakout station must be estimated by one of the following methods. However, if emissions determined using direct measurements or other methods approved by the executive director under subparagraph (A) or (B) of this paragraph are higher than emissions estimated using the default factors or charts in subparagraph (C) or (D) of this paragraph, the higher values must be used.

(A) The owner or operator may make direct measurements using the measuring instruments and methods specified in §115.117 of this title.

(B) The owner or operator may use other test methods or computer simulations approved by the executive director.

(C) The owner or operator may use a factor of 33.3 pounds of VOC per barrel (42 gallons) of condensate produced or 1.6 pounds of VOC per barrel (42 gallons) of oil produced.

(D) For crude oil storage only, the owner or operator may use the chart in Exhibit 2 of the United States Environmental Protection Agency publication *Lessons Learned from Natural Gas Star Partners: Installing Vapor Recovery Units on Crude Oil Storage Tanks,* October 2003, and assuming that the hydrocarbon vapors have a molecular weight of 34 pounds per pound mole and are 48% by weight VOC.

(7) Fixed roof storage tanks in the Bexar County area, Dallas-Fort Worth area, and Houston-Galveston-Brazoria area storing crude oil or condensate prior to custody transfer or at a pipeline breakout station for which the owner or operator is required by this subsection to control flashed gases must be maintained in accordance with manufacturer instructions. All openings in the fixed roof storage tank through which vapors are not routed to a vapor recovery unit or other vapor control device must be equipped with a closure device maintained according to the manufacturer's instructions and operated according to this paragraph. If manufacturer instructions are unavailable, industry standards consistent with good engineering practice can be substituted.

(A) Each closure device must be closed at all times except when normally actuated or required to be open for temporary access or to relieve excess pressure or vacuum in accordance with the manufacturer's design and consistent with good air pollution control practices. Such opening, actuation, or use must be limited to minimize vapor loss.

(B) Each closure device must be properly sealed to minimize vapor loss when closed.

(C) Each closure device must either be latched closed or, if designed to relieve pressure, set to automatically open at a pressure that will ensure all vapors are routed to the vapor recovery unit or other vapor control device under normal operating conditions other than gauging the tank or taking a sample through an open thief hatch.

(D) No closure device may be allowed to have a VOC leak for more than 15 calendar days after the leak is found unless delay of repair is allowed. For the purposes of this subparagraph, a leak is the exuding of process gasses from a closed device based on sight, smell, or sound. If parts are unavailable, repair may be delayed. Parts must be ordered promptly and the repair must be completed within five days of receipt of required parts. Repair may be delayed until the next shutdown if the repair of the component would require a shutdown that would create more emissions than the repair would eliminate. Repair must be completed by the end of the next shutdown.

§115.119. Compliance Schedules.

(a) In Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, the compliance date has passed and the owner or operator of each storage tank in which any volatile organic compounds (VOC) are placed, stored, or held shall continue to comply with this division except as follows.

(1) The affected owner or operator shall comply with the requirements of §§115.112(d); 115.115(a)(1), (2), (3)(A), and (4); 115.117; and 115.118(a) of this title (relating to Control Requirements; Monitoring Requirements; Approved Test Methods; and Recordkeeping Requirements, respectively) no later than January 1, 2009. Section 115.112(d) of this title no longer applies in the Houston-Galveston-Brazoria area beginning March 1, 2013. Prior to March 1, 2013, the owner or operator of a storage tank subject to §115.112(d) of this title shall continue to comply with §115.112(d) of this title until compliance has been demonstrated with the requirements of §115.112(e)(1) - (6) of this title. Section 115.112(e)(3)(A)(i) of this title no longer applies beginning July 20, 2018.

(A) If compliance with these requirements would require emptying and degassing of the storage tank, compliance is not required until the next time the storage tank is emptied and degassed but no later than January 1, 2017.

(B) The owner or operator of each storage tank with a storage capacity less than 210,000 gallons storing crude oil and condensate prior to custody transfer shall comply with the requirements

of this division no later than January 1, 2009, regardless if compliance with these requirements would require emptying and degassing of the storage tank.

(2) The affected owner or operator shall comply with §§115.112(e)(1) - (6), 115.115(a)(3)(B), (5), and (6), and 115.116 of this title (relating to Testing Requirements) no later than March 1, 2013. Section 115.112(e)(3)(A)(i) of this title no longer applies beginning July 20, 2018. Prior to July 20, 2018, the owner or operator of a storage tank subject to §115.112(e)(3)(A)(i) of this title shall continue to comply with §115.112(e)(3)(A)(i) of this title until compliance has been demonstrated with the requirements of §115.112(e)(3)(A)(ii) of this title. After July 20, 2018, the owner or operator of a storage tank is subject to §115.112(e)(3)(A)(ii) of this title.

(A) If compliance with these requirements would require emptying and degassing of the storage tank, compliance is not required until the next time the storage tank is emptied and degassed but no later than January 1, 2017.

(B) The owner or operator of each storage tank with a storage capacity less than 210,000 gallons storing crude oil and condensate prior to custody transfer shall comply with these requirements no later than March 1, 2013, regardless if compliance with these requirements would require emptying and degassing of the storage tank.

(3) The affected owner or operator shall comply with §§115.112(e)(3)(A)(ii), 115.112(e)(7), 115.118(a)(6)(D) and (E), and 115.114(a)(5) of this title (relating to Inspection and Repair Requirements) as soon as practicable, but no later than July 20, 2018.

(b) In Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division on or before March 1, 2009, and shall continue to comply with this division, except as follows.

(1) The affected owner or operator shall comply with §§115.112(e), 115.115(a)(3)(B), (5), and (6), 115.116, and 115.118(a)(6) of this title as soon as practicable, but no later than March 1, 2013.

(A) If compliance with §115.112(e) of this title would require emptying and degassing of the storage tank, compliance is not required until the next time the storage tank is emptied and degassed but no later than December 1, 2021.

(B) The owner or operator of a storage tank with a storage capacity less than 210,000 gallons storing crude oil and condensate prior to custody transfer shall comply with these requirements no later than March 1, 2013, regardless if compliance with these requirements would require emptying and degassing of the storage tank.

(2) The affected owner or operator in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties shall comply with §§115.112(e)(7), 115.114(a)(5), and 115.118(a)(6)(D) and (E) of this title no later than January 1, 2017.

(c) In Hardin, Jefferson, and Orange Counties, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division by March 7, 1997, and shall continue to comply with this division, except that compliance with §115.115(a)(3)(B), (5), and (6), and §115.116 of this title is required no later than March 1, 2013.

(d) In El Paso County, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division by January 1, 1996, and shall continue to comply with this division, except that compliance with §115.115(a)(3)(B), (5), and (6), and §115.116 of this title is required no later than March 1, 2013.

(e) Except as specified in subsection (g) of this section, in Aransas, Bexar, Calhoun, Gregg, Matagorda, Nueces, San Patricio, Travis, and Victoria Counties, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division by July 31, 1993, and shall continue to comply with this division, except that compliance with §115.116(b) of this title is required as soon as practicable, but no later than March 1, 2013.

(f) In Wise County, the owner or operator of each storage tank in which any VOC is placed, stored, or held was required to be in compliance with this division by January 1, 2017, and shall continue to comply with this division, except that compliance with §115.112(e)(4)(D) and (5)(D) by no later than November 7, 2025.

(g) The owner or operator of each storage tank in the Bexar County area subject to the requirements of this division shall comply with the requirements of §115.112(c) and §115.114(c) of this title through December 31, 2024, and all other applicable requirements of this division no later than January 1, 2025. Beginning March 1, 2026, the owner or operator of each storage tank in the Bexar County area subject to the requirements of this division shall comply with the requirements of §115.112(e)(4)(F), §115.112(e)(5)(E), and all other applicable requirements of this division.

(h) The owner or operator of each storage tank in which any VOC is placed, stored, or held that becomes subject to this division on or after the date specified in subsections (a) - (f) of this section, shall comply with the requirements in this division no later than 60 days after becoming subject. In Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, Waller, and Wise Counties, the owner or operator of a storage tank storing crude oil or condensate shall continue to comply with the requirements in this division until compliance with the requirements in Division 7 of this subchapter (relating to Oil and Natural Gas Service in Ozone Nonattainment Areas) is achieved or until December 31, 2022, whichever is sooner.

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

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DIVISION 2. VENT GAS CONTROL

30 TAC §115.122, §115.129

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code

within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103, and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.122. Control Requirements.

(a) For all persons in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, the following control requirements shall apply.

(1) Any vent gas streams affected by §115.121(a)(1) of this title (relating to Emission Specifications) must be controlled properly with a control efficiency of at least 90% or to a volatile organic compound (VOC) concentration of no more than 20 parts per million by volume (ppmv) (on a dry basis corrected to 3.0% oxygen for combustion devices):

(A) in a direct-flame incinerator at a temperature equal to or greater than 1,300 degrees Fahrenheit;

(B) in a smokeless flare that is lit at all times when VOC vapors are routed to the flare; or

(C) by any other vapor control system, as defined in §115.10 of this title (relating to Definitions). A glycol dehydrator reboiler burning the vent stream from the still vent is a vapor control system.

(2) Any vent gas streams affected by §115.121(a)(2) of this title must be controlled properly with a control efficiency of at least 98% or to a VOC concentration of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen for combustion devices):

(A) in a smokeless flare that is lit at all times when VOC vapors are routed to the flare; or

(B) by any other vapor control system, as defined in §115.10 of this title.

(3) For the Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, VOC emissions from each bakery with a bakery oven vent gas stream(s) affected by §115.121(a)(3) of this title shall be reduced as follows.

(A) Each bakery in the Houston-Galveston-Brazoria area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 25 tons per calendar year shall ensure that the overall emission reduction from the uncontrolled VOC emission rate of the oven(s) is at least 80%.

(B) Through November 6, 2025, each bakery in the Dallas-Fort Worth area, except in Wise County, with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 50 tons per calendar year, shall ensure that the overall emission reduction from the uncontrolled VOC emission rate of the oven(s) is at least 80%. Beginning November 7, 2025, each bakery in the Dallas-Fort Worth area, including Wise County, with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 25 tons per calendar year, shall ensure that the overall emission reduction from the uncontrolled VOC emission rate of the oven(s) is at least 80%.

(C) Each bakery in the Dallas-Fort Worth with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 25 tons per calendar year, but less than 50 tons per calendar year, shall reduce total VOC emissions by at least 30% from the bakery's 1990 emissions inventory in accordance with the schedule specified in §115.129(d) of this title (relating to Counties and Compliance Schedules). The requirements of this subparagraph no longer apply beginning November 7, 2025.

(D) Each bakery in the El Paso area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 25 tons per calendar year shall reduce total VOC emissions by at least 30% from the bakery's 1990 emissions inventory in accordance with the schedule specified in §115.129(e) of this title.

(E) Each bakery in the Bexar County area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 100 tons per calendar year, shall ensure that the overall emission reduction from the uncontrolled VOC emission rate of the oven(s) is at least 80%. Beginning March 1, 2026, each bakery in the Bexar County area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 50 tons per calendar year, shall ensure that the overall emission reduction from the uncontrolled VOC emission rate of the oven(s) is at least 80%.

(F) Emission reductions in the 30% to 90% range are not creditable under Chapter 101, Subchapter H, Division 1 of this title (relating to Emission Credit Program) for the following bakeries:

(i) each bakery in the Houston-Galveston-Brazoria area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 25 tons per calendar year;

(ii) each bakery in the Dallas-Fort Worth area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 50 tons per calendar year through November 6, 2025, and 25 tons per calendar year beginning November 7, 2025;

(iii) each bakery in the El Paso area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 50 tons per calendar year; and

(iv) each bakery in the Bexar County area with a total weight of VOC emitted from all bakery ovens on the property, when uncontrolled, equal to or greater than 100 tons per calendar year through February 28, 2026, and 50 tons per calendar year beginning March 1, 2026.

(4) Any vent gas stream that becomes subject to the provisions of paragraphs (1), (2), or (3) of this subsection by exceeding provisions of §115.127(a) of this title (relating to Exemptions) shall remain subject to the provisions of this subsection, even if throughput or emissions later fall below the exemption limits unless and until emissions are reduced to no more than the controlled emissions level existing before implementation of the project by which throughput or

emission rate was reduced to less than the applicable exemption limits in §115.127(a) of this title; and:

(A) the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or permit by rule required by Chapter 116 or Chapter 106 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification; and Permits by Rule). If a permit by rule is available for the project, compliance with this subsection must be maintained for 30 days after the filing of documentation of compliance with that permit by rule; or

(B) if authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator has given the executive director 30 days' notice of the project in writing.

(b) For all persons in Nueces and Victoria Counties, any vent gas streams affected by §115.121(b) of this title must be controlled properly with a control efficiency of at least 90% or to a VOC concentration of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen for combustion devices):

(1) in a direct-flame incinerator at a temperature equal to or greater than 1,300 degrees Fahrenheit;

(2) in a smokeless flare that is lit at all times when VOC vapors are routed to the flare; or

(3) by any other vapor control system, as defined in §115.10 of this title.

(c) For all persons in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, the following control requirements shall apply. The control requirements of the subsection no longer apply for sources located in Bexar County beginning January 1, 2025.

(1) Any vent gas streams affected by §115.121(c)(1) of this title must be controlled properly:

(A) in a direct-flame incinerator at a temperature equal to or greater than 1,300 degrees Fahrenheit;

(B) in a smokeless flare that is lit at all times when VOC vapors are routed to the flare; or

(C) by any other vapor control system, as defined in §115.10 of this title, with a control efficiency of at least 90% or to a VOC concentration of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen for combustion devices).

(2) Any vent gas streams affected by §115.121(c)(2) of this title must be controlled properly:

(A) in a direct-flame incinerator or boiler at a temperature equal to or greater than 1,300 degrees Fahrenheit; or

(B) by any other vapor control system, as defined in §115.10 of this title, with a control efficiency of at least 90% or to a VOC concentration of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen for combustion devices).

(3) Any vent gas streams affected by §115.121(c)(3) of this title must be controlled properly:

(A) at a temperature equal to or greater than 1,300 degrees Fahrenheit in an afterburner having a retention time of at least one-fourth of a second, and having a steady flame that is not affected by the cupola charge and relights automatically if extinguished; or

(B) by any other vapor control system, as defined in §115.10 of this title, with a control efficiency of at least 90% or to a VOC concentration of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen for combustion devices).

(4) Any vent gas streams affected by §115.121(c)(4) of this title must be controlled properly:

(A) in a smokeless flare that is lit at all times when VOC vapors are routed to the flare or in a combustion device used in a heating process associated with the operation of a blast furnace; or

(B) by any other vapor control system, as defined in §115.10 of this title, with a control efficiency of at least 90% or to a VOC concentration of no more than 20 ppmv (on a dry basis corrected to 3.0% oxygen for combustion devices).

§115.129. Counties and Compliance Schedules.

(a) Except as specified in subsections [~~subsection~~] (g) and (h) of this section, in Aransas, Bexar, Brazoria, Calhoun, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Matagorda, Montgomery, Nueces, Orange, San Patricio, Travis, Victoria, and Waller Counties, the compliance date has passed and the owner or operator of each vent gas stream shall continue to comply with existing provisions in this division.

(b) The owner or operator of each bakery in Collin, Dallas, Denton, and Tarrant Counties subject to §115.122(a)(3)(C) of this title (relating to Control Requirements) shall comply with §§115.121(a)(3), 115.122(a)(3)(C), and 115.126(6) of this title (relating to Emission Specifications; Control Requirements; and Monitoring and Recordkeeping Requirements) as soon as practicable, but no later than one year, after the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the national ambient air quality standard (NAAQS) for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in Federal Clean Air Act (FCAA), §172(c)(9).

(c) The owner or operator of each bakery in El Paso County subject to §115.122(a)(3)(D) of this title shall comply with §§115.121(a)(3), 115.122(a)(3)(D), and 115.126(6) of this title as soon as practicable, but no later than one year, after the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the NAAQS for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in FCAA, §172(c)(9).

(d) The owner or operator of each vent gas stream in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

(e) The owner or operator of each vent gas stream in Wise County shall comply with this division as soon as practicable, but no later than January 1, 2017.

(f) The owner or operator of a vent gas stream in Bexar, Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties that becomes subject to a new requirement of this division on or after the applicable compliance date in this section shall comply with the requirements in this division as soon as practicable, but no later than 60 days after becoming subject.

(g) The owner or operator of each vent gas stream in the Bexar County area subject to the requirements of this division shall comply with the requirements of §115.121(c), §115.122(c), §115.123(c), and §115.127(c) through December 31, 2024, and all other applicable requirements of this division by no later than January 1, 2025.

(h) The owner or operator of each bakery in the Bexar County area subject to the requirements of this division shall comply with the requirements of §115.122(a)(3)(E) and §115.122(a)(3)(F)(iv) and all

other applicable requirements of this division by no later than March 1, 2026.

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

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SUBCHAPTER C. VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS
DIVISION 6. GASOLINE DISPENSING FACILITY

30 TAC §§115.260, 115.262, 115.264 - 115.266, 115.269

Statutory Authority

The new rule sections are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new rule sections are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed new sections implement TWC, §§5.102, 5.103, and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.260. Applicability and Definitions.

(a) Applicability. The requirements in this division apply to each gasoline dispensing facility in the Bexar County area. Both "gasoline dispensing facility" and "Bexar County area" are defined in §115.10 of this title (relating to Definitions).

(b) Definitions. Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, or 115.10 of this title (relating to Definitions, respectively), the terms in this division have the meanings commonly used in the field of air pollution control. The following meanings apply in this division unless the context clearly indicates otherwise.

(1) Conventional Nozzle--A gasoline dispensing facility pump nozzle that does not have a supplementary vapor recovery pathway and does not have features to control excess liquid releases such as spillage, post fueling drips, and liquid retention.

(2) Dispensing spillage--Spillage that occurs between the time when the dispensing nozzle is inserted into the tank receiving the dispensed liquid and the time when the dispensing nozzle is withdrawn from the tank or container receiving the dispensed liquid and reinserted into the gasoline pump nozzle housing bracket.

(3) Enhanced Conventional (ECO) Nozzle--A gasoline dispensing facility pump nozzle certified by California Air Resources Board (CARB) CP-207 dated July 12, 2021, (including updates and revisions) and listed on the CARB Executive Officer's Exhibit 1 "Component List" in CARB Executive Order NVR-1-F, "Relating to Certification of Non-Vapor Recovery Hoses and Enhanced Conventional Nozzles, For Use at Gasoline Dispensing Facilities with No Phase II Vapor Recovery Systems," executed February 18, 2021, including updates and revisions.

(4) Gasoline dispenser--Equipment at a gasoline dispensing facility, as defined in §115.10 of this title, that provides a connection and sufficient hydraulic force to transfer gasoline or a gasoline and ethanol mixture from a storage tank into motor vehicles.

(5) Low permeation hose--A hose used to dispense gasoline that is included by the CARB Executive Officer on the Exhibit 1 "Component List" in CARB Executive Order NVR-1-D, "Relating to Certification of Non-Vapor Recovery Hoses and Enhanced Conventional Nozzles, For Use at Gasoline Dispensing Facilities with No Phase II Vapor Recovery Systems, " executed March 1, 2019, and complies with the permeation performance standard in CARB CP-207 dated July 12, 2021, (including updates and revisions) as determined by UL 330 (seventh edition), including updates and revisions.

(6) Malfunctioning equipment--Equipment that is not operating according to the manufacturer's design or specifications.

§115.262. Control Requirements.

(a) Installation and use. The owner or operator of a gasoline dispenser equipment shall install low permeation hoses, as defined in §115.260(b) of this title (relating to Definitions), and enhanced conventional (ECO) nozzles, as defined in §115.260(b) of this title, on each affected gasoline dispenser as follows:

(1) All hoses dispensing gasoline or a gasoline and ethanol mixture must be low permeation hoses that permeate at a rate of no more than 10.0 grams per square meter per day ($g/m^2/day$). This requirement exists for all hoses after the compliance date in §115.269(a) of this title (relating to Compliance Schedules).

(2) The owner or operator shall install ECO nozzles, as defined in §115.260(b) of this title, on each gasoline dispenser pump that becomes subject to this division by the compliance date in §115.269 of this title.

(b) Work Practices. The owner or operator of a gasoline dispensing facility shall not allow gasoline to be handled in a manner that would result in preventable vapor releases to the atmosphere for extended periods of time by implementing the following work practices:

(1) Implement and document spill prevention procedures.

(2) Prominently display the operating instructions for the gasoline dispensing system in the gasoline dispensing area and ensure

instructions are clearly visible and legible to all customers. The operating instructions must include the following information:

(A) A clear, step by step description of how to correctly dispense gasoline with the nozzles used at the site using simple language and, if possible, visual aids; and

(B) An overfill warning to clearly state that continued attempts to dispense gasoline after the gasoline dispensing system indicates that the motor vehicle fuel tank is full may result in spillage and unnecessary air and water quality contamination.

(3) Establish and maintain a policy to not top off or overfill vehicle tanks or containers. Post sign(s) at the gasoline dispensing facility instructing a person filling up a motor vehicle to not top off the vehicle tank. A sign must be placed on each gasoline dispenser, or on a permanent fixture within six feet of the dispenser and be clearly visible to an individual using the hose and nozzle to dispense gasoline. Cover all gasoline storage tank fill-pipes with a gasketed seal when not in use.

(4) Clean up spills as expeditiously as practicable. The owner or operator must develop a written plan that describes how a spill will be cleaned up upon occurrence. The plan must include, but is not limited to, where spill materials are located, a brief description of how each is used, and an explanation of how the owner or operator is implementing the 'as expeditiously as practicable' requirement.

(5) Minimize gasoline sent to open waste collection systems that collect and transport gasoline to reclamation and recycling devices, such as an oil/water separator.

(6) Provide adequate training and written instructions to gasoline dispensing facility operators and employees to ensure proper vehicle and container filling operations do not result in excessive or preventable gasoline spillage.

(7) Follow manufacturer's maintenance recommendations for all gasoline dispenser equipment to minimize gasoline spillage.

(c) Repair. Immediately remove from service and tag any gasoline dispensing system equipment identified during the inspection required by §115.264 of this title (relating to Monitoring and Inspection Requirements) as malfunctioning equipment until it is successfully repaired or replaced. Repair or replace any malfunctioning equipment identified as soon as possible before the next inspection required by §115.264 to minimize spillage.

(1) A component removed from service may not be returned to service until the malfunction is corrected.

(2) If the Executive Director or a designated representative finds during an inspection that a damaged or malfunctioning nozzle or other component of the gasoline dispensing system is not properly tagged, the component may not be returned to service until the defect is corrected.

§115.264. Monitoring and Inspection Requirements.

The owner or operator of gasoline dispenser equipment shall perform monthly inspections to check all of the following:

(1) Gasoline hoses are intact (no tears or holes).

(2) Gasoline nozzles function according to their design.

(3) Gasoline hoses are not touching the ground when the nozzle is resting on its holding bracket.

(4) Each gasoline nozzle fits securely in its holding bracket.

(5) Identify and document evidence of nozzle, hose, or other gasoline dispenser system leakage and the cause.

§115.265. Testing and Certification Requirements.

The following gasoline dispensing facility testing and certification requirements shall apply for the Bexar County area, as defined in §115.10 of this title (relating to Definitions).

(1) Test methods in UL 330 - Underwriters Laboratories' Standard for Hose and Hose Assemblies for Dispensing Flammable Liquids must be used to determine compliance with the low permeation hose limit in §115.262(a)(1) of this title (relating to Control Requirements).

(2) Each enhanced conventional nozzle subject to §115.262(b)(1) and (2) of this title must meet certification and test requirements in the California Air Resources Board (CARB) Certification Procedure for Enhanced Conventional (ECO) Nozzles and Low Permeation Conventional Hoses for Use at Gasoline Dispensing Facilities CP-207, dated July 12, 2021, including updates and revisions.

§115.266. Recordkeeping Requirements.

The owner or operator of gasoline dispensing facility equipment shall keep the following records.

(1) Records with the following information, as applicable, for each monitoring inspection conducted under subsection §115.264 of this title (relating to Monitoring and Inspection Requirements):

(A) The name of the person performing the inspection;

(B) The components inspected under subsection §115.264 of this title;

(C) The date the inspection was performed;

(D) The result of each inspection and repair of the components under §115.264 and §115.262(c) of this title (relating to Control Requirements), respectively;

(E) The name of the person making the correction or repair to the malfunctioning or failed component;

(F) The date the correction or repair was made to the malfunctioning or failed component; and

(G) The action taken to correct or repair the malfunctioning equipment.

(2) Records certifying the low permeation hoses and enhanced conventional nozzles.

(3) The owner or operator shall maintain on-site at the gasoline dispensing facility, or electronically stored allowing for on-site examination, a copy of the training schedule and written instructions required under §115.262(b) of this title.

(4) The owner or operator shall maintain all monitoring records for at least five years and make them available for review upon request by authorized representatives of the executive director, U.S. Environmental Protection Agency, or local air pollution control agencies with jurisdiction.

§115.269. Compliance Schedules.

(a) The owner or operator of gasoline dispenser equipment in Bexar County shall comply with the requirements of this division by no later than March 1, 2026.

(b) The owner or operator of gasoline dispenser equipment that becomes subject to this division after March 1, 2026, shall comply with the requirements of this division by no later than 60 days after becoming subject.

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

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SUBCHAPTER E. SOLVENT-USING PROCESSES

DIVISION 1. DEGREASING PROCESSES

30 TAC §§115.411, 115.412, 115.415, 115.416, 115.419

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103, and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.411. Exemptions.

(a) The following exemptions apply in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in Bastrop, Caldwell, Comal, Gregg, Guadalupe, Hays, Nueces, Travis, Victoria, Williamson, and Wilson Counties. The exemptions in this subsection are no longer available for an operation subject to §115.412(b) of this title (relating to Control Requirements) in the Dallas-Fort Worth area or §115.412(c) of this title in the Houston-Galveston-Brazoria area as of the compliance date specified in §115.419(f) or §115.419(g), respectively, of this title (relating to Counties and Compliance Schedules). Beginning March 1, 2026, the exemptions in this subsection are no longer available for an operation subject to §115.412(d) of this title in Bexar County.

(1) Any cold solvent cleaning system is exempt from the provisions of §115.412(a)(1)(B) of this title and may use an external drainage facility in place of an internal type drainage system, if the true vapor pressure of the solvent is less than or equal to 0.6 pounds per square inch absolute (psia) (4.1 kilo Pascals (kPa)) as measured at 100 degrees Fahrenheit (38 degrees Celsius) or if a cleaned part cannot fit into an internal drainage facility.

(2) The following are exempt from the requirements of §115.412(a)(1)(E) of this title:

(A) a cold solvent cleaning system for which the true vapor pressure of the solvent is less than or equal to 0.6 psia (4.1 kPa) as measured at 100 degrees Fahrenheit (38 degrees Celsius), provided that the solvent is not heated above 120 degrees Fahrenheit (49 degrees Celsius); and

(B) remote reservoir cold solvent cleaners.

(3) Any conveyorized degreaser with less than 20 square feet (ft^2) (2 square meters (m^2)) of air/vapor interface is exempt from the requirement of §115.412(a)(3)(A) of this title.

(4) An owner or operator who operates a remote reservoir cold solvent cleaner that uses solvent with a true vapor pressure equal to or less than 0.6 psia (4.1 kPa) measured at 100 degrees Fahrenheit (38 degrees Celsius) and that has a drain area less than 16 square inches (in^2) (100 square centimeters (cm^2)) and who properly disposes of waste solvent in enclosed containers is exempt from §115.412(a)(1) of this title.

(5) In Gregg, Nueces, and Victoria Counties, degreasing operations located on any property that can emit, when uncontrolled, a combined weight of volatile organic compounds (VOC) less than 550 pounds in any consecutive 24-hour period are exempt from the provisions of §115.412 of this title.

(b) If the commission publishes notice in the *Texas Register*, as provided in §115.419(f) of this title for the Dallas-Fort Worth area and/or §115.419(g) of this title for the Houston-Galveston-Brazoria area, to require compliance with the contingency measure control requirements of §115.412(b) of this title for the Dallas-Fort-Worth area and/or §115.412(c) of this title for the Houston-Galveston-Brazoria area, then the following exemptions apply in the applicable area as of the compliance date specified in §115.419(f) or (g) of this title.

(1) Any cold solvent cleaning system is exempt from the provisions of §115.412(a)(1)(B) of this title and may use an external drainage facility in place of an internal type drainage system if the VOC content of the solvent is less than or equal to 25 grams per liter (g/l) or if a cleaned part cannot fit into an internal drainage facility.

(2) The following are exempt from the requirements of §115.412(a)(1)(E) of this title:

(A) a cold solvent cleaning system for which the VOC content of the solvent is less than or equal to 25 g/l; and

(B) remote reservoir cold solvent cleaners.

(3) An owner or operator who operates a remote reservoir cold solvent cleaner that uses solvent with a VOC content that is less than or equal to 25 g/l and that has a drain area less than 16 (in^2) (100 (cm^2)) and who properly disposes of waste solvent in enclosed containers is exempt from §115.412(a)(1) of this title.

(c) Beginning March 1, 2026, the following exemptions apply in Bexar County.

(1) Any cold solvent cleaning system is exempt from the provisions of §115.412(a)(1)(B) of this title and may use an external drainage facility in place of an internal type drainage system if the VOC content of the solvent is less than or equal to 25 g/l or if a cleaned part cannot fit into an internal drainage facility.

(2) The following are exempt from the requirements of §115.412(a)(1)(E) of this title:

(A) a cold solvent cleaning system for which the VOC content of the solvent is less than or equal to 25 g/l; and

(B) remote reservoir cold solvent cleaners.

(3) An owner or operator who operates a remote reservoir cold solvent cleaner that uses solvent with a VOC content that is less than or equal to 25 g/l and that has a drain area less than 16 square inches (in^2) (100 square centimeters (cm^2)) and who properly disposes of waste solvent in enclosed containers is exempt from §115.412(a)(1) of this title.

§115.412. Control Requirements.

(a) In the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas as defined in §115.10 of this title (relating to Definitions) and in Gregg, Nueces, Victoria, Comal, Guadalupe, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson Counties, the following control requirements shall apply.

(1) Cold solvent cleaning. No person shall own or operate a system utilizing a volatile organic compound (VOC) for the cold solvent cleaning of objects without the following controls.

(A) A cover shall be provided for each cleaner which shall be kept closed whenever parts are not being handled in the cleaner. The cover shall be designed for easy one-handed operation if any of the following exists:

(i) the true vapor pressure of the solvent is greater than 0.3 psia (2 kPa) as measured at 100 degrees Fahrenheit (38 degrees Celsius);

(ii) the solvent is agitated; or

(iii) the solvent is heated.

(B) An internal cleaned-parts drainage facility, for enclosed draining under a cover, shall be provided for all cold solvent cleaners.

(C) A permanent label summarizing the operating requirements in subparagraph (F) of this paragraph shall be attached to the cleaner in a conspicuous location near the operator.

(D) If a solvent spray is used, it must be a solid fluid stream (not a fine, atomized, or shower-type spray) and at an operating pressure of 10 [~~ten~~] psig or less as necessary to prevent splashing above the acceptable freeboard.

(E) The system shall be equipped with a freeboard that provides a ratio equal to or greater than 0.7, or a water cover (solvent must be insoluble in and heavier than water). To determine the freeboard ratio, the freeboard height measurement is taken from the top of the degreaser to the top of the air/solvent level. This number is then divided by the smallest width measurement. The width measurement is taken at the smallest interior dimension. This dimension could be located at any point, from the top or opening of the unit to the air/solvent level.

(F) The operating procedures shall be as follows.

(i) Waste solvent shall not be disposed of or transferred to another party such that the waste solvent can evaporate into the atmosphere. Waste solvents shall be stored only in covered containers.

(ii) The degreaser cover shall be kept closed whenever parts are not being handled in the cleaner.

(iii) Parts shall be drained for at least 15 seconds or until dripping ceases.

(iv) Porous or absorbent materials, such as cloth, leather, wood, or rope, shall not be degreased.

(2) Open-top vapor degreasing. No person shall own or operate a system utilizing a VOC for the open-top vapor degreasing of objects without the following controls:

(A) a cover that can be opened and closed easily without disturbing the vapor zone;

(B) the following devices which will automatically shut off the sump heat:

(i) a condenser coolant flow sensor and thermostat which will detect if the condenser coolant is not circulating or if the condenser coolant temperature exceeds the solvent manufacturer's recommendations;

(ii) a solvent level sensor which will detect if the solvent level drops below acceptable design limits; and

(iii) a vapor level sensor which will detect if the vapor level rises above acceptable design limits;

(C) a spray safety switch which will shut off the spray pump to prevent spraying above the vapor level;

(D) one of the following controls:

(i) a freeboard that provides a ratio equal to or greater than 0.75 and, if the degreaser opening is greater than 10 ft^2 (1m^2 [~~2~~]), a powered cover. To determine the freeboard ratio, the freeboard height measurement is taken from the top of the degreaser to the top of the air/vapor level. This number is then divided by the smallest width measurement. The width measurement is taken at the smallest interior dimension. This dimension could be located at any point, from the top or opening of the unit to the air/vapor level;

(ii) a properly sized refrigerated chiller capable of achieving 85% or greater control of VOC emissions;

(iii) an enclosed design where the cover or door opens only when the dry part is actually entering or exiting the degreaser; or

(iv) a carbon adsorption system with ventilation equal to or greater than 50 cfm/ft^2 (15m^3 [~~3~~]/min per m^2) of air/vapor area (with the cover open) and exhausting less than 25 ppm of solvent by volume averaged over one complete adsorption cycle;

(E) a permanent, conspicuous, label summarizing the operating procedures listed in subparagraph (F) of this paragraph; and

(F) the following operating procedures:

(i) the cover shall be closed at all times except when processing work loads through the degreaser;

(ii) parts shall be positioned so that complete drainage is obtained;

(iii) parts shall be moved in and out of the degreaser at less than 11 ft/min (3.3 m/min);

(iv) the work load shall be retained in the vapor zone at least 30 seconds or until condensation ceases;

(v) any pools of solvent on the cleaned parts shall be removed by tipping the part before withdrawing it from the vapor zone;

(vi) parts shall be allowed to dry within the degreaser freeboard area for at least 15 seconds or until visually dry;

(vii) porous or absorbent materials, such as cloth, leather, wood, or rope, shall not be degreased;

(viii) work loads shall not occupy more than half of the degreaser open top surface area;

(ix) solvent shall not be sprayed above the vapor level;

(x) solvent leaks shall be repaired immediately, or the degreaser shall be shut down until repairs are made;

(xi) waste solvent shall not be disposed of or transferred to another party such that the waste solvent will evaporate into the atmosphere. Waste solvent shall be stored only in covered containers;

(xii) exhaust ventilation for systems other than those which vent to a major control device shall not exceed 65 cfm per ft^2 [~~2~~] (20 m^3/min per m^2) of degreaser open area, unless necessary to meet Occupational Safety and Health Administration (OSHA) requirements or unless a carbon adsorption system is installed as a major control device. Ventilation fans or other sources of air agitation shall not be used near the degreaser opening; and

(xiii) water shall not be visibly detectable in the solvent exiting the water separator.

(3) Conveyorized degreasing. No person shall own or operate a system utilizing a VOC for the conveyorized cleaning of objects without the following controls:

(A) one of the following major control devices:

(i) a properly sized refrigerated chiller capable of achieving 85% or greater control of VOC emissions; or

(ii) a carbon adsorption system with ventilation equal to or greater than 50 cfm/ft^2 (15 m^3 [~~3~~]/min/m^2 [~~2~~]) of air/vapor area (when downtime covers are open) and exhausting less than 25 ppm of solvent by volume averaged over one complete adsorption cycle;

(B) a drying tunnel or other means, such as rotating (tumbling) basket if space is available, to prevent solvent liquid or vapor carry-out;

(C) a condenser flow switch and thermostat which will shut off sump heat if the condenser coolant is not circulating or if the condenser coolant discharge temperature exceeds the solvent manufacturer's recommendation;

(D) a spray safety switch which will shut off the spray pump if the vapor level drops more than four inches (10 [~~ten~~] cm);

(E) a vapor level control thermostat which will shut off the sump heat when the vapor level rises above the designed operating level;

(F) entrances and exits which silhouette work loads so that the average clearance (between parts and edge of the degreaser opening) is either less than four inches (10 [~~ten~~] cm) or less than 10% of the width of the opening;

(G) downtime covers which close off the entrance and exit during nonoperating hours;

(H) a permanent, conspicuous label near the operator summarizing the operating requirements in subparagraph (I) of this paragraph; and

(I) the following operating procedures:

(i) exhaust ventilation for systems other than those which vent to a major control device shall not exceed 65 cfm/ft^2 (20 m^3/min/m^2) of degreaser opening, unless necessary to meet OSHA requirements or unless a carbon adsorption system is installed as a major control device. Ventilation fans shall not be used near the degreaser opening;

(ii) parts shall be positioned so that complete drainage is obtained;

(iii) vertical conveyor speed shall be maintained at less than 11 ft/min (3.3 m/min);

(iv) waste solvent shall not be disposed of, or transferred to another party, such that the waste solvent can evaporate into the atmosphere. Waste solvent shall be stored only in covered containers;

(v) leaks shall be repaired immediately or the degreaser shall be shut down until repairs are made;

(vi) water shall not be visibly detectable in the solvent exiting the water separator;

(vii) downtime covers shall be placed over entrances and exits of conveyorized degreasers immediately after the conveyor and exhaust are shut down and removed just before they are started up; and

(viii) porous or absorbent materials, such as cloth, leather, wood, or rope, shall not be degreased.

(b) In accordance with the compliance schedule for contingency requirements in §115.419(f) of this title (relating to Counties and Compliance Schedules), and in addition to the requirements of subsection (a) of this section, no person in the Dallas-Fort Worth area shall own or operate a system for the cold solvent cleaning, open-top vapor degreasing, or conveyorized degreasing of objects using a solvent with a VOC content greater than 25 grams per liter (g/l).

(c) In accordance with the compliance schedule for contingency requirements in §115.419(g) of this title, and in addition to the requirements of subsection (a) of this section, no person in the Houston-Galveston-Brazoria area shall own or operate a system for the cold solvent cleaning, open-top vapor degreasing, or conveyorized degreasing of objects using a solvent with a VOC content greater than 25 g/l.

(d) In addition to the requirements of subsection (a) of this section, beginning March 1, 2026, no person in the Bexar County area shall own or operate a system for cold solvent cleaning, open-top vapor degreasing, or conveyorized degreasing of objects using a solvent with a VOC content greater than 25 g/l.

§115.415. Testing Requirements.

The testing requirements for degreasing processes in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in Bastrop, Caldwell, Comal, Gregg, Guadalupe, Hays, Nueces, Travis, Victoria, Williamson, and Wilson Counties are as follows.

(1) Compliance with §115.412(a)(1) of this title (relating to Control Requirements) must be determined by applying the following test methods, as applicable:

(A) determination of true vapor pressure using ASTM International Test Method D323 [~~D323-89~~], ASTM Test Method D2879, ASTM Test Method D4953, ASTM Test Method D5190, or ASTM Test Method D5191 for the measurement of Reid vapor pressure, adjusted for actual storage temperature in accordance with American Petroleum Institute Publication 2517, Third Edition, 1989;

(B) minor modifications to the test methods and procedures listed in subparagraph (A) of this paragraph that are approved by the executive director.;

(C) using standard reference materials for the true vapor pressure of each volatile organic compound component; or

(D) using analytical data from the solvent supplier or manufacturer's material safety data sheet.

(2) Compliance with §115.412(a)(2)(D)(iv) and (a)(3)(A)(ii) of this title and §115.413(3) of this title (relating to Alternate Control Requirements) must be determined by applying the following test methods, as appropriate:

(A) Test Methods 1-4 (40 Code of Federal Regulations (CFR) Part 60, Appendix A) for determining flow rates, as necessary;

(B) Test Method 18 (40 CFR Part 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;

(C) Test Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(D) Test Methods 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis; or

(E) minor modifications to these test methods and procedures approved by the executive director.

(3) Compliance with §115.412(b), [~~and~~] (c), and (d) of this title must be determined by applying the following test methods, as applicable:

(A) Method 24 (40 CFR Part 60, Appendix A); or

(B) additional test procedures described in 40 CFR §60.446 (as amended through October 17, 2000 (65 *Federal Register* 61761)).

(4) Test methods other than those specified in paragraphs (1) - (3) of this section may be used if validated by 40 CFR Part 63, Appendix A, Test Method 301. For the purposes of this paragraph, substitute "executive director" each place that Test Method 301 references "administrator."

§115.416. Recordkeeping Requirements.

The owner or operator of each degreasing process in Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in Bastrop, Caldwell, Comal, Gregg, Guadalupe, Hays, Nueces, Travis, Victoria, Williamson, and Wilson Counties shall maintain the following records at the facility for at least two years and shall make such records available upon request to representatives of the executive director, the United States Environmental Protection Agency, or the local air pollution control agency having jurisdiction in the area:

(1) a record of control equipment maintenance, such as replacement of the carbon in a carbon adsorption unit;

(2) the results of all tests conducted at the facility in accordance with the requirements described in §115.415(2) and (3) of this title (relating to Testing Requirements);

(3) for each degreasing process in Gregg, Nueces, and Victoria Counties which is exempt under §115.411(a)(5) of this title (relating to Exemptions), records of solvent usage in sufficient detail to document continuous compliance with this exemption;

(4) for each degreasing process in the Dallas-Fort Worth area, records sufficient to demonstrate continuous compliance with:

(A) the vapor pressure testing described in §115.415(1)(A) - (D) of this title; and

(B) the applicable exemptions in §115.411 of this title

(5) for each degreasing process in the Bexar County area, records sufficient to demonstrate continuous compliance with:

(A) the volatile organic compound testing described in §115.415(3) of this title; and

(B) the applicable exemptions in §115.411 of this title.

§115.419. Counties and Compliance Schedules.

(a) In [~~Bexar,~~] Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Montgomery, Nueces, Orange, Tarrant, Victoria, and Waller, Counties, the compliance date has passed and all affected persons shall continue to comply with this division.

(b) All affected persons in Bastrop, Caldwell, Comal, Guadalupe, Hays, Travis, Williamson, and Wilson Counties shall comply with this division as soon as practicable, but no later than December 31, 2005.

(c) All affected persons in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

(d) All affected persons of a degreasing process in Wise County shall comply with this division as soon as practicable, but no later than January 1, 2017.

(e) All affected persons of a degreasing process in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties that becomes subject to this division on or after the applicable compliance date in subsection (a), (c), or (d) of this section shall comply with the requirements in this division as soon as practicable, but no later than 60 days after becoming subject.

(f) All affected owners or operators of a degreasing process in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties shall be in compliance with §115.412(b) of this title (relating to Control Requirements) by no later than 270 days after the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).

(g) All affected owners or operators of a degreasing process in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall be in compliance with §115.412(c) of this title by no later than 270 days after the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).

(h) The owner or operator of a degreasing process or operation in the Bexar County area subject to the requirements of this division shall comply with the requirements of this division, except §115.412(d) of this title, by no later than January 1, 2025. Beginning March 1, 2026, the owner or operator of a degreasing process or operation in the Bexar County area subject to the requirements of this division shall comply with §115.412(d). All affected persons of a degreasing process or op-

eration in the Bexar County area that becomes subject to this division on or after the applicable compliance date in this subsection shall comply with the requirements of this division [~~by but~~] no later than 60 days after becoming subject.

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

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

TRD-202502438
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-2678

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DIVISION 2. SURFACE COATING PROCESSES

30 TAC §§115.420, 115.421, 115.425, 115.427, 115.429

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103, and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.420. Applicability and Definitions.

(a) Applicability. The owner or operator of a surface coating process in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), and in Gregg, Nueces, and Victoria Counties, as specified in each paragraph below, is subject to this division. All owners and operators shall be in compliance with this division in accordance with the compliance schedules listed in §115.429 of this title (relating to Counties and Compliance Schedules).

(1) Large appliance coating. The requirements in this division apply in the Beaumont-Port Arthur and El Paso areas and in Gregg, Nueces, and Victoria Counties.

(2) Metal furniture coating. The requirements in this division apply in the Beaumont-Port Arthur and El Paso areas and in Gregg, Nueces, and Victoria Counties.

(3) Coil coating. The requirements in this division apply in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in Gregg, Nueces, and Victoria Counties.

(4) Paper coating. The requirements in this division apply in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in Gregg, Nueces, and Victoria Counties. In the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, applicability is determined by the volatile organic compound (VOC) emissions from each individual paper coating line.

(A) Each paper coating line in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas that has the potential to emit less than 25 tons per year (tpy) of VOC is subject to this division.

(B) Each paper coating line in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas that has the potential to emit equal to or greater than 25 tpy of VOC is subject to the requirements in Division 5 of this Subchapter (relating to Control Requirements for Surface Coating Processes).

(5) Fabric coating. The requirements in this division apply in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in Gregg, Nueces, and Victoria Counties.

(6) Vinyl coating. The requirements in this division apply in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, and in Gregg, Nueces, and Victoria Counties.

(7) Can coating. The requirements in this division apply in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, and in Gregg, Nueces, and Victoria Counties.

(8) Automobile and light-duty truck coating. The requirements in this division apply in the Beaumont-Port Arthur, El Paso, and Houston-Galveston-Brazoria areas.

(9) Vehicle refinishing coating (body shops). The requirements in this division apply in the Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas.

(10) Miscellaneous metal parts and products coating. The requirements in this division apply in the Beaumont-Port Arthur and El Paso areas and in Gregg, Nueces, and Victoria Counties. In the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, the requirements in this division apply only to designated on-site maintenance shops as specified in §115.427(8) of this title (relating to Exemptions).

(11) Factory surface coating of flat wood paneling. The requirements in this division apply in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in Gregg, Nueces, and Victoria Counties.

(12) Aerospace coating. The requirements in this division apply in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in Gregg, Nueces, and Victoria Counties.

(13) Mirror backing coating. The requirements in this division apply in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth El Paso, and Houston-Galveston-Brazoria areas.

(14) Wood parts and products coating. The requirements in this division apply in the Bexar County, Dallas-Fort Worth El Paso, and Houston-Galveston-Brazoria areas.

(15) Wood furniture manufacturing coatings. The requirements in this division apply in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas.

(16) Marine coatings. The requirements in this division apply in the Beaumont-Port Arthur and Houston-Galveston-Brazoria areas.

(b) General surface coating definitions. The following terms, when used in this division have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this division are found in §§3.2, 101.1, and 115.10 of this title (relating to Definitions).

(1) Aerosol coating (spray paint)--A hand-held, pressurized, nonrefillable container that expels an adhesive or a coating in a finely divided spray when a valve on the container is depressed.

(2) Coating--A material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealants, adhesives, thinners, diluents, inks, maskants, and temporary protective coatings.

(3) Coating application system--Devices or equipment designed for the purpose of applying a coating material to a surface. The devices may include, but are not be limited to, brushes, sprayers, flow coaters, dip tanks, rollers, knife coaters, and extrusion coaters.

(4) Coating line--An operation consisting of a series of one or more coating application systems and including associated flashoff area(s), drying area(s), and oven(s) wherein a surface coating is applied, dried, or cured.

(5) Coating solids (or solids)--The part of a coating that remains after the coating is dried or cured.

(6) Daily weighted average--The total weight of volatile organic compound (VOC) emissions from all coatings subject to the same emission standard in §115.421 of this title (relating to Emission Specifications), divided by the total volume of those coatings (minus water and exempt solvent) delivered to the application system each day. Coatings subject to different emission standards in §115.421 of this title must not be combined for purposes of calculating the daily weighted average. In addition, determination of compliance is based on each individual coating line.

(7) High-volume low-pressure spray guns--Equipment used to apply coatings by means of a spray gun which operates between 0.1 and 10.0 pounds per square inch gauge air pressure at the air cap.

(8) Normally closed container--A container that is closed unless an operator is actively engaged in activities such as adding or removing material.

(9) Pounds of VOC per gallon of coating (minus water and exempt solvents)--Basis for emission limits for surface coating processes. Can be calculated by the following equation:
Figure: 30 TAC §115.420(b)(9) (No change.)

(10) Pounds of VOC per gallon of solids--Basis for emission limits for surface coating process. Can be calculated by the following equation:
Figure: 30 TAC §115.420(b)(10) (No change.)

(11) Spray gun--A device that atomizes a coating or other material and projects the particulates or other material onto a substrate.

(12) Surface coating processes--Operations which utilize a coating application system.

(13) Transfer efficiency--The amount of coating solids deposited onto the surface of a part or product divided by the total amount of coating solids delivered to the coating application system.

(c) Specific surface coating definitions. The following terms, when used in this division, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Aerospace coating.

(A) Ablative coating--A coating that chars when exposed to open flame or extreme temperatures, as would occur during the failure of an engine casing or during aerodynamic heating. The ablative char surface serves as an insulative barrier, protecting adjacent components from the heat or open flame.

(B) Adhesion promoter--A very thin coating applied to a substrate to promote wetting and form a chemical bond with the subsequently applied material.

(C) Adhesive bonding primer--A primer applied in a thin film to aerospace components for the purpose of corrosion inhibition and increased adhesive bond strength by attachment. There are two categories of adhesive bonding primers: primers with a design cure at 250 degrees Fahrenheit or below and primers with a design cure above 250 degrees Fahrenheit.

(D) Aerospace vehicle or component--Any fabricated part, processed part, assembly of parts, or completed unit, with the exception of electronic components, of any aircraft including but not limited to airplanes, helicopters, missiles, rockets, and space vehicles.

(E) Aircraft fluid systems--Those systems that handle hydraulic fluids, fuel, cooling fluids, or oils.

(F) Aircraft transparency--The aircraft windshield, canopy, passenger windows, lenses, and other components which are constructed of transparent materials.

(G) Antichafe coating--A coating applied to areas of moving aerospace components that may rub during normal operations or installation.

(H) Antique aerospace vehicle or component--An aerospace vehicle or component thereof that was built at least 30 years ago. An antique aerospace vehicle would not routinely be in commercial or military service in the capacity for which it was designed.

(I) Aqueous cleaning solvent--A solvent in which water is at least 80% by volume of the solvent as applied.

(J) Bearing coating--A coating applied to an antifriction bearing, a bearing housing, or the area adjacent to such a bearing in order to facilitate bearing function or to protect base material from excessive wear. A material shall not be classified as a bearing coating if it can also be classified as a dry lubricative material or a solid film lubricant.

(K) Bonding maskant--A temporary coating used to protect selected areas of aerospace parts from strong acid or alkaline solutions during processing for bonding.

(L) Caulking and smoothing compounds--Semi-solid materials which are applied by hand application methods and are used to aerodynamically smooth exterior vehicle surfaces or fill cavities such as bolt hole accesses. A material shall not be classified as a caulking and smoothing compound if it can also be classified as a sealant.

(M) Chemical agent-resistant coating--An exterior topcoat designed to withstand exposure to chemical warfare agents or the decontaminants used on these agents.

(N) Chemical milling maskant--A coating that is applied directly to aluminum components to protect surface areas when chemically milling the component with a Type I or II etchant. Type I chemical milling maskants are used with a Type I etchant and Type II chemical milling maskants are used with a Type II etchant. This definition does not include bonding maskants, critical use and line sealer maskants, and seal coat maskants. Additionally, maskants that must be used with a combination of Type I or II etchants and any of the above types of maskants (i.e., bonding, critical use and line sealer, and seal coat) are not included. Maskants that are defined as specialty coatings are not included under this definition.

(O) Cleaning operation--Spray-gun, hand-wipe, and flush cleaning operations.

(P) Cleaning solvent--A liquid material used for hand-wipe, spray gun, or flush cleaning. This definition does not include solutions that contain no VOC.

(Q) Clear coating--A transparent coating usually applied over a colored opaque coating, metallic substrate, or placard to give improved gloss and protection to the color coat.

(R) Closed-cycle depainting system--A dust free, automated process that removes permanent coating in small sections at a time, and maintains a continuous vacuum around the area(s) being depainted to capture emissions.

(S) Coating operation--Using a spray booth, tank, or other enclosure or any area (such as a hangar) for applying a single type of coating (e.g., primer); using the same spray booth for applying another type of coating (e.g., topcoat) constitutes a separate coating operation for which compliance determinations are performed separately.

(T) Coating unit--A series of one or more coating applicators and any associated drying area and/or oven wherein a coating is applied, dried, and/or cured. A coating unit ends at the point where the coating is dried or cured, or prior to any subsequent application of a different coating.

(U) Commercial exterior aerodynamic structure primer--A primer used on aerodynamic components and structures that protrude from the fuselage, such as wings and attached components, control surfaces, horizontal stabilizers, vertical fins, wing-to-body fairings, antennae, and landing gear and doors, for the purpose of extended corrosion protection and enhanced adhesion.

(V) Commercial interior adhesive--Materials used in the bonding of passenger cabin interior components. These components must meet the Federal Aviation Administration (FAA) fireworthiness requirements.

(W) Compatible substrate primer--Either compatible epoxy primer or adhesive primer. Compatible epoxy primer is primer that is compatible with the filled elastomeric coating and is epoxy based. The compatible substrate primer is an epoxy-polyamide primer used to promote adhesion of elastomeric coatings such as impact-resistant coatings. Adhesive primer is a coating that:

(i) inhibits corrosion and serves as a primer applied to bare metal surfaces or prior to adhesive application; or

(ii) is applied to surfaces that can be expected to contain fuel. Fuel tank coatings are excluded from this category.

(X) Confined space--A space that:

(i) is large enough and so configured that a person can bodily enter and perform assigned work;

(ii) has limited or restricted means for entry or exit (for example, fuel tanks, fuel vessels, and other spaces that have limited means of entry); and

(iii) is not suitable for continuous occupancy.

(Y) Corrosion prevention compound--A coating system or compound that provides corrosion protection by displacing water and penetrating mating surfaces, forming a protective barrier between the metal surface and moisture. Coatings containing oils or waxes are excluded from this category.

(Z) Critical use and line sealer maskant--A temporary coating, not covered under other maskant categories, used to protect selected areas of aerospace parts from strong acid or alkaline solutions such as those used in anodizing, plating, chemical milling and processing of magnesium, titanium, or high-strength steel, high-precision aluminum chemical milling of deep cuts, and aluminum chemical milling of complex shapes. Materials used for repairs or to bridge gaps left by scribing operations (i.e., line sealer) are also included in this category.

(AA) Cryogenic flexible primer--A primer designed to provide corrosion resistance, flexibility, and adhesion of subsequent coating systems when exposed to loads up to and surpassing the yield point of the substrate at cryogenic temperatures (-275 degrees Fahrenheit and below).

(BB) Cryoprotective coating--A coating that insulates cryogenic or subcooled surfaces to limit propellant boil-off, maintain structural integrity of metallic structures during ascent or re-entry, and prevent ice formation.

(CC) Cyanoacrylate adhesive--A fast-setting, single component adhesive that cures at room temperature. Also known as "super glue."

(DD) Dry lubricative material--A coating consisting of lauric acid, cetyl alcohol, waxes, or other noncross linked or resin-bound materials that act as a dry lubricant.

(EE) Electric or radiation-effect coating--A coating or coating system engineered to interact, through absorption or reflection, with specific regions of the electromagnetic energy spectrum, such as the ultraviolet, visible, infrared, or microwave regions. Uses include, but are not limited to, lightning strike protection, electromagnetic pulse (EMP) protection, and radar avoidance. Coatings that have been designated as "classified" by the Department of Defense are excluded.

(FF) Electrostatic discharge and electromagnetic interference coating--A coating applied to space vehicles, missiles, aircraft radomes, and helicopter blades to disperse static energy or reduce electromagnetic interference.

(GG) Elevated-temperature Skydrol-resistant commercial primer--A primer applied primarily to commercial aircraft (or commercial aircraft adapted for military use) that must withstand immersion in phosphate-ester hydraulic fluid (Skydrol 500b or equivalent) at the elevated temperature of 150 degrees Fahrenheit for 1,000 hours.

(HH) Epoxy polyamide topcoat--A coating used where harder films are required or in some areas where engraving is accomplished in camouflage colors.

(II) Fire-resistant (interior) coating--For civilian aircraft, fire-resistant interior coatings are used on passenger cabin interior parts that are subject to the FAA fireworthiness requirements. For military aircraft, fire-resistant interior coatings are used on parts that are subject to the flammability requirements of MIL-STD-1630A and MIL-A-87721. For space applications, these coatings are used on parts that are subject to the flammability requirements of SE-R-0006 and SSP 30233.

(JJ) Flexible primer--A primer that meets flexibility requirements such as those needed for adhesive bond primed fastener heads or on surfaces expected to contain fuel. The flexible coating is required because it provides a compatible, flexible substrate over bonded sheet rubber and rubber-type coatings as well as a flexible bridge between the fasteners, skin, and skin-to-skin joints on outer aircraft skins. This flexible bridge allows more topcoat flexibility around fasteners and decreases the chance of the topcoat cracking around the fasteners. The result is better corrosion resistance.

(KK) Flight test coating--A coating applied to aircraft other than missiles or single-use aircraft prior to flight testing to protect the aircraft from corrosion and to provide required marking during flight test evaluation.

(LL) Flush cleaning--Removal of contaminants such as dirt, grease, oil, and coatings from an aerospace vehicle or component or coating equipment by passing solvent over, into, or through the item being cleaned. The solvent may simply be poured into the item being cleaned and then drained, or assisted by air or hydraulic pressure, or by pumping. Hand-wipe cleaning operations where wiping, scrubbing, mopping, or other hand action are used are not included.

(MM) Fuel tank adhesive--An adhesive used to bond components exposed to fuel and must be compatible with fuel tank coatings.

(NN) Fuel tank coating--A coating applied to fuel tank components for the purpose of corrosion and/or bacterial growth inhibition and to assure sealant adhesion in extreme environmental conditions.

(OO) Grams of VOC per liter of coating (less water and less exempt solvent)--The weight of VOC per combined volume of total volatiles and coating solids, less water and exempt compounds. Can be calculated by the following equation:
Figure: 30 TAC §115.420(c)(1)(OO) (No change.)

(PP) Hand-wipe cleaning operation--Removing contaminants such as dirt, grease, oil, and coatings from an aerospace vehicle or component by physically rubbing it with a material such as a rag, paper, or cotton swab that has been moistened with a cleaning solvent.

(QQ) High temperature coating--A coating designed to withstand temperatures of more than 350 degrees Fahrenheit.

(RR) Hydrocarbon-based cleaning solvent--A solvent which is composed of VOC (photochemically reactive hydrocarbons) and/or oxygenated hydrocarbons, has a maximum vapor pressure of seven millimeters of mercury (mm Hg) at 20 degrees Celsius (68 degrees Fahrenheit), and contains no hazardous air pollutant (HAP) identified in the 1990 Amendments to the Federal Clean Air Act (FCAA), §112(b).

(SS) Insulation covering--Material that is applied to foam insulation to protect the insulation from mechanical or environmental damage.

(TT) Intermediate release coating--A thin coating applied beneath topcoats to assist in removing the topcoat in depainting operations and generally to allow the use of less hazardous depainting methods.

(UU) Lacquer--A clear or pigmented coating formulated with a nitrocellulose or synthetic resin to dry by evaporation without a chemical reaction. Lacquers are resoluble in their original solvent.

(VV) Limited access space--Internal surfaces or passages of an aerospace vehicle or component that cannot be reached without the aid of an airbrush or a spray gun extension for the application of coatings.

(WW) Metalized epoxy coating--A coating that contains relatively large quantities of metallic pigmentation for appearance and/or added protection.

(XX) Mold release--A coating applied to a mold surface to prevent the molded piece from sticking to the mold as it is removed.

(YY) Monthly weighted average--The total weight of VOC emission from all coatings divided by the total volume of those coatings (minus water and exempt solvents) delivered to the application system each calendar month. Coatings shall not be combined for purposes of calculating the monthly weighted average. In addition, determination of compliance is based on each individual coating operation.

(ZZ) Nonstructural adhesive--An adhesive that bonds nonload bearing aerospace components in noncritical applications and is not covered in any other specialty adhesive categories.

(AAA) Operating parameter value--A minimum or maximum value established for a control equipment or process parameter that, if achieved by itself or in combination with one or more other operating parameter values, determines that an owner or operator has continued to comply with an applicable emission limitation.

(BBB) Optical antireflection coating--A coating with a low reflectance in the infrared and visible wavelength ranges that is used for antireflection on or near optical and laser hardware.

(CCC) Part marking coating--Coatings or inks used to make identifying markings on materials, components, and/or assemblies of aerospace vehicles. These markings may be either permanent or temporary.

(DDD) Pretreatment coating--An organic coating that contains at least 0.5% acids by weight and is applied directly to metal or composite surfaces to provide surface etching, corrosion resistance, adhesion, and ease of stripping.

(EEE) Primer--The first layer and any subsequent layers of identically formulated coating applied to the surface of an aerospace vehicle or component. Primers are typically used for corrosion prevention, protection from the environment, functional fluid resistance, and adhesion of subsequent coatings. Primers that are defined as specialty coatings are not included under this definition.

(FFF) Radome--The nonmetallic protective housing for electromagnetic transmitters and receivers (e.g., radar, electronic countermeasures, etc.).

(GGG) Rain erosion-resistant coating--A coating or coating system used to protect the leading edges of parts such as flaps,

stabilizers, radomes, engine inlet nacelles, etc. against erosion caused by rain impact during flight.

(HHH) Research and development--An operation whose primary purpose is for research and development of new processes and products and that is conducted under the close supervision of technically trained personnel and is not involved in the manufacture of final or intermediate products for commercial purposes, except in a de minimis manner.

(III) Rocket motor bonding adhesive--An adhesive used in rocket motor bonding applications.

(JJJ) Rocket motor nozzle coating--A catalyzed epoxy coating system used in elevated temperature applications on rocket motor nozzles.

(KKK) Rubber-based adhesive--A quick setting contact cement that provides a strong, yet flexible bond between two mating surfaces that may be of dissimilar materials.

(LLL) Scale inhibitor--A coating that is applied to the surface of a part prior to thermal processing to inhibit the formation of scale.

(MMM) Screen print ink--An ink used in screen printing processes during fabrication of decorative laminates and decals.

(NNN) Sealant--A material used to prevent the intrusion of water, fuel, air, or other liquids or solids from certain areas of aerospace vehicles or components. There are two categories of sealants: extrudable/rollable/brushable sealants and sprayable sealants.

(OOO) Seal coat maskant--An overcoat applied over a maskant to improve abrasion and chemical resistance during production operations.

(PPP) Self-priming topcoat--A topcoat that is applied directly to an uncoated aerospace vehicle or component for purposes of corrosion prevention, environmental protection, and functional fluid resistance. More than one layer of identical coating formulation may be applied to the vehicle or component.

(QQQ) Semiaqueous cleaning solvent--A solution in which water is a primary ingredient. More than 60% by volume of the solvent solution as applied must be water.

(RRR) Silicone insulation material--An insulating material applied to exterior metal surfaces for protection from high temperatures caused by atmospheric friction or engine exhaust. These materials differ from ablative coatings in that they are not "sacrificial."

(SSS) Solid film lubricant--A very thin coating consisting of a binder system containing as its chief pigment material one or more of the following: molybdenum, graphite, polytetrafluoroethylene, or other solids that act as a dry lubricant between faying (i.e., closely or tightly fitting) surfaces.

(TTT) Space vehicle--A man-made device, either manned or unmanned, designed for operation beyond earth's atmosphere. This definition includes integral equipment such as models, mock-ups, prototypes, molds, jigs, tooling, hardware jackets, and test coupons. Also included is auxiliary equipment associated with test, transport, and storage, that through contamination can compromise the space vehicle performance.

(UUU) Specialty coating--A coating that, even though it meets the definition of a primer, topcoat, or self-priming topcoat, has additional performance criteria beyond those of primers, topcoats, and self-priming topcoats for specific applications. These performance criteria may include, but are not limited to, temperature or fire resistance, substrate compatibility, antireflection, temporary protection or marking, sealing, adhesively joining substrates, or enhanced corrosion protection.

(VVV) Specialized function coating--A coating that fulfills extremely specific engineering requirements that are limited in application and are characterized by low volume usage. This category excludes coatings covered in other specialty coating categories.

(WWW) Structural autoclavable adhesive--An adhesive used to bond load-carrying aerospace components that is cured by heat and pressure in an autoclave.

(XXX) Structural nonautoclavable adhesive--An adhesive cured under ambient conditions that is used to bond load-carrying aerospace components or other critical functions, such as nonstructural bonding in the proximity of engines.

(YYY) Surface preparation--The removal of contaminants from the surface of an aerospace vehicle or component or the activation or reactivation of the surface in preparation for the application of a coating.

(ZZZ) Temporary protective coating--A coating applied to provide scratch or corrosion protection during manufacturing, storage, or transportation. Two types include peelable protective coatings and alkaline removable coatings. These materials are not intended to protect against strong acid or alkaline solutions. Coatings that provide this type of protection from chemical processing are not included in this category.

(AAAA) Thermal control coating--A coating formulated with specific thermal conductive or radiative properties to permit temperature control of the substrate.

(BBBB) Topcoat--A coating that is applied over a primer on an aerospace vehicle or component for appearance, identification, camouflage, or protection. Topcoats that are defined as specialty coatings are not included under this definition.

(CCCC) Touch-up and repair coating--A coating used to cover minor coating imperfections appearing after the main coating operation.

(DDDD) Touch-up and repair operation--That portion of the coating operation that is the incidental application of coating used to cover minor imperfections in the coating finish or to achieve complete coverage. This definition includes out-of-sequence or out-of-cycle coating.

(EEEE) Volatile organic compound (VOC) composite vapor pressure--The sum of the partial pressures of the compounds defined as VOCs, determined by the following calculation:
Figure: 30 TAC §115.420(c)(1)(EEEE) (No change.)

(FFFF) Waterborne (water-reducible) coating--A coating which contains more than 5.0% water by weight as applied in its volatile fraction.

(GGGG) Wet fastener installation coating--A primer or sealant applied by dipping, brushing, or daubing to fasteners that are installed before the coating is cured.

(HHHH) Wing coating--A corrosion-resistant topcoat that is resilient enough to withstand the flexing of the wings.

(2) Can coating--The coating of cans for beverages (including beer), edible products (including meats, fruit, vegetables, and others), tennis balls, motor oil, paints, and other mass-produced cans.

(3) Coil coating--The coating of any flat metal sheet or strip supplied in rolls or coils.

(4) Fabric coating--The application of coatings to fabric, which includes rubber application (rainwear, tents, and industrial products such as gaskets and diaphragms). The following definitions apply to fabric coatings.

(A) Plasticizer--A material used to keep plastic material soft and viscous.

(B) Plastisol--A coating that is a liquid dispersion of small particles of resins and plasticizers that are fused to become a plastic.

(C) Wash Primer--A material used to clean and/or activate surfaces of fabric, and may contain no more than 5.0 percent, by weight, solid materials.

(5) Factory surface coating of flat wood paneling--Coating of flat wood paneling products, including hardboard, hardwood plywood, particle board, printed interior paneling, and tile board.

(6) Large appliance coating--The coating of doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other large appliances.

(7) Metal furniture coating--The coating of metal furniture (tables, chairs, wastebaskets, beds, desks, lockers, benches, shelves, file cabinets, lamps, and other metal furniture products) or the coating of any metal part which will be a part of a nonmetal furniture product.

(8) Mirror backing coating--The application of coatings to the silvered surface of a mirror.

(9) Miscellaneous metal parts and products coating.

(A) Clear coat--A coating which lacks opacity or which is transparent and which may or may not have an undercoat that is used as a reflectant base or undertone color.

(B) Drum (metal)--Any cylindrical metal shipping container with a nominal capacity equal to or greater than 12 gallons (45.4 liters) but equal to or less than 110 gallons (416 liters).

(C) Extreme performance coating--A coating intended for exposure to extreme environmental conditions, such as continuous outdoor exposure; temperatures frequently above 95 degrees Celsius (203 degrees Fahrenheit); detergents; abrasive and scouring agents; solvents; and corrosive solutions, chemicals, or atmospheres.

(D) High-bake coatings--Coatings designed to cure at temperatures above 194 degrees Fahrenheit.

(E) Low-bake coatings--Coatings designed to cure at temperatures of 194 degrees Fahrenheit or less.

(F) Miscellaneous metal parts and products (MMPP) coating--The coating of MMPP in the following categories at original equipment manufacturing operations; designated on-site maintenance shops which recoat used parts and products; and off-site job shops which coat new parts and products or which recoat used parts and products:

(i) large farm machinery (harvesting, fertilizing, and planting machines, tractors, combines, etc.);

(ii) small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);

(iii) small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.);

(iv) commercial machinery (computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);

(v) industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);

(vi) fabricated metal products (metal-covered doors, frames, etc.); and

(vii) any other category of coated metal products, including, but not limited to, those which are included in the Standard Industrial Classification Code major group 33 (primary metal industries), major group 34 (fabricated metal products), major group 35 (nonelectrical machinery), major group 36 (electrical machinery), major group 37 (transportation equipment), major group 38 (miscellaneous instruments), and major group 39 (miscellaneous manufacturing industries). Excluded are those surface coating processes specified in paragraphs (1) - (8) and (10) - (14) of this subsection.

(G) Pail (metal)--Any cylindrical metal shipping container with a nominal capacity equal to or greater than 1 gallon (3.8 liters) but less than 12 gallons (45.4 liters) and constructed of 29 gauge or heavier material.

(10) Paper coating--The coating of paper and pressure-sensitive tapes (regardless of substrate and including paper, fabric, and plastic film) and related web coating processes on plastic film (including typewriter ribbons, photographic film, and magnetic tape) and metal foil (including decorative, gift wrap, and packaging).

(11) Marine coatings.

(A) Air flask specialty coating--Any special composition coating applied to interior surfaces of high pressure breathing air flasks to provide corrosion resistance and that is certified safe for use with breathing air supplies.

(B) Antenna specialty coating--Any coating applied to equipment through which electromagnetic signals must pass for reception or transmission.

(C) Antifoulant specialty coating--Any coating that is applied to the underwater portion of a vessel to prevent or reduce the attachment of biological organisms and that is registered with the EPA as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act.

(D) Batch--The product of an individual production run of a coating manufacturer's process. (A batch may vary in composition from other batches of the same product.)

(E) Bitumens--Black or brown materials that are soluble in carbon disulfide, which consist mainly of hydrocarbons.

(F) Bituminous resin coating--Any coating that incorporates bitumens as a principal component and is formulated primarily to be applied to a substrate or surface to resist ultraviolet radiation and/or water.

(G) Epoxy--Any thermoset coating formed by reaction of an epoxy resin (i.e., a resin containing a reactive epoxide with a curing agent).

(H) General use coating--Any coating that is not a specialty coating.

(I) Heat resistant specialty coating--Any coating that during normal use must withstand a temperature of at least 204 degrees Celsius (400 degrees Fahrenheit).

(J) High-gloss specialty coating--Any coating that achieves at least 85% reflectance on a 60 degree meter when tested by the American Society for Testing and Materials (ASTM) Method D523 [~~D-523~~].

(K) High-temperature specialty coating--Any coating that during normal use must withstand a temperature of at least 426 degrees Celsius (800 degrees Fahrenheit).

(L) Inorganic zinc (high-build) specialty coating--A coating that contains 960 grams per liter (eight pounds per gallon) or more elemental zinc incorporated into an inorganic silicate binder that is applied to steel to provide galvanic corrosion resistance. (These coatings are typically applied at more than two mil dry film thickness.)

(M) Maximum allowable thinning ratio--The maximum volume of thinner that can be added per volume of coating without exceeding the applicable VOC limit of §115.421(15) of this title.

(N) Military exterior specialty coating--Any exterior topcoat applied to military or United States Coast Guard vessels that are subject to specific chemical, biological, and radiological washdown requirements.

(O) Mist specialty coating--Any low viscosity, thin film, epoxy coating applied to an inorganic zinc primer that penetrates the porous zinc primer and allows the occluded air to escape through the paint film prior to curing.

(P) Navigational aids specialty coating--Any coating applied to Coast Guard buoys or other Coast Guard waterway markers when they are recoated aboard ship at their usage site and immediately returned to the water.

(Q) Nonskid specialty coating--Any coating applied to the horizontal surfaces of a marine vessel for the specific purpose of providing slip resistance for personnel, vehicles, or aircraft.

(R) Nonvolatiles (or volume solids)--Substances that do not evaporate readily. This term refers to the film-forming material of a coating.

(S) Nuclear specialty coating--Any protective coating used to seal porous surfaces such as steel (or concrete) that otherwise would be subject to intrusion by radioactive materials. These coatings must be resistant to long-term (service life) cumulative radiation exposure (ASTM D4082 [~~D4082-83~~]), relatively easy to decontaminate (ASTM D4256[~~-83~~]), and resistant to various chemicals to which the coatings are likely to be exposed (ASTM 3912 [~~3912-80~~]). (For nuclear coatings, see the general protective requirements outlined by the Nuclear Regulatory Commission [~~"U.S. Atomic Energy Commission in a report entitled "U.S. Atomic Energy Commission~~] Regulatory Guide 1.54, "Service Level I, II, III, and In-Scope License Renewal Protective Coatings Applied to Nuclear Power Plants" Revision 3, [~~"~~] dated April 2017 [~~June 1973~~], available in 82 *Federal Register* 19113, [~~through the Government Printing Office at (202) 512-2249~~] as document number 2017-08363. [~~A74062-00001.)~~]

(T) Organic zinc specialty coating--Any coating derived from zinc dust incorporated into an organic binder that contains more than 960 grams of elemental zinc per liter (eight pounds per gallon) of coating, as applied, and that is used for the expressed purpose of corrosion protection.

(U) Pleasure craft--Any marine or fresh-water vessel used by individuals for noncommercial, nonmilitary, and recreational purposes that is less than 20 meters (65.6 feet) in length. A vessel rented exclusively to, or chartered for, individuals for such purposes shall be considered a pleasure craft.

(V) Pretreatment wash primer specialty coating--Any coating that contains a minimum of 0.5% acid by weight that is applied only to bare metal surfaces to etch the metal surface for corrosion resistance and adhesion of subsequent coatings.

(W) Repair and maintenance of thermoplastic coating of commercial vessels (specialty coating)--Any vinyl, chlorinated rubber, or bituminous resin coating that is applied over the same type of existing coating to perform the partial recoating of any in-use commercial vessel. (This definition does not include coal tar epoxy coatings, which are considered "general use" coatings.)

(X) Rubber camouflage specialty coating--Any specially formulated epoxy coating used as a camouflage topcoat for exterior submarine hulls and sonar domes.

(Y) Sealant for thermal spray aluminum--Any epoxy coating applied to thermal spray aluminum surfaces at a maximum thickness of one dry mil.

(Z) Ship--Any marine or fresh-water vessel, including self-propelled vessels, those propelled by other craft (barges), and navigational aids (buoys). This definition includes, but is not limited to, all military and Coast Guard vessels, commercial cargo and passenger (cruise) ships, ferries, barges, tankers, container ships, patrol and pilot boats, and dredges. Pleasure craft and offshore oil or gas drilling platforms are not considered ships.

(AA) Shipbuilding and ship repair operations--Any building, repair, repainting, converting, or alteration of ships or offshore oil or gas drilling platforms.

(BB) Special marking specialty coating--Any coating that is used for safety or identification applications, such as ship numbers and markings on flight decks.

(CC) Specialty interior coating--Any coating used on interior surfaces aboard United States military vessels pursuant to a coating specification that requires the coating to meet specified fire retardant and low toxicity requirements, in addition to the other applicable military physical and performance requirements.

(DD) Tack coat specialty coating--Any thin film epoxy coating applied at a maximum thickness of two dry mils to prepare an epoxy coating that has dried beyond the time limit specified by the manufacturer for the application of the next coat.

(EE) Undersea weapons systems specialty coating--Any coating applied to any component of a weapons system intended to be launched or fired from under the sea.

(FF) Weld-through preconstruction primer (specialty coating)--A coating that provides corrosion protection for steel during inventory, is typically applied at less than one mil dry film thickness, does not require removal prior to welding, is temperature resistant (burn back from a weld is less than 1.25 centimeters (0.5 inches)), and does not normally require removal before applying film-building coatings, including inorganic zinc high-build coatings. When constructing new vessels, there may be a need to remove areas of weld-through preconstruction primer due to surface damage or contamination prior to application of film-building coatings.

(12) Automobile and light-duty truck manufacturing.

(A) Automobile coating--The assembly-line coating of passenger cars, or passenger car derivatives, capable of seating 12 or fewer passengers.

(B) Light-duty truck coating--The assembly-line coating of motor vehicles rated at 8,500 pounds (3,855.5 kg) gross vehicle weight or less and designed primarily for the transportation of property, or derivatives such as pickups, vans, and window vans.

(13) Vehicle refinishing (body shops).

(A) Basecoat/clearcoat system--A topcoat system composed of a pigmented basecoat portion and a transparent clearcoat portion. The VOC content of a basecoat (BCCA-AG)/clearcoat (cc) system shall be calculated according to the following formula.
Figure: 30 TAC §115.420(c)(13)(A) (No change.)

(B) Precoat--Any coating that is applied to bare metal to deactivate the metal surface for corrosion resistance to a subsequent water-based primer. This coating is applied to bare metal solely for the prevention of flash rusting.

(C) Pretreatment--Any coating which contains a minimum of 0.5% acid by weight that is applied directly to bare metal surfaces to etch the metal surface for corrosion resistance and adhesion of subsequent coatings.

(D) Primer or primer surfacers--Any base coat, sealer, or intermediate coat which is applied prior to colorant or aesthetic coats.

(E) Sealers--Coatings that are formulated with resins which, when dried, are not readily soluble in typical solvents. These coatings act as a shield for surfaces over which they are sprayed by resisting the penetration of solvents which are in the final topcoat.

(F) Specialty coatings--Coatings or additives which are necessary due to unusual job performance requirements. These coatings or additives prevent the occurrence of surface defects and impart or improve desirable coating properties. These products include, but are not limited to, uniform finish blenders, elastomeric materials for coating of flexible plastic parts, coatings for non-metallic parts, jambing clear coatings, gloss flatteners, and anti-glare/safety coatings.

(G) Three-stage system--A topcoat system composed of a pigmented basecoat portion, a semitransparent midcoat portion, and a transparent clearcoat portion. The VOC content of a three-stage system shall be calculated according to the following formula:
Figure: 30 TAC §115.420(c)(13)(G) (No change.)

(H) Vehicle refinishing (body shops)--The coating of motor vehicles, as defined in §114.620 of this title (relating to Definitions), including, but not limited to, motorcycles, passenger cars, vans, light-duty trucks, medium-duty trucks, heavy-duty trucks, buses, and other vehicle body parts, bodies, and cabs by an operation other than the original manufacturer. The coating of non-road vehicles and non-road equipment, as these terms are defined in §114.3 and §114.6 of this title (relating to Low Emission Vehicle Fleet Definitions; and Low Emission Fuel Definitions), and trailers is not included.

(I) Wipe-down solutions--Any solution used for cleaning and surface preparation.

(14) Vinyl coating--The use of printing or any decorative or protective topcoat applied over vinyl sheets or vinyl-coated fabric.

(15) Wood parts and products. The following terms apply to wood parts and products coating facilities subject to §115.421(14) of this title.

(A) Clear coat--A coating which lacks opacity or which is transparent and uses the undercoat as a reflectant base or undertone color.

(B) Clear sealers--Liquids applied over stains, toners, and other coatings to protect these coatings from marring during handling and to limit absorption of succeeding coatings.

(C) Final repair coat--Liquids applied to correct imperfections or damage to the topcoat.

(D) Opaque ground coats and enamels--Colored, opaque liquids applied to wood or wood composition substrates which completely hide the color of the substrate in a single coat.

(E) Semitransparent spray stains and toners--Colored liquids applied to wood to change or enhance the surface without concealing the surface, including but not limited to, toners and non-grain-raising stains.

(F) Semitransparent wiping and glazing stains--Colored liquids applied to wood that require multiple wiping steps to enhance the grain character and to partially fill the porous surface of the wood.

(G) Shellacs--Coatings formulated solely with the resinous secretions of the lac beetle (laccifer lacca), thinned with alcohol, and formulated to dry by evaporation without a chemical reaction.

(H) Topcoat--A coating which provides the final protective and aesthetic properties to wood finishes.

(I) Varnishes--Clear wood finishes formulated with various resins to dry by chemical reaction on exposure to air.

(J) Wash coat--A low-solids clear liquid applied over semitransparent stains and toners to protect the color coats and to set the fibers for subsequent sanding or to separate spray stains from wiping stains to enhance color depth.

(K) Wood parts and products coating--The coating of wood parts and products, excluding factory surface coating of flat wood paneling.

(16) Wood furniture manufacturing facilities. The following terms apply to wood furniture manufacturing facilities subject to §115.421(15) of this title.

(A) Adhesive--Any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means. Adhesives are not considered to be coatings or finishing materials for wood furniture manufacturing facilities subject to §115.421(15) of this title.

(B) Basecoat--A coat of colored material, usually opaque, that is applied before graining inks, glazing coats, or other opaque finishing materials and is usually topcoated for protection.

(C) Cleaning operations--Operations in which organic solvent is used to remove coating materials from equipment used in wood furniture manufacturing operations.

(D) Continuous coater--A finishing system that continuously applies finishing materials onto furniture parts moving along a conveyor system. Finishing materials that are not transferred to the part are recycled to the finishing material reservoir. Several types of application methods can be used with a continuous coater, including spraying, curtain coating, roll coating, dip coating, and flow coating.

(E) Conventional air spray--A spray coating method in which the coating is atomized by mixing it with compressed air at an air pressure greater than 10 pounds per square inch gauge (psig) at the point of atomization. Airless and air-assisted airless spray technologies are not conventional air spray because the coating is not atomized by mixing it with compressed air. Electrostatic spray technology is also not conventional air spray because an electrostatic charge is employed to attract the coating to the workpiece. In addition, high-volume low-pressure (HVLP) spray technology is not conventional air spray because its pressure is less than 10 psig.

(F) Finishing application station--The part of a finishing operation where the finishing material is applied (for example, a spray booth).

(G) Finishing material--A coating used in the wood furniture industry. For the wood furniture manufacturing industry, such materials include, but are not limited to, basecoats, stains, washcoats, sealers, and topcoats.

(H) Finishing operation--Those activities in which a finishing material is applied to a substrate and is subsequently air-dried, cured in an oven, or cured by radiation.

(I) Organic solvent--A liquid containing VOCs that is used for dissolving or dispersing constituents in a coating; adjusting the viscosity of a coating; cleaning; or washoff. When used in a coating, the organic solvent evaporates during drying and does not become a part of the dried film.

(J) Sealer--A finishing material used to seal the pores of a wood substrate before additional coats of finishing material are applied. Washcoats, which are used in some finishing systems to optimize aesthetics, are not sealers.

(K) Stain--Any color coat having a solids content of no more than 8.0% by weight that is applied in single or multiple coats directly to the substrate. Includes, but is not limited to, nongrain raising stains, equalizer stains, sap stains, body stains, no-wipe stains, penetrating stains, and toners.

(L) Strippable booth coating--A coating that is applied to a booth wall to provide a protective film to receive overspray during finishing operations; is subsequently peeled off and disposed; and reduces or eliminates the need to use organic solvents to clean booth walls.

(M) Topcoat--The last film-building finishing material applied in a finishing system. A material such as a wax, polish, nonoxidizing oil, or similar substance that must be periodically reapplied to a surface over its lifetime to maintain or restore the reapplied material's intended effect is not considered to be a topcoat.

(N) Touch-up and repair--The application of finishing materials to cover minor finishing imperfections.

(O) Washcoat--A transparent special purpose coating having a solids content of 12% by weight or less. Washcoats are applied over initial stains to protect and control color and to stiffen the wood fibers in order to aid sanding.

(P) Washoff operations--Those operations in which organic solvent is used to remove coating from a substrate.

(Q) Wood furniture--Any product made of wood, a wood product such as rattan or wicker, or an engineered wood product such as particleboard that is manufactured under any of the following standard industrial classification codes: 2434 (wood kitchen cabinets), 2511 (wood household furniture, except upholstered), 2512 (wood household furniture, upholstered), 2517 (wood television, radios, phonograph and sewing machine cabinets), 2519 (household furniture not elsewhere classified), 2521 (wood office furniture), 2531 (public building and related furniture), 2541 (wood office and store fixtures, partitions, shelving and lockers), 2599 (furniture and fixtures not elsewhere classified), or 5712 (custom kitchen cabinets).

(R) Wood furniture component--Any part that is used in the manufacture of wood furniture. Examples include, but are not limited to, drawer sides, cabinet doors, seat cushions, and laminated tops. However, foam seat cushions manufactured and fabricated at a facility that does not engage in any other wood furniture or wood furniture component manufacturing operation are excluded from this definition.

(S) Wood furniture manufacturing operations--The finishing, cleaning, and washoff operations associated with the production of wood furniture or wood furniture components.

§115.421. Emission Specification.

The owner or operator of the surface coating processes specified in §115.420(a) of this title (relating to Applicability and Definitions) shall not cause, suffer, allow, or permit volatile organic compound (VOC) emissions to exceed the specified emission limits in paragraphs (1) - (16) of this subsection. These limitations are based on the daily weighted average of all coatings delivered to each coating line, except for those in paragraph (9) of this subsection which are based on paneling surface area, and those in paragraph (15) of this subsection which, if using an averaging approach, must use one of the daily averaging equations within that paragraph. The owner or operator of a surface coating operation subject to paragraph (10) of the subsection may choose to comply by using the monthly weighted average option as defined in §115.420(c)(1)(YY) of this title.

(1) Large appliance coating. VOC emissions from the application, flashoff, and oven areas during the coating of large appliances (prime and topcoat, or single coat) must not exceed 2.8 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.34 kilogram/liter (kg/liter)).

(2) Metal furniture coating. VOC emissions from metal furniture coating lines (prime and topcoat, or single coat) must not exceed 3.0 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.36 kg/liter).

(3) Coil coating. VOC emissions from the coating (prime and topcoat, or single coat) of metal coils must not exceed 2.6 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.31 kg/liter).

(4) Paper coating. VOC emissions from the coating of paper (or specified tapes or films) must not exceed 2.9 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.35 kg/liter).

(5) Fabric coating. [~~VOC emissions from the coating of fabric must not exceed 2.9 pounds per gallon of coating (minus water and exempt solvent) delivered to the application system (0.35 kg/liter).~~]

(A) In the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, in Gregg, Nueces, and Victoria Counties, and in Bexar County until March 1, 2026, VOC emissions from the coating of fabric must not exceed 350 grams per liter of coating (minus water and exempt solvent) delivered to the application system (2.9 pounds per gallon).

(B) In the Bexar County area, the following limits apply.

(i) VOC emissions from the application of coating or wash primer to fabric substrates must not exceed 265 grams per liter of coating (minus water and exempt solvent) delivered to the application system (2.2 pounds per gallon).

(ii) VOC emissions from the application of plastisol to fabric substrates must not exceed 20 grams per liter of coating (minus water and exempt solvent) delivered to the application system (0.167 pounds per gallon).

(6) Vinyl coating. VOC emissions from the coating of vinyl fabrics or sheets must not exceed 3.8 pounds per gallon of coating (minus water and exempt solvent) delivered to the application

system (0.45 kg/liter). Plastisol coatings should not be included in calculations.

(7) Can coating. The following VOC emission limits must be achieved, on the basis of VOC solvent content per unit of volume of coating (minus water and exempt solvent) delivered to the application system:
Figure: 30 TAC §115.421(7) (No change.)

(8) Miscellaneous metal parts and products (MMPP) coating.

(A) VOC emissions from the coating of MMPP must not exceed the following limits for each surface coating type:
Figure: 30 TAC §115.421(8) (No change.)

(B) If more than one emission limitation in subparagraph (A) of this paragraph applies to a specific coating, then the least stringent emission limitation applies.

(C) All VOC emissions from non-exempt solvent washings must be included in determination of compliance with the emission limitations in subparagraph (A) of this paragraph unless the solvent is directed into containers that prevent evaporation into the atmosphere.

(9) Factory surface coating of flat wood paneling. The following emission limits apply to each product category of factory-finished paneling (regardless of the number of coats applied):
Figure: 30 TAC §115.421(9) (No change.)

(10) Aerospace coatings. The VOC content of coatings, including any VOC-containing materials added to the original coating supplied by the manufacturer, that are applied to aerospace vehicles or components must not exceed the following limits (in grams of VOC per liter of coating, less water and exempt solvent). The following applications are exempt from the VOC content limits of this paragraph: manufacturing or re-work of space vehicles or antique aerospace vehicles or components of each; touchup; United States Department of Defense classified coatings; and separate coating formulations in volumes less than 50 gallons per year to a maximum of 200 gallons per year for all such formulations at an account.

(A) For the broad categories of primers, topcoats, and chemical milling maskants (Type I/II) which are not specialty coatings as listed in subparagraph (B) of this paragraph:

(i) primer, 350;

(ii) topcoats (including self-priming topcoats), 420; and

(iii) chemical milling maskants:

(I) Type I, 622; and

(II) Type II, 160.

(B) For specialty coatings:
Figure: 30 TAC §115.421(10)(B) (No change.)

(11) Automobile and light-duty truck manufacturing coating. The following VOC emission limits must be achieved, on the basis of solvent content per unit volume of coating (minus water and exempt solvents) delivered to the application system or for primer surfacer and top coat application, compliance may be demonstrated on the basis of VOC emissions per unit volume of solids deposited as determined by §115.425(3) of this title (relating to Testing Requirements).
Figure: 30 TAC §115.421(11) (No change.)

(12) Vehicle refinishing coating (body shops). VOC emissions from coatings or solvents must not exceed the following limits, as delivered to the application system. Additional control requirements for vehicle refinishing (body shops) are referenced in §115.422 of this title (relating to Control Requirements).
Figure: 30 TAC §115.421(12) (No change.)

(13) Surface coating of mirror backing.

(A) VOC emissions from the coating of mirror backing must not exceed the following limits for each surface coating application method:

(i) 4.2 pounds per gallon (0.50 kg/liter) of coating (minus water and exempt solvent) delivered to a curtain coating application system; and

(ii) 3.6 pounds per gallon (0.43 kg/liter) of coating (minus water and exempt solvent) delivered to a roll coating application system.

(B) All VOC emissions from solvent washings must be included in determination of compliance with the emission limitations in subparagraph (A) of this paragraph, unless the solvent is directed into containers that prevent evaporation into the atmosphere.

(14) Surface coating of wood parts and products. VOC emissions from the coating of wood parts and products must not exceed the following limits, as delivered to the application system, for each surface coating type. All VOC emissions from solvent washings must be included in determination of compliance with the emission limitations in this paragraph, unless the solvent is directed into containers that prevent evaporation into the atmosphere.
Figure: 30 TAC §115.421(14) (No change.)

(15) Surface coating at wood furniture manufacturing facilities. For facilities which are subject to this paragraph, adhesives are not considered to be coatings or finishing materials.

(A) VOC emissions from finishing operations must be limited by:

(i) using topcoats with a VOC content no greater than 0.8 kilogram of VOC per kilogram of solids (0.8 pound of VOC per pound of solids), as delivered to the application system; or

(ii) using a finishing system of sealers with a VOC content no greater than 1.9 kilograms of VOC per kilogram of solids (1.9 pounds of VOC per pound of solids), as applied, and topcoats with a VOC content no greater than 1.8 kilograms of VOC per kilogram of solids (1.8 pounds of VOC per pound of solids), as delivered to the application system; or

(iii) for wood furniture manufacturing facilities using acid-cured alkyd amino vinyl sealers or acid-cured alkyd amino conversion varnish topcoats, using sealers and topcoats that meet the following criteria:

(I) if the wood furniture manufacturing facility uses acid-cured alkyd amino vinyl sealers and acid-cured alkyd amino conversion varnish topcoats, the sealer must contain no more than 2.3 kilograms of VOC per kilogram of solids (2.3 pounds of VOC per pound of solids), as applied, and the topcoat must contain no more than 2.0 kilograms of VOC per kilogram of solids (2.0 pounds of VOC per pound of solids), as delivered to the application system; or

(II) if the wood furniture manufacturing facility uses a sealer other than an acid-cured alkyd amino vinyl sealer and acid-cured alkyd amino conversion varnish topcoats, the sealer must contain no more than 1.9 kilograms of VOC per kilogram of solids (1.9 pounds of VOC per pound of solids), as applied, and the topcoat must contain no more than 2.0 kilograms of VOC per kilogram of solids (2.0 pounds of VOC per pound of solids), as delivered to the application system; or

(III) if the wood furniture manufacturing facility uses an acid-cured alkyd amino vinyl sealer and a topcoat other than an acid-cured alkyd amino conversion varnish topcoat, the sealer must contain no more than 2.3 kilograms of VOC per kilogram of solids (2.3 pounds of VOC per pound of solids), as applied, and the topcoat must contain no more than 1.8 kilograms of VOC per kilogram of solids (1.8 pounds of VOC per pound of solids), as delivered to the application system; or

(iv) using an averaging approach and demonstrating that actual daily emissions from the wood furniture manufacturing facility are less than or equal to the lower of the actual versus allowable emissions using one of the following inequalities:
Figure: 30 TAC §115.421(15)(A)(iv) (No change.)

(v) using a vapor control system that will achieve an equivalent reduction in emissions as the requirements of clauses (i) or (ii) of this subparagraph. If this option is used, the requirements of §115.423(3) of this title do not apply; or

(vi) using a combination of the methods presented in clauses (i) - (v) of this subparagraph.

(B) Strippable booth coatings used in cleaning operations must not contain more than 0.8 kilogram of VOC per kilogram of solids (0.8 pound of VOC per pound of solids), as delivered to the application system.

(16) Marine coatings.

(A) The following VOC emission limits apply to the surface coating of ships and offshore oil or gas drilling platforms at shipbuilding and ship repair operations, and are based upon the VOC content of the coatings as delivered to the application system.
Figure: 30 TAC §115.421(16)(A) (No change.)

(B) For a coating to which thinning solvent is routinely or sometimes added, the owner or operator shall determine the VOC content as follows.

(i) Prior to the first application of each batch, designate a single thinner for the coating and calculate the maximum allowable thinning ratio (or ratios, if the shipbuilding and ship repair operation complies with the cold-weather limits in addition to the other limits specified in subparagraph (A) of this paragraph) for each batch as follows.
Figure: 30 TAC §115.421(16)(B)(i) (No change.)

(ii) If the volume fraction of solids in the batch as supplied Vs is not supplied directly by the coating manufacturer, the owner or operator shall determine Vs as follows.
Figure: 30 TAC §115.421(16)(B)(ii) (No change.)

§115.425. Testing Requirements.

The testing requirements for surface coating processes in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas and in Gregg, Nueces, and Victoria Counties are as follows.

(1) The owner or operator shall determine compliance with §115.421 of this title (relating to Emission Specifications) by applying the following test methods, as appropriate, except as specified in paragraph (5) of this section. Where a test method also inadvertently measures compounds that are exempt solvent, an owner or operator may exclude these exempt solvents when determining compliance with an emission standard:

(A) Test Method 24 (40 Code of Federal Regulations (CFR) Part 60, Appendix A) with a one-hour bake;

(B) ASTM International Test Methods D1186, D1200, D1644, D2832, D3794, and D3960 [~~D 1186-06.01, D 1200-06.01, D 3794-06.01, D 2832-69, D 1644-75, and D 3960-81~~];

(C) The United States Environmental Protection Agency (EPA) guidelines series document "Procedures for Certifying Quantity of Volatile Organic Compounds (VOC) Emitted by Paint, Ink, and Other Coatings (EPA-450/3-84-019)," as in effect December, 1984;

(D) additional test procedures described in 40 Code of Federal Regulations (CFR) §60.446; or

(E) minor modifications to these test methods approved by the executive director

(2) Compliance with §115.423(3) of this title (relating to Alternate Control Requirements) must be determined by applying the following test methods, as appropriate:

(A) Test Methods 1-4 (40 CFR Part 60, Appendix A) for determining flow rates, as necessary;

(B) Test Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(C) Test Method 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;

(D) additional performance test procedures described in 40 CFR §60.044; or

(E) minor modifications to these test methods approved by the executive director.

(3) Compliance with the alternative emission limits in §115.421(11) of this title must be determined by applying the following test methods, as appropriate:

(A) Protocol for Determining the Daily VOC Emission Rate of Automobile and Light-Duty Truck Topcoat Operations (EPA 450/3-88-018); or

(B) The procedure contained in this paragraph for determining daily compliance with the alternative emission limitation in §115.421(11) of this title for final repair. Calculation of occurrence weighted average for each combination of repair coatings (primer, specific basecoat, clearcoat) must be determined by the following procedure.

(i) The characteristics identified below, which are represented in the following equations by the variables shown, are established for each repair material as sprayed:
Figure: 30 TAC §115.425(3)(B)(i) (No change.)

(ii) The relative occurrence weighted usage is calculated as follows:
Figure: 30 TAC §115.425(3)(B)(ii) (No change.)

(iii) The occurrence weighted average (Q) in pounds of VOC per gallon of coating (minus water and exempt solvents) as applied for each potential combination of repair coatings is calculated according to paragraph (4) of this section.
Figure: 30 TAC §115.425(3)(B)(iii) (No change.)

(4) In the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, the owner or operator of surface coating processes subject to §115.423(3) of this title shall measure the capture efficiency using applicable procedures outlined in 40 CFR §52.741, Subpart O, Appendix B. These procedures are: Procedure T-Criteria for and Verification of a Permanent or Tem-

porary Total Enclosure; Procedure L-VOC Input; Procedure G.2-Captured VOC Emissions (Dilution Technique); Procedure F.1-Fugitive VOC Emissions from Temporary Enclosures; and Procedure F.2-Fugitive VOC Emissions from Building Enclosures.

(A) Exemptions to capture efficiency testing requirements:

(i) If a source installs a permanent total enclosure (PTE) that meets the specifications of Procedure T and directs all VOC to a control device, then the capture efficiency is assumed to be 100%, and the source is exempted from capture efficiency testing requirements. This does not exempt the source from performance of any control device efficiency testing that may be required. In addition, a source must demonstrate all criteria for a PTE are met during testing for control efficiency.

(ii) If a source uses a control device designed to collect and recover VOC (e.g., carbon adsorption system), an explicit measurement of capture efficiency is not necessary if the following conditions are met. The overall control of the system can be determined by directly comparing the input liquid VOC to the recovered liquid VOC. The general procedure for use in this situation is given in 40 CFR §60.433, with the following additional restrictions.

(I) The source must be able to equate solvent usage with solvent recovery on a 24-hour (daily) basis, rather than a 30-day weighted average. This must be done within 72 hours following each 24-hour period of the 30-day period.

(II) The solvent recovery system (i.e., capture and control system) must be dedicated to a single process line (e.g., one process line venting to a carbon adsorber system); or if the solvent recovery system controls multiple process lines, the source must be able to demonstrate that the overall control (i.e., the total recovered solvent VOC divided by the sum of liquid VOC input to all process lines venting to the control system) meets or exceeds the most stringent standard applicable for any process line venting to the control system.

(B) The capture efficiency must be calculated using one of the following four protocols referenced. Any affected source must use one of these protocols, unless a suitable alternative protocol is approved by the executive director and the EPA.

(i) Gas/gas method using Temporary Total Enclosure (TTE). The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.425(4)(B)(i) (No change.)

(ii) Liquid/gas method using TTE. The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.425(4)(B)(ii) (No change.)

(iii) Gas/gas method using the building or room in which the affected source is located as the enclosure (BE) and in which G and F are measured while operating only the affected facility. All fans and blowers in the BE must be operating as they would under normal production. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.425(4)(B)(iii) (No change.)

(iv) Liquid/gas method using a BE in which L and F are measured while operating only the affected facility. All fans and blowers in the building or room must be operated as they would under normal production. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.425(4)(B)(iv) (No change.)

(C) The following conditions must be met in measuring capture efficiency:

(i) Any error margin associated with a test protocol may not be incorporated into the results of a capture efficiency test.

(ii) All affected facilities must accomplish the initial capture efficiency testing by July 31, 1992, in Brazoria, Dallas, El Paso, Galveston, Harris, Jefferson, Orange, and Tarrant Counties, and by July 31, 1993, in Chambers, Collin, Denton, Fort Bend, Hardin, Liberty, Montgomery, and Waller Counties, except that all mirror backing coating facilities must accomplish the initial capture efficiency testing by July 31, 1994. Affected sources in the Bexar County area must conduct initial capture efficiency testing by no later than July 1, 2024.

(iii) During an initial pretest meeting, the executive director and the source owner or operator shall identify those operating parameters that must be monitored to ensure that capture efficiency does not change significantly over time. These parameters must be monitored and recorded initially during the capture efficiency testing and thereafter during facility operation. The executive director may require a new capture efficiency test if the operating parameter values change significantly from those recorded during the initial capture efficiency test.

(5) The following additional testing requirements apply to each aerospace vehicle or component coating facility subject to §115.421(10) of this title.

(A) For coatings which are not waterborne (water-reducible), determine the VOC content of each formulation (less water and less exempt solvents) as applied using manufacturer's supplied data or Method 24 of 40 CFR Part 60, Appendix A. If there is a discrepancy between the manufacturer's formulation data and the results of the Method 24 analysis, compliance must be based on the results from the Method 24 analysis. For water-borne (water-reducible) coatings, manufacturer's supplied data alone can be used to determine the VOC content of each formulation.

(B) For aqueous and semiaqueous cleaning solvents, manufacturers' supplied data must be used to determine the water content.

(C) For hand-wipe cleaning solvents, manufacturers' supplied data or standard engineering reference texts or other equivalent methods shall be used to determine the vapor pressure or VOC composite vapor pressure for blended cleaning solvents.

(D) Except for specialty coatings, compliance with the test method requirements of 40 CFR §63.750, (National Emission Standards for Aerospace Manufacturing and Rework Facilities), is considered to represent compliance with the requirements of this section.

(6) Test methods other than those specified in paragraphs (1) - (5) of this section may be used if validated by 40 CFR Part 63, Appendix A, Test Method 301. For the purposes of this paragraph, substitute "executive director" each place that Test Method 301 references "administrator."

§115.427. Exemptions.

In the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions) and in Gregg, Nueces, and Victoria Counties the following exemptions apply.

(1) The following coating operations are exempt from the miscellaneous metal parts and products surface coating emission spec-

ifications in §115.421(8) of this title (relating to Emission Specifications):

(A) aerospace vehicles and components;

(B) in the Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, vehicle refinishing (body shops); and

(C) in the Beaumont-Port Arthur and Houston-Galveston-Brazoria areas, ships and offshore oil or gas drilling platforms.

(2) The following coating operations are exempt from the factory surface coating of flat wood paneling emission specifications in §115.421(9) of this title:

(A) the manufacture of exterior siding;

(B) tile board; or

(C) particle board used as a furniture component.

(3) In the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, the following exemptions apply to surface coating processes, except as specified in paragraphs (3)(K) and (6) of this section, and except for vehicle refinishing (body shops) controlled by §115.421(12) of this title. Excluded from the volatile organic compounds (VOC) emission calculations are coatings and solvents used in surface coating activities that are not addressed by the surface coating categories of §115.421(1) - (16) or §115.453 of this title (relating to Control Requirements). For example, architectural coatings [~~(i.e., coatings that are~~] applied in the field to stationary structures and their appurtenances, [~~to~~] portable buildings, [~~to~~] pavements, or [~~to~~] curbs[~~)~~] at a property would not be included in the calculations.

(A) Surface coating operations on a property that, when uncontrolled, will emit a combined weight of VOC of less than 3.0 pounds per hour and 15 pounds in any consecutive 24-hour period are exempt from §115.421 of this title and §115.423 of this title (relating to Alternate Control Requirements).

(B) Surface coating operations on a property that, when uncontrolled, will emit a combined weight of VOC of less than 100 pounds in any consecutive 24-hour period are exempt from §115.421 and §115.423 of this title if documentation is provided to and approved by both the executive director and the United States Environmental Protection Agency to demonstrate that necessary coating performance criteria cannot be achieved with coatings that satisfy applicable emission specifications and that control equipment is not technically or economically feasible.

(C) Surface coating operations on a property for which total coating and solvent usage does not exceed 150 gallons in any consecutive 12-month period are exempt from §115.421 and §115.423 of this title.

(D) Mirror backing coating operations located on a property that, when uncontrolled, emit a combined weight of VOC less than 25 tons in one year (based on historical coating and solvent usage) are exempt from this division.

(E) Wood furniture manufacturing facilities that are subject to and are complying with §115.421(15) of this title and §115.422(3) of this title (relating to Control Requirements) are exempt from §115.421(14) of this title. These wood furniture manufacturing facilities must continue to comply with §115.421(14) of this title until these facilities are in compliance with §115.421(15) and §115.422(3) of this title.

(F) Wood furniture manufacturing facilities that, when uncontrolled, emit a combined weight of VOC from wood furniture manufacturing operations less than 25 tons per year (tpy) are exempt from §115.421(15) and §115.422(3) of this title.

(G) In Hardin, Jefferson, and Orange Counties, wood parts and products coating facilities are exempt from §115.421(14) of this title.

(H) In Hardin, Jefferson, and Orange Counties, shipbuilding and ship repair operations that, when uncontrolled, emit a combined weight of VOC from ship and offshore oil or gas drilling platform surface coating operations less than 50 tpy are exempt from §115.421(16) and §115.422(4) of this title.

(I) In Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, shipbuilding and ship repair operations that, when uncontrolled, emit a combined weight of VOC from ship and offshore oil or gas drilling platform surface coating operations less than 25 tpy are exempt from §115.421(16) and §115.422(4) of this title.

(J) The following activities where cleaning and coating of aerospace vehicles or components may take place are exempt from this division: research and development, quality control, laboratory testing, and electronic parts and assemblies, except for cleaning and coating of completed assemblies.

(K) Beginning March 1, 2026, fabric coating operations in the Bexar County area are no longer eligible for the exemptions in subparagraphs (3)(A) - (C) of this subsection.

(4) Vehicle refinishing (body shops) in Hardin, Jefferson, and Orange Counties are exempt from §115.421(12) and §115.422(1) and (2) of this title.

(5) The coating of vehicles at in-house (fleet) vehicle refinishing operations and the coating of vehicles by private individuals are exempt from §115.421(11)(B) and §115.422(1) and (2) of this title. This exemption is not applicable if the coating of a vehicle by a private individual occurs at a commercial operation.

(6) Aerosol coatings (spray paint) are exempt from this division. However, in the Bexar County area, aerosol coatings, commonly known as spray paint, are no longer exempt from the requirements for fabric coating operations as of the compliance date specified in §115.429(g) of this title.

(7) In Gregg, Nueces, and Victoria Counties, surface coating operations located at any property that, when uncontrolled, will emit a combined weight of VOC less than 550 pounds (249.5 kilograms) in any continuous 24-hour period are exempt from §115.421 of this title. Excluded from this calculation are coatings and solvents used in surface coating activities that are not addressed by the surface coating categories of §115.421(1) - (10) of this title. For example, architectural coatings (i.e., coatings that are applied in the field to stationary structures and their appurtenances, to portable buildings, to pavements, or to curbs) at a property would not be included in the calculation.

(8) In the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, the following surface coating categories that are subject to the requirements of Chapter 115, Subchapter E, Division 5 of this title (relating to Control Requirements for Surface Coating Processes) are exempt from the requirements in this division:

(A) large appliance coating;

(B) metal furniture coating;

(C) miscellaneous metal parts and products coating;

(D) each paper coating line with the potential to emit equal to or greater than 25 tpy of VOC from all coatings applied; and

(E) automobile and light-duty truck manufacturing coating.

(9) In the Dallas-Fort Worth and the Houston-Galveston-Brazoria areas, the re-coating of used miscellaneous metal parts and products at a designated on-site maintenance shop that was exempt from §115.421(8) of this title prior to January 1, 2012, or that begins operation on or after January 1, 2012, is exempt from all requirements in this division. The re-coating of used miscellaneous metal parts and products at a designated on-site maintenance shop that was subject to §115.421(8) of this title prior to January 1, 2012, remains subject to this division. For purposes of this exemption, a designated on-site maintenance shop is an area at a site where used miscellaneous metal parts or products are re-coated on a routine basis. Miscellaneous metal parts and products coating processes in Wise County are not subject to this division.

§115.429. Counties and Compliance Schedules.

(a) In Brazoria, Chambers, Collin, Dallas, Denton, Ellis, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Johnson, Kaufman, Liberty, Montgomery, Nueces, Orange, Parker, Rockwall, Tarrant, Victoria, and Waller Counties, the compliance date has passed and the owner or operator of a surface coating process shall continue to comply with this division.

(b) In Hardin, Jefferson, and Orange Counties the compliance date has passed and the owner or operator of each shipbuilding and ship repair operation that, when uncontrolled, emits a combined weight of volatile organic compounds from ship and offshore oil or gas drilling platform surface coating operations equal to or greater than 50 tons per year and less than 100 tons per year shall continue to comply with this division.

(c) The owner or operator of a paper surface coating process located in the Dallas-Fort Worth area, except Wise County, and Houston-Galveston-Brazoria area, as defined in §115.10 of this title (relating to Definitions), shall comply with the requirements in §115.422(7) of this title (relating to Control Requirements), no later than March 1, 2013.

(d) The owner or operator of a surface coating process in Wise County shall comply with the requirements in this division as soon as practicable, but no later than January 1, 2017.

(e) The owner or operator of a surface coating process that becomes subject to this division on or after the applicable compliance date of this section shall comply with the requirements in this division no later than 60 days after becoming subject. [~~The owner or operator of a surface coating process in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties that becomes subject to this division on or after the applicable compliance date in this section shall comply with the requirements in this division as soon as practicable, but no later than 60 days after becoming subject.~~]

(f) The owner or operator of a surface coating process in the Bexar County area subject to the requirements of this division shall comply with the requirements of this division, with the exception of §115.421(5)(B) of this title (relating to Emission Specification), no later than January 1, 2025. [~~All affected persons of a surface coating process in the Bexar County area that becomes subject to this division on or after the applicable compliance date in this subsection shall comply with the requirements of this division as soon as practicable, but no later than 60 days after becoming subject.~~]

(g) The owner or operator of a fabric coating process in the Bexar County area subject to the requirements of §115.421 of this title shall comply with the requirements in §115.421(5)(B) of this title no later than March 1, 2026.

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

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DIVISION 4. OFFSET LITHOGRAPHIC PRINTING

30 TAC §§115.440, 115.441, 115.449

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103, and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.440. Applicability and Definitions.

(a) Applicability. The provisions in this division apply to offset lithographic printing lines located in the Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions).

(b) Definitions. Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, and 115.10 of this title (relating to Definitions), the terms in this division have the meanings commonly used in the field of air pollution control. In addition, the following meanings apply unless the context clearly indicates otherwise.

(1) Alcohol--Any of the hydroxyl-containing organic compounds with a molecular weight equal to or less than 74.12, which includes methanol, ethanol, propanol, and butanol.

(2) Alcohol substitutes--Nonalcohol additives that contain volatile organic compounds and are used in the fountain solution to reduce the surface tension of water or prevent ink piling.

(3) Batch--A supply of fountain solution or cleaning solution that is prepared and used without alteration until completely used or removed from the printing process.

(4) Cleaning solution--Liquids used to remove ink and debris from the operating surfaces of the printing press and its parts.

(5) Fountain solution--A mixture of water, nonvolatile printing chemicals, and a liquid additive that reduces the surface tension of the water so that it spreads easily across the printing plate surface. The fountain solution wets the non-image areas so that the ink is maintained within the image areas.

(6) Heatset--Any operation where heat is required to evaporate ink oil from the printing ink.

(7) Lithography--A plane-o-graphic printing process where the image and non-image areas are on the same plane of the printing plate. The image and non-image areas are chemically differentiated so the image area is oil receptive and the non-image area is water receptive.

(8) Major printing source--All offset lithographic printing lines located on a property with combined uncontrolled emissions of volatile organic compounds (VOC) greater than or equal to:

(A) 50 tons of VOC per calendar year before and 25 tons of VOC per calendar year on and after November 7, 2025, in the Dallas-Fort Worth area as defined in §115.10 of this title (relating to Definitions), except Wise County;

(B) 25 tons of VOC per calendar year in the Houston-Galveston-Brazoria area, as defined in §115.10 of this title;

(C) 100 tons of VOC per calendar year before and 25 tons of VOC per calendar year on and after November 7, 2025, in Wise County; or

(D) 100 tons of VOC per calendar year before and 50 tons of VOC per calendar year on and after March 1, 2026, [~~on and after January 1, 2025~~] in the Bexar County area.

(9) Minor printing source--All offset lithographic printing lines located on a property with combined uncontrolled emissions of volatile organic compounds (VOC) less than:

(A) 50 tons of VOC per calendar year before and 25 tons of VOC per calendar year on and after November 7, 2025, in the Dallas-Fort Worth area, defined in §115.10 of this title (relating to Definitions), except Wise County;

(B) 25 tons of VOC per calendar year in the Houston-Galveston-Brazoria area, as defined in §115.10 of this title;

(C) 100 tons of VOC per calendar year before and 25 tons of VOC per calendar year on and after November 7, 2025, in Wise County; or

(D) 100 tons of VOC per calendar year before and 50 tons of VOC per calendar year on and after March 1, 2026, [~~on and after January 1, 2025,~~] in the Bexar County area.

(10) Non-heatset--Any operation where the printing inks are set without the use of heat. For the purposes of this division, ultraviolet-cured and electron beam-cured inks are considered non-heatset.

(11) Offset lithography--A printing process that transfers the ink film from the lithographic plate to an intermediary surface (blanket) that, in turn, transfers the ink film to the substrate.

(12) Volatile organic compound (VOC) composite partial pressure--The sum of the partial pressures of the compounds that meet the definition of VOC in §101.1 of this title (relating to Definitions). The VOC composite partial pressure is calculated as follows.
Figure: 30 TAC §115.440(b)(12) (No change.)

§115.441. Exemptions.

(a) In the Bexar County, Dallas-Fort Worth, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), the owner or operator of all offset lithographic printing lines located on a property with combined emissions of volatile organic compounds less than 3.0 tons per calendar year when uncontrolled, is exempt from the requirements in this division except as specified in subsection (b)(1) of this section and §115.446 of this title (relating to Monitoring and Recordkeeping Requirements).

(b) In the Bexar County, Dallas-Fort Worth and Houston-Galveston-Brazoria areas, the owner or operator of a minor printing source, as defined in §115.440 of this title (relating to Applicability and Definitions) and in Wise County, the owner or operator of a minor printing source or a major printing source, as defined in §115.440 of this title:

(1) may exempt up to 110 gallons of cleaning solution per calendar year from the content limits in §115.442(c)(1) of this title (relating to Control Requirements), though as of March 1, 2026, this exemption no longer applies in Bexar County;

(2) may exempt any press with a total fountain solution reservoir less than 1.0 gallons from the fountain solution content limits in §115.442(c)(2) - (4) of this title; and

(3) may exempt any sheet-fed press with a maximum sheet size of 11.0 inches by 17.0 inches or less from the fountain solution content limits in §115.442(c)(2) of this title.

§115.449. Compliance Schedules.

(a) In the El Paso area, the owner or operator of all offset lithographic printing presses must be in compliance with §§115.442, 115.443, 115.445, and 115.446 of this title (relating to Control Requirements; Alternate Control Requirements; Approved Test Methods; and Monitoring and Recordkeeping Requirements) as soon as practicable, but no later than November 15, 1996.

(b) In Collin, Dallas, Denton, and Tarrant Counties, the owner or operator of all offset lithographic printing presses on a property that, when uncontrolled, emit a combined weight of volatile organic compounds (VOC) equal to or greater than 50 tons per calendar year, must be in compliance with §§115.442(a), 115.443, 115.445, and 115.446(a) of this title as soon as practicable, but no later than December 31, 2000.

(c) In Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, the owner or operator of all offset lithographic printing presses on a property that, when uncontrolled, emit a combined weight of VOC equal to or greater than 25 tons per calendar year, must be in compliance with §§115.442(a), 115.443, 115.445, and 115.446(a) of this title as soon as practicable, but no later than December 31, 2002.

(d) In Ellis, Johnson, Kaufman, Parker, and Rockwall Counties, the owner or operator of all offset lithographic printing presses on a property that, when uncontrolled, emit a combined weight of VOC equal to or greater than 50 tons per calendar year, shall comply with §§115.442(a), 115.443, 115.445, and 115.446(a) of this title as soon as practicable, but no later than March 1, 2009.

(e) The owner or operator of a major printing source, as defined in §115.440 of this title (relating to Applicability and Definitions), in Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, and Waller Counties, as defined in §115.10 of this title (relating to Definitions), shall comply with the requirements in this division no later than March 1, 2011, except as specified in subsections (b), (c), and (d) of this section.

(f) The owner or operator of a minor printing source, as defined in §115.440 of this title, in the Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, and Waller Counties, shall comply with the requirements in this division no later than March 1, 2012.

(g) The owner or operator of a major or minor printing source, as defined in §115.440 of this title, in Wise County, shall comply with the requirements in this division as soon as practicable, but no later than January 1, 2017.

(h) The owner or operator of a major or minor printing source, as defined in §115.440 of this title, in the Bexar County area subject to the requirements of this division shall comply with the requirements of this division no later than January 1, 2025.

(i) The owner or operator of an offset lithographic printing line in Brazoria, Bexar, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, Waller, and Wise Counties that becomes subject to this division on or after the date specified in subsections (e) - (h) of this section, shall comply with the requirements in this division no later than 60 days after becoming subject.

(j) The owner or operator of a major or minor printing source, as defined in §115.440(b)(8)(D) and §115.440(b)(9)(D) of this title, in the Bexar County area subject to the requirements of this division shall comply with the requirements of this division no later than March 1, 2026.

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DIVISION 5. CONTROL REQUIREMENTS FOR SURFACE COATING PROCESSES

30 TAC §§115.450, 115.451, 115.453, 115.455, 115.458, 115.459

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103, and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.450. Applicability and Definitions.

(a) Applicability. In the Bexar County, Dallas-Fort Worth and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), the requirements in this division apply to the following surface coating processes, except as specified in paragraphs (6) through (10) [~~(8)~~] of this subsection:

(1) large appliance surface coating;

(2) metal furniture surface coating;

(3) miscellaneous metal parts and products surface coating, miscellaneous plastic parts and products surface coating, pleasure craft surface coating, and automotive/transportation and business machine plastic parts surface coating at the original equipment manufacturer and off-site job shops that coat new parts and products or that re-coat used parts and products;

(4) motor vehicle materials applied to miscellaneous metal and plastic parts specified in paragraph (3) of this subsection, at the original equipment manufacturer and off-site job shops that coat new metal and plastic parts or that re-coat used parts and products;

(5) paper, film, and foil surface coating lines with the potential to emit from all coatings greater than or equal to 25 tons per year of volatile organic compounds (VOC) when uncontrolled;

(6) in the Bexar County and Dallas-Fort Worth areas, automobile and light-duty truck assembly surface coating processes conducted by the original equipment manufacturer and operators that conduct automobile and light-duty truck surface coating processes under contract with the original equipment manufacturer;

(7) as of the compliance date specified in §115.459(e) or (g) of this title (relating to Compliance Schedules), industrial maintenance coatings in the Dallas-Fort Worth area and/or the Houston-Galveston-Brazoria area if the commission has published notice for the applicable area in the *Texas Register,* as provided in §115.459(e) or (g) of this title, to require compliance with the applicable contingency measure control requirements of §115.453(f) or (g) of this title (relating to Control Requirements); [~~and~~]

(8) as of the compliance date specified in §115.459(f) or (h) of this title, traffic marking coatings in the Dallas-Fort Worth area and/or the Houston-Galveston-Brazoria area if the commission

has published notice for the applicable area in the *Texas Register,* as provided in §115.459(f) or (h) of this title, to require compliance with the applicable contingency measure control requirements of §115.453(h) or (i) of this title; [.]

(9) in the Bexar County area beginning March 1, 2026, architectural coatings applied for compensation to stationary structures or their appurtenances; and

(10) in the Bexar County area beginning March 1, 2026, industrial maintenance coatings surface coating processes.

(b) General definitions. Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, or 115.10 of this title (relating to Definitions), the terms in this division have the meanings commonly used in the field of air pollution control. In addition, the following meanings apply in this division unless the context clearly indicates otherwise.

(1) Aerosol coating (spray paint)--A hand-held, pressurized, non-refillable container that expels an adhesive or a coating in a finely divided spray when a valve on the container is depressed.

(2) Air-dried coating--A coating that is cured at a temperature below 194 degrees Fahrenheit (90 degrees Celsius). These coatings may also be referred to as low-bake coatings.

(3) Baked Coating--A coating that is cured at a temperature at or above 194 degrees Fahrenheit (90 degrees Celsius). These coatings may also be referred to as high-bake coatings.

(4) Coating application system--Devices or equipment designed for the purpose of applying a coating material to a surface. The devices may include, but are not be limited to, brushes, sprayers, flow coaters, dip tanks, rollers, knife coaters, and extrusion coaters.

(5) Coating line--An operation consisting of a series of one or more coating application systems and associated flash-off area(s), drying area(s), and oven(s) wherein a surface coating is applied, dried, or cured. The coating line ends at the point the coating is dried or cured, or prior to any subsequent application of a different coating.

(6) Coating solids (or solids)--The part of a coating that remains on the substrate after the coating is dried or cured.

(7) Daily weighted average--The total weight of volatile organic compounds (VOC) emissions from all coatings subject to the same VOC limit in §115.453 of this title (relating to Control Requirements), divided by the total volume or weight of those coatings (minus water and exempt solvent), where applicable, or divided by the total volume or weight of solids, delivered to the application system on each coating line each day. Coatings subject to different VOC content limits in §115.453 of this title may not be combined for purposes of calculating the daily weighted average.

(8) Multi-component coating--A coating that requires the addition of a separate reactive resin, commonly known as a catalyst or hardener, before application to form an acceptable dry film. These coatings may also be referred to as two-component coatings.

(9) Normally closed container--A container that is closed unless an operator is actively engaged in activities such as adding or removing material.

(10) One-component coating--A coating that is ready for application as it comes out of its container to form an acceptable dry film. A thinner, necessary to reduce the viscosity, is not considered a component.

(11) Pounds of volatile organic compounds (VOC) per gallon of coating (minus water and exempt solvent)--The basis for content limits for surface coating processes that can be calculated by the following equation:
Figure: 30 TAC §115.450(b)(11) (No change.)

(12) Pounds of volatile organic compounds (VOC) per gallon of solids--The basis for emission limits for surface coating processes that can be calculated by the following equation:
Figure: 30 TAC §115.450(b)(12) (No change.)

(13) Spray gun--A device that atomizes a coating or other material and projects the particulates or other material onto a substrate.

(14) Surface coating processes--Operations that use a coating application system.

(c) Specific surface coating definitions. The following meanings apply in this division unless the context clearly indicates otherwise.

(1) Automobile and light-duty truck manufacturing--The following definitions apply to this surface coating category.

(A) Adhesive--Any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.

(B) Automobile and light-duty truck adhesive--An adhesive, including glass-bonding adhesive, used in an automobile or light-duty truck assembly surface coating process and applied for the purpose of bonding two vehicle surfaces together without regard to the substrates involved.

(C) Automobile and light-duty truck bedliner--A multicomponent coating used in an automobile or light-duty truck assembly surface coating process and applied to a cargo bed after the application of topcoat and outside of the topcoat operation to provide additional durability and chip resistance.

(D) Automobile and light-duty truck cavity wax--A coating, used in an automobile or light-duty truck assembly surface coating process, applied into the cavities of the vehicle primarily for the purpose of enhancing corrosion protection.

(E) Automobile and light-duty truck deadener--A coating used in an automobile or light-duty truck assembly surface coating process and applied to selected vehicle surfaces primarily for the purpose of reducing the sound of road noise in the passenger compartment.

(F) Automobile and light-duty truck gasket/gasket sealing material--A fluid used in an automobile or light-duty truck assembly surface coating process and applied to coat a gasket or replace and perform the same function as a gasket. Automobile and light-duty truck gasket/gasket sealing material includes room temperature vulcanization seal material.

(G) Automobile and light-duty truck glass-bonding primer--A primer, used in an automobile or light-duty truck assembly surface coating process, applied to windshield or other glass, or to body openings, to prepare the glass or body opening for the application of glass-bonding adhesives or the installation of adhesive-bonded glass. Automobile and light-duty truck glass-bonding primer includes glass-bonding/cleaning primers that perform both functions (cleaning and priming of the windshield or other glass, or body openings) prior to the application of an adhesive or the installation of adhesive-bonded glass.

(H) Automobile and light-duty truck lubricating wax/compound--A protective lubricating material used in an automobile or light-duty truck assembly surface coating process and applied to vehicle hubs and hinges.

(I) Automobile and light-duty truck sealer--A high viscosity material used in an automobile or light-duty truck assembly surface coating process and generally, but not always, applied in the paint shop after the body has received an electrodeposition primer coating and before the application of subsequent coatings (e.g., primer-surfacer). The primary purpose of automobile and light-duty truck sealer is to fill body joints completely so that there is no intrusion of water, gases, or corrosive materials into the passenger area of the body compartment. Such materials are also referred to as sealant, sealant primer, or caulk.

(J) Automobile and light-duty truck trunk interior coating--A coating used in an automobile or light-duty truck assembly surface coating process outside of the primer-surfacer and topcoat operations and applied to the trunk interior to provide chip protection.

(K) Automobile and light-duty truck underbody coating--A coating used in an automobile or light-duty truck assembly surface coating process and applied to the undercarriage or firewall to prevent corrosion or provide chip protection.

(L) Automobile and light-duty truck weather strip adhesive--An adhesive used in an automobile or light-duty truck assembly surface coating process and applied to weather-stripping materials for the purpose of bonding the weather-stripping material to the surface of the vehicle.

(M) Automobile assembly surface coating process--The assembly-line coating of new passenger cars, or passenger car derivatives, capable of seating 12 or fewer passengers.

(N) Electrodeposition primer--A process of applying a protective, corrosion-resistant waterborne primer on exterior and interior surfaces that provides thorough coverage of recessed areas. Electrodeposition primer is a dip-coating method that uses an electrical field to apply or deposit the conductive coating onto the part; the object being painted acts as an electrode that is oppositely charged from the particles of paint in the dip tank. Electrodeposition primer is also referred to as E-Coat, Uni-Prime, and ELPO Primer.

(O) Final repair--The operation(s) performed and coating(s) applied to completely assembled motor vehicles or to parts that are not yet on a completely assembled vehicle to correct damage or imperfections in the coating. The curing of the coatings applied in these operations is accomplished at a lower temperature than that used for curing primer-surfacer and topcoat. This lower temperature cure avoids the need to send parts that are not yet on a completely assembled vehicle through the same type of curing process used for primer-surfacer and topcoat and is necessary to protect heat-sensitive components on completely assembled vehicles.

(P) In-line repair--The operation(s) performed and coating(s) applied to correct damage or imperfections in the topcoat on parts that are not yet on a completely assembled vehicle. The curing of the coatings applied in these operations is accomplished at essentially the same temperature as that used for curing the previously applied topcoat. In-line repair is also referred to as high-bake repair or high-bake reprocess. In-line repair is considered part of the topcoat operation.

(Q) Light-duty truck assembly surface coating process--The assembly-line coating of new motor vehicles rated at 8,500 pounds gross vehicle weight or less and designed primarily for the transportation of property, or derivatives such as pickups, vans, and window vans.

(R) Primer-surfacer--An intermediate protective coating applied over the electrodeposition primer and under the topcoat. Primer-surfacer provides adhesion, protection, and appearance properties to the total finish. Primer-surfacer is also referred to as guide coat or surfacer. Primer-surfacer operations may include other coatings (e.g., anti-chip, lower-body anti-chip, chip-resistant edge primer, spot primer, blackout, deadener, interior color, basecoat replacement coating, etc.) that are applied in the same spray booth(s).

(S) Topcoat--The final coating system applied to provide the final color or a protective finish. The topcoat may be a monocoat color or basecoat/clearcoat system. In-line repair and two-tone are part of topcoat. Topcoat operations may include other coatings (e.g., blackout, interior color, etc.) that are applied in the same spray booth(s).

(T) Solids turnover ratio (RT')--The ratio of total volume of coating solids that is added to the electrodeposition primer system (EDP) in a calendar month divided by the total volume design capacity of the EDP system.

(2) Automotive/transportation and business machine plastic parts--The following definitions apply to this surface coating category.

(A) Adhesion prime--A coating that is applied to a polyolefin part to promote the adhesion of a subsequent coating. An adhesion prime is clearly identified as an adhesion prime or adhesion promoter on its accompanying material safety data sheet.

(B) Automotive/transportation plastic parts--Interior and exterior plastic components of automobiles, trucks, tractors, lawnmowers, and other mobile equipment.

(C) Black coating--A coating that has a maximum lightness of 23 units and a saturation less than 2.8, where saturation equals the square root of A2 + B2. These criteria are based on Cielab color space, 0/45 geometry. For spherical geometry, specular included, maximum lightness is 33 units.

(D) Business machine--A device that uses electronic or mechanical methods to process information, perform calculations, print or copy information, or convert sound into electrical impulses for transmission. This definition includes devices listed in Standard Industrial Classification codes 3572, 3573, 3574, 3579, and 3661 and photocopy machines, a subcategory of Standard Industrial Classification code 3861.

(E) Clear coating--A coating that lacks color and opacity or is transparent and that uses the undercoat as a reflectant base or undertone color.

(F) Coating of plastic parts of automobiles and trucks--The coating of any plastic part that is or will be assembled with other parts to form an automobile or truck.

(G) Coating of business machine plastic parts--The coating of any plastic part that is or will be assembled with other parts to form a business machine.

(H) Electrostatic prep coat--A coating that is applied to a plastic part solely to provide conductivity for the subsequent application of a prime, a topcoat, or other coating through the use of electrostatic application methods. An electrostatic prep coat is clearly identified as an electrostatic prep coat on its accompanying material safety data sheet.

(I) Flexible coating--A coating that is required to comply with engineering specifications for impact resistance, mandrel bend, or elongation as defined by the original equipment manufacturer.

(J) Fog coat--A coating that is applied to a plastic part for the purpose of color matching without masking a molded-in texture.

A fog coat may not be applied at a thickness of more than 0.5 mil of coating solids.

(K) Gloss reducer--A coating that is applied to a plastic part solely to reduce the shine of the part. A gloss reducer may not be applied at a thickness of more than 0.5 mil of coating solids.

(L) Red coating--A coating that meets all of the following criteria:

(i) yellow limit: the hue of hostaperm scarlet;

(ii) blue limit: the hue of monastral red-violet;

(iii) lightness limit for metallics: 35% aluminum flake;

(iv) lightness limit for solids: 50% titanium dioxide white;

(v) solid reds: hue angle of -11 to 38 degrees and maximum lightness of 23 to 45 units; and

(vi) metallic reds: hue angle of -16 to 35 degrees and maximum lightness of 28 to 45 units. These criteria are based on Cielab color space, 0/45 geometry. For spherical geometry, specular included, the upper limit is 49 units. The maximum lightness varies as the hue moves from violet to orange. This is a natural consequence of the strength of the colorants, and real colors show this effect.

(M) Resist coat--A coating that is applied to a plastic part before metallic plating to prevent deposits of metal on portions of the plastic part.

(N) Stencil coat--A coating that is applied over a stencil to a plastic part at a thickness of 1.0 mil or less of coating solids. Stencil coats are most frequently letters, numbers, or decorative designs.

(O) Texture coat--A coating that is applied to a plastic part which, in its finished form, consists of discrete raised spots of the coating.

(P) Vacuum-metalizing coatings--Topcoats and basecoats that are used in the vacuum-metalizing process.

(3) Industrial maintenance coating--A high performance maintenance coating, including primers, sealers, undercoaters, intermediate coats, and topcoats, that is not applied to items meeting the definition for miscellaneous metal parts and products in §115.450(c)(6)(Q) of this section, and is formulated for application to stationary source substrates, including floors, exposed to one or more of the following extreme environmental conditions.

(A) Immersion in water, wastewater, or chemical solutions (aqueous and non-aqueous solutions), or chronic exposures of interior surfaces to moisture condensation; or

(B) Acute or chronic exposure to corrosive, caustic, or acidic agents, or to chemicals, chemical fumes, or chemical mixtures or solutions; or

(C) Frequent exposure to temperatures above 121°C (250°F); or

(D) Frequent heavy abrasion, including mechanical wear and frequent scrubbing with industrial solvents, cleansers, or scouring agents; or

(E) Exterior exposure of metal structures and structural components.

(4) Large appliance coating--The coating of doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other large appliances.

(A) Extreme high-gloss coating--A coating which, when tested by the American Society for Testing Material Test Method D523 adopted in 1980, shows a reflectance of 75% or more on a 60 degree meter.

(B) Extreme performance coating--A coating used on a metal surface where the coated surface is, in its intended use, subject to:

(i) chronic exposure to corrosive, caustic or acidic agents, chemicals, chemical fumes, chemical mixtures, or solutions;

(ii) repeated exposure to temperatures in excess of 250 degrees Fahrenheit (121 degrees Celsius);

(iii) repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial grade solvents, cleansers, or scouring agents; or

(iv) exposure to extreme environmental conditions, such as continuous outdoor exposure.

(C) Heat-resistant coating--A coating that must withstand a temperature of at least 400 degrees Fahrenheit (204 degrees Celsius) during normal use.

(D) Metallic coating--A coating that contains more than 0.042 pounds of metal particles per gallon of coating as applied. Metal particles are pieces of a pure elemental metal or a combination of elemental metals.

(E) Pretreatment coating--A coating that contains no more than 12% solids by weight and at least 0.50% acid by weight; is used to provide surface etching; and is applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.

(F) Solar-absorbent coating--A coating that has as its prime purpose the absorption of solar radiation.

(5) Metal furniture coating--The coating of metal furniture including, but not limited to, tables, chairs, wastebaskets, beds, desks, lockers, benches, shelves, file cabinets, lamps, and other metal furniture products or the coating of any metal part that will be a part of a nonmetal furniture product.

(A) Extreme high-gloss coating--A coating which, when tested by the American Society for Testing Material Test Method D523 adopted in 1980, shows a reflectance of 75% or more on a 60 degree meter.

(B) Extreme performance coating--A coating used on a metal surface where the coated surface is, in its intended use, subject to:

(i) chronic exposure to corrosive, caustic or acidic agents, chemicals, chemical fumes, chemical mixtures, or solutions;

(ii) repeated exposure to temperatures in excess of 250 degrees Fahrenheit (121 degrees Celsius);

(iii) repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial grade solvents, cleansers, or scouring agents; or

(iv) exposure to extreme environmental conditions, such as continuous outdoor exposure.

(C) Heat-resistant coating--A coating that must withstand a temperature of at least 400 degrees Fahrenheit (204 degrees Celsius) during normal use.

(D) Metallic coating--A coating containing more than 5.0 grams of metal particles per liter of coating as applied. Metal particles are pieces of a pure elemental metal or a combination of elemental metals.

(E) Pretreatment coating--A coating that contains no more than 12% solids by weight and at least 0.50% acid by weight; is used to provide surface etching; and is applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.

(F) Solar-absorbent coating--A coating that has as its primary purpose the absorption of solar radiation.

(6) Miscellaneous metal and plastic parts--The following definitions apply to this surface coating category.

(A) Camouflage coating--A coating used, principally by the military, to conceal equipment from detection.

(B) Clear coat--A coating that lacks opacity or is transparent and may or may not have an undercoat that is used as a reflectant base or undertone color.

(C) Drum (metal)--Any cylindrical metal shipping container with a capacity equal to or greater than 12 gallons but equal to or less than 110 gallons.

(D) Electric-dissipating coating--A coating that rapidly dissipates a high-voltage electric charge.

(E) Electric-insulting varnish--A non-convertible-type coating applied to electric motors, components of electric motors, or power transformers, to provide electrical, mechanical, and environmental protection or resistance.

(F) EMI/RFI shielding--A coating used on electrical or electronic equipment to provide shielding against electromagnetic interference (EMI), radio frequency interference (RFI), or static discharge.

(G) Etching filler--A coating that contains less than 23% solids by weight and at least 0.50% acid by weight and is used instead of applying a pretreatment coating followed by a primer.

(H) Extreme high-gloss coating--A coating which, when tested by the American Society for Testing and Materials Test Method D523 adopted in 1980, shows a reflectance of 75% or more on a 60 degree meter.

(I) Extreme performance coating--A coating used on a metal or plastic surface where the coated surface is, in its intended use, subject to one of the following conditions. Extreme performance coatings include, but are not limited to, coatings applied to locomotives, railroad cars, farm machinery, marine shipping containers, downhole drilling equipment, and heavy-duty trucks:

(i) chronic exposure to corrosive, caustic or acidic agents, chemicals, chemical fumes, chemical mixtures, or solutions;

(ii) repeated exposure to temperatures in excess of 250 degrees Fahrenheit (121 degrees Celsius);

(iii) repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial grade solvents, cleansers, or scouring agents; or

(iv) exposure to extreme environmental conditions, such as continuous outdoor exposure.

(J) Heat-resistant coating--A coating that must withstand a temperature of at least 400 degrees Fahrenheit (204 degrees Celsius) during normal use.

(K) High performance architectural coating--A coating used to protect architectural subsections and meets the requirements of the American Architectural Manufacturers Association's publication number AAMA 2604-05 (Voluntary Specification, Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels) or 2605-05 (Voluntary Specification, Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels).

(L) High temperature coating--A coating that is certified to withstand a temperature of 1000 degrees Fahrenheit (538 degrees Celsius) for 24 hours.

(M) Mask coating--A thin film coating applied through a template to coat a small portion of a substrate.

(N) Metallic coating--A coating containing more than 5.0 grams of metal particles per liter of coating as applied. Metal particles are pieces of a pure elemental metal or a combination of elemental metals.

(O) Military specification coating--A coating that has a formulation approved by a United States Military Agency for use on military equipment.

(P) Mold-seal coating--The initial coating applied to a new mold or a repaired mold to provide a smooth surface that when coated with a mold release coating, prevents products from sticking to the mold.

(Q) Miscellaneous metal parts and products--Parts and products considered miscellaneous metal parts and products include:

(i) large farm machinery (harvesting, fertilizing, and planting machines, tractors, combines, etc.);

(ii) small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);

(iii) small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.);

(iv) commercial machinery (computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);

(v) industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);

(vi) fabricated metal products (metal-covered doors, frames, etc.); and

(vii) any other category of coated metal products, including, but not limited to, those that are included in the Standard Industrial Classification Code major group 33 (primary metal industries), major group 34 (fabricated metal products), major group 35 (nonelectrical machinery), major group 36 (electrical machinery), major group 37 (transportation equipment), major group 38 (miscellaneous instruments), and major group 39 (miscellaneous manufacturing industries). Excluded are those surface coating processes specified in §115.420(c)(1) - (8) and (10) - (16) of this title (relating to Surface Coating Definitions) and paragraphs (1) - (4) and (6) - (8) of this subsection.

(R) Miscellaneous plastic parts and products--Parts and products considered miscellaneous plastic parts and products include, but are not limited to:

(i) molded plastic parts;

(ii) small and large farm machinery;

(iii) commercial and industrial machinery and equipment;

(iv) interior or exterior automotive parts;

(v) construction equipment;

(vi) motor vehicle accessories;

(vii) bicycles and sporting goods;

(viii) toys;

(ix) recreational vehicles;

(x) lawn and garden equipment;

(xi) laboratory and medical equipment;

(xii) electronic equipment; and

(xiii) other industrial and household products. Excluded are those surface coating processes specified in §115.420(c)(1) - (16) of this title and paragraphs (1) - (4) and (6) - (8) of this subsection.

(S) Multi-colored coating--A coating that exhibits more than one color when applied, is packaged in a single container, and applied in a single coat.

(T) Off-site job shop--A non-manufacturer of metal or plastic parts and products that applies coatings to such products at a site under contract with one or more parties that operate under separate ownership and control.

(U) Optical coating--A coating applied to an optical lens.

(V) Pail (metal)--Any cylindrical metal shipping container with a capacity equal to or greater than 1 gallon but less than 12 gallons and constructed of 29 gauge or heavier material.

(W) Pan-backing coating--A coating applied to the surface of pots, pans, or other cooking implements that are exposed directly to a flame or other heating elements.

(X) Prefabricated architectural component coating--A coating applied to metal parts and products that are to be used as an architectural structure.

(Y) Pretreatment coating--A coating that contains no more than 12% solids by weight and at least 0.50% acid by weight; is used to provide surface etching; and is applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.

(Z) Repair coating--A coating used to re-coat portions of a previously coated product that has sustained mechanical damage to the coating following normal surface coating processes.

(AA) Safety-indicating coating--A coating that changes physical characteristics, such as color, to indicate unsafe conditions.

(BB) Shock-free coating--A coating applied to electrical components to protect the user from electric shock. The coating has characteristics of being low-capacitance and high-resistance and having resistance to breaking down under high voltage.

(CC) Silicone-release coating--A coating that contains silicone resin and is intended to prevent food from sticking to metal surfaces such as baking pans.

(DD) Solar-absorbent coating--A coating that has as its primary purpose the absorption of solar radiation.

(EE) Stencil coating--A pigmented coating or ink that is rolled or brushed onto a template or stamp in order to add identifying letters, symbols, or numbers.

(FF) Touch-up coating--A coating used to cover minor coating imperfections appearing after the main surface coating process.

(GG) Translucent coating--A coating that contains binders and pigment and formulated to form a colored, but not opaque, film.

(HH) Vacuum-metalizing coating--The undercoat applied to the substrate on which the metal is deposited or the overcoat applied directly to the metal film. Vacuum metalizing or physical vapor deposition is the process whereby metal is vaporized and deposited on a substrate in a vacuum chamber.

(7) Motor vehicle materials--The following definitions apply to this surface coating category.

(A) Motor vehicle bedliner--A multi-component coating used in a process that is not an automobile or light-duty truck manufacturing coating process and is applied to a cargo bed after the application of topcoat to provide additional durability and chip resistance.

(B) Motor vehicle cavity wax--A coating used in a process that is not an automobile or light-duty truck manufacturing coating process and is applied into the cavities of the vehicle primarily for the purpose of enhancing corrosion protection.

(C) Motor vehicle deadener--A coating used in a process that is not an automobile or light-duty truck manufacturing coating process and is applied to selected vehicle surfaces primarily for the purpose of reducing the sound of road noise in the passenger compartment.

(D) Motor vehicle gasket/sealing material--A fluid used in a process that is not an automobile or light-duty truck manufacturing coating process and is applied to coat a gasket or replace and perform the same function as a gasket. Automobile and light-duty truck gasket/gasket sealing material includes room temperature vulcanization seal material.

(E) Motor vehicle lubricating wax/compound--A protective lubricating material used in a process that is not an automobile or light-duty truck manufacturing coating process and is applied to vehicle hubs and hinges.

(F) Motor vehicle sealer--A high viscosity material used in a process that is not an automobile or light-duty truck manufacturing coating process and is generally, but not always, applied in the paint shop after the body has received an electrodeposition primer coating and before the application of subsequent coatings (e.g., primer-surfacer). The primary purpose of motor vehicle sealer is to fill body joints completely so that there is no intrusion of water, gases, or corrosive materials into the passenger area of the body compartment. Such materials are also referred to as sealant, sealant primer, or caulk.

(G) Motor vehicle trunk interior coating--A coating used in a process that is not an automobile or light-duty truck manufacturing coating process and is applied to the trunk interior to provide chip protection.

(H) Motor vehicle underbody coating--A coating used in a process that is not an automobile or light-duty truck manufacturing coating process and is applied to the undercarriage or firewall to prevent corrosion or provide chip protection.

(8) Paper, film, and foil coating--The coating of paper and pressure-sensitive tapes (regardless of substrate and including paper, fabric, and plastic film), related web coating processes on plastic film (including typewriter ribbons, photographic film, and magnetic tape), metal foil (including decorative, gift wrap, and packaging), industrial

and decorative laminates, abrasive products (including fabric coated for use in abrasive products), and flexible packaging.

(A) Paper, film, and foil coating includes the application of a continuous layer of a coating material across the entire width or any portion of the width of a paper, film, or foil web substrate to:

(i) provide a covering, finish, or functional or protective layer to the substrate;

(ii) saturate the substrate for lamination; or

(iii) provide adhesion between two substrates for lamination.

(B) Paper, film, and foil coating excludes coating performed on or in-line with any offset lithographic, screen, letterpress, flexographic, rotogravure, or digital printing press; or size presses and on-machine coaters that function as part of an in-line papermaking system.

(9) Pleasure craft--Any marine or fresh-water vessel used by individuals for noncommercial, nonmilitary, and recreational purposes that is less than 65.6 feet in length. A vessel rented exclusively to, or chartered for, individuals for such purposes is considered a pleasure craft.

(A) Antifoulant coating--A coating applied to the underwater portion of a pleasure craft to prevent or reduce the attachment of biological organisms, and registered with the United States Environmental Protection Agency as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (7 United States Code, §136).

(B) Antifoulant sealer/tie coating--A coating applied over an antifoulant coating to prevent the release of biocides into the environment or to promote adhesion between an antifoulant coating and a primer or other antifoulants.

(C) Extreme-90 high-gloss coating--A coating that achieves at least 90% reflectance on a 60 degree meter when tested by American Society for Testing and Materials Method D523 [~~D523-89~~].

(D) Finish primer-surfacer--A coating applied with a wet film thickness less than 10 mils prior to the application of a topcoat for purposes of providing corrosion resistance, adhesion of subsequent coatings, a moisture barrier, or promotion of a uniform surface necessary for filling in surface imperfections.

(E) High-build primer-surfacer--A coating applied with a wet film thickness of 10 mils or more prior to the application of a topcoat for purposes of providing corrosion resistance, adhesion of subsequent coatings, or a moisture barrier, or promoting a uniform surface necessary for filling in surface imperfections.

(F) High-gloss coating--A coating that achieves at least 85% reflectance on a 60 degree meter when tested by American Society for Testing and Materials Test Method D523 [~~D523-89~~].

(G) Pleasure craft coating--A marine coating, except unsaturated polyester resin (fiberglass) coatings, applied by brush, spray, roller, or other means to a pleasure craft.

(H) Pretreatment wash primer--A coating that contains no more than 25% solids by weight and at least 0.10% acids by weight; used to provide surface etching; and applied directly to fiberglass and metal surfaces to provide corrosion resistance and adhesion of subsequent coatings.

(I) Repair coating--A coating used to re-coat portions of a previously coated product that has sustained mechanical damage to the coating following normal surface coating processes.

(J) Topcoat--A final coating applied to the interior or exterior of a pleasure craft.

(K) Touch-up coating--A coating used to cover minor coating imperfections appearing after the main surface coating process.

(10) Traffic marking coating--A coating labeled and formulated for marking and striping streets, highways, or other traffic surfaces including, but not limited to, curbs, berms, driveways, parking lots, sidewalks, and airport runways.

(11) Architectural Coatings--Any coatings applied to stationary structures or their appurtenances, or to fields and lawns.

(A) Aluminum Roof Coatings--Roof coatings containing at least 0.7 pounds per gallon (84 grams per liter) of coating as applied, of elemental aluminum pigment.

(B) Appurtenance--Accessories to a stationary structure including, but not limited to: hand railings, cabinets, bathroom and kitchen fixtures, fences, rain-gutters and down-spouts, window screens, lamp-posts, heating and air conditioning equipment, other mechanical equipment, large fixed stationary tools, signs, motion picture and television production sets, and concrete forms.

(C) Below Ground Wood Preservatives--Wood preservatives formulated to protect below-ground wood.

(D) Bituminous Coating Materials--Black or brownish coating materials, soluble in carbon disulfide, consisting mainly of hydrocarbons and which are obtained from natural deposits, or as residues from the distillation of crude petroleum oils, or of low grades of coal.

(E) Bituminous Roof Primers--Primers formulated for or applied to roofing that incorporate bituminous coating materials.

(F) Bond Breakers--Coatings formulated for or applied between layers of concrete to prevent the freshly poured top layer of concrete from bonding to the substrate over which it is poured.

(G) Building Envelope--The ensemble of exterior and demising partitions of a building that enclose conditioned space.

(H) Building Envelope Coatings--Fluid applied coatings applied to the building envelope to provide a continuous barrier to air or vapor leakage through the building envelope that separates conditioned from unconditioned spaces. Building Envelope Coatings are applied to diverse materials including, but not limited to, concrete masonry units (CMU), oriented stranded board (OSB), gypsum board, and wood substrates and must meet the following performance criteria:

(i) Air Barriers formulated to have an air permeance not exceeding 0.004 cubic feet per minute (cfm) per square foot (ft^2) under a pressure differential of 1.57 pounds per square foot (0.004 cfm/ft^2 at 1.57 psf), (0.02 liters per square meter per second under a pressure differential of 75 Pascals (Pa) (0.02 liter per second per square meter at 75 Pa) when tested in accordance with ASTM E2178; and/or

(ii) Water Resistive Barriers formulated to resist liquid water that has penetrated a cladding system from further intruding into the exterior wall assembly and is classified as follows:

(I) Passes water resistance testing according to ASTM E331, and

(II) Water vapor permeance is classified in accordance with ASTM E96/E96M.

(I) Colorant--Solutions of dyes or suspensions of pigments.

(J) Concrete-Curing Compounds--coatings labeled and formulated for application to freshly poured concrete to retard the evap-

oration of water, harden the surface of freshly poured concrete, or dustproof the surface of freshly poured concrete.

(K) Concrete Surface Retarders--Coatings containing one or more ingredients such as extender pigments, primary pigments, resins, and solvents that interact chemically with the cement to prevent hardening on the surface where the retarder is applied, allowing the mix of cement and sand at the surface to be washed away to create an exposed aggregate finish.

(L) Default Coatings--Specialty coatings (those other than flat or nonflat coatings) that are not defined in §115.450(c)(11) of this title as any other coating category.

(M) Driveway Sealers--Coatings that are applied to worn asphalt driveway surfaces in order to:

(i) Fill cracks;

(ii) Seal the surface to provide protection; or

(iii) Restore or preserve the surface appearance.

(N) Dry-Fog Coatings--Coatings which are formulated only for spray application so that when sprayed, overspray droplets dry before falling on floors and other surfaces.

(O) Faux Finishing Coatings--Coatings that meet one or more of the following subcategories:

(i) Clear Topcoats--Clear coatings used to enhance, seal, and protect a faux finishing coating that meets the requirements of §115.450(c)(11)(K)(ii), (iii), (iv) or (v) of this title. These clear topcoats must be sold and used solely as part of a faux finishing or graphic arts coating system.

(ii) Decorative Coatings--Coatings used to create a gonioapparent appearance, such as metallic, iridescent, or pearlescent appearance, that contain at least 48 grams of pearlescent mica pigment or other iridescent pigment per liter of coating as applied (at least 0.4 pounds per gallon).

(iii) Glazes--Coatings formulated and recommended to be used (or to be mixed with another coating) for:

(I) Wet-in-wet techniques, where a wet coating is applied over another wet coating to create artistic effects, including simulated marble or wood grain, or

(II) Wet-in-dry techniques, where a wet coating is applied over a pre-painted or a specially prepared substrate or base coat and is either applied or is treated during the drying period with various tools, such as a brush, rag, comb, or sponge to create artistic effects such as dirt, old age, smoke damage, simulated marble and wood grain finishes, decorative patterns, or color blending.

(iv) Japans--Pure concentrated pigments, finely ground in a slow drying vehicle used by motion picture and television production studios to create artistic effects including, but not limited to, dirt, old age, smoke damage, water damage, simulated marble, and wood grain.

(v) Trowel Applied Coatings--Coatings exclusively applied by trowel that are used to create aesthetic effects including, but not limited to, polished plaster, clay, suede and dimensional, tactile textures.

(P) Fire-Resistive Coatings--Opaque coatings formulated to protect the structural integrity of steel and other construction materials and listed by UL Solutions for the fire protection of steel.

(Q) Flat Coatings--Coatings that register a gloss of less than 15 on an 85-degree meter or less than five on a 60-degree meter according to ASTM Test method D523.

(R) Form Release Compounds--Coatings designed for or applied to a concrete form to prevent the freshly poured concrete from bonding to the form. The form may consist of metal, wood, or some material other than concrete.

(S) Gonioapparent--Change in appearance with a change in the angle of illumination or the angle of view, as defined according to ASTM E284.

(T) Graphic Arts Coatings (Sign Paints)--Coatings formulated for hand-application by artists using brush or roller techniques to indoor and outdoor signs (excluding structural components) and murals, including lettering enamels, poster colors, copy blockers, and bulletin enamels.

(U) Interior Stains--Stains labeled and formulated exclusively for use on interior surfaces.

(V) Lacquers--Clear or pigmented wood topcoats or clear lacquer sanding sealers, both formulated with nitrocellulose or synthetic resins to dry by evaporation without chemical reaction.

(W) Low-Solids Coatings--Coatings containing one pound or less of solids per gallon of material.

(X) Magnesite Cement Coatings--Coatings formulated for or applied to magnesite cement decking to protect the magnesite cement substrate from erosion by water.

(Y) Mastic Coating--Coatings formulated to cover holes and minor cracks and to conceal surface irregularities, excluding roof coatings, and applied in a thickness of at least 10 mils (dry, single coat).

(Z) Metallic Pigmented Coatings--Are decorative coatings, excluding industrial maintenance and roof coatings, containing at least 0.4 pounds per gallon (48 grams/liter) of coating, as applied, of elemental metallic pigment (excluding zinc).

(AA) Multi-Color Coatings--Coatings which exhibit more than one color when applied, are packaged in a single container and applied in a single coat.

(BB) Nonflat Coatings--Coatings that register a gloss of five or greater on a 60 degree meter and a gloss of 15 or greater on an 85 degree meter according to ASTM Test Method D523.

(CC) Pearlescent--Exhibiting various colors depending on the angles of illumination and viewing, as observed in mother-of-pearl.

(DD) Pigmented--Containing colorant or dry coloring matter, such as an insoluble powder, to impart color to a substrate.

(EE) Post-Consumer Coatings--Finished coatings that would have been disposed of in a landfill, having completed their usefulness to a consumer, and does not include manufacturing wastes.

(FF) Pre-Treatment Wash Primers--Coatings which contain a minimum of 0.5% acid, by weight, applied directly to bare metal surfaces to provide necessary surface etching.

(GG) Primers--Coatings applied to a surface to provide a firm bond between the substrate and subsequent coats.

(HH) Reactive Penetrating Sealers--Clear or pigmented coatings labeled and formulated for application to above-grade concrete and masonry substrates to provide protection from water and waterborne contaminants including, but not limited to, alkalis, acids, and

salts. Reactive Penetrating Sealers must meet all of the following criteria:

(i) Used only for reinforced concrete bridge structures for transportation projects within five miles of the coast or for restoration and/or preservation projects on registered historical buildings that are under the purview of a restoration architect.

(ii) Penetrate into concrete and masonry substrates and chemically react to form covalent bonds with naturally occurring minerals in the substrate.

(iii) Line the pores of concrete and masonry substrates with a hydrophobic coating, but do not form a surface film.

(iv) Improve water repellency at least 80% after application on a concrete or masonry substrate. This performance must be verified on standardized test specimens, in accordance with one or more of the following standards: ASTM C67, or ASTM C97/C97M, or ASTM C140.

(v) Provide a breathable waterproof barrier for concrete or masonry surfaces that does not prevent or substantially retard water vapor transmission. This performance must be verified on standardized test specimens, in accordance with ASTM E96/E96M or ASTM D6490.

(vi) Meet the performance criteria listed in the National Cooperative Highway Research Report 244 (1981), surface chloride screening applications, for products labeled and formulated for vehicular traffic.

(II) Recycled Coatings--Coatings manufactured by a certified recycled paint manufacturer and formulated such that 50% or more of the total weight consists of secondary and post-consumer coatings and 10% or more of the total weight consists of post-consumer coatings.

(JJ) Restoration Architect--An architect that has a valid certificate of registration as an architect issued by the California State Board of Architectural Examiners or the National Council of Architectural Registration Boards and working on registered historical restoration and/or preservation projects.

(KK) Roof Coatings--Coatings formulated for application to exterior roofs for the primary purpose of preventing penetration of the substrate by water or reflecting heat and ultraviolet radiation.

(LL) Rust Preventative Coatings--Coatings formulated for use in preventing the corrosion of metal surfaces in residential and commercial situations.

(MM) Sacrificial Anti-Graffiti Coatings--Non-binding, clear coatings which are formulated and recommended for applications that allow for the removal of graffiti primarily by power washing.

(NN) Sanding Sealers--Clear wood coatings formulated for or applied to bare wood for sanding and to seal the wood for subsequent application(s) of coatings.

(OO) Sealers--Coatings applied to either block materials from penetrating into or leaching out of a substrate, to prevent subsequent coatings from being absorbed by the substrate, or to prevent harm to subsequent coatings by materials in the substrate.

(PP) Shellacs--Clear or pigmented coatings formulated solely with the resinous secretions of the lac insect (*laccifer lacca*). Shellacs are formulated to dry by evaporation without a chemical reaction providing a quick-drying, solid, protective film for priming and sealing stains and odors; and for wood finishing excluding floors.

(QQ) Specialty Primers--Coatings formulated for or applied to a substrate to seal fire, smoke or water damage, or to condition excessively chalky surfaces. An excessively chalky surface is one that is defined as having chalk rating of four or less as determined by ASTM D4214- Photographic Reference Standard No. 1 or the Federation of Societies for Coatings Technology "Pictorial Standards for Coatings Defects."

(RR) Stains--Opaque or semi-transparent coatings which are formulated to change the color but not conceal the grain pattern or texture.

(SS) Stationary Structures--include, but are not limited to, homes, office buildings, factories, mobile homes, pavements, curbs, roadways, racetracks, and bridges.

(TT) Stone Consolidants--Coatings that are labeled and formulated for application to stone substrates to repair historical structures that have been damaged by weathering or other decay mechanisms. Stone Consolidants must meet all of the following criteria:

(i) Used only for restoration and/or preservation projects on registered historical buildings that are under the purview of a restoration architect.

(ii) Penetrate into stone substrates to create bonds between particles and consolidate deteriorated material.

(iii) Specified and used in accordance with ASTM E2167.

(UU) Swimming Pool Coatings--Coatings specifically formulated for or applied to the interior of swimming pools including, but not limited to, water park attractions, ponds and fountains, to resist swimming pool chemicals.

(VV) Tile and Stone Sealers--Clear or pigmented sealers that are used for sealing tile, stone, or grout to provide resistance against water, alkalis, acids, ultraviolet light, or staining and which meet one of the following subcategories:

(i) Penetrating sealers are polymer solutions that cross-link in the substrate and must meet all of the following criteria:

(I) A fine particle structure to penetrate dense tile such as porcelain with absorption as low as 0.10% per ASTM C373, ASTM C97/C97M, or ASTM C642,

(II) Retain or increase static coefficient of friction per ANSI A137.1,

(III) Not create a topical surface film on the tile or stone, and

(IV) Allow vapor transmission per ASTM E96/96M.

(ii) Film forming sealers which leave a protective film on the surface.

(WW) Topcoat--Any final coating, applied in one or more coats, to the interior or exterior of a stationary structure or their appurtenances.

(XX) Tub and Tile Refinishing Coatings--Clear or opaque coatings that are used exclusively for refinishing the surface of a bathtub, shower, or sink and must meet all of the following criteria:

(i) Have a scratch hardness of 3H or harder and a gouge hardness of 4H or harder as determined on bonderite 1000 in accordance with ASTM D3363,

(ii) Have a weight loss of 20 milligrams or less after 1000 cycles as determined with CS-17 wheels on bonderite 1000 in accordance with ASTM D4060,

(iii) Must withstand 1,000 hours or more of exposure with few or no #8 blisters as determined on unscribed bonderite in accordance with ASTM D4585, and ASTM D714, and

(iv) Must have an adhesion rating of 4B or better after 24 hours of recovery as determined on unscribed bonderite in accordance with ASTM D4585 and ASTM D3359.

(YY) Undercoaters--Coatings formulated for or applied to substrates to provide a smooth surface for subsequent coats.

(ZZ) Varnishes--Clear or pigmented wood topcoats formulated with various resins to dry by chemical reaction.

(AAA) Waterproofing Sealers--Coatings which are formulated for the primary purpose of preventing penetration of porous substrates by water.

(BBB) Waterproofing Concrete/Masonry Sealers--Clear or pigmented sealers that are formulated for sealing concrete and masonry to provide resistance against water, alkalis, acids, ultraviolet light, or staining.

(CCC) Wood Coatings--Film forming coatings used for application to wood substrates only, which are applied to substrates including floors, decks, and porches. The Wood Coating category includes all lacquers, varnishes, and sanding sealers, regardless of whether they are clear, semi-transparent, or opaque.

(DDD) Wood Coatings, Other--The Wood Coating, Other category excludes all lacquers, varnishes, sanding sealers, wood coatings, and wood preservatives.

(EEE) Wood Conditioners--Coatings that are formulated for or applied to bare wood, prior to applying a stain, to provide uniform penetration of the stain.

(FFF) Wood Preservatives--Coatings formulated to protect wood from decay or insect attack by the addition of a wood preservative chemical registered by the United States Environmental Protection Agency.

§115.451. Exemptions.

(a) The volatile organic compounds (VOC) from coatings and solvents used in surface coating processes and associated cleaning operations not addressed by the surface coating categories in §115.421(3) - (7), (9), (10), and (13) - (16) of this title (relating to Emission Specifications) or §115.453 of this title (relating to Control Requirements) are excluded from the VOC emission calculations for the purposes of paragraphs (1) - (3) of this subsection. For example, architectural coatings applied in the field to stationary structures and their appurtenances, portable buildings, pavements, or curbs at a property would not be included in the calculations, except as specified in paragraphs (4) [~~and~~], (5), and (6) of this subsection.

(1) All surface coating processes on a property that, when uncontrolled, will emit a combined weight of VOC of less than 3.0 pounds per hour and 15 pounds in any consecutive 24-hour period are exempt from all of the requirements in §115.453 of this title except §115.453(f) - (i) of this title.

(2) Surface coating processes on a property that, when uncontrolled, will emit a combined weight of VOC of less than 100 pounds in any consecutive 24-hour period are exempt from §115.453(a) of this title if documentation is provided to and approved by both the executive director and the United States Environmental Protection Agency to demonstrate that necessary coating performance criteria cannot be achieved with coatings that satisfy applicable VOC limits and that control equipment is not technologically or economically feasible.

(3) Surface coating processes on a property where total coating and solvent usage does not exceed 150 gallons in any consecutive 12-month period are exempt from the VOC limits in §115.453(a) of this title.

(4) As of the applicable compliance date in §115.459(e) or (g) of this title, if the commission has published notice for the Dallas-Fort Worth and/or Houston-Galveston-Brazoria area in the *Texas Register,* as provided in §115.459(e) or (g) of this title, to require compliance for the applicable area with the industrial maintenance coatings contingency measure control requirements of §115.453(f) or (g) of this title, respectively, the exemptions in paragraphs (1) through (3) of this subsection no longer apply to industrial maintenance coatings. The owner or operator of a site may continue to exclude industrial maintenance coatings from the criteria in paragraphs (1) through (3) of this subsection for the purposes of determining applicability of this division for the purposes of coatings other than industrial maintenance coatings.

(5) As of the applicable compliance date in §115.459(f) or (h) of this title, if the commission has published notice for the Dallas-Fort Worth and/or Houston-Galveston-Brazoria area in the *Texas Register,* as provided in §115.459(f) or (h) of this title, to require compliance for the applicable area with the traffic marking coatings contingency measure control requirements of §115.453(h) or (i) of this title, respectively, the exemptions in paragraphs (1) through (3) of this subsection no longer apply to traffic marking coatings. The owner or operator of a site may continue to exclude traffic marking coatings from the criteria in paragraphs (1) through (3) of this subsection for the purposes of determining applicability of this division for the purposes of coatings other than traffic marking coatings.

(6) Beginning March 1, 2026, the exemptions in paragraphs (1) through (3) of this subsection no longer apply to industrial maintenance coatings, metal parts and products coatings, or architecture coatings in the Bexar County area. The owner or operator of a site may continue to exclude industrial maintenance coatings, metal parts and products coatings, and architectural coatings from the criteria in paragraphs (1) through (3) of this subsection to determine applicability of this division for the purposes of coatings other than industrial maintenance coatings, metal parts and products coatings, and architectural coatings.

(b) The following surface coating processes are exempt from the VOC limits for miscellaneous metal and plastic parts coatings in §115.453(a)(1)(C) - (F) of this title and motor vehicle materials in §115.453(a)(2) of this title:

(1) large appliance surface coating;

(2) metal furniture surface coating;

(3) automobile and light-duty truck assembly surface coating; and

(4) surface coating processes specified in §115.420(a)(1) - (9) and (11) - (16) of this title (relating to Applicability and Definitions).

(c) Paper, film, and foil surface coating processes are exempt from the coating application system requirements in §115.453(c) of this title and the coating use work practice requirements in §115.453(d)(1) of this title.

(d) Automobile and light-duty truck assembly surface coating processes are exempt from the coating application system requirements in §115.453(c) of this title and the cleaning-related work practice requirements in §115.453(d)(2) of this title.

(e) Automobile and light-duty truck assembly surface coating materials supplied in containers with a net volume of 16 ounces or less, or a net weight of 1.0 pound or less, are exempt from the VOC limits in Table 2 in §115.453(a)(3) of this title.

(f) The following miscellaneous metal part and product surface coatings and surface coating processes are exempt from the coating application system requirements in §115.453(c) of this title:

(1) touch-up coatings, repair coatings, and textured finishes;

(2) stencil coatings;

(3) safety-indicating coatings;

(4) solid-film lubricants;

(5) electric-insulating and thermal-conducting coatings;

(6) magnetic data storage disk coatings; and

(7) plastic extruded onto metal parts to form a coating.

(g) All miscellaneous plastic part airbrush surface coatings and surface coating processes where total coating usage is less than 5.0 gallons per year are exempt from the coating application system requirements in §115.453(c) of this title.

(h) The application of extreme high-gloss coatings to pleasure craft is exempt from the coating application system requirements in §115.453(c) of this title.

(i) The following miscellaneous plastic parts surface coatings and surface coating processes are exempt from the coating VOC limits in §115.453(a)(1)(D) of this title:

(1) touch-up and repair coatings;

(2) stencil coatings applied on clear or transparent substrates;

(3) clear or translucent coatings;

(4) any individual coating type used in volumes less than 50 gallons in any one year, if substitute compliant coatings are not available, provided that the total usage of all such coatings does not exceed 200 gallons per year, per property;

(5) reflective coating applied to highway cones;

(6) mask coatings that are less than 0.5 mil thick dried and the area coated is less than 25 square inches;

(7) electromagnetic interference/radio frequency interference (EMI/RFI) shielding coatings; and

(8) heparin-benzalkonium chloride-containing coatings applied to medical devices, if the total usage of all such coatings does not exceed 100 gallons per year, per property.

(j) The following automotive/transportation and business machine plastic part surface coatings and surface coating processes are exempt from the VOC limits in §115.453(a)(1)(E) of this title:

(1) texture coatings;

(2) vacuum-metalizing coatings;

(3) gloss reducers;

(4) texture topcoats;

(5) adhesion primers;

(6) electrostatic preparation coatings;

(7) resist coatings; and

(8) stencil coatings.

(k) Powder coatings and ultraviolet curable coatings applied during metal and plastic parts surface coating processes specified in §115.453(a)(1)(C) - (F) and (2) of this title are exempt from the requirements in this division, except as specified in §115.458(b)(5) of this title (relating to Monitoring and Recordkeeping Requirements).

(l) Aerosol coatings (spray paint) are exempt from the requirements in this division, except for §115.453(f) - (i) of this title.

(m) Coatings applied to test panels and coupons as part of research and development, quality control, or performance testing activities at paint research or manufacturing facilities are exempt from the requirements in this division.

(n) Pleasure craft touch-up and repair coatings supplied in containers less than or equal to 1.0 quart, are exempt from the VOC limits in §115.453(a)(1)(F) of this title provided that the total usage of all such coatings does not exceed 50 gallons per calendar year per property.

(o) Pleasure craft surface coating processes are exempt from the VOC limits in §115.453(a)(1)(C) and (D) of this title.

(p) Adhesives applied to miscellaneous metal and plastic parts listed in §115.453(a)(1)(C) - (F) and (2) of this title that meet a specific adhesive or adhesive primer application process definition in §115.470 of this title (relating to Applicability and Definitions) and are listed in Table 2 of §115.473(a) of this title (relating to Control Requirements) are not subject to the requirements in this division. Contact adhesives are not included in this exemption.

(q) In the Bexar County area, the following categories are exempt from the VOC limits in §115.453(a)(1)(C) and (D) of this title:

(1) Emulsion type bituminous pavement sealers; and

(2) Architectural coatings based on small container usage.

(A) One liter (1.057 quarts) or less:

(i) Bond Beakers;

(ii) Building Envelope Coatings;

(iii) Concrete-Curing Compounds;

(iv) Concrete Surface Retarders;

(v) Default Coatings;

(vi) Driveway Sealers;

(vii) Dry-Fog Coatings;

(viii) Faux Finishing Coatings (Clear, Topcoat, Decorative Coatings, Glazes, Japans, and Trowel Applied Coatings);

(ix) Fire-Resistive Coatings;

(x) Form Release Compound;

(xi) Graphic Arts (Sign) Coatings;

(xii) Mastic Coatings;

(xiii) Primers, Sealers, and Undercoaters;

(xiv) Recycled Coatings;

(xv) Roof Coatings;

(xvi) Roof Primer, Bituminous;

(xvii) Specialty Primers;

(xviii) Stains (Stains, Interior);

(xix) Tile and Stone Sealers;

(xx) Waterproofing Concrete/Masonry sealers; and

(xxi) Waterproofing Sealers.

(B) Eight fluid ounces or less or used for touch-up purpose only:

(i) Flat Coating;

(ii) Nonflat Coatings; and

(iii) Rust Preventive Coatings.

§115.453. Control Requirements.

(a) The following control requirements apply to surface coating processes subject to this division. Except as specified in paragraph (3) of this subsection, these limitations are based on the daily weighted average of all coatings, as defined in §101.1 of this title (relating to Definitions), as delivered to the application system. Upon the compliance date specified in §115.459(d) or (e) of this title (relating to Compliance Schedules), the requirements in subsection (f) or (h) of this section apply in the Dallas-Fort Worth area in addition to this subsection, and upon the compliance date specified in §115.459(g) or (h) of this title, the requirements in subsection (g) or (i) of this section apply in the Houston-Galveston-Brazoria area in addition to this subsection.

(1) The following limits must be met by applying low-volatile organic compound (VOC) coatings to meet the specified VOC content limits on a pound of VOC per gallon of coating basis (lb VOC/gal coating) (minus water and exempt solvent), or by applying coatings in combination with the operation of a vapor control system, as defined in §115.10 (relating to Definitions), to meet the specified VOC emission limits on a pound of VOC per gallon of solids basis (lb VOC/gal solids). If a coating meets more than one coating type definition, then the coating with the least stringent VOC limit applies.

(A) Large appliances. If a coating does not meet a specific coating type definition, then it can be assumed to be a general-use coating and the VOC limit for general coating applies.
Figure: 30 TAC §115.453(a)(1)(A) (No change.)

(B) Metal furniture. If a coating does not meet a specific coating type definition, then it can be assumed to be a general-use coating and the VOC limit for general coating applies.
Figure: 30 TAC §115.453(a)(1)(B) (No change.)

(C) Miscellaneous metal parts and products. If a coating does not meet a specific coating type definition, then it can be assumed to be a general-use coating and the VOC limit for general coating applies.
[~~Figure: 30 TAC §115.453(a)(1)(C)~~]

(i) The following VOC limits apply in the Dallas-Fort Worth and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions) These limits also apply in the Bexar County area, as defined in §115.10 of this title (relating to Definitions), until March 1, 2026.
Figure: 30 TAC §115.453(a)(1)(C)(i)

(ii) The following VOC limits apply in the Bexar County area beginning March 1, 2026.
Figure: 30 TAC §115.453(a)(1)(C)(ii)

(D) Miscellaneous plastic parts and products. If a coating does not meet a specific coating category definition, then it can be assumed to be a general-use coating and the VOC limit for general coating applies.
Figure: 30 TAC §115.453(a)(1)(D) (No change.)

(E) Automotive/transportation and business machine plastic parts. For red, yellow, and black automotive/transportation coatings, except touch-up and repair coatings, the VOC limit is determined by multiplying the appropriate limit in Table 1 of this subparagraph by 1.15.
Figure: 30 TAC §115.453(a)(1)(E) (No change.)

(F) Pleasure craft. If a coating does not meet a specific coating category definition, then it can be assumed to be a general-use coating and the VOC limits for other coatings applies.
Figure: 30 TAC §115.453(a)(1)(F) (No change.)

(2) The coating VOC limits for motor vehicle materials applied to the metal and plastic parts in paragraph (1)(C) - (F) of this subsection, as delivered to the application system, must be met using low-VOC coatings (minus water and exempt solvent).
Figure: 30 TAC §115.453(a)(2) (No change.)

(3) The coating VOC limits for automobile and light-duty truck assembly surface coating processes must be met by applying low-VOC coatings.
Figure: 30 TAC §115.453(a)(3) (No change.)

(A) The owner or operator shall determine compliance with the VOC limits for electrodeposition primer operations on a monthly weighted average in accordance with §115.455(a)(2)(D) of this title (relating to Approved Test Methods and Testing Requirements).

(B) As an alternative to the VOC limit in Table 1 of this paragraph for final repair coatings, if an owner or operator does not compile records sufficient to enable determination of the daily weighted average, compliance may be demonstrated each day by meeting a standard of 4.8 lb VOC/gal coating (minus water and exempt solvent) on an occurrence weighted average basis. Compliance with the VOC limits on an occurrence weighted average basis must be determined in accordance with the procedure specified in §115.455(a)(2) of this title.

(C) The owner or operator shall determine compliance with the VOC limits in Table 2 of this paragraph in accordance with §115.455(a)(1) or (2)(C) of this title, as appropriate.

(4) The coating VOC limits for paper, film, and foil surface coating processes must be met by applying low-VOC coatings to meet the specified VOC content limits on a pound of VOC per pound of coating basis, as delivered to the application system, or by applying coatings in combination with the operation of a vapor control system to meet the specified VOC emission limits on a pound of VOC per pound of solids basis, as delivered to the application system.
Figure: 30 TAC §115.453(a)(4) (No change.)

(5) The coating VOC limits for an architectural coating surface coating process must be met by applying low-VOC coatings.
Figure: 30 TAC §115.453(a)(5)
[~~Figure: 30 TAC §115.453(a)(5)~~]

(6) [~~(5)~~] An owner or operator applying coatings in combination with the operation of a vapor control system to meet the VOC emission limits in paragraph (1) or (4) of this subsection shall use the following equation to determine the minimum overall control efficiency necessary to demonstrate equivalency. Control device and capture efficiency testing must be performed in accordance with the testing requirements in §115.455 (a)(3) and (4) of this title.
Figure: 30 TAC §115.453(a)(6)
[~~Figure: 30 TAC §115.453(a)(5)~~]

(b) Except for the surface coating process in subsection (a)(5) of this section, the owner or operator of a surface coating process may operate a vapor control system capable of achieving a 90% overall control efficiency as an alternative to subsection (a) of this section. Control

device and capture efficiency testing must be performed in accordance with the testing requirements in §115.455(a)(3) and (4) of this title. If the owner or operator complies with the overall control efficiency option under this subsection, then the owner or operator is exempt from the application system requirements of subsection (c) of this section.

(c) The owner or operator of any surface coating process subject to this division shall not apply coatings unless one of the following coating application systems is used:

(1) electrostatic application;

(2) high-volume, low-pressure (HVLP) spray;

(3) flow coat;

(4) roller coat;

(5) dip coat;

(6) brush coat or hand-held paint rollers; or

(7) for metal and plastic parts surface coating processes specified in §115.450(a)(3) and (4) of this title (relating to Applicability and Definitions), airless spray or air-assisted airless spray; or

(8) other coating application system capable of achieving a transfer efficiency equivalent to or better than that achieved by HVLP spray. For the purpose of this requirement, the transfer efficiency of HVLP spray is assumed to be 65%. The owner or operator shall demonstrate that either the application system being used is equivalent to the transfer efficiency of an HVLP spray or that the application system being used has a transfer efficiency of at least 65%.

(d) The following work practices apply to the owner or operator of each surface coating process subject to this division.

(1) For all coating-related activities including, but not limited to, solvent storage, mixing operations, and handling operations for coatings and coating-related waste materials, the owner or operator shall:

(A) store all VOC-containing coatings and coating-related waste materials in closed containers;

(B) minimize spills of VOC-containing coatings;

(C) convey all coatings in closed containers or pipes;

(D) close mixing vessels and storage containers that contain VOC coatings and other materials except when specifically in use;

(E) clean up spills immediately; and

(F) for automobile and light-duty truck assembly coating processes, minimize VOC emissions from the cleaning of storage, mixing, and conveying equipment.

(2) For all cleaning-related activities including, but not limited to, waste storage, mixing, and handling operations for cleaning materials, the owner or operator shall:

(A) store all VOC-containing cleaning materials and used shop towels in closed containers;

(B) ensure that storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials;

(C) minimize spills of VOC-containing cleaning materials;

(D) convey VOC-containing cleaning materials from one location to another in closed containers or pipes;

(E) minimize VOC emissions from cleaning of storage, mixing, and conveying equipment;

(F) clean up spills immediately; and

(G) for metal and plastic parts surface coating processes specified in §115.450(a)(3) - (5) of this title (relating to Applicability and Definitions), minimize VOC emission from the cleaning of application, storage, mixing, and conveying equipment by ensuring that equipment cleaning is performed without atomizing the cleaning solvent and all spent solvent is captured in closed containers.

(3) The owner or operator of automobile and light-duty truck assembly surface coating processes shall implement a work practice plan containing procedures to minimize VOC emissions from cleaning activities and purging of coating application equipment. Properties with a work practice plan already in place to comply with requirements specified in 40 Code of Federal Regulations (CFR) §63.3094(b) (as amended through April 20, 2006 (71 FR 20464)), may incorporate procedures for minimizing non-hazardous air pollutant VOC emissions to comply with the work practice plan required by this paragraph.

(e) A surface coating process that becomes subject to subsection (a) of this section by exceeding the exemption limits in §115.451 of this title (relating to Exemptions) is subject to the provisions in subsection (a) of this section even if throughput or emissions later fall below exemption limits unless emissions are maintained at or below the controlled emissions level achieved while complying with subsection (a) of this section and one of the following conditions is met.

(1) The project that caused throughput or emission rate to fall below the exemption limits in §115.451 of this title must be authorized by a permit, permit amendment, standard permit, or permit by rule required by Chapters 106 or 116 of this title (relating to Permits by Rule; and Control of Air Pollution by Permits for New Construction or Modification, respectively). If a permit by rule is available for the project, the owner or operator shall continue to comply with subsection (a) of this section for 30 days after the filing of documentation of compliance with that permit by rule.

(2) If authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator shall provide the executive director 30 days notice of the project in writing.

(f) In the Dallas-Fort Worth area, in accordance with the schedule specified in 115.459(e) of this title, industrial maintenance coatings must meet a VOC limit of 2.1 pounds per gallon (250 grams per liter) of coating (minus water and exempt solvent), which must be met by applying low-VOC coatings.

(g) In the Houston-Galveston-Brazoria area, in accordance with the schedule specified in 115.459(g) of this title, industrial maintenance coatings must meet a VOC limit of 2.1 pounds per gallon (250 grams per liter) of coating (minus water and exempt solvent), which must be met by applying low-VOC coatings.

(h) In the Dallas-Fort Worth area, in accordance with the schedule specified in §115.459(f) of this title, traffic marking coatings must meet a VOC content limit of 100 grams of VOC per liter of coating (minus water and exempt solvent), which must be met by applying low-VOC coatings.

(i) In the Houston-Galveston-Brazoria area, in accordance with the schedule specified in §115.459(h) of this title, traffic marking coatings must meet a VOC content limit of 100 grams of VOC per liter of coating (minus water and exempt solvent), which must be met by applying low-VOC coatings.

(j) In the Bexar County area, industrial maintenance coatings must meet a VOC content limit of 2.1 pounds per gallon (250 grams per liter) of coating (minus water and exempt solvent), which must be met by applying low-VOC coatings.

§115.455. Approved Test Methods and Testing Requirements.

(a) Approved Test Methods and Testing Requirements. Compliance with the requirements in this division must be determined by applying one or more of the following test methods, as appropriate. As an alternative to the test methods in paragraph (1) of this subsection, the volatile organic compounds (VOC) content of coatings and, if necessary dilution solvent, may be determined by using analytical data from the material safety data sheet.

(1) The owner or operator shall demonstrate compliance with the VOC limits in §115.453 of this title (relating to Control Requirements), by applying the following test methods, as appropriate. Where a test method also inadvertently measures compounds that are exempt solvent an owner or operator may exclude the exempt solvent when determining compliance with a VOC limit. The methods include:

(A) Method 24 (40 Code of Federal Regulations (CFR) Part 60, Appendix A);

(B) American Society for Testing and Materials (ASTM) Test Methods C67, C97, C97M, C140, C309 Class B, C373, C642, D523, D714, D1186, D1200, D1644, D2832, D3359, D3363, D3794, D3960 [~~D1186-06.01, D1200-06.01, D3794-06.01, D2832-69, D1644-75, and D3960-81~~], D4060, D4214, D4585, D6490, E96/E96M, E284, E331, E2167, and E2178.

(C) the United States Environmental Protection Agency (EPA) guidelines series document "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings," EPA-450/3-84-019, as in effect December, 1984;

(D) The American National Standards Institute (ANSI) A137.1 Standard Specifications for Ceramic Tiles;

(E) The National Cooperative Highway Research Report 244 (1981), "Concrete Sealers for the Protection of Bridge Structures";

(F) [~~(D)~~] additional test procedures described in 40 CFR §60.446 (as amended through October 17, 2000 (65 FR 61761)); and

(G) [~~(E)~~] minor modifications to these test methods approved by the executive director.

(2) The owner or operator shall determine compliance with the VOC limits for automobile and light-duty truck assembly coating processes in §115.453(a)(3) of this title by applying the following test methods in addition to paragraph (1) of this subsection, as appropriate. The methods include:

(A) Protocol for Determining the Daily VOC Emission Rate of Automobile and Light-Duty Truck Topcoat Operations (EPA-453/R-08-002);

(B) the procedure contained in subparagraph (A) of this paragraph for determining daily compliance with the alternative emission limitation in §115.453(a)(3) of this title for final repair. Calculation of occurrence weighted average for each combination of repair coatings (primer, specific basecoat, clearcoat) must be determined by the following procedure;

(i) the relative occurrence weighted usage calculated as follows for each repair coating:
Figure: 30 TAC §115.455(a)(2)(B)(i) (No change.)

(ii) the occurrence weighted average (Q) in pounds of VOC per gallon of coating (minus water and exempt solvents) as applied, for each potential combination of repair coatings calculated according to this subparagraph;
Figure: 30 TAC §115.455(a)(2)(B)(ii) (No change.)

(C) the procedure contained in 40 CFR Part 63, Subpart PPPP, Appendix A (as amended through April 24, 2007 (72 FR 20237)), for reactive adhesives; and

(D) the procedure contained in 40 CFR Part 60, Subpart MM (as amended October 17, 2000 (65 FR 61760)) for determining the monthly weighted average for electrodeposition primer.

(3) The owner or operator shall determine compliance with the vapor control system requirements in §115.453 of this title by applying the following test methods, as appropriate:

(A) Methods 1 - 4 (40 CFR Part 60, Appendix A) for determining flow rates, as necessary;

(B) Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(C) Method 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;

(D) additional performance test procedures described in 40 CFR §60.444 (as amended through October 18, 1983 (48 FR 48375)); or

(E) minor modifications to these test methods approved by the executive director.

(4) The owner or operator of a surface coating process subject to §115.453(a)(6) [~~§115.453(a)(5)~~] or (b) of this title shall measure the capture efficiency using applicable procedures outlined in 40 CFR §52.741, Subpart O, Appendix B (as amended through October 21, 1996 (61 FR 54559)). These procedures are: Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure; Procedure L - VOC Input; Procedure G.2 - Captured VOC Emissions (Dilution Technique); Procedure F.1 - Fugitive VOC Emissions from Temporary Enclosures; and Procedure F.2 - Fugitive VOC Emissions from Building Enclosures.

(A) The following exemptions apply to capture efficiency testing requirements.

(i) If a source installs a permanent total enclosure that meets the specifications of Procedure T and that directs all VOC to a control device, then the capture efficiency is assumed to be 100%, and the source is exempted from capture efficiency testing requirements. This does not exempt the source from performance of any control device efficiency testing that may be required. In addition, a source must demonstrate all criteria for a permanent total enclosure are met during testing for control efficiency.

(ii) If a source uses a vapor control system designed to collect and recover VOC (e.g., carbon adsorption system), an explicit measurement of capture efficiency is not necessary if the following conditions are met. The overall control of the system can be determined by directly comparing the input liquid VOC to the recovered liquid VOC. The general procedure for use in this situation is given in 40 CFR §60.433 (as amended through October 17, 2000 (65 FR 61761)), with the following additional restrictions.

(I) The source must be able to equate solvent usage with solvent recovery on a 24-hour (daily) basis, rather than a 30-day weighted average. This verification must be done within 72 hours following each 24-hour period of the 30-day period.

(II) The solvent recovery system (i.e., capture and control system) must be dedicated to a single process line (e.g., one process line venting to a carbon adsorber system); or if the solvent recovery system controls multiple process lines, the source must be able to demonstrate that the overall control (i.e., the total recovered solvent VOC divided by the sum of liquid VOC input to all process lines venting to the control system) meets or exceeds the most stringent standard applicable for any process line venting to the control system.

(B) The capture efficiency must be calculated using one of the following protocols referenced. Any affected source must use one of these protocols, unless a suitable alternative protocol is approved by the executive director and the EPA.

(i) Gas/gas method using temporary total enclosure (TTE). The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.455(a)(4)(B)(i) (No change.)

(ii) Liquid/gas method using TTE. The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.455(a)(4)(B)(ii) (No change.)

(iii) Gas/gas method using the building or room enclosure (BE) in which the affected source is located and in which the mass of VOC captured and delivered to a control device and the mass of fugitive VOC that escapes from BE are measured while operating only the affected facility. All fans and blowers in the BE must be operating as they would under normal production. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.455(a)(4)(B)(iii) (No change.)

(iv) Liquid/gas method using a BE in which the mass of liquid VOC input to process and the mass of fugitive VOC that escapes from BE are measured while operating only the affected facility. All fans and blowers in the building or room must be operated as they would under normal production. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.455(a)(4)(B)(iv) (No change.)

(C) The operating parameters selected for monitoring of the capture system for compliance with the requirements in §115.458(a) of this title (relating to Monitoring and Recordkeeping Requirements) must be monitored and recorded during the initial capture efficiency test and thereafter during facility operation. The executive director may require a new capture efficiency test if the operating parameter values change significantly from those recorded during the initial capture efficiency test.

(5) Test methods other than those specified in paragraphs (1) - (4) of this subsection may be used if approved by the executive director and validated by Method 301 (40 CFR Part 63, Appendix A). For the purposes of this paragraph, substitute "executive director" each place that Method 301 references "administrator."

(b) Inspection requirements. The owner or operator of each surface coating process subject to §115.453 of this title shall provide samples, without charge, upon request by authorized representatives of the executive director, the EPA, or any local air pollution agency with jurisdiction. The representative or inspector requesting the sample will determine the amount of coating needed to test the sample to determine compliance.

§115.458. Monitoring and Recordkeeping Requirements.

(a) Monitoring requirements. The following monitoring requirements apply to the owner or operator of a surface coating process subject to this division that uses a vapor control system in accordance with §115.453 of this title (relating to Control Requirements). The owner or operator shall install and maintain monitors to accurately measure and record operational parameters of all required control devices to ensure the proper functioning of those devices in accordance with design specifications, including:

(1) continuous monitoring of the exhaust gas temperature immediately downstream of direct-flame incinerators or the gas temperature immediately upstream and downstream of any catalyst bed;

(2) the total amount of volatile organic compounds (VOC) recovered by carbon adsorption or other solvent recovery systems during a calendar month;

(3) continuous monitoring of carbon adsorption bed exhaust; and

(4) appropriate operating parameters for capture systems and control devices other than those specified in paragraphs (1) - (3) of this subsection.

(b) Recordkeeping requirements. The following recordkeeping requirements apply to the owner or operator of a surface coating process subject to this division.

(1) The owner or operator shall maintain records of the testing data or the material safety data sheets (MSDS) in accordance with the requirements in §115.455(a) of this title (relating to Approved Test Methods and Testing Requirements). The MSDS must document relevant information regarding each coating and solvent available for use in the affected surface coating processes including the VOC content, composition, solids content, and solvent density. Records must be sufficient to demonstrate continuous compliance with the applicable VOC limits in §115.453(a) and [~~or~~] (f) - (j)[~~(i)~~] of this title.

(2) Records must be maintained of the quantity and type of each coating and solvent consumed during the specified averaging period if any of the coatings, as delivered to the coating application system, exceed the applicable VOC limits. Such records must be sufficient to calculate the applicable weighted average of VOC content for all coatings.

(3) As an alternative to the recordkeeping requirements of paragraph (2) of this subsection, the owner or operator that qualifies for exemption under §115.451(a)(3) of this title (relating to Exemptions) may maintain records of the total gallons of coating and solvent used in each month and total gallons of coating and solvent used in the previous 12 months.

(4) The owner or operator shall maintain, on file, the capture efficiency protocol submitted under §115.455(a)(4) of this title. The owner or operator shall submit all results of the test methods and capture efficiency protocols to the executive director within 60 days of the actual test date. The owner or operator shall maintain records of the capture efficiency operating parameter values on-site for a minimum of one year. If any changes are made to capture or control equipment, the owner or operator is required to notify the executive director in writing within 30 days of these changes and a new capture efficiency or control device destruction or removal efficiency test may be required.

(5) The owner or operator claiming an exemption in §115.451 of this title shall maintain records sufficient to demonstrate continuous compliance with the applicable exemption criteria.

(6) Records must be maintained of any testing conducted in accordance with the provisions specified in §115.455(a) of this title.

(7) Records must be maintained a minimum of two years and be made available upon request to authorized representatives of the

executive director, the United States Environmental Protection Agency, or any local air pollution agency with jurisdiction.

§115.459. Compliance Schedules.

(a) The owner or operator of a surface coating process in Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, and Waller Counties subject to this division shall comply with the requirements of this division, except as specified in §115.453(f) - (i) of this title (relating to Control Requirements), no later than March 1, 2013.

(b) The owner or operator of a surface coating process in Wise County shall comply with the requirements in this division, except as specified in §115.453(f) - (i) of this title, no later than January 1, 2017.

(c) The owner or operator of a surface coating process in the Bexar County area subject to the requirements of this division shall comply with all applicable [~~the~~] requirements [~~in this division~~], except for §115.453(a)(1)(C)(ii) and §115.453(a)(5) of this title, [~~no later than~~] by January 1, 2025. Compliance with §115.453(a)(1)(C)(ii), §115.453(a)(5), and §115.453(j) of this title must be achieved no later than March 1, 2026.

(d) The owner or operator of a surface coating process that becomes subject to this division on or after the applicable compliance date of this section shall comply with the requirements in this division no later than 60 days after becoming subject.

(e) The owner or operator of a surface coating process in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties shall comply with §115.453(f) of this title by no later than 270 days after the commission publishes notification in the *Texas Register* of its determination that this industrial maintenance coating contingency rule is necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).

(f) The owner or operator of a surface coating process in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties shall comply with §115.453(h) of this title by no later than 270 days after the commission publishes notification in the *Texas Register* of its determination that this traffic marking coating contingency rule is necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).

(g) The owner or operator of a surface coating process in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall be in compliance with §115.453(g) of this title by no later than 270 days after the commission publishes notification in the *Texas Register* of its determination that this industrial maintenance coating contingency rule is necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).

(h) The owner or operator of a surface coating process in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall be in compliance with §115.453(i) of this title by no later than 270 days after the commission publishes notification in the *Texas Register* of its determination that this traffic marking coating contingency rule is necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).

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

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Texas Commission on Environmental Quality
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DIVISION 6. INDUSTRIAL CLEANING SOLVENTS

30 TAC §§115.460, 115.461, 115.463, 115.465, 115.468, 115.469

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103, and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.460. Applicability and Definitions.

(a) Applicability. Except as specified in §115.461 of this title (relating to Exemptions), the requirements in this division apply to solvent cleaning operations in the Bexar County, Dallas-Fort Worth and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title

(relating to Definitions). Residential cleaning and janitorial cleaning are not considered solvent cleaning operations.

(b) Definitions. Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, or 115.10 of this title (relating to Definitions), the terms in this division have the meanings commonly used in the field of air pollution control. In addition, the following meanings apply in this division unless the context clearly indicates otherwise indicates otherwise.

(1) Aerosol can--A hand-held, non-refillable container that expels pressurized product by means of a propellant-induced force.

(2) Application device--A device used to apply adhesive, coating, ink, or polyester resin materials.

(3) Application line--A portion of a motor vehicle assembly production line which applies surface and other coatings to motor vehicle bodies, hoods, fenders, cargo boxes, doors, and grill opening panels.

(4) Blanket--A synthetic rubber mat used in offset-lithography to transfer or offset an image from a planographic printing plate to the paper or other substrate.

(5) Blanket wash--A solvent used to remove ink from the blanket of a press.

(6) Cured coating, cured ink, or cured adhesive--A coating, ink, or adhesive, which is dry to the touch.

(7) Electrical and electronic components--Components and assemblies of components that generate, convert, transmit, or modify electrical energy. Electrical and electronic components include, but are not limited to, wires, windings, stators, rotors, magnets, contacts, relays, printed circuit boards, printed wire assemblies, wiring boards, integrated circuits, resistors, capacitors, and transistors. Cabinets that house electrical and electronic components are not considered electrical and electronic components. In the context of the provisions in §115.461(d), [~~and~~] (e), and (f) of this title (relating to Exemptions) and §115.463(e) and (f) of this title (relating to Control Requirements), Electronic component is defined as that portion of an assembly, including circuit card assemblies, printed wire assemblies, printed circuit boards, soldered joints, ground wires, bus bars, and other electrical fixtures, except for the actual cabinet in which the components are housed; and Electrical component is defined as an internal component such as wires, windings, stators, rotors, magnets, contacts, relays, energizers, and connections in an apparatus that generates or transmits electrical energy including, but not limited to: alternators, generators, transformers, electric motors, cables, and circuit breakers, except for the actual cabinet in which the components are housed. Electrical components of graphic arts application equipment and hot-line tools are also included in this category.

(8) Electron beam ink--An ink that dries by chemical reaction caused by high energy electrons.

(9) Facility--A business or businesses engaged in solvent cleaning operations which are owned or operated by the same person or persons and are located on the same or contiguous parcels.

(10) Grams of VOC per liter of material--The weight of VOC per volume of material and can be calculated by the following equation.
Figure: 30 TAC §115.460(b)(10) (No change.)

(11) Graphic arts--All gravure, letterpress, flexographic, and lithographic printing processes.

(12) Gravure printing-- An intaglio process in which the ink is carried in minute etched or engraved wells on a roll or cylinder. The excess ink is removed from the surface by a doctor blade.

(13) High precision optic--An optical element used in an electro-optical device and is designed to sense, detect, or transmit light energy, including specific wavelengths of light energy and changes in light energy levels.

(14) Hot-line tool--A specialized tool used primarily on the transmission systems, sub-transmission systems and distribution systems for replacing and repairing circuit components or for other types of work with electrically energized circuits.

(15) Janitorial cleaning--The cleaning of building or facility components including, but not limited to, floors, ceilings, walls, windows, doors, stairs, bathrooms, furnishings, and exterior surfaces of office equipment, and excludes the cleaning of work areas where manufacturing or repair activity is performed.

(16) Letterpress printing--The method in which the image area is raised relative to the non-image area and the ink is transferred to the paper directly from the image surface.

(17) Liquid-tight food container--A paperboard container that can hold liquid food and food products without leaking even when it is held upside-down.

(18) Lithographic printing--A plane-o-graphic method in which the image and non-image areas are on the same plane.

(19) Magnet wire--Wire used in electromagnetic field application in electrical machinery and equipment such as transformers, motors, generators, and magnetic tape recorders.

(20) Magnet wire coating operation--The process of applying insulation coatings such as varnish or enamel on magnet wire where wire is continuously drawn through a coating applicator.

(21) Maintenance cleaning--A solvent cleaning operation or activity carried out to keep clean general work areas where manufacturing or repair activity is performed, to clean tools, machinery, molds, forms, jigs, and equipment. This definition does not include the cleaning of coatings, adhesives, or ink application equipment.

(22) Manufacturing process--The process of making goods or articles by hand or by machinery.

(23) Medical device--An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar article, including any component or accessory, that meets one of the following conditions:

(A) it is intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease; or

(B) it is intended to affect the structure or any function of the body; or

(C) it is defined in the National Formulary of the United States Pharmacopeia, or any supplement to them.

(24) Medical device and pharmaceutical preparation operations--Medical devices, pharmaceutical products, and associated manufacturing and product handling equipment and material, work surfaces, maintenance tools, and room surfaces that are subject to the United States Federal Drug Administration current Good Manufacturing/Laboratory Practice, or Center for Disease Control or National Institute of Health guidelines for biological disinfection of surfaces.

(25) Medical or pharmaceutical work surface--An area of a medical device or pharmaceutical facility where solvent cleaning is performed on work surfaces including, but not limited to, tables, countertops, and laboratory benches. Medical or pharmaceutical work surface shall not include items defined under janitorial cleaning.

(26) Non-absorbent container--A container made of non-porous material, which does not allow the migration of the liquid solvent through it.

(27) On-press component--A part, component, or accessory of a press that is cleaned while still being physically attached to the press.

(28) On-press screen cleaning--A solvent cleaning activity carried out during press runs in screen printing operation to remove excess inks and contaminants from a screen that is still attached to the press.

(29) Packaging printing--Any lithographic, flexographic, gravure, or letterpress printing that results in identifying or beautifying paper, paperboard, or cardboard products to be used as containers, enclosures, wrappings, or boxes.

(30) Pharmaceutical product--A preparation or compound of medicinal drugs including, but not limited to, a prescription drug, analgesic, decongestant, antihistamine, cough suppressant, vitamin, mineral and herb, and is used by humans or animals for consumption to enhance personal health.

(31) Photocurable resin--A chemical material that solidifies upon exposure to light.

(32) Polyester resin operation--The fabrication, rework, repair, or touch-up of composite products for commercial, military, or industrial uses by mixing, pouring, manual application, molding, impregnating, injecting, forming, spraying, pultrusion, filament winding, or centrifugally casting with polyester resins.

(33) Precision optics--The optical elements used in electro-optical devices that are designed to sense, detect, or transmit light energy, including specific wavelengths of light energy and changes of light energy levels.

(34) Printing--In the graphic arts, is any operation that imparts color, design, alphabet, or numerals on a substrate.

(35) Removable press component--A part, component, or accessory of a press that is physically attached to the press but is disassembled and removed from the press prior to being cleaned. Rollers, blankets, metering rollers, dampening rollers, ink trays, printing plates, fountains, impression cylinders and plates shall not be considered as removable press components.

(36) Repair cleaning--A solvent cleaning operation or activity carried out during a repair process.

(37) Repair process--The process of returning a damaged object or an object not operating properly to good condition.

(38) Roller wash--A solvent used to remove ink from the rollers of a press.

(39) Scientific instrument--An instrument (including the components, assemblies, and subassemblies used in their manufacture) and associated accessories and reagents that is used for the detection, measurement, analysis, separation, synthesis, or sequencing of various compounds.

(40) Screen printing--A process in which the printing ink passes through a web or a fabric to which a refined form of stencil has been applied. The stencil openings determine the form and dimensions of the imprint.

(41) Solvent--A volatile organic compound-containing liquid used to perform solvent cleaning operations.

(42) Solvent cleaning operation--The removal of uncured adhesives, inks, and coatings; and contaminants such as dirt, soil, oil, and grease from parts, products, tools, machinery, equipment, vessels, floors, walls, and other work production-related areas using a solvent. In the context of the provisions in §115.461(d), [~~and~~] (e), and (f) this title and §115.463(e) and (f) of this title, each distinct method of cleaning in a cleaning process that consists of a series of cleaning methods shall constitute a separate solvent cleaning operation.

(43) Solvent flushing--The use of a solvent to remove uncured adhesives, uncured inks, uncured coatings, or contaminants from the internal surfaces and passages of the equipment by flushing solvent through the equipment.

(44) Specialty flexographic printing--Flexographic printing on polyethylene or polypropylene food packaging, fertilizer bags, or liquid-tight food containers.

(45) Stereolithography--A type of printing process that employs a system using a light to solidify photocurable resins in a desired configuration in order to produce a 3-dimensional object.

(46) Stripping--The removal of cured coatings, cured inks, or cured adhesives.

(47) Surface preparation--The removal of contaminants such as dust, soil, oil, grease, etc., prior to coating, adhesive, or ink applications.

(48) Ultraviolet ink--An ink that dries by polymerization reaction induced by ultraviolet energy.

(49) Volatile organic compound (VOC) composite partial pressure--The sum of the partial pressures of the compounds that meet the definition of VOC in §101.1 of this title (relating to Definitions). The VOC composite partial pressure is calculated as follows.
Figure: 30 TAC §115.460(b)(12) (No change.)

§115.461. Exemptions.

(a) Solvent cleaning operations located on a property with total actual volatile organic compounds (VOC) emissions of less than 3.0 tons per calendar year from all cleaning solvents, when uncontrolled, are exempt from the requirements of this division, except as specified in §115.468(b)(2) of this title (relating to Monitoring and Recordkeeping Requirements). When calculating the VOC emissions, solvents used for solvent cleaning operations that are exempt from this division under subsections (b) - (d), [~~and~~] (f), and (g) of this section are excluded.

(b) The owner or operator of any process or operation subject to another division of this chapter that specifies solvent cleaning operation requirements related to that process or operation is exempt from the requirements in this division.

(c) A solvent cleaning operation is exempt from this division if:

(1) the process or operation that the solvent cleaning operation is associated with is subject to another division in this chapter; and

(2) the VOC emissions from the solvent cleaning operation are controlled in accordance with an emission specification or control requirement of the division that the process or operation is subject to.

(d) The following are exempt from the VOC limits in §115.463(a) of this title (relating to Control Requirements:

(1) electrical and electronic components;

(2) precision optics;

(3) numisimatic dies;

(4) resin mixing, molding, and application equipment;

(5) coating, ink, and adhesive mixing, molding, and application equipment;

(6) stripping of cured inks, cured adhesives, and cured coatings;

(7) research and development laboratories;

(8) medical device or pharmaceutical preparation operations;

(9) performance or quality assurance testing of coatings, inks, or adhesives;

(10) architectural coating manufacturing and application operations;

(11) magnet wire coating operations;

(12) semiconductor wafer fabrication;

(13) coating, ink, resin, and adhesive manufacturing;

(14) polyester resin operations;

(15) flexographic and rotogravure printing processes;

(16) screen printing operations; and

(17) digital printing operations.

(e) If the commission publishes notice in the *Texas Register*, as provided in §115.469(d) of this title (relating to Compliance Schedules) for the Dallas-Fort Worth area, or §115.469(e) of this title for the Houston-Galveston-Brazoria area, or both areas, to require compliance with the contingency measure control requirements of §115.463(e) of this title, then the exemptions in subsections (a) - (d) of this section are no longer available, and the following exemptions apply in the applicable area as of the compliance date specified in §115.469(d) or (e) of this title.

(1) In the Dallas-Fort Worth area, in accordance with the schedule specified in §115.469(d) of this title, the following types of cleaning are exempt from the VOC content limits in §115.463(e)(1) of this title:

(A) Cleaning of solar cells, laser hardware, scientific instruments, and high-precision optics;

(B) Cleaning conducted with performance laboratory tests on coatings, adhesives, or inks; research and development programs; and laboratory tests in quality assurance laboratories;

(C) Cleaning of paper-based gaskets, and clutch assemblies where rubber is bonded to metal by means of an adhesive;

(D) Cleaning of cotton swabs to remove cottonseed oil before cleaning of high-precision optics;

(E) Medical device and pharmaceutical facilities using up to 1.5 gallons per day of solvents;

(F) The cleaning of photocurable resins from stereolithography equipment and models;

(G) Cleaning of adhesive application equipment used for thin metal laminating operations provided the clean-up solvent used contains no more than 950 grams of VOC per liter;

(H) Cleaning of electronic or electrical cables provided the clean-up solvent used contains no more than 400 grams of VOC per liter;

(I) Touch up cleaning performed on printed circuit boards where surface mounted devices have already been attached provided that the solvent used contains no more than 800 grams of VOC per liter;

(J) Cleaning carried out in batch loaded cold cleaners, vapor degreasers, conveyorized degreasers, or motion picture film cleaning equipment;

(K) Janitorial cleaning, including graffiti removal; and

(L) Stripping of cured coatings, cured ink, or cured adhesives.

(2) In the Houston-Galveston-Brazoria area, in accordance with the schedule specified in §115.469(e) of this title, the following types of cleaning are exempt from the VOC content limits in §115.463(e)(2) of this title:

(A) Cleaning of solar cells, laser hardware, scientific instruments, and high-precision optics;

(B) Cleaning conducted with performance laboratory tests on coatings, adhesives, or inks; research and development programs; and laboratory tests in quality assurance laboratories;

(C) Cleaning of paper-based gaskets, and clutch assemblies where rubber is bonded to metal by means of an adhesive;

(D) Cleaning of cotton swabs to remove cottonseed oil before cleaning of high-precision optics;

(E) Medical device and pharmaceutical facilities using up to 1.5 gallons per day of solvents;

(F) The cleaning of photocurable resins from stereolithography equipment and models;

(G) Cleaning of adhesive application equipment used for thin metal laminating operations provided the clean-up solvent used contains no more than 950 grams of VOC per liter;

(H) Cleaning of electronic or electrical cables provided the clean-up solvent used contains no more than 400 grams of VOC per liter;

(I) Touch up cleaning performed on printed circuit boards where surface mounted devices have already been attached provided that the solvent used contains no more than 800 grams of VOC per liter;

(J) Cleaning carried out in batch loaded cold cleaners, vapor degreasers, conveyorized degreasers, or motion picture film cleaning equipment;

(K) Janitorial cleaning, including graffiti removal; and

(L) Stripping of cured coatings, cured ink, or cured adhesives.

(f) In the Bexar County area, exemptions in §115.461(a) through (d) of this section do not apply after February 28, 2026. Beginning March 1, 2026, exemptions for industrial cleaning solvents from the VOC content limits specified in §115.463(f) of this title are limited to the following cleaning activities:

(1) Cleaning of solar cells, laser hardware, scientific instruments, and high-precision optics;

(2) Cleaning conducted with performance laboratory tests on coatings, adhesives, or inks; research and development programs; and laboratory tests in quality assurance laboratories;

(3) Cleaning of paper-based gaskets and clutch assemblies where rubber is bonded to metal by means of an adhesive;

(4) Cleaning of cotton swabs to remove cottonseed oil before cleaning of high-precision optics;

(5) Medical device and pharmaceutical facilities using up to 1.5 gallons per day of solvents;

(6) The cleaning of photocurable resins from stereolithography equipment and models;

(7) Cleaning of adhesive application equipment used for thin metal laminating operations provided the clean-up solvent used contains no more than 950 grams of VOC per liter;

(8) Cleaning of electronic or electrical cables provided the clean-up solvent used contains no more than 400 grams of VOC per liter;

(9) Touch up cleaning performed on printed circuit boards where surface mounted devices have already been attached provided that the solvent used contains no more than 800 grams of VOC per liter;

(10) Cleaning carried out in batch loaded cold cleaners, vapor degreasers, conveyorized degreasers, or motion picture film cleaning equipment;

(11) Janitorial cleaning, including graffiti removal; and

(12) Stripping of cured coatings, cured ink, or cured adhesives.

(g) [~~(f)~~] Cleaning solvents supplied in aerosol cans are exempt from the VOC limits in §115.463(a) of this title if total aerosol use for the property is less than 160 fluid ounces per day.

§115.463. Control Requirements.

(a) Except as specified in subsections [~~subsection~~] (e) and (f) of this section, the owner or operator shall limit the volatile organic compounds (VOC) content of cleaning solutions to:

(1) 0.42 pound of VOC per gallon of solution (lb VOC/gal solution), as applied; or

(2) limit the composite partial vapor pressure of the cleaning solution to 8.0 millimeters of mercury at 20 degrees Celsius (68 degrees Fahrenheit).

(b) As an alternative to subsection (a) of this section, the owner or operator shall operate a vapor control system capable of achieving an overall control efficiency of 85% by mass. Control device and capture efficiency testing must be performed in accordance with the testing requirements in §115.465 of this title (relating to Approved Test Methods and Testing Requirements).

(c) The owner or operator of a solvent cleaning operation shall implement the following work practices during the handling, storage, and disposal of cleaning solvents and shop towels:

(1) cover open containers and used applicators;

(2) minimize air circulation around solvent cleaning operations;

(3) properly dispose of used solvent and shop towels; and

(4) implement equipment practices that minimize emissions (e.g. maintaining cleaning equipment to repair solvent leaks).

(d) A solvent cleaning operation that becomes subject to subsection (a) of this section by exceeding the exemption limits in §115.461 of this title (relating to Exemptions) is subject to the provisions in subsection (a) of this section even if throughput or emissions later fall below exemption limits unless emissions are maintained at or below the controlled emissions level achieved while complying with subsection (a) of this section and one of the following conditions is met.

(1) The project that caused throughput or emission rate to fall below the exemption limits in §115.461 of this title must be authorized by a permit, permit amendment, standard permit, or permit by rule required by Chapter 116 or Chapter 106 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification; and Permits by Rule, respectively). If a permit by rule is available for the project, the owner or operator shall continue to comply with subsection (a) of this section for 30 days after the filing of documentation of compliance with that permit by rule.

(2) If authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner or operator shall provide the executive director 30 days notice of the project in writing.

(e) If the commission has published notice in the *Texas Register*, as provided in §115.469(d) or (e) of this title (relating to Compliance Schedules), to require compliance with the contingency measure control requirements for the Dallas-Fort Worth area, the Houston-Galveston-Brazoria area, or both areas the following control requirements apply instead of subsection (a) of this section.
Figure: 30 TAC §115.463(e) (No change.)

(1) In the Dallas-Fort Worth area, in accordance with the schedule specified in §115.469(d) of this title, the limits in Table 1 of this subsection apply.

(2) In the Houston-Galveston-Brazoria area, in accordance with the schedule specified in §115.469(e) of this title, the limits in Table 1 of this subsection apply.

(f) In the Bexar County area, the following control requirements apply beginning March 1, 2026.
Figure: 30 TAC §115.463(f)

§115.465. Approved Test Methods and Testing Requirements.
The owner or operator shall demonstrate compliance with the control requirements in §115.463 of this title (relating to Control Requirements) by applying the following test methods, as appropriate.

(1) Compliance with the volatile organic compound (VOC) limits in §115.463(a), [~~or~~] (e), or (f) of this title must be determined by the following methods, as applicable:

(A) Method 24 (40 Code of Federal Regulations (CFR) Part 60, Appendix A);

(B) American Society for Testing and Materials Method D2879, Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope to demonstrate compliance with §115.463(a)(2) of this title;

(C) using standard reference texts for the true vapor pressure of each VOC component to demonstrate compliance with §115.463(a)(2) of this title; or

(D) using analytical data from the cleaning solvent supplier or manufacturer's material safety data sheet.

(2) The owner or operator subject to §115.463(b) of this title shall measure the capture efficiency using applicable procedures

outlined in 40 CFR §52.741, Subpart O, Appendix B (as amended through October 21, 1996 (61 FR 54559)). These procedures are: Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure; Procedure L - VOC Input; Procedure G.2 - Captured VOC Emissions (Dilution Technique); Procedure F.1 - Fugitive VOC Emissions from Temporary Enclosures; and Procedure F.2 - Fugitive VOC Emissions from Building Enclosures.

(A) The following exemptions apply to capture efficiency testing requirements.

(i) If a source installs a permanent total enclosure that meets the specifications of Procedure T and that directs all VOC to a control device, then the capture efficiency is assumed to be 100%, and the source is exempted from capture efficiency testing requirements. This does not exempt the source from performance of any control device efficiency testing that may be required. In addition, a source must demonstrate all criteria for a permanent total enclosure are met during testing for control efficiency.

(ii) If a source uses a vapor control system designed to collect and recover VOC (e.g., carbon adsorption system), an explicit measurement of capture efficiency is not necessary if the following conditions are met. The overall control of the system can be determined by directly comparing the input liquid VOC to the recovered liquid VOC. The general procedure for use in this situation is given in 40 CFR §60.433 (as amended through October 17, 2000 (65 FR 61761)), with the following additional restrictions.

(I) The source must be able to equate solvent usage with solvent recovery on a 24-hour (daily) basis, rather than a 30-day weighted average. This verification must be done within 72 hours following each 24-hour period of the 30-day period.

(II) The solvent recovery system (i.e., capture and control system) must be dedicated to a single process line (e.g., one process line venting to a carbon adsorber system) or if the solvent recovery system controls multiple process lines, the source must be able to demonstrate that the overall control (i.e., the total recovered solvent VOC divided by the sum of liquid VOC input to all process lines venting to the control system) meets or exceeds the most stringent standard applicable for any process line venting to the control system.

(B) The capture efficiency must be calculated using one of the following protocols referenced. Any affected source must use one of these protocols, unless a suitable alternative protocol is approved by the executive director and the United States Environmental Protection Agency (EPA).

(i) Gas/gas method using temporary total enclosure (TTE). The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.465(2)(B)(i) (No change.)

(ii) Liquid/gas method using TTE. The EPA specifications to determine whether a temporary enclosure is considered a TTE are given in Procedure T. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.465(2)(B)(ii) (No change.)

(iii) Gas/gas method using the building or room enclosure (BE) in which the affected source is located and in which the mass of VOC captured and delivered to a control device and the mass of fugitive VOC that escapes from the BE are measured while operating only the affected facility. All fans and blowers in the BE must be operating as they would under normal production. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.465(2)(B)(iii) (No change.)

(iv) Liquid/gas method using a BE in which the mass of liquid VOC input to process and the mass of fugitive VOC that escapes from the BE are measured while operating only the affected facility. All fans and blowers in the BE must be operated as they would under normal production. The capture efficiency equation to be used for this protocol is:
Figure: 30 TAC §115.465(2)(B)(iv) (No change.)

(C) The operating parameters selected for monitoring of the capture system for compliance with the requirements in §115.468(a) of this title (relating to Monitoring and Recordkeeping Requirements) must be monitored and recorded during the initial capture efficiency testing and thereafter during facility operation. The executive director may require a new capture efficiency test if the operating parameter values change significantly from those recorded during the initial capture efficiency test.

(3) In addition to the requirements of paragraph (2) of this section, the owner or operator shall determine compliance with §115.463(b) of this title by applying the following test methods, as appropriate:

(A) Methods 1 - 4 (40 CFR Part 60, Appendix A) for determining flow rates, as necessary;

(B) Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(C) Method 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis; and

(D) additional performance test procedures described in 40 CFR §60.444 (as amended through October 18, 1983 (48 FR 48375)).

(4) Minor modifications to the methods in paragraphs (1) - (3) of this section may be approved by the executive director. Methods other than those specified in paragraphs (1) - (3) of this section may be used if approved by the executive director and validated using Method 301 (40 CFR Part 63, Appendix A). For the purposes of this paragraph, substitute "executive director" each place that Method 301 references "administrator."

§115.468. Monitoring and Recordkeeping Requirements.

(a) Monitoring requirements. The following monitoring requirements apply to the owner or operator of a solvent cleaning operation subject to this division that uses a vapor control system in accordance with §115.463(b) of this title (relating to Control Requirements). The owner or operator shall install and maintain monitors to accurately measure and record operational parameters of all required control devices, as necessary, to ensure the proper functioning of those devices in accordance with design specifications, including:

(1) continuous monitoring of the exhaust gas temperature immediately downstream of direct-flame incinerators or the gas temperature immediately upstream and downstream of any catalyst bed;

(2) the total amount of volatile organic compounds (VOC) recovered by carbon adsorption or other solvent recovery systems during a calendar month;

(3) continuous monitoring of carbon adsorption bed exhaust; and

(4) appropriate operating parameters for vapor control systems other than those specified in paragraphs (1) - (3) of this subsection.

(b) Recordkeeping requirements. The following recordkeeping requirements apply to the owner or operator of a solvent cleaning operation subject to this division.

(1) The owner or operator shall maintain records of the testing data, the material safety data sheet,or documentation of the standard reference texts used to determine the true vapor pressure of each VOC component, in accordance with the requirements in §115.465(1) of this title (relating to Approved Test Methods and Testing Requirements). The concentration of all VOC used to prepare the cleaning solution and, if diluted prior to use, the proportions that each of these materials is used must be recorded. Records must be sufficient to demonstrate continuous compliance with the VOC limits in §115.463(a), [~~and~~] (e), and (f) of this title.

(2) The owner or operator claiming an exemption in §115.461 of this title (relating to Exemptions) shall maintain records sufficient to demonstrate continuous compliance with the applicable exemption criteria.

(3) The owner or operator claiming exemption from this division in accordance with §115.461(c) of this title shall maintain records indicating the applicable division the process or operation is subject to as specified in §115.461(c)(1) of this title and the control requirements or emission specifications used to control the VOC emissions from the solvent cleaning operation as specified in §115.461(c)(2) of this title. The owner or operator shall also comply with the applicable recordkeeping requirements from the division the process or operation is subject to sufficient to demonstrate that the VOC emissions from the solvent cleaning operation are controlled in accordance with the control requirements or emission specifications of that division.

(4) The owner or operator shall maintain records of any testing conducted in accordance with the provisions specified in §115.465(2) - (4) of this title.

(5) Records must be maintained a minimum of two years and be made available upon request to authorized representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution agency with jurisdiction.

§115.469. Compliance Schedules.

(a) In Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, Waller, and Wise Counties the compliance date has passed for control requirements in §115.463(a) - (d) of this title (relating to Control Requirements) and all associated requirements, and the owner or operator of a solvent cleaning operation shall continue to comply with the requirements in this division, except as specified in subsection (d) and (e) of this section.

(b) The owner or operator of a solvent cleaning operation in the Bexar County area subject to the requirements of this division shall comply with each applicable requirement [~~the requirements in this division no later than~~], except for §115.463(f) of this title, by January 1, 2025. Compliance with the control requirement in §115.463(f) of this title must be achieved no later than March 1, 2026.

(c) The owner or operator of a solvent cleaning operation that becomes subject to this division on or after the applicable compliance date in this section shall comply with the requirements in this division no later than 60 days after becoming subject.

(d) The owner or operator of a solvent cleaning operation in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties shall be in compliance with the requirements of §115.463(e) of this title (relating to Control Requirements) no later than 270 days after the commission publishes notification in the *Texas Register* of its determination that the industrial cleaning solvent contingency requirements are necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the federal Clean Air Act, §172(c)(9).

(e) The owner or operator of a solvent cleaning operation in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall be in compliance with the requirements of §115.463(e) of this title no later than 270 days after the commission publishes notification in the *Texas Register* of its determination that the contingency requirements are necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the federal Clean Air Act.

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

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Texas Commission on Environmental Quality
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CHAPTER 117. CONTROL OF AIR POLLUTION FROM NITROGEN COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§117.10, 117.200, 117.203, 117.205, 117.230, 117.235, 117.240, 117.245 and 117.9010.

If adopted, these rules would be submitted to the U.S. Environmental Protection Agency (EPA) as a state implementation plan (SIP) revision.

Background and Summary of the Factual Basis for the Proposed Rules

On June 20, 2024, EPA published the final reclassification of the Bexar County 2015 eight-hour ozone National Ambient Air Quality Standards (NAAQS) nonattainment area from moderate to serious, effective July 22, 2024 (89 *Federal Register* (FR) 51829). The attainment date for Bexar County under the serious classification is September 24, 2027, with a 2026 attainment year. TCEQ is required to submit serious classification attainment demonstration (AD) and reasonable further progress (RFP) SIP revisions to EPA by January 1, 2026, to comply with the serious ozone nonattainment area requirements, as outlined in federal Clean Air Act (FCAA), §§172(c), 182(c), and 182(f) for the Bexar County 2015 eight-hour ozone nonattainment area.

Nonattainment areas classified as moderate and above, including serious, are required to meet the mandates of the FCAA in §172(c)(1) and §182(c) and (f). FCAA, §172(c)(1) requires that the SIP incorporate all reasonably available control measures (RACM), including reasonably available control technology (RACT), as expeditiously as practicable and to provide for attainment of the NAAQS. FCAA, §182(c) addresses the SIP requirements for demonstrating attainment and RFP for areas classified as serious.

FCAA, §172(c) mandates that the commission submit an AD SIP revision to demonstrate that the Bexar County area will meet the NAAQS by its attainment date. Photochemical modeling for future years indicates that the Bexar County area will meet the 2015 ozone NAAQS by the mandated deadline using existing control strategies. The commission is neither required to propose nor is it proposing any amendments to demonstrate attainment for the Bexar County area in this rulemaking because the AD modeling demonstrates attainment without the need for additional measures. A RACM analysis to identify additional potential control measures that could expedite attainment of the NAAQS earlier than the area's attainment date is provided in the concurrently proposed Bexar County 2015 Ozone NAAQS Serious AD SIP Revision (Non-Rule Project No. 2024-041-SIP-NR). The RACM analysis determined that no potential control measures met the criteria to be considered RACM. As a result, no rule revisions are proposed as RACM.

FCAA, §182(f) requires the state to submit a SIP revision that implements RACT for all major sources of nitrogen oxides (NO_x). EPA defines RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 FR 53761, September 17, 1979). RACT requirements for moderate and higher classification ozone nonattainment areas are included in the FCAA to ensure that significant source categories at major sources of ozone precursor emissions are controlled to a reasonable extent, but not necessarily to best available control technology levels expected of new sources or to maximum achievable control technology levels required for major sources of hazardous air pollutants. Although the FCAA requires the state to implement RACT, EPA guidance provides states with the flexibility to determine the most technologically and economically feasible RACT requirements for a nonattainment area. As currently defined in 30 Texas Administrative Code (TAC) §117.10(29), a major source of NO_x is any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit a specific amount of NO_x emissions based on the area's ozone nonattainment classification. For the Bexar County serious ozone nonattainment area, a major source of NO_x is any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit at least 50 tons per year (tpy) of NO_x.

For the reclassification to serious ozone nonattainment, TCEQ reviewed the 2022 point source Emissions Inventory (EI) to identify all major sources of NO_x emissions in the Bexar County ozone nonattainment area. Since the point source EI database reports actual emissions rather than potential to emit, TCEQ reviewed sources that reported actual emissions as low as 10 tpy of NO_x to account for the difference between actual and potential emissions. TCEQ also reviewed air permits to further confirm which sites with low emissions in 2022 were major sources of NO_x due to authorized emissions of 50 or more tpy. Sites from the point source EI database with emissions of 10 tpy or more of NO_x that could not be verified as minor sources by other means were included in the RACT analysis. To evaluate what rules would be necessary to fulfill RACT requirements, TCEQ considered other Chapter 117 rules that address other ozone nonattainment areas, rules in other states, and federal rules for the unit categories identified at the major NO_x sources in the serious ozone nonattainment area. As part of this proposed rulemaking, TCEQ determined that the proposed rule revisions for the affected major NO_x sources located in the Bexar County ozone nonattainment area would fulfill RACT requirements for those sources and be consistent with or more stringent than controls implemented in other ozone nonattainment areas within the state and outside the state. Because the Bexar County 2015 eight-hour ozone NAAQS nonattainment area was previously classified as moderate, sources that emit or have the potential to emit at least 100 tpy NO_x are already required to comply with Chapter 117 RACT rules. On April 24, 2024, the commission adopted NO_x RACT rules for sources in Bexar County under the moderate classification in a Chapter 117 rulemaking (Rule Project No. 2023-117-117-AI) that was part of the Bexar County 2015 Eight-Hour Ozone Standard Moderate Nonattainment Area RACT SIP Revision (Non-Rule Project No. 2023-132-SIP-NR). This proposed rulemaking would extend implementation of RACT to all major sources of NO_x in the area that emit or have the potential to emit at least 50 tpy of NO_x.

As required by FCAA, §172(c)(1) and §182(f), the proposed rulemaking would ensure that all major sources of NO_x in the Bexar County ozone nonattainment area are subject to RACT, either by being subject to requirements that meet or exceed the applicable RACT requirements, or by determining that further emission controls on the sources in the area are either not economically feasible or not technologically feasible. Federally approved state rules and rule approval dates can be found in 40 Code of Federal Regulations (CFR) §52.2270(c), *EPA Approved Regulations in the Texas SIP*.

The commission proposes to revise Chapter 117, Subchapter B, Division 2 to change the requirements for major industrial, commercial, or institutional (ICI) sources of NO_x in the Bexar County ozone nonattainment area to address NO_x RACT requirements for serious ozone nonattainment areas. Proposed revisions would require some owners or operators of major ICI sources of NO_x in Bexar County to reduce NO_x emissions from certain stationary sources and source categories for the serious ozone nonattainment area. The proposed rulemaking would extend rule applicability of Subchapter B, Division 2 to stationary gas-fired engines fired on landfill gas, stationary diesel engines, ICI process heaters, natural gas-fired ovens, and incinerators. The proposed rulemaking would also include new emission standards for stationary gas-fired engines fired on landfill gas. Proposed rule revisions would further include new emission standards and exemptions for stationary diesel engines, process heaters, and natural gas-fired ovens. Proposed rule revisions would also include new exemptions for incinerators. The proposed rulemaking would also extend applicability of existing monitoring, testing, recordkeeping, and reporting requirements associated with Division 2 to the newly affected major sources of NO_x located in the Bexar County serious ozone nonattainment area. These monitoring, testing, recordkeeping, and reporting requirements would be necessary to ensure compliance with the new emission specifications, confirm eligibility for certain exemptions, and ensure that NO_x emission reductions are achieved from the units that become subject to the requirements of Chapter 117, Subchapter B, Division 2.

Section by Section Discussion

In addition to the proposed amendments associated with implementing RACT for the Bexar County ozone nonattainment area and specific minor clarifications and corrections discussed in greater detail in this section, this proposed rulemaking also includes various stylistic, non-substantive changes to update rule language to current *Texas Register* style and format requirements. Such changes include appropriate and consistent use

of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally are not specifically discussed in this preamble.

Subchapter A, Definitions

Section 117.10, Definitions

The proposal would revise the definition of major source in §117.10(29)(B) to lower the major source threshold from 100 tpy to 50 tpy for NO_x for sources in the Bexar County ozone nonattainment area. The change is necessary to address the area's reclassification to serious nonattainment for the 2015 eight-hour ozone NAAQS. Major sources affected by the proposed rulemaking would be required to comply with all applicable Chapter 117 rules by March 1, 2026, as stated in the rule compliance schedule in proposed revised §117.9010.

The proposed rulemaking would also expand the definition of unit in §117.10(51)(G) to include the list of units that would be covered under §117.205 concerning RACT emissions specifications in Bexar County. The proposed changes to §117.10(51)(G) would add process heaters and any other stationary source of NO_x at a major source, as defined in §117.10. The proposed changes to §117.10(51)(G) would also replace the term "gas-fired lean-burn stationary reciprocating internal combustion engine" with the proposed new term "stationary internal combustion engine." As with the existing definition for stationary internal combustion engine, the proposed changes to §117.10(51)(G) would specify that stationary gas-fired lean-burn engines remain subject to the requirements of Subchapter B, Division 2 and that stationary diesel engines and stationary gas-fired engines fired on landfill gas would also become subject to the requirements of Subchapter B, Division 2. Because the emission reductions required by the RACT provisions necessitate further reductions from additional unit categories not previously covered, the proposed revisions broaden the applicability of the definition of unit to include any other stationary source of NO_x at a major source, including those units that may qualify for a proposed exemption.

Subchapter B, Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas

Division 2, Bexar County Ozone Nonattainment Area Major Sources

Section 117.200, Applicability

The proposed rulemaking would expand the applicability of Subchapter B, Division 2 to include additional unit categories under §117.200. Section 117.200 currently applies to stationary gas turbines, duct burners used in turbine exhaust ducts, and gas-fired lean-burn stationary reciprocating internal combustion engines located at a major source of NO_x in the Bexar County ozone nonattainment area. Proposed changes would add ICI process heaters and natural gas-fired ovens, flares, and incinerators to the list of applicable units. The term "gas-fired lean-burn stationary reciprocating internal combustion engines" in §117.200(3) is proposed to be replaced with the new term, "stationary internal combustion engines." Considering that the existing definition of stationary internal combustion engines in §117.10(46) addresses any reciprocating engine that satisfies the time in residence requirement of the definition, revising §117.200(3) to apply to stationary internal combustion engines would cover not only gas-fired lean-burn stationary reciprocating internal combustion engines, but also stationary diesel engines and stationary gas-fired engines fired on landfill gas. All known diesel-fuel fired and gaseous-fuel fired stationary engines at major NO_x sources in the Bexar County ozone nonattainment area that are not identified as stationary turbines are reciprocating internal combustion engines.

The commission proposes to add new paragraphs (4) through (7) in §117.200 to expand applicability of the rule provisions of Subchapter B, Division 2 to ICI process heaters and natural gas-fired ovens, flares, and incinerators. These unit categories were identified in the 2022 point source EI at NO_x major sources in the Bexar County ozone nonattainment area.

Section 117.203, Exemptions

Existing §117.203 lists the units that are exempt from the provisions of Chapter 117, Subchapter B, Division 2. The commission notes that the existing rule provision reference to §117.245(f)(9) in §117.203 is an error. Section 117.245(f) currently does not contain a paragraph (9). Therefore, the existing reference to §117.245(f)(9) in §117.203 is proposed to be deleted. Because the commission proposes a new §117.245(f)(7) to specify recordkeeping requirements concerning diesel engines and operating restrictions, the commission proposes a new rule provision reference to proposed new §117.245(f)(7) in §117.203. Because the commission further proposes a new §117.205(e) to specify operating restrictions for owners or operators of stationary diesel engines, the commission proposes a new rule provision reference to proposed new §117.205(e) in §117.203.

Proposed revised paragraph (1) would replace the term gas-fired lean-burn stationary reciprocating internal combustion engines with the term stationary internal combustion engines. This proposed change would coincide with the proposed change to §117.200(3) to list stationary internal combustion engines as applicable units subject to the provisions of Subchapter B, Division 2. With this proposed change, owners or operators of gas-fired lean-burn stationary reciprocating internal combustion engines, stationary diesel engines, and stationary gas-fired engines fired on landfill gas would be able to claim an exemption based on dedicated use. The allowed dedicated uses eligible for an exemption are listed in subparagraphs (A) through (E) of paragraph (1).

Existing §117.203(1)(D) provides for an exemption for owners or operators of stationary gas turbines and gas-fired lean-burn stationary reciprocating internal combustion engines that are used exclusively in emergency situations, as defined in §117.10(15), except that operation of the unit for testing or maintenance purposes of the unit is allowed for up to 100 hours per year, on a rolling 12-month basis. For an owner or operator of a stationary diesel engine used exclusively in emergency situations, as defined in §117.10(15), to claim this exemption, proposed revisions to subparagraph (D) would specify that a stationary diesel engine would have to be placed into service before March 1, 2026. The proposed change would make clear that any new stationary diesel engine and any modified, reconstructed, or relocated existing stationary diesel engine placed into service on or after March 1, 2026, would be ineligible for the exemption under proposed revised subparagraph (D). For the purposes of this exemption, the terms "modification" and "reconstruction" have the meanings defined in 30 TAC §116.10 and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in 30 TAC §101.1, a used engine from anywhere outside that account.

This proposed change would mirror similar provisions in other parts of Chapter 117 for other ozone nonattainment areas for owners or operators of stationary diesel engines claiming an ex-

emption based on dedicated emergency use. The proposed change to subparagraph (D) provides owners or operators of existing stationary diesel engines that are used solely for emergency reasons the opportunity to continue to rely on such units without having to modify an engine, install post-combustion controls, or replace a unit to meet proposed NO_x emission specifications so long as the existing unit is never modified or reconstructed, nor is an existing unit ever relocated from outside the area to a major source of NO_x in the Bexar County ozone nonattainment area, on or after the proposed threshold date. These changes to the existing exemption are proposed due to the relatively small NO_x emissions contribution in the area from these sources due to their limited, dedicated use or the impracticality of using NO_x emissions controls during such limited operating times. A threshold date is proposed in §117.203(1)(D) to ensure the net effect is that existing stationary diesel engines, if used exclusively in emergency situations and placed into service before the proposed threshold date, would be exempt from the new emission specifications in proposed new §117.205(a)(3)(B), whereas new, modified, reconstructed, or relocated stationary diesel engines placed into service on or after March 1, 2026, would be required to be cleaner diesel engines. New, modified, reconstructed, or relocated stationary diesel engines placed into service on or after March 1, 2026, would be required to meet federal Tier 4 emission standards for non-road diesel engines in effect at the time of installation, modification, reconstruction, or relocation. These proposed measures would leverage the natural replacement cycle of equipment and ensure that as older stationary diesel engines reach the end of their operational life, and turnover of older, higher-emitting stationary diesel engines occurs, the replacement units would be cleaner diesel engines. The gradual modernization of stationary diesel engines in the Bexar County area would lead to consistent decreases in NO_x emissions, helping the area comply with more stringent NAAQS.

The proposed changes to §117.203 would also add a new §117.203(2) to exempt existing stationary diesel engines located at major sources of NO_x in the Bexar County ozone nonattainment area that are placed into service before March 1, 2026, and operate less than 100 hours per calendar year on a rolling 12-month basis. The proposed new §117.203(2) would not exempt any modified, reconstructed, or relocated stationary diesel engine placed into service on or after March 1, 2026. For the purposes of this exemption, the terms "modification" and "reconstruction" have the meanings defined in 30 TAC §116.10 and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in 30 TAC §101.1, a used engine from anywhere outside that account. This exemption in proposed new §117.203(2) would be similar in effect to the proposed revisions to §117.203(1)(D) in that an owner or operator of an existing stationary diesel engine could continue to operate the unit provided the unit would not be altered on or after the rule compliance date. This would help to ensure that the same NO_x emissions profile from the existing unit could be expected in the future. This would also help to ensure that all NO_x emissions from any existing unit already located in the nonattainment area and any existing unit that may be moved into the area, thus considered new, are accounted for during SIP development. Based on reported information in the 2022 point source EI, the commission does not anticipate owners or operators of existing stationary diesel engines placed into service before the proposed threshold date of March 1, 2026, would be unable to meet the proposed operating hour requirement of less than 100 hours per calendar year based on a rolling 12-month basis.

The proposed changes to §117.203 would further add a new §117.203(3) to exempt new, modified, reconstructed, or relocated stationary diesel engines located at major sources of NO_x in the Bexar County ozone nonattainment area if the new, modified, reconstructed, or relocated stationary diesel engine is placed into service on or after March 1, 2026, operates less than 100 hours per calendar year on a rolling 12-month basis and meets the corresponding NO_x emission standard for non-road engines listed in 40 CFR §1039.101, Table 1 (effective July 29, 2021), and in effect at the time of installation, modification, reconstruction, or relocation. Operating time during emergency situations, as defined in §117.10(15), would be excluded from the limit on operating hours under proposed new §117.203(3). For the purposes of this exemption, the terms "modification" and "reconstruction" have the meanings defined in 30 TAC §116.10 and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in 30 TAC §101.1, a used engine from anywhere outside that account. Similar to the proposed revisions to §117.203(1)(D) and proposed new §117.203(2), owners or operators of existing units could continue to operate their existing units as they previously had provided the units would not be altered on or after the proposed threshold date of March 1, 2026. Furthermore, these and the other proposed new requirements for stationary diesel engines would ensure that as turnover of older, higher-emitting stationary diesel engines occurs, the replacement units would be cleaner diesel engines.

Existing paragraphs (2) and (3) in §117.203 are proposed to be renumbered to paragraphs (4) and (5), respectively. Existing paragraph (2), renumbered as paragraph (4), concerning exempt units, continues to apply to gas-fired lean-burn stationary internal combustion engines rated less than 50 horsepower (hp) and fired on any type of gaseous fuel other than landfill gas. The commission also proposes to remove the word "reciprocating" from the term "gas-fired lean-burn stationary reciprocating internal combustion engines" in existing paragraph (2), renumbered as paragraph (4), because, for purposes of Chapter 117, the concept of a reciprocating engine is implied with stationary engines as opposed to rotary engines. For purposes of Chapter 117, rotary engines are considered stationary turbines, and the existing definition for stationary internal combustion engine in §117.10 already includes the term "reciprocating." Existing paragraph (3), renumbered as paragraph (5), concerning exempt units, continues to apply to stationary gas turbines with a maximum rated capacity less than 10.0 million British thermal units per hour (MMBtu/hr). Existing paragraph (3), renumbered as paragraph (5), would further include the new acronym "MMBtu/hr" for "million British thermal units per hour."

The commission proposes new §117.203(6) to specify that ICI process heaters with a maximum rated capacity equal to or less than 5.0 MMBtu/hr are exempt from the provisions of Subchapter B, Division 2. The commission identified nine process heaters in the 2022 point source EI, with all nine units located at the same major source of NO_x in the Bexar County ozone nonattainment area. Because three units had reported heat input equal to or less than 5.0 MMBtu/hr, the commission anticipates that these three units would qualify for exemption from the proposed rulemaking. Because the remaining six units had reported heat inputs equal to or greater than the proposed exemption threshold of 5.0 MMBtu/hr, these six units are anticipated to require NO_x emission reductions to meet the proposed NO_x emission specification requirements for ICI process heaters in proposed revised §117.205. This exemption level is proposed in §117.203 due to

the relatively small contribution of NO_x emissions from units that are equal to or less than 5.0 MMBtu/hr and the impracticality of installing and maintaining NO_x controls on such units for this proposed rulemaking.

The proposed rulemaking would specify in new §117.203(7) that natural gas-fired ovens with a maximum rated capacity equal to or less than 5.0 MMBtu/hr are exempt from the provisions of Subchapter B, Division 2. The commission identified seven ovens in the 2022 point source EI, with all seven units located at the same major source of NO_x in the Bexar County ozone nonattainment area. Because three units had reported heat input equal to or less than 5.0 MMBtu/hr, the commission anticipates that these three units would qualify for exemption from the proposed rulemaking. Because the remaining four units had reported heat inputs equal to or greater than the proposed exemption threshold of 5.0 MMBtu/hr, these four units are anticipated to require NO_x emission reductions to meet the proposed NO_x emission specification requirements for natural gas-fired ovens in proposed revised §117.205. Similar to the exemption proposed for ICI process heaters, this exemption level for natural gas-fired ovens is proposed due to the relatively small contribution of NO_x emissions from units that are equal to or less than 5.0 MMBtu/hr and the impracticality of installing and maintaining NO_x controls on such units for this proposed rulemaking.

Proposed new §117.203(8) would add an exemption for flares from the provisions of Subchapter B, Division 2. Proposed new §117.203(9) would exempt incinerators with a maximum rated capacity less than 40 MMBtu/hr from the provisions of Subchapter B, Division 2. The proposed exemptions for these unit types located at major sources of NO_x in the Bexar County ozone nonattainment area are consistent with existing exemptions for the Dallas-Fort Worth (DFW) eight-hour ozone nonattainment area major sources, in existing §117.403(a)(3), and for the Houston-Galveston-Brazoria (HGB) ozone nonattainment area major sources, in existing §117.303(a)(4). The commission identified four incinerators in the 2022 point source EI at major sources of NO_x in the Bexar County ozone nonattainment area, with all four units expected to qualify for exemption under proposed new §117.203(9). Existing §117.203(4) is proposed to be renumbered as §117.203(10).

Section 117.205, Emission Specifications for Reasonably Available Control Technology (RACT)

The commission proposes to revise §117.205(a)(3) as part of a broader effort to include additional types of stationary internal combustion engines located at major sources of NO_x. Currently, §117.205(a)(3) specifies NO_x emission limits for only gas-fired lean-burn engines not fired on landfill gas. The proposed revision would expand these specifications to include two additional engine types: gas-fired lean-burn engines fired on landfill gas and diesel engines. Proposed new §117.205(a)(3)(A)(i) would specify that gas-fired lean-burn engines fired on landfill gas would be subject to a NO_x emission standard of 0.60 grams per horsepower-hour (g/hp-hr). The landfill gas fired in these stationary engines is a byproduct of the decomposition of organic waste in a nearby municipal solid waste landfill, with methane composing much of the waste gas. The proposed Bexar County NO_x emission specification for stationary engines that are fired on landfill gas is based on the NO_x emission specification for similar units located at NO_x major sources in the DFW eight-hour ozone nonattainment area, §117.410(a)(4)(B)(ii)(I), and in the HGB ozone nonattainment area, §117.310(a)(9)(B)(i), respectively. The proposed emission specification of 0.60 g/hp-hr in §117.205(a)(3)(A)(i) is expected to be achievable through combustion modifications. The existing NO_x emission standard of 0.50 g/hp-hr in §117.205(a)(3), for gas-fired lean-burn stationary reciprocating internal combustion engines, is proposed to be moved to new §117.205(a)(3)(A)(ii).

The proposed changes to §117.205(a)(3) further add a new subparagraph (B) that would establish NO_x emission standards for stationary diesel engines based on the size of the stationary diesel engine and the date the engine was installed, modified, reconstructed, or relocated in the Bexar County ozone nonattainment area. The proposed NO_x standards in new §117.205(a)(3)(B) are based on EPA's Tier 4 emission standards for non-road diesel engines listed in 40 CFR §1039.101, Table 1 (effective July 29, 2021). While EPA's Tier 4 emission standards are also based on engine size, they differ from TCEQ's standards in proposed new §117.205(a)(3)(B) in that they are also based on the engine model year and the dedicated end-use for larger diesel engines.

With promulgation of the new Tier 4 diesel emission standards in 40 CFR Part 1039, EPA established another comprehensive, new program to phase in more stringent Tier 4 emission standards for all diesel engine sizes, similar to its earlier rulemaking efforts for the Tier 2 and Tier 3 emission standards. The Tier 4 emission standards were phased in beginning with model year 2008, requiring lower standards for certain engine sizes and model years 2011 and 2012, and being fully implemented by 2015. Some of the Tier 4 NO_x emission standards for certain engine sizes and model years overlap with some of EPA's prior tier emission standards.

Because some of EPA's Tier 4 exhaust emission standards for diesel engines are expressed in terms of nonmethane hydrocarbons (NMHC) + NO_x, the commission used Table 7: *Tier 2 and Tier 3 Combined and Estimated Pollutant-Specific Emissions Standards for Nonroad Diesel Engines* from EPA's *Exhaust and Crankcase Emission Factors for Nonroad Engine Modeling--Compression-Ignition, Report No. NR-009C* (EPA420-P-04-009, revised April 2004) to split the combined NMHC + NO_x Tier 4 standards into single pollutant emission standards for NO_x, where necessary.

Proposed new §117.205(a)(3)(B)(i) - (iv) would establish NO_x emissions performance standards for stationary diesel engines rated less than 25 hp and through 750 hp and that are installed, modified, reconstructed, or relocated on or after March 1, 2026. Proposed new §117.205(a)(3)(B)(v) would establish a NO_x emission specification for stationary diesel engines rated greater than 750 hp that are electric generator sets and are installed, modified, reconstructed, or relocated on or after March 1, 2026. Proposed new §117.205(a)(3)(B)(vi) would establish a NO_x emission specification for stationary diesel engines rated greater than 750 hp that exclude electric generator sets and are installed, modified, reconstructed, or relocated on or after March 1, 2026.

Proposed revisions to §117.205(a) include a new paragraph (4) to specify new NO_x emission specifications for process heaters located at NO_x major sources in the Bexar County ozone nonattainment area. Proposed new §117.205(a)(4)(A) would include a NO_x emission specification of 0.025 pounds per million British thermal units (lb/MMBtu) for process heaters with a maximum rated capacity equal to or greater than 40 million British thermal units per hour (MMBtu/hr). Proposed new §117.205(a)(4)(B) would include a NO_x emission limit of 0.036 lb/MMBtu (or alternatively, 30 parts per million by volume (ppmv), at 3.0% oxygen (O_2), dry basis) for process heaters with a maximum rated capac-

ity less than 40 MMBtu/hr. Post-combustion NO_x control such as selective catalytic reduction (SCR) may be necessary for some gas-fired process heaters with a maximum rated capacity equal to or greater than 40 MMBtu/hr to comply with the proposed 0.025 lb/MMBtu emission specification. Given advancements in burner technology to produce the same output with fewer NO_x emissions, some units of this size category may be able to meet the proposed limit of 0.025 lb/MMBtu through combustion modifications such as low-NO_x burners (LNB), or more specifically the next generation of LNB or ultra low-NO_x burners (ULNB). Owners or operators of gas-fired process heaters with maximum rated capacities less than 40 MMBtu/hr may be required to install LNB, ULNB, or make other combustion modifications to comply with the proposed 0.036 lb/MMBtu (or 30 ppmv, at 3.0% O_2, dry) emission specification. No liquid-fired process heaters were identified in the 2022 point source EI in the Bexar County ozone nonattainment area; however, SCR may be necessary for a liquid-fired process heater to comply with the proposed emission specifications. The NO_x emission standards for units located in Bexar County are proposed at the same NO_x performance level for ICI process heaters located at major NO_x sources in the DFW eight-hour ozone nonattainment area, §117.410(a)(3), and in the HGB ozone nonattainment area, §117.310(a)(8)(A), respectively.

Proposed new §117.205(a)(5) would establish a 0.036 lb/MMBtu NO_x emission specification for natural gas-fired ovens used in industrial, commercial, or institutional processes. This proposed new emission specification is anticipated to be achievable through combustion modifications, such as burner modifications or installation of LNB or possibly ULNB. The proposed emission limit in new §117.205(a)(5) aligns with the NO_x emission specification for natural gas-fired ovens subject to §117.410(a)(12) for the DFW eight-hour ozone nonattainment area. The commission did not identify in the 2022 point source EI for the Bexar County ozone nonattainment area any ovens using fuels other than natural gas. However, for ovens using fuels other than natural gas, particularly liquid fuels, NO_x emissions controls in addition to or beyond burner modifications, LNB, or ULNB may be necessary.

The commission further proposes a new §117.205(a)(6) to establish a NO_x emission specification for incinerators that would not qualify for the proposed exemption under proposed new §117.203(9). Owners or operators of these units would be required to comply with a 0.030 lb/MMBtu emission specification. While this proposed emission specification for incinerators may be achievable through installation of LNB or through other combustion modifications, SCR may be necessary to achieve the 0.030 lb/MMBtu emission specification. This proposed new NO_x limit for incinerators in the Bexar County ozone nonattainment area is set at the same NO_x performance level as for incinerators subject to the provisions of Subchapter B, Divisions 3 and 4 for the HGB and DFW areas (§117.310(a)(16)(B) and §117.410(a)(9)(B)), respectively.

Proposed revisions to §117.205(b), concerning NO_x averaging times for units subject to a NO_x emission specification under §117.205(a), include repealing existing §117.205(b)(1) and proposing it as new §117.205(b)(2), with amendments. Proposed new §117.205(b)(2) would specify that compliance with the NO_x emission specifications in §117.205(a) must be determined on a block one-hour averaging time, in the units of the applicable NO_x emission specification, for units that do not operate with a NO_x continuous emission monitoring system (CEMS) or predictive emission monitoring system (PEMS) under §117.240 of Subchapter B, Division 2. Proposed new §117.205(b)(2) would provide for the same requirements as existing §117.205(b)(1) and further specify that the block one-hour averaging time would apply to owners or operators of units that do not operate with a NO_x CEMS or PEMS. Proposed new §117.205(b)(2) further includes a new provision for owners or operators of process heaters in the Bexar County ozone nonattainment area by providing an alternative NO_x averaging time for demonstrating compliance with the NO_x limits in §117.205(a). If a process heater that is subject to §117.205(a) is not operated with a NO_x CEMS or PEMS under §117.240, under proposed new §117.205(b)(2) the owner or operator may choose to calculate the actual NO_x emissions rate from the unit on a pounds per hour basis by multiplying the unit's maximum rated capacity by the unit's applicable NO_x emission specification in lb/MMBtu and using this calculated result to show compliance with the applicable specifications in Subchapter B, Division 2. Under this alternative NO_x averaging time, where the owner or operator shows compliance on a block one-hour average in pounds per hour as opposed to on a block one-hour average in the units of the applicable NO_x emission specification, the calculated value for the process heater would be compared to the performance evaluation result obtained through the emissions stack testing that would be required by the initial demonstration of compliance provisions under §117.235 of Subchapter B, Division 2. This alternative would allow for a direct comparison between the calculated theoretical emissions and the measured actual emissions, providing an alternative method to verify compliance with the applicable NO_x standard.

Existing §117.205(b)(2) is proposed to be renumbered as §117.205(b)(1), and three new subparagraphs would also be added. For units, except process heaters, that operate with a NO_x CEMS or PEMS under §117.240, the owner or operator would be able to choose between two different NO_x averaging times to show compliance with the NO_x emission specifications in §117.205(a). Proposed new §117.205(b)(1)(A) offers flexibility to comply with the specifications in §117.205(a) on a 30-day rolling average in the units of the applicable emission standard. Proposed new §117.205(b)(1)(B) offers flexibility to comply with the specifications in §117.205(a) on a block one-hour average in the units of the applicable emission standard. The owner or operator of a process heater in the Bexar County ozone nonattainment area would have an additional option in proposed new §117.205(b)(1)(C). As an alternative to the 30-day rolling average in the units of the applicable emission standard in proposed new §117.205(b)(1)(A) and to the block one-hour average in the units of the applicable emission standard in proposed new §117.205(b)(1)(B), proposed new §117.205(b)(1)(C) for process heaters would offer flexibility to comply with the specifications in §117.205(a) on a block one-hour average in pounds per hour. Like the alternative for process heaters under proposed new §117.205(b)(2), with amendments, the owner or operator may choose to calculate the actual NO_x emissions rate from the unit on a pounds per hour basis by multiplying the unit's maximum rated capacity by the unit's applicable NO_x emission specification in lb/MMBtu and using this calculated result to show compliance with the applicable NO_x emission specifications in Subchapter B, Division 2. The commission further proposes to rearrange the wording of the NO_x averaging time for 30 days from "rolling 30-day average" to "30-day rolling average," to keep use of this term within the chapter consistent with how the term is worded within its definition in §117.10.

The reclassification of the Bexar County ozone nonattainment area to serious resulted in the identification of additional major source NO_x emissions units, including flares and incinerators. For purposes of ozone attainment, it is necessary to prevent circumvention due to the transfer of NO_x emissions associated with chemical-bound nitrogen from a unit under which these emissions would be controlled to a unit that is not subject to the NO_x emission specifications in §117.205(a), and therefore uncontrolled. Proposed changes to §117.205(d) add a new paragraph (3) that would prohibit changes to a unit subject to a NO_x emission specification in §117.205(a) that would result in increased NO_x emissions from a unit that is not subject to the NO_x emission specifications in §117.205(a). An example of this type of change that would be prohibited under proposed new §117.205(d)(3) would be redirecting one or more fuel or waste streams containing chemical-bound nitrogen to an incinerator with a maximum rated capacity less than 40 MMBtu/hr, or a flare. The redirection of the fuel or waste stream would result in increased NO_x emissions from the unit not subject to a NO_x emission specification in §117.205(a). Consequently, these additional NO_x emissions would not have been accounted for in the SIP revision for the ozone nonattainment area and either deemed insignificant or not needing additional NO_x emissions control. The proposed prohibition threshold date of December 19, 2019, was the modeling base year for the attainment demonstration SIP revision required at the time that the Bexar County ozone nonattainment area was classified as moderate. The 2019 base year was also used in the concurrent proposed Bexar County 2015 ozone NAAQS serious attainment demonstration SIP revision, thus the December 19, 2019, date remains appropriate for the prohibition threshold. Therefore, any changes after December 19, 2019, to a unit subject to §117.205(a) that would result in increased NO_x emissions from another unit not subject to §117.205(a) would be prohibited, unless certain criteria are met, as explained below.

An owner or operator would be allowed to make such changes that would otherwise be prohibited under proposed new §117.205(d)(3) only if both of the conditions under proposed new §117.205(d)(3)(A) and (B) were satisfied. Under proposed new §117.205(d)(3)(A), the increase in NO_x emissions from the unit not subject to the NO_x emission specifications in §117.205(a) must be determined either using a NO_x CEMS or PEMS that meets the requirements in §117.240 of Subchapter B, Division 2 or through emissions stack testing that meets the requirements in §117.235 of Subchapter B, Division 2. Under proposed new §117.205(d)(3)(B), emission credits that are equal to the increase in NO_x emissions from the unit not subject to the NO_x emission specifications in §117.205(a) must be obtained and used in accordance with §117.9800 of Subchapter H, Division 2. Any change to a unit subject to §117.205(a) that resulted in increased NO_x emissions from another unit not subject to §117.205(a) after December 19, 2019, and before the effective date of this proposed rulemaking, if adopted, would still be prohibited. Existing §117.205(d)(3) is proposed as renumbered §117.205(d)(4).

Proposed revisions to §117.205 further include a new subsection (e) that would prohibit an owner or operator of a stationary diesel engine in the Bexar County ozone nonattainment area from starting or operating the stationary diesel engine between the hours of 6:00 a.m. and noon for testing or maintenance of the engine itself, with three specified exceptions to the prohibition. This proposed new requirement on starting or operating restrictions for stationary diesel engines would delay the emissions of NO_x, a key ozone precursor, until after noon (12:00 p.m.) to limit ozone formation. Proposed new §117.205(e)(1) would allow the starting or operation of the stationary diesel engine between the hours of 6:00 a.m. and noon if it is for a manufacturer's specific recommended testing requiring a run of over 18 consecutive hours. Proposed new §117.205(e)(2) would allow the starting or operation of the stationary diesel engine between the hours of 6:00 a.m. and noon if it is to verify reliability of emergency equipment (e.g., emergency generators or pumps) immediately after unforeseen repairs. Routine maintenance, such as an oil change, is not considered to be an unforeseen repair since it can be scheduled outside the 6:00 a.m. to noon time period. Finally, proposed new §117.205(e)(3) would allow the starting or operation of the stationary diesel engine between the hours of 6:00 a.m. and noon if it is for the purpose of using firewater pumps that are used for emergency response training conducted between April 1 and October 31 of a calendar year.

Section 117.230, Operating Requirements

The commission proposes a new subsection (a) in existing §117.230 to require that the owner or operator of any unit subject to the NO_x emission specifications in §117.205(a) must operate the unit in compliance with those limitations. The existing introductory rule text in §117.230 is moved to new subsection (b) in §117.230. The commission further proposes in new paragraphs (1) - (2) of proposed renumbered §117.230(b) operational requirements for owners or operators of process heaters that use forced draft flue gas recirculation (FGR) or induced draft FGR for control of NO_x emissions. Proposed new §117.230(b)(3) would specify operational requirements for owners or operators of units that use steam or water injection for control of NO_x emissions. Existing §117.230(1) is proposed to be renumbered as §117.230(b)(4). Existing §117.230(2) is proposed to be renumbered as §117.230(b)(5). Similar to the existing provisions under §117.230(1) and (2), before proposed changes, for operational requirements for post-combustion NO_x control techniques and gas-fired lean-burn stationary engines, the purpose of proposed new §117.230(b)(1) - (3) is to require that equipment be operated in such a manner as to reduce NO_x emissions over the entire operating range. These proposed new requirements would ensure that NO_x reductions are achieved, particularly for units that operate without a NO_x emissions monitor, i.e. a NO_x CEMS or PEMS. Finally, the commission proposes in renumbered §117.230(b)(5) to replace the term "gas-fired lean-burn stationary reciprocating internal combustion engine" with the new term "stationary internal combustion engine." This proposed change in existing §117.230(2), renumbered as §117.230(b)(5), would require that all stationary internal combustion engines covered under Subchapter B, Division 2, and not only gas-fired lean-burn stationary engines, must be checked for proper engine operation according to §117.8140(b) of Subchapter G, Division 2. This change would be necessary to be consistent with the proposed changes for new §117.205(a)(3) as part of this proposed rulemaking.

Section 117.235, Initial Demonstration of Compliance

The commission proposes in revised §117.235(a) that the owner or operator of any NO_x emissions unit that does not qualify for an exemption from the NO_x emission specifications in Subchapter B, Division 2 is required to conduct emissions performance testing for each unit that is subject to a NO_x emission specification of the division.

The commission proposes in revised §117.235(e) to specify that for units operating without a NO_x emissions monitor, the initial

demonstration of compliance with the NO_x emission specifications of Subchapter B, Division 2 must be performed according to the requirements in §117.8000 of Subchapter G, Division 1. The word "initially" was previously not part of the rule provision language for §117.235(e). Proposed revisions to §117.235(e) would follow the same intent as existing requirements in §117.235(f).

Proposed revisions to §117.235(f) include minor rewording to the subsection to make clear that if an owner or operator of a unit subject to the emission specifications in §117.205(a) is required or otherwise elects to use a NO_x CEMS or PEMS, which must be installed, calibrated, maintained, and operated in accordance with §117.240 of Subchapter B, Division 2, the NO_x monitor must undergo monitor certification testing first before being used to monitor NO_x emissions from the unit for both the initial compliance demonstration required under §117.235 and ongoing compliance demonstrations required under §117.240. Requirements for a NO_x specification on a block one-hour average are deleted from §117.235(f) and moved to new §117.235(f)(2), as described below.

The commission proposes a new §117.235(f)(1) to specify how an owner or operator demonstrating compliance with proposed revised §117.235(f) must determine the NO_x emissions from the unit to demonstrate initial compliance with the emission specifications of §117.205(a) for an emission specification expressed in units of lb/MMBtu and based on a 30-day rolling average. Proposed new §117.235(f)(2) would specify how an owner or operator demonstrating compliance with proposed revised §117.235(f) must determine the NO_x emissions from the unit to demonstrate initial compliance with the emission specifications of §117.205(a) for an emission specification on a block one-hour average. These rule provisions for demonstrating initial compliance with the applicable NO_x emission specifications for owners or operators of units operating with a NO_x monitor align with other similar provisions that exist in other parts of Chapter 117, specifically in §117.435(e)(1) and (2) for the DFW eight-hour ozone nonattainment area and in §117.335(f)(1) and (2) for the HGB ozone nonattainment area, respectively. To be consistent with the two options for the NO_x averaging time provided in proposed renumbered §117.205(b)(1), notwithstanding the third option specific to owners or operators of process heaters choosing compliance in units of pounds per hour, proposed new subsection (f)(1) and (2) are necessary for owners or operators of units operating with a NO_x monitor to show compliance depending on the averaging time chosen by the owner or operator. If a 30-day rolling average is chosen under proposed new §117.205(b)(1)(A), the owner or operator is required to comply with proposed new §117.235(f)(1). If a block one-hour average is chosen under proposed new §117.205(b)(1)(B), the owner or operator is required to comply with proposed new §117.235(f)(2).

Proposed new §117.235(f)(1) would specify that the calculated initial 30-day average emission rate must be used to show initial compliance with the applicable NO_x emission specification in §117.205(a). The 30-day average emission rate is calculated as the total NO_x emissions from a unit, in pounds, during a 30-day test period divided by the total heat input to the unit, in MMBtu, during the same 30-day test period. Any 30-day test period may be chosen by the owner or operator so long as the unit operates for 30 successive days for the NO_x emissions monitoring to occur. Proposed new §117.235(f)(2) would specify that any one-hour period of NO_x emissions monitoring using the certified NO_x monitor, while the unit operates at its maximum rated capacity, or as near thereto as practicable, must be used to show initial compliance with the applicable NO_x emission specification in §117.205(a). Any one-hour period may be used by the owner or operator of the unit since a NO_x emissions monitor used in compliance with Chapter 117 must be able to show compliance with EPA's regulations under 40 CFR Part 60 or Part 75, EPA-compliant NO_x emissions monitors provide hourly averages of NO_x emissions, and the averaging time for the initial compliance demonstration is on an hourly basis.

Section 117.240, Continuous Demonstration of Compliance

Existing §117.240(a)(2) provides alternatives to the requirements of §117.240(a)(1). The commission proposes to revise §117.240(a)(2)(C) by replacing the term "gas-fired lean-burn stationary reciprocating internal combustion engines" with the new term, "stationary internal combustion engines." This change would be necessary because the commission is proposing to expand the applicability of the rule provisions of Subchapter B, Division 2 to additional types of stationary engines. Proposed revised §117.240(a)(2)(C) would therefore specify that the alternative in existing §117.240(a)(2)(C) to the totalizing fuel flow metering requirement in §117.240(a)(1) would be available to an owner or operator of any stationary internal combustion engine that triggers applicability under proposed revised §117.200.

Existing §117.240(b)(2) specifies that units subject to the NO_x CEMS requirements of 40 CFR Part 75 are not required to install a NO_x CEMS or PEMS under §117.240(b). The commission proposes to expand §117.240(b)(2) to incorporate new provisions for stationary diesel engines. The commission proposes to move the existing exception provided to units subject to 40 CFR Part 75 to a proposed new §117.240(b)(2)(A). Proposed new §117.240(b)(2)(B) would provide an exception for owners or operators of stationary diesel engines with SCR systems from the requirement to install a NO_x CEMS or PEMS. To qualify for the exception, the stationary diesel engine must operate with an SCR emissions control system for NO_x and meet all the criteria in proposed new §117.240(b)(2)(B)(i) - (vi). Stationary diesel engines operated in this manner are expected to be newer diesel engines that would already be certified to EPA's Tier 4 emission standards in 40 CFR §1039.101, Table 1 (effective July 29, 2021). Currently, most diesel engine manufacturers incorporate SCR emissions control systems to produce engines that can be certified to EPA's Tier 4 emission standards for NO_x. The SCR emissions control system built into the operational design of the diesel engine makes the operation of the diesel engine without the SCR practically impossible. The criteria specified in proposed new §117.240(b)(2)(B)(i) - (iv) are from 40 CFR Part 1039, Subpart B for monitoring reductant use and unit and control system diagnostic functions. Consequently, an owner or operator of a stationary diesel engine operating with an SCR system and according to the conditions in proposed new §117.240(b)(2)(B) would not need to monitor exhaust NO_x with a NO_x CEMS or PEMS under §117.240(b). The proposed rule provisions for stationary diesel engines under §117.240(b)(2)(B) do not waive the requirement for an owner or operator to demonstrate initial compliance with the NO_x emission specifications of Subchapter B, Division 2 according to §117.235, ongoing compliance with the engine monitoring requirements in §117.240(e), or ongoing compliance with the retesting provisions in §117.240(h)(2), if retesting is triggered.

Similar to the proposed revision to §117.240(a)(2)(C), proposed revisions to §117.240(e) include replacing the term, gas-fired lean-burn stationary reciprocating internal combustion engine, with the new term, stationary internal combustion engine. Like

other changes proposed in this rulemaking for stationary engines, this change would be necessary to extend existing engine monitoring requirements to all stationary engines that would trigger applicability to the rule provisions of Subchapter B, Division 2 through proposed revised §117.200. The commission also proposes to add language to §117.240(e) to make clear that the requirement to stack test is for engines that are not equipped with a NO_x CEMS or PEMS. For stationary engines not required to operate with a NO_x monitor, or for those units for which the owner or operator elects not to use a NO_x monitor, owners or operators of stationary engines that trigger the engine emissions monitoring requirement under §117.240(e) would be required to conduct periodic emissions testing in accordance with the provisions in §117.8140(a). This requirement to conduct periodic emissions testing for stationary engines exists in §117.440(h) for stationary gas engines in the DFW eight-hour ozone nonattainment area and in §117.340(h) for all stationary engines in the HGB ozone nonattainment area.

Section §117.240(f) requires owners or operators of stationary gas turbines or gas-fired lean-burn stationary reciprocating internal combustion engines to record the unit's operating time with a non-resettable elapsed run time meter if the unit is claimed exempt using the exemption in §117.203(1)(D). Proposed revised §117.240(f) would extend the existing run time meter and operating time recording requirement to owners or operators of units claimed exempt using the exemptions in proposed new §117.203(2) or in proposed new §117.203(3). Like other proposed changes for stationary engines in this proposed rulemaking, the commission proposes to also replace the term gas-fired lean-burn stationary reciprocating internal combustion engine with the new term stationary internal combustion engine in proposed revised §117.240(f). These proposed new inclusions for §117.240(f) would mirror, as necessary, existing rule provision requirements for stationary gas turbines and stationary internal combustion engines for units claimed exempt in the DFW eight-hour ozone nonattainment area, in §117.440(i), and in the HGB ozone nonattainment area, in §117.340(j).

To be consistent with the proposed clarification in §117.240(e) concerning stationary engines that do not operate with a NO_x emissions monitor, either a CEMS or PEMS, the commission proposes to clarify in §117.240(h)(2) that for units not operating with a NO_x monitor, owners or operators of such units must retest their units, as specified in §117.235, within 60 days after any modification to a unit that could reasonably be expected to increase the NO_x emissions rate from the modified unit. The NO_x emissions retesting would be conducted according to §117.235(a), (e), and (g) of Subchapter B, Division 2. The emissions retesting provision in §117.240(h)(2) applies to any unit subject to a NO_x emission specification in §117.205(a) that does not use a NO_x monitor and for which a modification occurs that could reasonably be expected to increase the NO_x emissions rate from the unit.

Section 117.245, Notification, Recordkeeping, and Reporting Requirements

The commission proposes to move the existing notification requirements for owners or operators of units subject to the NO_x emission specifications in §117.205(a) from §117.245(b) to new paragraphs (1) and (2) within the subsection. The purpose is to make clearer, by separating into two new paragraphs, the existing notification requirements for emissions testing conducted under §117.235, in proposed new §117.245(b)(1), and the existing notification requirements for NO_x monitor performance evaluations conducted under §117.240, in proposed new §117.245(b)(2).

Proposed revisions to §117.245(e) include replacing the existing term, "gas-fired engine," with the new term, "stationary internal combustion engine." This change would be necessary to be consistent with the other changes proposed in this rulemaking to extend the applicability of the rule provisions of Subchapter B, Division 2 to additional stationary engine types. Therefore, owners or operators of stationary gas-fired lean-burn engines not fired on landfill gas, stationary gas-fired engines fired on landfill gas, and stationary diesel engines, subject to the NO_x emission specifications of §117.205(a), would be required to report in writing to the commission on a semiannual basis any excess emissions and air-fuel ratio monitoring system performance, as applicable.

The current rule provision reference to §117.230(a)(2) in §117.245(e)(1) is proposed to be revised to new §117.230(b)(5) to be consistent with the proposed changes to §117.230. The commission further notes that the current rule provision reference to §117.230(a)(2) is incorrect; the correct current rule provision reference is §117.230(2).

The commission proposes to remove the word "daily" from existing §117.245(f)(2)(B) because current rule provisions under Subchapter B, Division 2 do not specify any NO_x emission specifications on a daily basis. Current rule provisions under §117.205 and §117.235 specify compliance only on either a one-hour or a 30-day basis for units that operate with a NO_x CEMS or PEMS. Proposed changes to §117.245(f)(3)(A)(i) would include revising the current rule provision reference from §117.230(2) to new §117.230(b)(5). This change would be necessary pursuant to the changes proposed to §117.230 of Subchapter B, Division 2. Section §117.245(f)(3)(A) specifies requirements for owners or operators of stationary internal combustion engines, subject to the NO_x emission specifications of Subchapter B, Division 2, to maintain records of emissions measurements required by new §117.230(b)(5) and §117.240(e) of the division.

Proposed changes to §117.245(f)(4) would include adding rule provision references to new §117.203(2) and (3) to include the proposed new exemptions for stationary diesel engines that operate less than 100 hours per year based on a rolling 12-month basis. Section §117.245(f)(4) specifies requirements for owners or operators of units claimed exempt from the emission specifications of Subchapter B, Division 2. For exemptions based on hours per year of operation, maintaining records of monthly hours of operation is required. For exemptions based on dedicated use, keeping records of the unit's purpose of use is required. Furthermore, the commission proposes to add to §117.245(f)(4) a rule provision reference to the definition of emergency situation in §117.10(15). The term itself already exists within the rule provision text of §117.245(f)(4). The purpose is to remind owners or operators of potentially affected units that the term is defined for purposes of Chapter 117, and not all situations that may occur may qualify as an emergency situation for purposes of Chapter 117.

Proposed revisions to §117.245(f) concerning recordkeeping requirements include a new paragraph (7) for owners or operators of stationary diesel engines subject to the operating restrictions in proposed new §117.205(e). Similar to existing provisions for owners or operators of stationary diesel engine in the DFW eight-hour ozone nonattainment area, in §117.445(f)(9), and in the HGB ozone nonattainment area, in §117.345(f)(10), proposed new §117.245(f)(7) would require owners or operators to maintain records of each time a stationary diesel engine is op-

erated for testing and maintenance of the engine itself, including the date(s) of engine operation; the start and end times of engine operation; the identification of the engine; and the total hours of engine operation for each month and for the most recent 12 consecutive months. This proposed new recordkeeping requirement would apply for each stationary diesel engine that is subject to the operating restrictions of §117.240(e) to ensure compliance with the proposed restriction on operating hours for testing and maintenance of a stationary diesel engine.

Subchapter H, Administrative Provisions

Division 1, Compliance Schedules

Section 117.9010, Compliance Schedule for Bexar County Ozone Nonattainment Major Sources

Proposed revisions to §117.9010(a) include new paragraphs (1) and (2) to specify when owners or operators of units subject to the requirements of Subchapter B, Division 2 are required to demonstrate compliance with those requirements. Proposed new §117.9010(a)(1) would preserve prior compliance deadlines for submittal of the control plan and all other requirements of Chapter 117, Subchapter B, Division 2 for units subject to the NO_x emission specifications in §117.205(a) that were subject to the prior definition of "Major source" for the Bexar County ozone nonattainment in §117.10(29)(B) before the effective date of this current rulemaking - those that emit or have the potential to emit equal to or greater than 100 tpy of NO_x. The prior compliance deadline of January 1, 2025, for control plans is proposed in new §117.9010(a)(1)(A). The prior compliance deadline of January 1, 2025, for all other requirements of Subchapter B, Division 2, when the area was classified as moderate ozone nonattainment, is proposed in new §117.9010(a)(1)(B). Proposed new §117.9010(a)(1)(B) further specifies that units that were required to demonstrate compliance by January 1, 2025, must continue to demonstrate compliance with the requirements of Subchapter B Division 2. Finally, the commission proposes in new §117.9010(a)(1)(C) that for units that became subject to the NO_x emission specifications in §117.205(a) after January 1, 2025, compliance with the requirements of Subchapter B, Division 2 is required as soon as practicable but no later than 60 days after becoming subject. These changes are intended to provide clarity and distinguish between the prior compliance deadline of January 1, 2025, in proposed new §117.9010(a)(1)(A) - (C) relating to the compliance date for the Bexar County ozone nonattainment area under a moderate classification and the proposed new deadlines in new §117.9010(a)(2). These proposed changes in §117.9010(a) are not intended to change the existing requirements for those units that had a rule provision compliance deadline of January 1, 2025.

Proposed new §117.9010(a)(2)(A) - (B) would specify the compliance deadlines for units subject to the NO_x emission specifications of §117.205(a) that become subject to the proposed revised definition of "Major Source" for the Bexar County ozone nonattainment area in proposed revised §117.10(29)(B). The commission proposes a compliance deadline of February 1, 2026, in proposed new §117.9010(a)(2)(A) for submission of the control plan required by §117.252 and March 1, 2026, in proposed new §117.9010(a)(2)(B) for demonstrating compliance with all other applicable requirements of Chapter 117, Subchapter B, Division 2. The compliance date assures that NO_x reductions would occur by the start of ozone season in Bexar County in 2026, the year used to determine attainment with the 2015 eight-hour ozone NAAQS.

The commission does not propose any changes to existing §117.9010(b), which specifies that the owner or operator of any stationary source of NO_x that becomes subject to the requirements of Chapter 117, Subchapter B, Division 2 on or after the applicable compliance date specified in subsection (a) of the section must comply with the requirements of the division as soon as practicable, but no later than 60 days after becoming subject to the requirements of the division. Considering the reclassification of the Bexar County ozone nonattainment area and the new NO_x major source threshold, an owner or operator of any stationary source of NO_x that becomes subject to the requirements of proposed revised Subchapter B, Division 2 on or after March 1, 2026, must comply with the requirements of Chapter 117, Subchapter B, Division 2 as soon as practicable, but no later than 60 days after becoming subject. For example, owners or operators of new units placed into service on or after March 1, 2026, would be required to demonstrate compliance with the requirements of the division within 60 days after startup of the unit. Owners or operators of existing units previously claimed exempt from the rule provisions but no longer qualifying for exemption after March 1, 2026, would be required to demonstrate compliance with the requirements of the division by no later than 60 days after the unit no longer qualifies for the previously claimed exemption.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for TCEQ during implementation of the proposed rule. No fiscal implications are anticipated for other state or local government entities.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be compliance with federal law and continued protection of the environment and public health and safety combined with efficient and fair administration of NO_x emission standards for Bexar County. Corrections of errors and other non-substantive changes within the rule would also benefit the public.

Costs would be incurred for affected businesses operating in Bexar County for implementation of requirements appliable to RACT. Revisions to §117.10 would lower the threshold for major sources from 100 tpy to 50 tpy NO_x in Bexar County, so any sources emitting or with the potential to emit 50-100 tpy NO_x in Bexar County would be impacted by this rulemaking. Additionally, revisions to Subchapter B, Division 2 would expand the applicability of RACT requirements as applicable to NO_x to include gas engines fired on landfill gas, diesel engines, boilers, process heaters, ovens, and incinerators, so any applicable requirements in Chapter 117 would apply to all major sources with these technologies.

It is estimated that four businesses would be affected by this rulemaking. This includes one landfill/waste-to-gas management plant with five stationary diesel engines and four flares (subject to federal new source review requirements); one waste-to-gas energy production plant with six stationary gas-fired, lean-burn engines; one petroleum refinery with nine process heaters, four stationary diesel engines, two incinerators, and two flares (subject to federal new source review requirements); and one vehicle automotive manufacturer plant with two incinerators and seven ovens.

For the landfill/waste-to-gas management plant, total costs are estimated at $24,000-$39,000 for the first, third, and fifth year after the rulemaking is in effect, and $9,400-$18,400 in years two and four. Capital purchases were assumed to be annualized over 15 years with an 8.25% rate on the loan. Costs include purchase of new Tier 2, Tier 3, and Tier 4 diesel engines and other equipment, operating and maintenance costs, the purchase and operation of flow meters, and costs associated with stack testing.

For the waste-to-gas energy production plant, total costs are estimated at $35,000 in years one, three, and five and $5,800 in years two and four. Capital purchases were assumed to be annualized over 15 years with an 8.25% rate on the loan. Costs include the purchase of flow meters, annual operating and maintenance costs, stack testing costs, and costs associated with recordkeeping and reporting. None of the six engines at this site are anticipated to need to implement additional controls to meet proposed emissions specifications for stationary gas-fired, lean burn engines fired on landfill gas.

For the petroleum refinery, total costs are estimated at $199,000 in year one and $154,600 in years two through five. Capital purchases were assumed to be annualized over 15 years with an 8.25% rate on the loan. Costs include the purchase of ultra-low-NO_x burners for six process heaters, tests of the burners, the purchase of flow meters, the purchase of non-resettable run time meters for four stationary diesel engines, stack testing costs, and costs associated with recordkeeping and reporting. It is assumed that four stationary diesel engines would qualify for an exemption, either based on dedicated use or low operational use; and two incinerators would qualify for an exemption based on unit size.

For the vehicle automotive manufacturer, total costs are estimated at $22,000 in year one and $2,200 in years two through five. Capital purchases were assumed to be annualized over 15 years with an 8.25% rate on the loan. Costs include the purchase of flow meters, operating and maintenance costs, stack testing costs, and costs associated with recordkeeping and reporting. It is assumed that two incinerators and three of the gas-fired ovens would qualify for an exemption from requirements based on unit size. The remaining four ovens are not anticipated to require additional control measures.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking is not anticipated to adversely affect a local economy in a significant way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. This rulemaking applies to Bexar County, which has a large population; therefore, rural communities are not significantly impacted.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect. No small businesses have been identified that would be affected by this rulemaking.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation, and it does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225 and determined that the proposed rulemaking does not meet the definition of a major environmental rule as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis. A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the proposed rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Tex. Gov't Code Ann., §2001.0225(a). Section 2001.0225 of the Texas Government Code applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The specific intent of these proposed rules is to comply with federal requirements for the implementation of control strategies necessary to attain and maintain the NAAQS for ozone mandated by 42 United States Code (USC), 7410, FCAA, §110 and required to be included in operating permits by 42 USC, §7661a, FCAA, §502, as specified elsewhere in this preamble. The proposed rulemaking addresses RACT requirements for the Bexar County 2015 eight-hour ozone nonattainment area as discussed elsewhere in this preamble. States are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. As discussed in the FISCAL NOTE portion of this preamble, the proposed rules are not anticipated to add any significant additional costs

to affected individuals or businesses beyond what is necessary to attain the ozone NAAQS on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

If a state does not comply with its obligations under 42 USC, §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) or mandatory sanctions under 42 USC, §7509, FCAA, §179; as well as the imposition of a federal implementation plan (FIP) under 42 USC, §7410, FCAA, §110(c). Under 42 USC, §7661a, FCAA, §502, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including enforceable emission limitations and other control measures, means, or techniques, which are required under 42 USC, §7410, FCAA, §110. Similar to requirements in 42 USC, §7410, FCAA, §110, states are not free to ignore requirements in 42 USC, §7661a, FCAA, §502 and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Lastly, states are also subject to the imposition of sanctions under 42 USC, §7661a(d) and (i), FCAA, §502(d) and (i) for failure to submit an operating permits program, the disapproval of any operating permits program, or failure to adequately administer and enforce the approved operating permits program.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th legislative session in 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. Requiring a full RIA for all federally required rules is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the proposed rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA, and in fact creates no additional impacts since the proposed rules do not impose burdens greater than required to demonstrate attainment of the ozone NAAQS as discussed elsewhere in this preamble. For these reasons, the proposed rules fall under the exception in Texas Government Code, §2001.0225(a), because they are required by, and do not exceed, federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue*, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ*). *Cf. Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied*); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).) The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard.

As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225. The proposed rulemaking implements the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble. The proposed rules were determined to be necessary to attain the ozone NAAQS and are required to be included in permits under 42 USC, §7661a, FCAA, §502 and will not exceed any standard set by state or federal law. These proposed rules are not an express requirement of state law. The proposed rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the proposed rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C. §7410, FCAA, §110. The proposed rules were not developed solely under the general powers of the agency but are authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the Statutory Authority section of this preamble, including Texas Health and Safety Code, §§382.011, 382.012, and 382.017. Therefore, this proposed rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The commission completed a takings impact analysis for the proposed rulemaking action under the Texas Government Code, §2007.043.

The primary purpose of this proposed rulemaking action, as discussed elsewhere in this preamble, is to meet federal requirements for the implementation of control strategies necessary to attain and maintain the NAAQS for ozone mandated by 42 United States Code (USC), 7410, FCAA, §110 and required to be included in operating permits by 42 USC, §7661a, FCAA, §502. The proposed rulemaking addresses RACT requirements for the Bexar County 2015 eight-hour ozone nonattainment area as discussed elsewhere in this preamble.

States are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. If a state does not comply with its obligations under 42 USC, §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) or mandatory sanctions under 42 USC, §7509, FCAA, §179; as well as the imposition of a FIP under 42 USC, §7410, FCAA, §110(c). Under 42 USC, §7661a, FCAA, §502, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including enforceable emission limitations and other control measures, means, or techniques, which are required under 42 USC, §7410, FCAA, §110. Similar to requirements in 42 USC, §7410, FCAA, §110, regarding the requirement to adopt and implement plans to attain and maintain the national ambient air quality standards, states are not free to ignore requirements in 42 USC, §7661a, FCAA, §502 and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Lastly, states are also subject to the imposition of sanctions under 42 USC, §7661a(d) and (i), FCAA, §502(d) and (i) for failure to submit an operating permits program, the disapproval of any operating permits program, or failure to adequately administer and enforce the approved operating permits program.

The proposed rules will not create any additional burden on private real property beyond what is required under federal law, as the proposed rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C. §7410, FCAA, §110. The proposed rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) (or §29.11(b)(4), whichever is applicable) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. Note: §29.11(b)(2) applies only to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks. §29.11(b)(4) applies to all other actions.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 117 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. Once adopted, owners or operators of affected sites subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 117 requirements.

Announcement of Hearing

The commission will offer a public hearing on this proposal in San Antonio on July 15, 2025, at 7:00 p.m. Central Daylight Time in Suite 101 at 2700 Northeast Loop 410 in San Antonio, Texas 78217. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing. Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: *https://tceq.commentinput.com/comment/search*. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2025-007-117-AI. The comment period closes on July 21, 2025. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Javier Galván, Air Quality Planning Section, at javier.galvan@tceq.texas.gov.

SUBCHAPTER A. DEFINITIONS

30 TAC §117.10

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under Texas Healthy and Safety Code (THSC), §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air.

The proposed amendments implement Texas Water Code, §§5.102, 5.103, 5.105 and 7.002; and Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017.

§117.10. Definitions.

Unless specifically defined in the Texas Clean Air Act or Chapter 101 of this title (relating to General Air Quality Rules), the terms in this chapter have the meanings commonly used in the field of air pollution control. Additionally, the following meanings apply, unless the context clearly indicates otherwise. Additional definitions for terms used in this chapter are found in §3.2 and §101.1 of this title (relating to Definitions).

(1) Annual capacity factor--The total annual fuel consumed by a unit divided by the fuel that could be consumed by the unit if operated at its maximum rated capacity for 8,760 hours per year.

(2) Applicable ozone nonattainment area-The following areas, as designated under the 1990 Federal Clean Air Act Amendments.

(A) Beaumont-Port Arthur ozone nonattainment area--An area consisting of Hardin, Jefferson, and Orange Counties.

(B) Bexar County ozone nonattainment area-An area consisting of Bexar County.

(C) Dallas-Fort Worth eight-hour ozone nonattainment area--An area consisting of:

(i) for the purposes of Subchapter D of this chapter (relating to Combustion Control at Minor Sources in Ozone Nonattainment Areas), Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties; or

(ii) for all other divisions of this chapter, Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties.

(D) Houston-Galveston-Brazoria ozone nonattainment area--An area consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(3) Auxiliary steam boiler--Any combustion equipment within an electric power generating system, as defined in this section, that is used to produce steam for purposes other than generating electricity. An auxiliary steam boiler produces steam as a replacement for steam produced by another piece of equipment that is not operating due to planned or unplanned maintenance.

(4) Average activity level for fuel oil firing--The product of an electric utility unit's maximum rated capacity for fuel oil firing and the average annual capacity factor for fuel oil firing for the period from January 1, 1990, to December 31, 1993.

(5) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour.

(6) Boiler--Any combustion equipment fired with solid, liquid, and/or gaseous fuel used to produce steam or to heat water.

(7) Btu--British thermal unit.

(8) Chemical processing gas turbine-A gas turbine that vents its exhaust gases into the operating stream of a chemical process.

(9) Continuous emissions monitoring system (CEMS)--The total equipment necessary for the continuous determination and recordkeeping of process gas concentrations and emission rates in units of the applicable emission limitation.

(10) Daily--A calendar day starting at midnight and continuing until midnight the following day.

(11) Diesel engine--A compression-ignited two- or four-stroke engine that liquid fuel injected into the combustion chamber ignites when the air charge has been compressed to a temperature sufficiently high for auto-ignition.

(12) Duct burner--A unit that combusts fuel and that is placed in the exhaust duct from another unit (such as a stationary gas turbine, stationary internal combustion engine, kiln, etc.) to allow the firing of additional fuel to heat the exhaust gases.

(13) Electric generating facility (EGF)--A unit that generates electric energy for compensation and is owned or operated by a person doing business in this state, including a municipal corporation, electric cooperative, or river authority.

(14) Electric power generating system--One electric power generating system consists of either:

(A) for the purposes of Subchapter C, Divisions 1, 2, and 4 of this chapter (relating to Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources; Bexar County Ozone Nonattainment Area Utility Electric Generation Sources; and Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources), all boilers, auxiliary steam boilers, and stationary gas turbines (including duct burners used in turbine exhaust ducts) at electric generating facility (EGF) accounts that generate electric energy for compensation; are owned or operated by an electric cooperative, municipality, river authority, public utility, independent power producer, or a Public Utility Commission of Texas regulated utility, or any of its successors; and are entirely located in one of the following ozone nonattainment areas:

(i) Beaumont-Port Arthur;

(ii) Bexar County; or

(iii) Dallas-Fort Worth eight-hour;

(B) for the purposes of Subchapter C, Division 3 of this chapter (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources), all boilers, auxiliary steam boilers, and stationary gas turbines (including duct burners used in turbine exhaust ducts) at EGF accounts that generate electric energy for compensation; are owned or operated by an electric cooperative, municipality, river authority, public utility, or a Public Utility Commission of Texas regulated utility, or any of its successors; and are entirely located in the Houston-Galveston-Brazoria ozone nonattainment area;

(C) for the purposes of Subchapter B, Division 3 of this chapter (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources), all units in the Houston-Galveston-Brazoria ozone nonattainment area that generate electricity but do not meet the conditions specified in subparagraph (B) of this paragraph, including, but not limited to, cogeneration units and units owned by independent power producers; or

(D) for the purposes of Subchapter E, Division 1 of this chapter (relating to Utility Electric Generation in East and Central Texas), all boilers, auxiliary steam boilers, and stationary gas turbines at EGF accounts that generate electric energy for compensation; are owned or operated by an electric cooperative, independent power producer, municipality, river authority, or public utility, or any of its successors; and are located in Atascosa, Bastrop, Brazos, Calhoun, Cherokee, Fannin, Fayette, Freestone, Goliad, Gregg, Grimes, Harrison, Henderson, Hood, Hunt, Lamar, Limestone, Marion, McLennan, Milam, Morris, Nueces, Parker, Red River, Robertson, Rusk, Titus, Travis, Victoria, or Wharton County, or in Bexar County until December 31, 2024.

(15) Emergency situation--As follows.

(A) An emergency situation is any of the following:

(i) an unforeseen electrical power failure from the serving electric power generating system;

(ii) the period of time that an Electric Reliability Council of Texas, Inc. (ERCOT)-issued emergency notice or energy emergency alert (EEA) (as defined in *ERCOT Nodal Protocols, Section 2: Definitions and Acronyms* (August 13, 2014) and issued as specified in ERCOT *Nodal Protocols, Section 6: Adjustment Period and Real-Time Operations* (August 13, 2014)) is applicable to the serving electric power generating system. The emergency situation is considered to end upon expiration of the emergency notice or EEA issued by ERCOT;

(iii) an unforeseen failure of on-site electrical transmission equipment (e.g., a transformer);

(iv) an unforeseen failure of natural gas service;

(v) an unforeseen flood or fire, or a life-threatening situation;

(vi) operation of emergency generators for Federal Aviation Administration licensed airports, military airports, or manned space flight control centers for the purposes of providing power in anticipation of a power failure due to severe storm activity; or

(vii) operation of an emergency generator as part of ERCOT's emergency response service (as defined in *ERCOT Nodal Protocols, Section 2: Definitions and Acronyms* (August 13, 2014)) if the operation is in direct response to an instruction by ERCOT during the period of an ERCOT EEA as specified in clause (ii) of this subparagraph.

(B) An emergency situation does not include:

(i) operation for training purposes or other foreseeable events; or

(ii) operation for purposes of supplying power for distribution to the electric grid, except as specified in subparagraph (A)(vii) of this paragraph.

(16) Functionally identical replacement--A unit that performs the same function as the existing unit that it replaces, with the condition that the unit replaced must be physically removed or rendered permanently inoperable before the unit replacing it is placed into service.

(17) Heat input--The chemical heat released due to fuel combustion in a unit, using the higher heating value of the fuel. This does not include the sensible heat of the incoming combustion air. In the case of carbon monoxide (CO) boilers, the heat input includes the enthalpy of all regenerator off-gases and the heat of combustion of the incoming CO and of the auxiliary fuel. The enthalpy change of the fluid catalytic cracking unit regenerator off-gases refers to the total heat content of the gas at the temperature it enters the CO boiler, referring to the heat content at 60 degrees Fahrenheit, as being zero.

(18) Heat treat furnace--A furnace that is used in the manufacturing, casting, or forging of metal to heat the metal so as to produce specific physical properties in that metal.

(19) High heat release rate--A ratio of boiler design heat input to firebox volume (as bounded by the front firebox wall where the burner is located, the firebox side waterwall, and extending to the level just below or in front of the first row of convection pass tubes) greater than or equal to 70,000 British thermal units per hour per cubic foot.

(20) Horsepower rating--The engine manufacturer's maximum continuous load rating at the lesser of the engine or driven equipment's maximum published continuous speed.

(21) Incinerator--As follows.

(A) For the purposes of this chapter, the term "incinerator" includes both of the following:

(i) a control device that combusts or oxidizes gases or vapors (e.g., thermal oxidizer, catalytic oxidizer, vapor combustor); and

(ii) an incinerator as defined in §101.1 of this title (relating to Definitions).

(B) The term "incinerator" does not apply to boilers or process heaters as defined in this section, or to flares as defined in §101.1 of this title.

(22) Industrial boiler--Any combustion equipment, not including utility or auxiliary steam boilers as defined in this section, fired with liquid, solid, or gaseous fuel, that is used to produce steam or to heat water.

(23) International Standards Organization (ISO) conditions--ISO standard conditions of 59 degrees Fahrenheit, 1.0 atmosphere, and 60% relative humidity.

(24) Large utility system--All boilers, auxiliary steam boilers, and stationary gas turbines that are located in the Dallas-Fort Worth eight-hour ozone nonattainment area, and were part of one electric

power generating system on January 1, 2000, that had a combined electric generating capacity equal to or greater than 500 megawatts.

(25) Lean-burn engine--A spark-ignited or compression-ignited, Otto cycle, diesel cycle, or two-stroke engine that is not capable of being operated with an exhaust stream oxygen concentration equal to or less than 0.5% by volume, as originally designed by the manufacturer.

(26) Low annual capacity factor boiler, process heater, or gas turbine supplemental waste heat recovery unit--An industrial, commercial, or institutional boiler; process heater; or gas turbine supplemental waste heat recovery unit with maximum rated capacity:

(A) greater than or equal to 40 million British thermal units per hour (MMBtu/hr), but less than 100 MMBtu/hr and an annual heat input less than or equal to 2.8 (10^{11}) British thermal units per year (Btu/yr), based on a rolling 12-month average; or

(B) greater than or equal to 100 MMBtu/hr and an annual heat input less than or equal to 2.2 (10^{11}) Btu/yr, based on a rolling 12-month average.

(27) Low annual capacity factor stationary gas turbine or stationary internal combustion engine--A stationary gas turbine or stationary internal combustion engine that is demonstrated to operate less than 850 hours per year, based on a rolling 12-month average.

(28) Low heat release rate--A ratio of boiler design heat input to firebox volume less than 70,000 British thermal units per hour per cubic foot.

(29) Major source--Any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit:

(A) at least 50 tons per year (tpy) of nitrogen oxides (NO_x) and is located in the Beaumont-Port Arthur ozone nonattainment area;

(B) at least 50 [~~100~~] tpy of NO_x and is located in the Bexar County ozone nonattainment area;

(C) at least 25 tpy of NO_x and is located in the Dallas-Fort Worth eight-hour ozone nonattainment area;

(D) at least 25 tpy of NO_x and is located in the Houston-Galveston-Brazoria ozone nonattainment area; or

(E) the amount specified in the major source definition contained in the Prevention of Significant Deterioration of Air Quality regulations promulgated by the United States Environmental Protection Agency in 40 Code of Federal Regulations §52.21 as amended June 3, 1993 (effective June 3, 1994), and is located in Atascosa, Bastrop, Brazos, Calhoun, Cherokee, Comal, Fannin, Fayette, Freestone, Goliad, Gregg, Grimes, Harrison, Hays, Henderson, Hood, Hunt, Lamar, Limestone, Marion, McLennan, Milam, Morris, Nueces, Red River, Robertson, Rusk, Titus, Travis, Victoria, or Wharton County or in Bexar County until December 31, 2024.

(30) Maximum rated capacity--The maximum design heat input, expressed in million British thermal units per hour, unless:

(A) the unit is a boiler, utility boiler, or process heater operated above the maximum design heat input (as averaged over any one-hour period), in which case the maximum operated hourly rate must be used as the maximum rated capacity; or

(B) the unit is limited by operating restriction or permit condition to a lesser heat input, in which case the limiting condition must be used as the maximum rated capacity; or

(C) the unit is a stationary gas turbine, in which case the manufacturer's rated heat consumption at the International Standards Organization (ISO) conditions must be used as the maximum rated capacity, unless limited by permit condition to a lesser heat input, in which case the limiting condition must be used as the maximum rated capacity; or

(D) the unit is a stationary, internal combustion engine, in which case the manufacturer's rated heat consumption at Diesel Equipment Manufacturer's Association or ISO conditions must be used as the maximum rated capacity, unless limited by permit condition to a lesser heat input, in which case the limiting condition must be used as the maximum rated capacity.

(31) Megawatt (MW) rating--The continuous MW output rating or mechanical equivalent by a gas turbine manufacturer at International Standards Organization conditions, without consideration to the increase in gas turbine shaft output and/or the decrease in gas turbine fuel consumption by the addition of energy recovered from exhaust heat.

(32) Nitric acid--Nitric acid that is 30% to 100% in strength.

(33) Nitric acid production unit--Any source producing nitric acid by either the pressure or atmospheric pressure process.

(34) Nitrogen oxides (NO_x)--The sum of the nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

(35) Parts per million by volume (ppmv)--All ppmv emission specifications specified in this chapter are referenced on a dry basis. When required to adjust pollutant concentrations to a specified oxygen (O_2) correction basis, the following equation must be used. Figure: 30 TAC §117.10(35) (No change.)

(36) Peaking gas turbine or engine--A stationary gas turbine or engine used intermittently to produce energy on a demand basis.

(37) Plant-wide emission rate--The ratio of the total actual nitrogen oxides mass emissions rate discharged into the atmosphere from affected units at a major source when firing at their maximum rated capacity to the total maximum rated capacities for those units.

(38) Plant-wide emission specification--The ratio of the total allowable nitrogen oxides mass emissions rate dischargeable into the atmosphere from affected units at a major source when firing at their maximum rated capacity to the total maximum rated capacities for those units.

(39) Predictive emissions monitoring system (PEMS)--The total equipment necessary for the continuous determination and recordkeeping of process gas concentrations and emission rates using process or control device operating parameter measurements and a conversion equation or computer program to produce results in units of the applicable emission limitation.

(40) Process heater--Any combustion equipment fired with liquid and/or gaseous fuel that is used to transfer heat from combustion gases to a process fluid, superheated steam, or water for the purpose of heating the process fluid or causing a chemical reaction. The term "process heater" does not apply to any unfired waste heat recovery heater that is used to recover sensible heat from the exhaust of any combustion equipment, or to boilers as defined in this section.

(41) Pyrolysis reactor--A unit that produces hydrocarbon products from the endothermic cracking of feedstocks such as ethane,

propane, butane, and naphtha using combustion to provide indirect heating for the cracking process.

(42) Reheat furnace--A furnace that is used in the manufacturing, casting, or forging of metal to raise the temperature of that metal in the course of processing to a temperature suitable for hot working or shaping.

(43) Rich-burn engine--A spark-ignited, Otto cycle, four-stroke, naturally aspirated or turbocharged engine that is capable of being operated with an exhaust stream oxygen concentration equal to or less than 0.5% by volume, as originally designed by the manufacturer.

(44) Small utility system--All boilers, auxiliary steam boilers, and stationary gas turbines that are located in the Dallas-Fort Worth eight-hour ozone nonattainment area, and were part of one electric power generating system on January 1, 2000, that had a combined electric generating capacity less than 500 megawatts.

(45) Stationary gas turbine--Any gas turbine system that is gas and/or liquid fuel fired with or without power augmentation. This unit is either attached to a foundation or is portable equipment operated at a specific minor or major source for more than 90 days in any 12-month period. Two or more gas turbines powering one shaft must be treated as one unit.

(46) Stationary internal combustion engine--A reciprocating engine that remains or will remain at a location (a single site at a building, structure, facility, or installation) for more than 12 consecutive months. Included in this definition is any engine that, by itself or in or on a piece of equipment, is portable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of portability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine being replaced is included in calculating the consecutive residence time period. An engine is considered stationary if it is removed from one location for a period and then returned to the same location in an attempt to circumvent the consecutive residence time requirement. Nonroad engines, as defined in 40 Code of Federal Regulations §89.2, are not considered stationary for the purposes of this chapter.

(47) System-wide emission rate--The ratio of the total actual nitrogen oxides mass emissions rate discharged into the atmosphere from affected units in an electric power generating system or portion thereof located within a single ozone nonattainment area when firing at their maximum rated capacity to the total maximum rated capacities for those units. For fuel oil firing, average activity levels must be used in lieu of maximum rated capacities for the purpose of calculating the system-wide emission rate.

(48) System-wide emission specification--The ratio of the total allowable nitrogen oxides mass emissions rate dischargeable into the atmosphere from affected units in an electric power generating system or portion thereof located within a single ozone nonattainment area when firing at their maximum rated capacity to the total maximum rated capacities for those units. For fuel oil firing, average activity levels must be used in lieu of maximum rated capacities for the purpose of calculating the system-wide emission specification.

(49) Thirty-day rolling average--An average, calculated for each day that fuel is combusted in a unit, of all the hourly emissions data for the preceding 30 days that fuel was combusted in the unit.

(50) Twenty-four hour rolling average--An average, calculated for each hour that fuel is combusted (or acid is produced, for a nitric or adipic acid production unit), of all the hourly emissions data for the preceding 24 hours that fuel was combusted in the unit.

(51) Unit--A unit consists of either:

(A) for the purposes of §§117.105, 117.305, 117.405, 117.1005, and 117.1205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) and each requirement of this chapter associated with §§117.105, 117.305, 117.405, 117.1005, and 117.1205 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section;

(B) for the purposes of §§117.110, 117.310, 117.1010, and 117.1210 of this title (relating to Emission Specifications for Attainment Demonstration) and each requirement of this chapter associated with §§117.110, 117.310, 117.1010, and 117.1210 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section, or any other stationary source of nitrogen oxides (NO_x) at a major source, as defined in this section;

(C) for the purposes of §117.2010 of this title (relating to Emission Specifications) and each requirement of this chapter associated with §117.2010 of this title, any boiler, process heater, stationary gas turbine (including any duct burner in the turbine exhaust duct), or stationary internal combustion engine, as defined in this section;

(D) for the purposes of §117.2110 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.2110 of this title, any stationary internal combustion engine, as defined in this section;

(E) for the purposes of §117.3310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.3310 of this title, any stationary internal combustion engine, as defined in this section;

(F) for the purposes of §117.410 and §117.1310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.410 and §117.1310 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section, or any other stationary source of NO_x at a major source, as defined in this section;

(G) for the purposes of §117.205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) and each requirement of this chapter associated with §117.205 of this title, any process heater, stationary gas turbine (including any duct burner used in the turbine exhaust duct), or [~~gas-fired lean-burn~~] stationary [~~reciprocating~~] internal combustion engine, as defined in this section, or any other stationary source of NO_x at a major source, as defined in this section; or

(H) for the purposes of §117.1105 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) and each requirement of this chapter associated with §117.1105 of this title, any utility boiler, auxiliary steam boiler, or stationary gas turbine (including any duct burner used in turbine exhaust ducts), as defined in this section.

(52) Utility boiler--Any combustion equipment owned or operated by an electric cooperative, municipality, river authority, public utility, or Public Utility Commission of Texas regulated utility, fired with solid, liquid, and/or gaseous fuel, used to produce steam for the purpose of generating electricity. Stationary gas turbines, including any associated duct burners and unfired waste heat boilers, are not considered to be utility boilers.

(53) Wood--Wood, wood residue, bark, or any derivative fuel or residue thereof in any form, including, but not limited to, sawdust, sander dust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

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

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

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Texas Commission on Environmental Quality
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SUBCHAPTER B. COMBUSTION CONTROL AT MAJOR INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 2. BEXAR COUNTY OZONE NONATTAINMENT AREA MAJOR SOURCES

30 TAC §§117.200, 117.203, 117.205, 117.230, 117.235, 117.240, 117.245

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103, and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§117.200. Applicability.

This division applies to the following units located at any major stationary source of nitrogen oxides located in the Bexar County ozone nonattainment area:

(1) stationary gas turbines;

(2) duct burners used in turbine exhaust ducts; [~~and~~]

(3) [~~gas-fired lean-burn~~] stationary [~~reciprocating~~] internal combustion engines; [~~.~~]

(4) industrial, commercial, or institutional process heaters;

(5) natural gas-fired ovens;

(6) flares; and

(7) incinerators.

§117.203. Exemptions.

The following units are exempt from the provisions of this division, except as specified in §§117.205(e), 117.240(f), 117.245(f)(4) and (7) [~~(9)~~], and 117.252 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT); Continuous Demonstration of Compliance; Notification, Recordkeeping, and Reporting Requirements; and Control Plan Procedures for Reasonably Available Control Technology [~~(RACT)~~]):

(1) stationary gas turbines and [~~gas-fired lean-burn~~] stationary [~~reciprocating~~] internal combustion engines that are used as follows:

(A) in research and testing of the unit;

(B) for purposes of performance verification and testing of the unit;

(C) solely to power other gas turbines or engines during startups;

(D) exclusively in emergency situations, except that operation for testing or maintenance purposes of the gas turbine or engine is allowed for up to 100 hours per year, based on a rolling 12-month basis. Any new, modified, reconstructed, or relocated stationary diesel engine placed into service on or after March 1, 2026, is ineligible for this exemption. For purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 Code of Federal Regulations (CFR) §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account; or

(E) in response to and during the existence of any officially declared disaster or state of emergency;

(2) any stationary diesel engine placed into service before March 1, 2026, that:

(A) operates less than 100 hours per year, based on a rolling 12-month basis; and

(B) has not been modified, reconstructed, or relocated on or after March 1, 2026. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account;

(3) any new, modified, reconstructed, or relocated stationary diesel engine placed into service on or after March 1, 2026, that:

(A) operates less than 100 hours per year, based on a rolling 12-month basis, in other than emergency situations; and

(B) meets the corresponding emission standard for nonroad engines listed in 40 CFR §1039.101, Table 1 (effective July 29, 2021), and in effect at the time of installation, modification, reconstruction, or relocation. For the purposes of this paragraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account;

(4) [~~(2)~~] gas-fired lean-burn stationary [~~reciprocating~~] internal combustion engines with a horsepower (hp) rating less than 50 hp;

(5) [~~(3)~~] stationary gas turbines with a maximum rated capacity less than 10.0 million British thermal units per hour (MMBtu/hr); [~~and~~]

(6) industrial, commercial, or institutional process heaters with a maximum rated capacity equal to or less than 5.0 MMBtu/hr;

(7) natural gas-fired ovens with a maximum rated capacity equal to or less than 5.0 MMBtu/hr;

(8) flares;

(9) incinerators with a maximum rated capacity less than 40 MMBtu/hr; and

(10) [~~(4)~~] units located at a major source that is subject to Subchapter C, Division 2 of this chapter (related to Bexar County Ozone Nonattainment Area Utility Electric Generation Sources).

§117.205. Emission Specifications for Reasonably Available Control Technology (RACT).

(a) Emission specifications. No person shall allow the discharge into the atmosphere nitrogen oxides (NO_x) [~~(NOx)~~] emissions in excess of the following emission specifications, in accordance with the applicable schedule in §117.9010 of this title (relating to Compliance Schedule for Bexar County Ozone Nonattainment Area Major Sources), except as provided in subsection (c) of this section:

(1) stationary gas turbines, 0.55 pounds [~~pound~~] per million British thermal units [~~unit~~] (lb/MMBtu);

(2) duct burners used in turbine exhaust ducts, 0.55 lb/MMBtu; [~~and~~]

(3) [~~gas-fired lean-burn~~] stationary [~~reciprocating~~] internal combustion engines: [~~, 0.5 gram per horsepower-hour.~~]

(A) gas-fired lean-burn engines:

(i) fired on landfill gas, 0.60 grams per horsepower-hour (g/hp-hr); and

(ii) all others, 0.50 g/hp-hr; and

(B) diesel engines:

(i) with a horsepower (hp) rating of less than 25 hp that are installed, modified, reconstructed, or relocated on or after March 1, 2026, 5.0 g/hp-hr;

(ii) with a hp rating of 25 hp or greater, but less than 75 hp, that are installed, modified, reconstructed, or relocated on or after March 1, 2026, 3.3 g/hp-hr;

(iii) with a hp rating of 75 hp or greater, but less than 175 hp, that are installed, modified, reconstructed, or relocated on or after March 1, 2026, 0.30 g/hp-hr;

(iv) with a hp rating of 175 hp or greater, but less than or equal to 750 hp, that are installed, modified, reconstructed, or relocated on or after March 1, 2026, 0.30 g/hp-hr;

(v) with a hp rating greater than 750 hp, that are electric generator sets, and that are installed, modified, reconstructed, or relocated on or after March 1, 2026, 0.50 g/hp-hr; and

(vi) with a hp rating greater than 750 hp, for all others that are not electric generator sets, and that are installed, modified, reconstructed, or relocated on or after March 1, 2026, 2.6 g/hp-hr;

(4) process heaters:

(A) with a maximum rated capacity equal to or greater than 40 million British thermal units per hour (MMBtu/hr), 0.025 lb/MMBtu; and

(B) with a maximum rated capacity less than 40 MMBtu/hr, 0.036 lb/MMBtu (or alternatively, 30 parts per million by volume (ppmv) NO_x, at 3.0% oxygen (O_2), dry basis);

(5) natural gas-fired ovens, 0.036 lb/MMBtu; and

(6) incinerators, 0.030 lb/MMBtu.

(b) NO_x averaging time. The emission specifications in subsection (a) of this section apply [~~on~~]:

[~~(1) a block one-hour average, in the units of the applicable standard; or~~]

(1) [~~(2)~~] If [~~if~~] the unit is operated with a NO_x continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) under §117.240 of this title (relating to Continuous Demonstration of Compliance), either as: [~~a rolling 30-day average, in the units of the applicable standard.~~]

(A) a 30-day rolling average, in the units of the applicable standard;

(B) a block one-hour average, in the units of the applicable standard, or alternatively;

(C) a block one-hour average, in pounds per hour, for process heaters, calculated as the product of the process heater's maximum rated capacity and its applicable emission specification in lb/MMBtu.

(2) If the unit is not operated with a NO_x CEMS or PEMS under §117.240 of this title, as a block one-hour average, in the units of the applicable standard. Alternatively for process heaters, the emission specification may be applied in pounds per hour, as specified in paragraph (1)(C) of this subsection.

(c) Compliance flexibility. An owner or operator may use §117.9800 of this title (relating to Use of Emission Credits for Compliance) to comply with the NO_x emission specifications of this section.

(d) Prohibition of circumvention.

(1) The maximum rated capacity used to determine the applicability of the emission specifications in this section and the initial compliance demonstration, monitoring, testing requirements, and control plan requirements in §§117.235, 117.240, and 117.252 of this title (relating to Initial Demonstration of Compliance; Continuous Demonstration of Compliance; and Control Plan Procedures for Reasonably Available Control Technology) must be the greater of the following:

(A) the maximum rated capacity as of December 31, 2019;

(B) the maximum rated capacity after December 31, 2019; or

(C) the maximum rated capacity authorized by a permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) after December 31, 2019.

(2) A unit's classification is determined by the most specific classification applicable to the unit as of December 31, 2019. For example, a unit that is classified as a gas-fired lean-burn stationary reciprocating internal combustion engine as of December 31, 2019, but subsequently is authorized to operate as a dual-fuel engine, is classified as a gas-fired lean-burn stationary reciprocating internal combustion engine for the purposes of this chapter.

(3) After December 31, 2019, changes to a unit subject to an emission specification in this section that would result in increased NO_x emissions from a unit not subject to an emission specification in this section, are only allowed if:

(A) the increase in NO_x emissions at the unit not subject to this section is determined:

(i) using a CEMS or PEMS that meets the requirements in §117.240 of this title, or

(ii) through stack testing that meets the requirements in §117.235 of this title; and

(B) emission credits equal to the increase in NO_x emissions at the unit not subject to this section are obtained and used in accordance with §117.9800 of this title.

(4) [~~(3)~~] A source that met the definition of major source on December 31, 2019, is always classified as a major source for purposes of this chapter. A source that did not meet the definition of major source (i.e., was a minor source, or did not yet exist) on December 31, 2019, but becomes a major source at any time after December 31, 2019, is from that time forward always classified as a major source for purposes of this chapter.

(e) Operating restrictions. No person may start or operate any stationary diesel engine for testing or maintenance of the engine between the hours of 6:00 a.m. and noon, except:

(1) to comply with specific manufacturer's recommended testing requiring a run of over 18 consecutive hours;

(2) to verify reliability of emergency equipment (e.g., emergency generators or pumps) immediately after unforeseen repairs. Routine maintenance is not considered to be an unforeseen repair; or

(3) for firewater pumps used for emergency response training conducted from April 1 through October 31.

§117.230. Operating Requirements.

(a) The owner or operator shall operate any unit subject to the emission specifications in §117.205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) in compliance with those limitations.

(b) All units subject to the emission specifications in §117.205 of this title [~~(relating to Emission Specifications for Reasonably Available Control Technology (RACT))~~] must be operated to minimize nitrogen oxides (NO_x) emissions, consistent with the emission control techniques selected, over the unit's operating or load range during normal operations. Such operational requirements include the following.

(1) Each process heater controlled with forced draft flue gas recirculation (FGR) to reduce NO_x emissions must be operated such that the proportional design rate of FGR is maintained, consistent with combustion stability, over the operating range.

(2) Each process heater controlled with induced draft FGR to reduce NO_x emissions must be operated such that the operation of FGR over the operating range is not restricted by artificial means.

(3) Each unit controlled with steam or water injection must be operated such that injection rates are maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity (corrected to 15% oxygen on a dry basis for stationary gas turbines).

(4) [~~(1)~~] Each unit controlled with post-combustion control techniques must be operated such that the reducing agent injection rate is maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity.

(5) [~~(2)~~] Each [~~gas-fired lean-burn~~] stationary [~~reciprocating~~] internal combustion engine must be checked for proper operation of the engine according to §117.8140(b) of this title (relating to Emission Monitoring for Engines).

§117.235. Initial Demonstration of Compliance.

(a) The owner or operator of any unit subject to the emission specifications in §117.205(a) of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) shall test each [~~the~~] unit for nitrogen oxides (NO_x) and oxygen [~~(O_2)~~] emissions while firing gaseous fuel or, as applicable, liquid and solid fuel.

(b) Initial demonstration of compliance testing must be performed in accordance with the schedule specified in §117.9010 of this title (relating to Compliance Schedule for Bexar County Ozone Nonattainment Area Major Sources).

(c) The initial demonstration of compliance tests required by subsection (a) of this section must use the methods referenced in subsection (e) or (f) of this section and must be used for determination of initial compliance with the emission specifications of this division (relating to Bexar County Ozone Nonattainment Area Major Sources). Test results must be reported in the units of the applicable emission specifications and averaging periods.

(d) Any continuous emissions monitoring system (CEMS) or any predictive emissions monitoring system (PEMS) required by §117.240 of this title (relating to Continuous Demonstration of Compliance) must be installed and operational before conducting testing under subsection (a) of this section. Verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device or system.

(e) For units operating without a CEMS or PEMS, initial compliance with the emission specifications of this division must be demonstrated according to the requirements in [~~of~~] §117.8000 of this title (relating to Stack Testing Requirements).

(f) For units operating with a CEMS or PEMS in accordance with §117.240 of this title, after monitor certification testing of the CEMS or PEMS in accordance with subsection (d) of this section, initial compliance with the emission specifications of this division must be demonstrated [~~after monitor certification testing~~] using the CEMS or PEMS as follows. [~~For units complying with a NO_x emission specification on a block one-hour average, every one-hour period while operating at the maximum rated capacity (or as near thereto as practicable) is used to determine compliance with the NO_x emission specification.~~]

(1) For units demonstrating compliance using a NO_x emission specification in pounds per million British thermal units (lb/MMBtu) on a 30-day rolling average, NO_x emissions from the unit are monitored for 30 successive unit operating days, and the 30-day

average emission rate is used to determine compliance with the NO_x emission specification. The 30-day average emission rate is calculated as the total NO_x emissions (in pounds) from the unit for the 30-day test period divided by the total heat input (in MMBtu) for the unit during the same 30-day test period.

(2) For units demonstrating compliance using a NO_x emission specification on a block one-hour average, any one-hour period while operating at the maximum rated capacity, or as near thereto as practicable, is used to determine compliance with the NO_x emission specification.

(g) Compliance stack test reports must include the information required in §117.8010 of this title (relating to Compliance Stack Test Reports).

§117.240. Continuous Demonstration of Compliance.

(a) Totalizing fuel flow meters.

(1) The owner or operator of units subject to this division (relating to Bexar County Ozone Nonattainment Area Major Sources) shall install, calibrate, maintain, and operate a totalizing fuel flow meter, with an accuracy of ± 5%, to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. The owner or operator must continuously operate the totalizing fuel flow meter at least 95% of the time when the unit is operating during a calendar year. For the purpose of compliance with this subsection for units having pilot fuel supplied by a separate fuel system or from an unmonitored portion of the same fuel system, the fuel flow to pilots may be calculated using the manufacturer's design flow rates rather than measured with a fuel flow meter. The calculated pilot fuel flow rate must be added to the monitored fuel flow when fuel flow is totaled.

(2) The following are alternatives to the fuel flow monitoring requirements of paragraph (1) of this subsection.

(A) Units operating with a nitrogen oxides (NO_x) and diluent continuous emissions monitoring system (CEMS) under subsection (c) of this section may monitor stack exhaust flow using the flow monitoring specifications of 40 Code of Federal Regulations (CFR) Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.

(B) Units that vent to a common stack with a NO_x and diluent CEMS under subsection (c) of this section may use a single totalizing fuel flow meter.

(C) Stationary [~~Gas-fired lean-burn stationary reciprocating~~] internal combustion engines and stationary gas turbines equipped with a continuous monitoring system that continuously monitors horsepower and hours of operation are not required to install totalizing fuel flow meters. The continuous monitoring system must be installed, calibrated, maintained, and operated according to manufacturers' recommended procedures.

(b) NO_x monitors.

(1) The owner or operator of the following units shall install, calibrate, maintain, and operate a CEMS or predictive emissions monitoring system (PEMS) to monitor exhaust NO_x [~~NOx~~]:

(A) units with a rated heat input greater than or equal to 100 million British thermal units (MMBtu) per hour;

(B) stationary gas turbines with a megawatt (MW) rating greater than or equal to 30 MW and operated more than 850 hours per year;

(C) units that use a chemical reagent for reduction of NO_x; and

(D) units that the owner or operator elects to comply with the NO_x emission specifications in [~~of~~] §117.205(a) of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) using a pound per MMBtu limit on a 30-day rolling average.

(2) The owner or operator of the following units is not required to install a CEMS or PEMS under this subsection: [~~Units subject to the NO_x CEMS requirements of 40 CFR Part 75 are not required to install CEMS or PEMS under this subsection.~~]

(A) units subject to the NO_x CEMS requirements of 40 CFR Part 75; and

(B) stationary diesel engines equipped with selective catalytic reduction (SCR) systems that meet all of the following criteria.

(i) The SCR system must use a reductant other than the engine's fuel.

(ii) The SCR system must operate with a diagnostic system that monitors reductant quality and tank levels.

(iii) The diagnostic system must alert owners or operators to the need to refill the reductant tank before it is empty or to replace the reductant if the reductant does not meet applicable concentration specifications.

(iv) If the SCR system uses input from an exhaust NO_x sensor (or other sensor) to alert owners or operators when the reductant quality is inadequate, the reductant quality does not need to be monitored separately by the diagnostic system.

(v) The reductant tank level must be monitored in accordance with the manufacturer's design to demonstrate compliance with this subparagraph.

(vi) The method of alerting an owner or operator must be a visual or audible alarm.

(3) The owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the NO_x monitor is off-line:

(A) if the NO_x monitor is a CEMS:

(i) subject to 40 CFR Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or

(ii) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

(B) if the NO_x monitor is a PEMS:

(i) use the methods specified in 40 CFR Part 75, Subpart D; or

(ii) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources);

(C) monitor operating parameters for each unit in accordance with 40 CFR Part 75, Appendix E, §1.1 or §1.2 and calculate NO_x emission rates based on those procedures; or

(D) use the maximum block one-hour emission rate as measured during the initial demonstration of compliance required in

§117.235(e) of this title (relating to Initial Demonstration of Compliance).

(c) CEMS requirements. The owner or operator of any CEMS used to meet a pollutant monitoring requirement of this section shall comply with the requirements in [~~of~~] §117.8100(a) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources).

(d) PEMS requirements. The owner or operator of any PEMS used to meet a pollutant monitoring requirement of this section shall comply with the following.

(1) The PEMS must predict the pollutant emissions in the units of the applicable emission limitations of this division.

(2) The PEMS must meet the requirements in [~~of~~] §117.8100(b) of this title.

(e) Engine monitoring. The owner or operator of any [~~gas-fired lean-burn~~] stationary [~~reciprocating~~] internal combustion engine subject to the emission specifications of this division that is not equipped with a NO_x CEMS or PEMS shall stack test engine NO_x emissions as specified in §117.8140(a) of this title (relating to Emission Monitoring for Engines).

(f) Run time meters. The owner or operator of any stationary gas turbine or [~~gas-fired lean-burn~~] stationary [~~reciprocating~~] internal combustion engine claimed exempt using the exemption in [~~of~~] §117.203(1)(D), (2), or (3) of this title (relating to Exemptions) shall record the operating time with a non-resettable elapsed run time meter.

(g) Data used for compliance. After the initial demonstration of compliance required by §117.235 of this title, the methods required in this section must be used to determine compliance with the emission specifications of §117.205(a) of this title. For enforcement purposes, the executive director may also use other commission compliance methods to determine whether the unit is in compliance with applicable emission specifications.

(h) Testing requirements.

(1) The owner or operator of units that are subject to the emission specifications in [~~of~~] §117.205(a) of this title shall test the units as specified in §117.235 of this title in accordance with the applicable schedule specified in §117.9010 of this title (relating to Compliance Schedule for Bexar County [~~Eight-Hour~~] Ozone Nonattainment Area Major Sources).

(2) The owner or operator of any unit [~~not equipped with CEMS or PEMS that are~~] subject to the emission specifications in [~~of~~] §117.205(a) of this title that is not equipped with a NO_x CEMS or PEMS shall retest the unit as specified in §117.235 of this title within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate.

§117.245. Notification, Recordkeeping, and Reporting Requirements.

(a) Startup and shutdown records. For units subject to the startup and/or shutdown provisions in [~~of~~] §101.222 of this title (relating to Demonstrations), hourly records must be made of startup and/or shutdown events and maintained for a period of at least two years. Records must be available for inspection by the executive director, the United States Environmental Protection Agency, and any local air pollution control agency having jurisdiction upon request. These records must include but are not limited to: type of fuel burned; quantity of each type of fuel burned; and the date, time, and duration of the procedure.

(b) Notification. The owner or operator of a unit subject to the emission specifications in [~~of~~] §117.205(a) of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) shall submit [~~written~~] notification to the appropriate regional office and any local air pollution control agency having jurisdiction as follows: [~~of any continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) relative accuracy test audit (RATA) conducted under §117.240 of this title (relating to Continuous Demonstration of Compliance) or any testing conducted under §117.235 of this title (relating to Initial Demonstration of Compliance) at least 15 days in advance of the date of the RATA or testing to the appropriate regional office and any local air pollution control agency having jurisdiction.~~]

(1) written notification of the date of any testing conducted under §117.235 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date; and

(2) written notification of the date of any continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) relative accuracy test audit (RATA) conducted under §117.240 of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date.

(c) Reporting of test results. The owner or operator of a unit subject to the emission specifications in [~~of~~] §117.205(a) of this title shall furnish the Office of Compliance and Enforcement, the appropriate regional office, and any local air pollution control agency having jurisdiction a copy of the results of any testing conducted under §117.235 of this title and any CEMS or PEMS RATA conducted under §117.240 of this title:

(1) within 60 days after completion of such testing or evaluation; and

(2) not later than the compliance schedule specified in §117.9010 of this title (relating to Compliance Schedule for Bexar County [~~Eight-Hour~~] Ozone Nonattainment Area Major Sources).

(d) Semiannual reports. The owner or operator of a unit required to install a CEMS or PEMS under §117.240 of this title shall report in writing to the executive director on a semiannual basis any exceedance of the applicable emission specifications of this division (relating to Bexar County Ozone Nonattainment Area Major Sources) and the monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period (i.e., July 30 and January 30). Written reports must include the following information:

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period;

(2) specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit, the nature and cause of any malfunction (if known), and the corrective action taken, or preventative measures adopted;

(3) the date and time identifying each period when the continuous monitoring system was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information must be stated in the report; and

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the re-

porting period and the CEMS or PEMS downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period, only a summary report form (as outlined in the latest edition of the commission's Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports) must be submitted, unless otherwise requested by the executive director. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total unit operating time for the reporting period or the CEMS or PEMS downtime for the reporting period is greater than or equal to 5.0% of the total unit operating time for the reporting period, a summary report and an excess emission report must both be submitted.

(e) Reporting for engines. The owner or operator of any stationary internal combustion [~~gas-fired~~] engine subject to the emission specifications in §117.205(a) of this title shall report in writing to the executive director on a semiannual basis any excess emissions and the air-fuel ratio monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period (i.e., July 30 and January 30). Written reports must include the following information:

(1) the magnitude of excess emissions (based on the quarterly emission checks in [~~of~~] §117.230(b)(5) [~~§117.230(a)(2)~~] of this title (relating to Operating Requirements) and the biennial emission testing required for demonstration of emissions compliance in accordance with §117.240(e) of this title), computed in pounds per hour and grams per horsepower-hour, any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the engine operating time during the reporting period; and

(2) specific identification, to the extent feasible, of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the engine or emission control system, the nature and cause of any malfunction (if known), and the corrective action taken, or preventative measures adopted.

(f) Recordkeeping. The owner or operator of a unit subject to the requirements of this division shall maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction. The records must include:

(1) for each unit subject to §117.240(a) of this title, records of annual fuel usage;

(2) for each unit using a CEMS or PEMS in accordance with §117.240 of this title, monitoring records of:

(A) hourly emissions and fuel usage (or stack exhaust flow) for units complying with an emission specification enforced on a block one-hour average; or

(B) daily emissions and fuel usage (or stack exhaust flow) for units complying with an emission specification enforced on a [~~daily or~~] rolling 30-day average. Emissions must be recorded in units of:

(i) pounds per million British thermal units (lb/MMBtu) heat input; and

(ii) pounds or tons per day;

(3) for each stationary internal combustion engine subject to the emission specifications of this division, records of:

(A) emissions measurements required by:

(i) §117.230(b)(5) [~~§117.230(2)~~] of this title; and

(ii) §117.240(e) of this title;

(B) catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken; and

(C) daily average horsepower and total daily hours of operation for each engine that the owner or operator elects to use the alternative monitoring system allowed under §117.240(a)(2)(C) of this title;

(4) for units claimed exempt from emission specifications using the exemption in [~~of~~] §117.203(1)(D), (2), or (3) of this title (relating to Exemptions), records of monthly hours of operation, for exemptions based on hours per year of operation. In addition, for each turbine or engine claimed exempt under §117.203(1)(D) or (E) of this title, written records must be maintained of the purpose of turbine or engine operation and, if operation was for an emergency situation, as defined in §117.10(15) of this title (relating to Definitions), identification of the type of emergency situation and the start and end times and date(s) of the emergency situation;

(5) records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS or PEMS; [~~and~~]

(6) records of the results of performance testing, including initial demonstration of compliance testing conducted in accordance with §117.235 of this title; and [~~.~~]

(7) for each stationary diesel engine subject to the operating restrictions of §117.205(e) of this title, records of each time the engine is operated for testing and maintenance of the engine, including:

(A) date(s) of operation;

(B) start and end times of operation;

(C) identification of the engine; and

(D) total hours of operation for each month and for the most recent 12 consecutive months.

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

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

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Charmaine K. Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0682

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SUBCHAPTER H. ADMINISTRATIVE PROVISIONS
DIVISION 1. COMPLIANCE SCHEDULES

30 TAC §117.9010

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers

and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also proposed under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The proposed amendments implement TWC, §§5.102, 5.103, and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§117.9010. Compliance Schedule for Bexar County Ozone Nonattainment Area Major Sources.

(a) The owner or operator of any stationary source of nitrogen oxides (NO_x) in the Bexar County ozone nonattainment area that is a major source of NO_x and is subject to §117.205(a) of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) shall comply with the requirements of Subchapter B, Division 2 of this chapter (relating to Bexar County Ozone Nonattainment Area Major Sources) as follows: [~~shall comply with the requirements of Subchapter B, Division 2 of this chapter as soon as practicable, but no later than January 1, 2025.~~]

(1) for units subject to the emission specifications in §117.205(a) of this title that emit or have the potential to emit equal to or greater than 100 tons per year (tpy) of NO_x:

(A) submission of the control plan required by §117.252 of this title (relating to Control Plan Procedures for Reasonably Available Control Technology) was required by January 1, 2025;

(B) for units subject to the emission specifications in §117.205(a) of this title as of January 1, 2025, compliance with all other requirements of Subchapter B, Division 2 of this chapter was required by January 1, 2025, and these units must continue to comply with the requirements of Subchapter B, Division 2 of this chapter; and

(C) for units that became subject to the emission specifications in §117.205(a) of this title after January 1, 2025, compliance is required as specified in subsection (b) of this section.

(2) for units subject to the emission specifications in §117.205(a) of this title that emit or have the potential to emit equal to or greater than 50 tpy but less than 100 tpy of NO_x:

(A) submission of the control plan required by §117.252 of this title is required no later than February 1, 2026; and

(B) compliance with all other requirements of Subchapter B, Division 2 of this chapter is required as soon as practicable but no later than March 1, 2026.

(b) The owner or operator of any stationary source of NO_x that becomes subject to the requirements of Subchapter B, Division 2 of this chapter on or after the applicable compliance date specified in subsection (a) of this section[~~,~~] shall comply with the requirements of Subchapter B, Division 2 of this chapter as soon as practicable, but no later than 60 days after becoming subject.

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

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Charmaine K. Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION

SUBCHAPTER C. ADMINISTRATION

34 TAC §1.201

The Comptroller of Public Accounts proposes new §1.201, concerning tuition reimbursement program, to establish a process for authorizing and obtaining tuition reimbursement for comptroller employees.

New §1.201 provides that comptroller designated funds may be used to reimburse employees for job-related training and education expenses, and the comptroller may award time off for job related training and education.

Subsection (a) outlines the establishment and purpose and states that programs for the training and education of administrators and employees, including tuition reimbursement, materially aid effective state administration, and public money spent on those programs serves an important public purpose.

Subsection (b) provides the definitions of the term "training" and "tuition reimbursement."

Subsection (c) outlines employee eligibility for tuition reimbursement and/or approved time off during regular working hours.

Subsection (d) outlines the terms by which an employee would be ineligible to receive tuition reimbursement and/or approved time off during regular working hours.

Subsection (e) provides that the comptroller may establish limits to approved time off for course work.

Subsection (f) outlines the terms that may affect reimbursement and/or time off denials, caps on amounts reimbursed, allowable expenses, provides that an employee does not have a right to tuition reimbursement and/or time off, and provides that comptroller decisions regarding denials are final and not appealable. Subsection (f) also provides that before an employee of the agency may be reimbursed for tuition expenditures, the deputy comptroller must approve the tuition reimbursement payment.

Tetyana Melnyk, Director of Revenue Estimating Division, has determined that the proposed new rule will create a new program and will, as a result, increase the number of individuals subject to the rule's applicability. During the first five years that the proposed new rule is in effect, the rule: will not require the creation or elimination of employee positions; will not require an increase or decrease in future legislative appropriations to the agency; will not require an increase or decrease in fees paid to the agency; and will not positively or adversely affect this state's economy.

Ms. Melnyk also has determined that the proposed new rule would have no significant fiscal impact on the state government, units of local government, or individuals. The proposed new rule would benefit the public by fulfilling a statutory requirement, establishing a program whereby the agency could enhance its capacity to perform its duties, and protect state funding. There would be no significant economic cost to the public. The proposed new rule would have no significant fiscal impact on small businesses or rural communities.

You may submit comments on the proposal to Katie McLaughlin, Manager, Human Resources, at human.resources@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711-3528. The comptroller must receive your comments no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The rule is proposed under Government Code, §656.048, which requires state agencies to adopt rules regarding training and education.

The rule implements Government Code, §656.048.

§1.201. Tuition Reimbursement Program.

(a) Establishment and Purpose. The comptroller finds that programs for the training and education of administrators and employees, including tuition reimbursement, materially aid effective state administration, and public money spent on those programs serves an important public purpose. Comptroller designated funds may be used to reimburse employees for job-related training and education expenses, and the comptroller may award time off for job-related training and education. Such expenditures or privileges are at the discretion of the comptroller and should only be made to address current or anticipated needs of the comptroller.

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

(1) Training--Instruction, or other education received by a comptroller employee that is not normally received by other comptroller employees, and that is designed to enhance the ability of the employee to perform their job. Training includes a course of study at an institution of higher education or a private or independent institution of higher education and may also include nontraditional training, such as online courses or courses not credited towards a degree.

(2) Tuition Reimbursement--The reimbursement of a monetary amount preapproved by the comptroller, to a current comptroller employee, after the employee has paid for and successfully completed comptroller preapproved coursework and/or training that addresses current or anticipated needs of the comptroller.

(c) Employee Eligibility. To be eligible for tuition reimbursement and/or approved time off during regular work hours, the following requirements must be met:

(1) employee must be employed on a full-time basis;

(2) employee must have been employed with the comptroller for at least six months;

(3) employee must have continued employment for the duration of the course;

(4) participation by the employee must be approved by their supervisor and the employee's supervisor must verify that the employee's participation will not disrupt the operations of the agency;

(5) the supervisor must verify that the comptroller has sufficient funds to cover the expected costs to be reimbursed and that the training is aligned with the comptroller's needs;

(6) the employee should complete any necessary agreements for tuition assistance and any forms for requesting training, and receive approval from agency management prior to the employee beginning the course work;

(7) the employee must agree to remain in the employment of the comptroller for a period as further specified by comptroller policy;

(8) the employee must agree to repay the comptroller for all expenses for which the employee was reimbursed, if the employee terminates employment before the end of the period specified by comptroller policy; and

(9) the employee must complete the course work for which tuition reimbursement is requested and achieve satisfactory performance in the course work as further specified in comptroller policy. Requirements to establish satisfactory completion of course work will be specified in the comptroller tuition reimbursement policy or procedures developed by the agency.

(d) Employee Ineligibility. An employee is not eligible for consideration if any of the following applies:

(1) the employee is on probation;

(2) the employee is the subject of a Human Resources investigation;

(3) the employee has received agency discipline within the last 12 months; or

(4) the employee's job performance has been rated unsatisfactory in any of the Core Competency categories of the latest employee performance evaluation.

(5) Notwithstanding employee discipline or performance status, the comptroller may grant an exception and allow an employee to apply for tuition reimbursement when the employee is requested by the agency to take course work, or the agency has determined that the disciplinary, investigatory, or performance-related issues have been addressed to the satisfaction of the agency. The employee must maintain satisfactory performance through the duration of the course or training program.

(e) Course Work During Established Work Hours. The comptroller may establish limits on the amount of time allowed for qualified employees to participate in actual coursework or classes during the employee's normal work hours.

(f) Reimbursement; Denial of Request.

(1) Tuition reimbursement is always subject to funding availability.

(2) The comptroller may establish policies and procedures for requesting reimbursement. At any time, the comptroller may set a cap on the amount of tuition reimbursement. Any cap amounts will be

specified in the comptroller tuition reimbursement policy or procedures developed by the agency.

(3) Before an employee of the agency may be reimbursed for tuition expenditures, the deputy comptroller must approve the tuition reimbursement payment.

(4) Allowable expenses for the training of employees include tuition and educational fees specified in policy or procedures established by the comptroller. The comptroller may specify expenses that are not reimbursable, including without limitation, late fees, installment fees, supplies, travel or commuting expenses, and expenses for classes or courses taken prior to employment with the comptroller's office.

(5) The tuition reimbursement program does not include training required either by state or federal law or that is determined necessary by the comptroller and offered to all employees of the comptroller performing similar jobs.

(6) An employee does not have a right to reimbursement and/or approved time off for course work, even if the employee meets the qualifications of the tuition reimbursement program.

(7) Any decision of the agency to deny a request to attend training or reimburse tuition is final and cannot be appealed.

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

Filed with the Office of the Secretary of State on July 10, 2025.

TRD-202502322
Don Neal
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 475-2220

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 211. ADMINISTRATION

37 TAC §211.1

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §211.1, Definitions. The proposed amended rule would add definitions for a full-time peace officer, part-time peace officer, and reserve law enforcement officer. The definitions were developed from Texas Government Code Chapter 614, Texas Occupations Code §1701.001, and the statutes cited in the proposed reserve law enforcement officer definition. These definitions would provide guidance for determining the appropriate type of appointment for a peace officer.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be a positive benefit to the public by clarifying the meaning for the types of peace officer appointments. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

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

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

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

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

(6) the proposed rule does not expand, limit, or repeal an existing regulation;

(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed amended rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rule is proposed pursuant to Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701.

The amended rule as proposed affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority. No other code, article, or statute is affected by this proposal.

The proposed amended rule has been reviewed by legal counsel and has been found to be within the Commission's authority to adopt.

§211.1. Definitions.

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

(1) Academic alternative program--A program for college credit offered by a training provider recognized by the Southern Association of Colleges and Schools or its successors and the Texas Higher Education Coordinating Board, authorized by the commission to conduct preparatory law enforcement training as part of a degree plan program, and consisting of commission-approved curricula.

(2) Academic provider--A school, accredited by the Southern Association of Colleges and Schools or its successors and the Texas Higher Education Coordinating Board, which has been approved by the commission to provide basic licensing courses.

(3) Accredited college or university--An institution of higher education that is accredited or authorized by the Southern Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Commission on Colleges and Universities, the Western Association of Schools and Colleges or its successors, or an international college or university evaluated and accepted by a United States accredited college or university.

(4) Active--A license issued by the commission that meets the current requirements of licensure and training as determined by the commission.

(5) Administrative Law Judge (ALJ)--An administrative law judge appointed by the chief administrative law judge of the State Office of Administrative Hearings.

(6) Agency--A law enforcement unit or other entity, whether public or private, authorized by Texas law to appoint a person licensed or certified by the commission.

(7) Appointed--Elected or commissioned by an agency as a peace officer, reserve or otherwise selected or assigned to a position governed by the Texas Occupations Code, Chapter 1701, without regard to pay or employment status.

(8) Background investigation--An investigation completed by the enrolling or appointing entity into an applicant's personal history as set forth in §217.1(b)(10).

(9) Basic licensing course--Any current commission developed course that is required before an individual may be licensed by the commission.

(10) Certified copy--A true and correct copy of a document or record certified by the custodian of records of the submitting entity.

(11) Chief administrator--The head or designee of a law enforcement agency.

(12) Commission--The Texas Commission on Law Enforcement.

(13) Commissioned--Has been given the legal power to act as a peace officer or reserve, whether elected, employed, or appointed.

(14) Commissioners--The nine commission members appointed by the governor.

(15) Contract jail--A correctional facility, operated by a county, municipality or private vendor, operating under a contract with a county or municipality, to house inmates convicted of offenses committed against the laws of another state of the United States, as provided by Texas Government Code, §511.0092.

(16) Contract Jailer--A person licensed as a Jailer in a Contract Jail or employed by an agency outside of a County Jail whose employing agency provides services inside of a County Jail which would require the person to have a Jailer License.

(17) Contractual training provider--A law enforcement agency or academy, a law enforcement association, alternative delivery trainer, distance education, academic alternative, or proprietary training provider that conducts specific education and training under a contract with the commission.

(18) Convicted--Has been adjudged guilty of or has had a judgment of guilt entered in a criminal case that has not been set aside on appeal, regardless of whether:

(A) the sentence is subsequently probated and the person is discharged from probation;

(B) the charging instrument is dismissed and the person is released from all penalties and disabilities resulting from the offense; or

(C) the person is pardoned, unless the pardon is expressly granted for subsequent proof of innocence.

(19) Community supervision--Any court-ordered community supervision or probation resulting from a deferred adjudication or conviction by a court of competent jurisdiction. However, this does not include supervision resulting from a pretrial diversion.

(20) Diploma mill--An entity that offers for a fee with little or no coursework, degrees, diplomas, or certificates that may be used to represent to the general public that the individual has successfully completed a program of secondary education or training.

(21) Distance education--Study, at a distance, with an educational provider that conducts organized, formal learning opportunities for students. The instruction is offered wholly or primarily by distance study, through virtually any media. It may include the use of: videotapes, DVD, audio recordings, telephone and email communications, and Web-based delivery systems.

(22) Duty ammunition--Ammunition required or permitted by the agency to be carried on duty.

(23) Executive director--The executive director of the commission or any individual authorized to act on behalf of the executive director.

(24) Experience--Includes each month, or part thereof, served as a peace officer, reserve, jailer, telecommunicator, or federal officer. Credit may, at the discretion of the executive director, be awarded for relevant experience from an out-of-state agency.

(25) Family Violence--In this chapter, has the meaning assigned by Chapter 71, Texas Family Code.

(26) Field training program--A program intended to facilitate a transition from the academic setting to the performance of the general duties of the appointing agency.

(27) Firearms--Any handgun, shotgun, precision rifle, patrol rifle, or fully automatic weapon that is carried by the individual officer in an official capacity. Conducted energy devices (CEDs) are not firearms.

(28) Firearms proficiency--Successful completion of the annual firearms proficiency requirements.

(29) Fit for duty review--A formal specialized examination of an individual, appointed to a position governed by the Texas Occupations Code, Chapter 1701, without regard to pay or employment status, to determine if the appointee is able to safely and/or effectively perform essential job functions. The basis for these examinations should be based on objective evidence and a reasonable basis that the cause may be attributable to a medical and/or psychological condition or impairment. Objective evidence may include direct observation, credible

third party reports; or other reliable evidence. The review should come after other options have been deemed inappropriate in light of the facts of the case. The selected Texas licensed medical doctor or psychologist, who is familiar with the duties of the appointee, conducting an examination should be consulted to ensure that a review is indicated. This review may include psychological and/or medical fitness examinations.

(30) Full-time peace officer--a peace officer who:

(A) works as a peace officer on average at least 32 hours per week, exclusive of paid vacation; and

(B) is compensated at least at the federal minimum wage and is entitled to all employee benefits offered to a peace officer by the appointing law enforcement agency or its governing body.

(31) [~~(30)~~] High School Diploma--An earned high school diploma from a United States high school, an accredited secondary school equivalent to that of United States high school, or a passing score on the general education development test indicating a high school graduation level. Documentation from diploma mills is not acceptable.

(32) [~~(31)~~] Home School Diploma--An earned diploma from a student who predominately receives instruction in a general elementary or secondary education program that is provided by the parent, or a person in parental authority, in or through the child's home. (Texas Education Code §29.916)

(33) [~~(32)~~] Honorably Retired Peace Officer--An unappointed person with a Texas Peace Officer license who has a cumulative total of 15 years of full-time service as a Peace Officer. An Honorably Retired Peace Officer does not carry any Peace Officer authority.

(34) [~~(33)~~] Individual--A human being who has been born and is or was alive.

(35) [~~(34)~~] Jailer--A person employed or appointed as a jailer under the provisions of the Local Government Code, §85.005, or Texas Government Code §511.0092.

(36) [~~(35)~~] Killed in the line of duty--A death that is the directly attributed result of a personal injury sustained in the line of duty.

(37) [~~(36)~~] Law--Including, but not limited to, the constitution or a statute of this state, or the United States; a written opinion of a court of record; a municipal ordinance; an order of a county commissioners' court; or a rule authorized by and lawfully adopted under a statute.

(38) [~~(37)~~] Law enforcement academy--A school operated by a governmental entity which may provide basic licensing courses and continuing education under contract with the commission.

(39) [~~(38)~~] Law enforcement automobile for training--A vehicle equipped to meet the requirements of an authorized emergency vehicle as identified by Texas Transportation Code §546.003 and §547.702.

(40) [~~(39)~~] Less lethal force weapon--A weapon designed or intended for use on individuals or groups of individuals which, in the course of expected or reasonably foreseen use, has a lower risk of causing death or serious injury than do firearms. Less lethal force weapons do not include firearms or other weapons whose expected or reasonably foreseen use would result in life-threatening injuries. Less lethal force weapons may include police batons, hand-held chemical irritants, chemical irritants dispersed at a distance, conducted electrical weapons, kinetic impact projectiles, water cannons, and acoustic weapons and equipment. An officer provided or equipped with a less lethal force weapon should be trained, qualified, or certified in its use.

(41) [~~(40)~~] Lesson plan--A plan of action consisting of a sequence of logically linked topics that together make positive learning experiences. Elements of a lesson plan include: measurable goals and objectives, content, a description of instructional methods, tests and activities, assessments and evaluations, and technologies utilized.

(42) [~~(41)~~] License--A license required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(43) [~~(42)~~] Licensee--An individual holding a license issued by the commission.

(44) [~~(43)~~] Line of duty--Any lawful and reasonable action, which an officer identified in Texas Government Code, Chapter 3105 is required or authorized by rule, condition of employment, or law to perform. The term includes an action by the individual at a social, ceremonial, athletic, or other function to which the individual is assigned by the individual's employer.

(45) [~~(44)~~] Moral character--The propensity on the part of a person to serve the public of the state in a fair, honest, and open manner.

(46) [~~(45)~~] Officer--A peace officer or reserve identified under the provisions of the Texas Occupations Code, §1701.001.

(47) Part-time peace officer--a peace officer who:

(A) works as a peace officer on a regular basis but on average less than 32 hours per week, exclusive of paid vacation; and

(B) is compensated at least at the federal minimum wage and is entitled to all employee benefits offered to a peace officer by the appointing law enforcement agency or its governing body.

(48) [~~(46)~~] Patrol rifle--Any magazine-fed repeating rifle with iron/open sights or with a frame mounted optical enhancing sighting device, 5 power or less, that is carried by the individual officer in an official capacity.

(49) [~~(47)~~] Patrol vehicle--A vehicle equipped with emergency lights, siren, and the means to safely detain and transport a combative detainee.

(50) [~~(48)~~] Peace officer--A person elected, employed, or appointed as a peace officer under the provisions of the Texas Occupations Code, §1701.001.

(51) [~~(49)~~] Personal Identification Number (PID)--A unique computer-generated number assigned to individuals for identification in the commission's electronic database.

(52) [~~(50)~~] Placed on probation--Has received an adjudicated or deferred adjudication probation for a criminal offense.

(53) [~~(51)~~] POST--State or federal agency with jurisdiction similar to that of the commission, such as a peace officer standards and training agency.

(54) [~~(52)~~] Precision rifle--Any rifle with a frame mounted optical sighting device greater than 5 power that is carried by the individual officer in an official capacity.

(55) [~~(53)~~] Proprietary training contractor--An approved training contractor who has a proprietary interest in the intellectual property delivered.

(56) [~~(54)~~] Public security officer--A person employed or appointed as an armed security officer identified under the provisions of the Texas Occupations Code, §1701.001.

(57) [~~(55)~~] Reactivate--To make a license issued by the commission active after a license becomes inactive. A license becomes inactive at the end of the most recent unit or cycle in which the licensee is not appointed and has failed to complete legislatively required training.

(58) [~~(56)~~] Reinstate--To make a license issued by the commission active after disciplinary action or failure to obtain required continuing education.

[~~(57) Reserve--A person appointed as a reserve law enforcement officer under the provisions of the Texas Occupations Code, §1701.001.~~]

(59) Reserve law enforcement officer--a licensed peace officer appointed according to Section 37.0816, Education Code, Section 41.102 or 411.0208, Government Code, Section 85.004, 86.012, or 341.012, Local Government Code, or Section 60.0775, Water Code.

(60) [~~(58)~~] School marshal--A person employed and appointed by the board of trustees of a school district, the governing body of an open-enrollment charter school, the governing body of a private school, or the governing board of a public junior college under Texas Code of Criminal Procedure, Article 2.127 and in accordance with and having the rights provided by Texas Education Code, §37.0811.

(61) [~~(59)~~] Self-assessment--Completion of the commission created process, which gathers information about a training or education program.

(62) [~~(60)~~] Separation--An explanation of the circumstances under which the person resigned, retired, or was terminated, reported on the form currently prescribed by the commission, in accordance with Texas Occupations Code, §1701.452.

(63) [~~(61)~~] SOAH--The State Office of Administrative Hearings.

(64) [~~(62)~~] Successful completion--A minimum of:

(A) 70 percent or better; or

(B) C or better; or

(C) pass, if offered as pass/fail.

(65) [~~(63)~~] Sustainable funding sources--Funding from an agency's governing body such as property tax, sales tax, use and franchise fees, and the issuance of traffic citations subject to section 542.402 of the Texas Transportation Code. Term limited sources, such as grants, are not sustainable funding sources.

(66) [~~(64)~~] TCLEDDS--Texas Commission on Law Enforcement Data Distribution System.

(67) [~~(65)~~] Telecommunicator--A person employed as a telecommunicator under the provisions of the Texas Occupations Code, §1701.001.

(68) [~~(66)~~] Training coordinator--An individual, appointed by a commission-recognized training provider, who meets the requirements of §215.9 of this title.

(69) [~~(67)~~] Training cycle--A 48-month period as established by the commission. Each training cycle is composed of two contiguous 24-month units.

(70) [~~(68)~~] Training hours--Classroom or distance education hours reported in one-hour increments.

(71) [~~(69)~~] Training program--An organized collection of various resources recognized by the commission for providing preparatory or continuing training. This program includes, but is not limited to, learning goals and objectives, academic activities and exercises, lesson plans, exams, skills training, skill assessments, instructional and learning tools, and training requirements.

(72) [~~(70)~~] Training provider--A governmental body, law enforcement association, alternative delivery trainer, or proprietary entity credentialed by or authorized under a training provider contract with the commission to provide preparatory or continuing training for licensees or potential licensees.

(73) [~~(71)~~] Uniform--Dress that makes an officer immediately identifiable as a peace officer, to include a visible badge. Acceptable uniform dress must be defined in agency policy and consistent in its application and use across the agency.

(74) [~~(72)~~] Verification (verified)--The confirmation of the correctness, truth, or authenticity of a document, report, or information by sworn affidavit, oath, or deposition.

(b) The effective date of this section is November 1, 2025 [~~June 1, 2024~~].

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

Filed with the Office of the Secretary of State on July 14, 2025.

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Gregory Stevens
Executive Director
Texas Commission on Law Enforcement
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 936-7700

37 TAC §211.29

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §211.29, Responsibilities of Agency Chief Administrators. The proposed amended rule would codify in rule the requirements of law enforcement agencies in relation to the Commission contained in Texas Occupations Code Chapter 1701 or in the Misconduct Allegations and Personnel Files model policies. This will allow the Commission to enforce limited aspects of these model policies adopted by law enforcement agencies, including the investigation of and submission of reports for allegations of misconduct and the maintenance and submission of personnel and department files.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be a positive benefit to the public by conforming with the Misconduct Allegations and Personnel Files model policies. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

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

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

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule does create a new regulation by allowing Commission enforcement, as reflected by statute, of policies required of law enforcement agencies;

(6) the proposed rule does not expand, limit, or repeal an existing regulation;

(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed amended rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rule is proposed pursuant to Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.4522, Misconduct Investigation and Hiring Procedures, and Texas Occupations Code §1701.4535, Personnel File. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.4522 requires the Commission to adopt a model policy for misconduct investigations. Texas Occupations Code §1701.4535 requires the Commission to adopt a model policy for personnel files.

The amended rule as proposed affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Texas Occupations Code §1701.4522, Misconduct Investigation and Hiring Procedures, and Texas Occupations Code §1701.4535, Personnel File. No other code, article, or statute is affected by this proposal.

The proposed amended rule has been reviewed by legal counsel and has been found to be within the Commission's authority to adopt.

§211.29. Responsibilities of Agency Chief Administrators.

(a) An agency chief administrator is responsible for making any and all reports and submitting any and all documents required of that agency by the commission.

(b) An individual who is appointed or elected to the position of the chief administrator of a law enforcement agency shall notify the Commission of the date of appointment and title, through a form prescribed by the Commission within 30 days of such appointment.

(c) An agency chief administrator must comply with the appointment and retention requirements under Texas Occupations Code, Chapter 1701.

(d) An agency chief administrator must report to the commission within 30 days, any change in the agency's name, physical location, mailing address, electronic mail address, or telephone number.

(e) An agency chief administrator must report, in a standard format, incident-based data compiled in accordance with Texas Occupations Code §1701.164.

(f) Line of duty deaths shall be reported to the commission in current peace officers' memorial reporting formats.

(g) An agency chief administrator has an obligation to determine that all appointees are able to safely and effectively perform the essential job functions. An agency chief administrator may require a fit for duty review upon identifying factors that indicate an appointee may no longer be able to perform job-related functions safely and effectively. These factors should be based on objective evidence and a reasonable basis that the cause may be attributable to a medical or psychological condition or impairment.

(h) An agency chief administrator shall notify the commission of any failed medical (L-2) or psychological (L-3) examination within 30 days on a form prescribed by the commission. An agency chief administrator shall notify the commission upon a final determination of a failed fit-for-duty examination (FFDE) or drug screen within 30 days on a form prescribed by the commission.

(i) An agency must provide training on employment issues identified in Texas Occupations Code §1701.402 and field training.

(j) An agency must provide continuing education training required in Texas Occupations Code §1701.351 and §1701.352.

(k) Before an agency appoints any licensee to a position requiring a commission license it shall complete the reporting requirements of Texas Occupations Code §1701.451.

(l) An agency appointing a person who does not hold a commission license must file an application for the appropriate license with the commission.

(m) An agency must notify the commission electronically following the requirements of Texas Occupations Code §1701.452, when a person under appointment with that agency resigns or is terminated.

(n) An agency chief administrator must comply with orders from the commission regarding the correction of a report of resignation/termination or request a hearing from SOAH.

(o) An agency chief administrator must:

(1) at the time the agency becomes aware of an allegation of misconduct, as defined in the model policy required by Texas Occupations Code § 1701.4522(a)(1), that may result in suspension, demotion, or termination, initiate an appropriate administrative or criminal investigation into alleged misconduct of a licensee who was appointed by the law enforcement agency at the time the alleged misconduct occurred;

(2) ensure completion of the investigation into alleged misconduct in a timely manner consistent with the law enforcement agency's policies even if the licensee has separated from the law enforcement agency;

(3) submit a report of a completed investigation into alleged criminal misconduct for which criminal charges are filed against a licensee to the commission within 30 days after the investigation is completed on a form prescribed by the commission;

(4) submit a report of a completed investigation into alleged administrative misconduct to the commission in a timely manner, but not later than 30 days after the licensee's separation from the law enforcement agency, on a form prescribed by the commission;

(5) if the investigative findings or disciplinary action taken are appealed, notify the commission that the matter is under appeal and notify the commission of the disposition of an appeal within 30 days after receipt of the decision; and

(6) include documentation of the completed investigation in the licensee's personnel or department file, as appropriate.

(p) An agency chief administrator must:

(1) maintain a personnel file and department file for each licensee appointed with the law enforcement agency;

(2) submit to the commission a complete copy of the personnel file of a licensee within 30 days after separation of the licensee from the law enforcement agency in a manner prescribed by the commission; and

(3) submit to the commission a complete copy of the personnel file and department file of a licensee upon request as part of an ongoing investigation relating to the licensee.

(q) [~~(o)~~] Except in the case of a commission error, an agency that wishes to report a change to any information within commission files about a licensee shall do so in a request to the commission, containing:

(1) the licensees name, date of birth, last four digits of the social security number, or PID;

(2) the requested change; and

(3) the reason for the change.

(r) [~~(p)~~] An agency chief administrator may not appoint an applicant subject to pending administrative action based on:

(1) enrollment or licensure ineligibility; or

(2) statutory suspension or revocation.

(s) [~~(q)~~] The effective date of this section is November 1, 2025 [~~May 1, 2025~~].

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

Filed with the Office of the Secretary of State on July 14, 2025.

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Gregory Stevens
Executive Director
Texas Commission on Law Enforcement
Earliest possible date of adoption: August 24, 2025
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CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS

37 TAC §215.8

The Texas Commission on Law Enforcement (Commission) proposes new 37 Texas Administrative Code §215.8, Minimum Standards for Appointment as a Training Coordinator over a Basic Licensing Course. The proposed new rule would establish minimum standards and training requirements for individuals to be appointed as a training coordinator over a basic licensing course. This new rule was developed by the Minimum Standards for Training Coordinators Advisory Committee. These minimum standards were developed from the minimum standards required for Commission licensees as contained in 37 Texas Administrative Code §217.1. This new rule would require training coordinators over a basic licensing course to take a basic training coordinator course once and continuing education on a biennial basis.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed new rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be a positive benefit to the public by ensuring that basic licensing courses are conducted by qualified training coordinators. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed new rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

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

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

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule does create a new regulation by requiring training coordinators over a basic licensing course to meet minimum standards and training requirements;

(6) the proposed rule does not expand, limit, or repeal an existing regulation;

(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed new rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments

may be submitted electronically to or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The new rule is proposed pursuant to Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701 and to establish minimum standards relating to the competence and reliability, including the education, training, physical, and mental standards, for licensing as an officer, county jailer, or telecommunicator.

The new rule as proposed affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority.

The proposed new rule has been reviewed by legal counsel and has been found to be within the Commission's authority to adopt.

§215.8. Minimum Standards for Appointment as a Training Coordinator over a Basic Licensing Course.

(a) A licensee currently appointed by a law enforcement agency that provides or reports a basic licensing course may be appointed by that same agency as a training coordinator if the licensee:

(1) holds a peace officer license or the respective license for the course to be taught;

(2) holds a valid instructor proficiency certificate or license; and

(3) has completed the basic training coordinator course:

(A) for an initial appointment as a training coordinator, within six months after appointment; or

(B) for any subsequent appointment, prior to being appointed.

(b) Any individual to which subsection (a) of this section does not apply must meet the following minimum standards to be appointed as a training coordinator for a training provider that provides or reports any basic licensing course:

(1) minimum age requirement:

(A) 21 years of age for providers who provide a peace officer basic licensing course, or 18 years of age if the individual has received:

(i) an associate's degree or 60 semester hours of credit from an accredited college or university; or

(ii) an honorable discharge from the armed forces of the United States after at least two years of active service; or

(B) 18 years of age for providers who provide jailer or telecommunicator basic licensing courses;

(2) minimum educational requirements:

(A) holds a valid instructor proficiency certificate or license;

(B) has completed the basic training coordinator course:

(i) for an initial appointment as a training coordinator, within six months after appointment; or

(ii) for any subsequent appointment, prior to being appointed; and

(C) satisfies one of the following requirements:

(i) has passed a general educational development (GED) test indicating high school graduation level;

(ii) holds a high school diploma; or

(iii) has an honorable discharge from the armed forces of the United States after at least 24 months of active duty service;

(3) is fingerprinted and is subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(4) has never been on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor or a Class B misdemeanor within the last ten years from the date of the court order;

(5) is not currently charged with any criminal offense for which conviction would be a bar to licensure;

(6) has never been convicted of an offense above the grade of a Class B misdemeanor or a Class B misdemeanor within the last ten years;

(7) has never been convicted or placed on community supervision in any court of an offense involving family violence;

(8) for providers who provide a peace officer basic licensing course, is not prohibited by state or federal law from operating a motor vehicle;

(9) is not prohibited by state or federal law from possessing firearms or ammunition;

(10) has been subjected to a background investigation completed by the training provider into the individual's personal history. A background investigation shall include, at a minimum, the following:

(A) the training provider shall:

(i) require completion of the commission-approved personal history statement; and

(ii) meet all requirements enacted in Texas Occupations Code §1701.451, including submission to the commission of a form confirming all requirements have been met. An in-person review of personnel records is acceptable in lieu of making the personnel records available electronically if a hiring training provider and a previous employing training provider or law enforcement agency mutually agree to the in-person review;

(11) examined by a physician, selected by the training provider, who is licensed by the Texas Medical Board. The physician must be familiar with the duties of a training coordinator. The individual must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of appointment by the training provider to be:

(A) physically sound and free from any defect which may adversely affect the performance of duties of the training coordinator; and

(B) show no trace of drug dependency or illegal drug use after a blood test or other medical test;

(12) examined by a psychologist, selected by the training provider, who is licensed by the Texas State Board of Examiners of Psychologists. This examination may also be conducted by a psychiatrist licensed by the Texas Medical Board. The psychologist or psychiatrist must be familiar with the duties appropriate to a training coordi-

nator. The individual must be declared by that professional, on a form prescribed by the commission, to be in satisfactory psychological and emotional health to serve as a training coordinator. The examination must be conducted pursuant to professionally recognized standards and methods. The examination process must consist of a review of a job description for a training coordinator; review of any personal history statements; review of any background documents; at least two instruments, one which measures personality traits and one which measures psychopathology; and a face-to-face interview conducted after the instruments have been scored. The individual must be declared by that professional, on a form prescribed by the commission, within 180 days before the date of the appointment by the training provider;

(13) has never received a dishonorable discharge from the armed forces of the United States;

(14) has not had a commission or out-of-state equivalent license denied by final order or revoked;

(15) is not currently on suspension, or does not have a surrender of a commission or out-of-state equivalent license currently in effect; and

(16) is a U.S. citizen or is a legal permanent resident of the United States, if the individual is an honorably discharged veteran of the armed forces of the United States with at least two years of service before discharge and presents evidence satisfactory to the commission that the individual has applied for United States citizenship.

(c) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

(d) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.

(e) An individual who fails to meet the minimum standards set forth in this section shall not accept appointment as a training coordinator over a basic licensing course. If an application for appointment is found to be false or untrue or if the individual did not meet minimum standards at the time of appointment, the training provider must terminate the appointment if directed by the commission.

(f) If a training coordinator appointed over a basic licensing course no longer meets the minimum standards set forth in this section, the training provider must terminate the appointment if directed by the commission.

(g) If an individual does not complete the basic training coordinator course within six months of initial appointment as a training coordinator over a basic licensing course, the training provider must terminate the appointment if directed by the commission. The individual is not eligible for another appointment as a training coordinator until the basic training coordinator course is completed.

(h) In order to appoint an individual as a training coordinator over a basic licensing course, a training provider must have on file documentation, acceptable to the commission, that the individual meets the minimum standards for appointment. The training provider must submit an appointment application and receive approval from the commission before the individual may discharge the duties of a training coordinator.

(i) A training coordinator appointed over a basic licensing course must complete training coordinator specific continuing education biennially as prescribed by the commission.

(j) The effective date of this section is November 1, 2025.

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

Filed with the Office of the Secretary of State on July 14, 2025.

TRD-202502512
Gregory Stevens
Executive Director
Texas Commission on Law Enforcement
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 936-7700

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37 TAC §215.9

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §215.9, Training Coordinator. The proposed amended rule would require a training coordinator to report to the Commission the separation of a student from a basic licensing course. This would allow the Commission to better assess the operations of a training academy and to make the Commission, training providers, and prospective appointing agencies aware of these separated students.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be a positive benefit to the public by providing data regarding the success and operations of training academies. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

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

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

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

(5) the proposed rule does create a new regulation by requiring training coordinators to submit reports of separation for students of a basic licensing course, which was previously allowed but not required;

(6) the proposed rule does not expand, limit, or repeal an existing regulation;

(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed amended rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rule is proposed pursuant to Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.153, Reports from Agencies and Schools. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.153 requires the Commission to establish reporting standards and procedures for the activities of licensed training schools and for matters the Commission considers necessary for the administration of Occupations Code Chapter 1701.

The amended rule as proposed affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and §1701.153, Reports from Agencies and Schools. No other code, article, or statute is affected by this proposal.

The proposed amended rule has been reviewed by legal counsel and has been found to be within the Commission's authority to adopt.

§215.9. Training Coordinator.

(a) A training coordinator must hold a valid instructor license or certificate and must be a full-time paid employee of that Training Provider.

(b) The training coordinator must:

(1) ensure compliance with commission rules and guidelines;

(2) prepare, maintain, and submit the following reports within the time frame specified:

(A) reports of training:

(i) basic licensing course shall be submitted prior to students attempting a licensing exam; and

(ii) within 30 days of completion of continuing education course;

(B) self-assessment reports as required by the commission;

(C) a copy of advisory board minutes during an on-site evaluation;

(D) training calendars-schedules must be available for review and posted on the internet, or another public venue, no later than 30 days prior to the beginning of each calendar quarter or academic semester. A continually updated and posted (live) calendar will meet this requirement; and

(E) any other reports or records as requested by the commission;

(3) report the separation of any student who fails to complete a basic licensing course on a form prescribed by the commission within 30 days;

(4) be responsible for the administration and conduct of each course, including those conducted at ancillary sites, and specifically:

(A) appointing and supervising qualified instructors;

(B) maintaining course schedules and training files. At a minimum, training files shall contain:

(i) complete lesson plan;

(ii) clear learning objectives;

(iii) instructor biography indicating subject matter expertise and teaching experience;

(iv) approved class roster and original sign-in sheet; and

(v) course evaluation;

(C) enforcing all admission, attendance, retention, and other standards set by the commission and approved by the advisory board;

(D) securing and maintaining all facilities necessary to meet the inspection standards of this section;

(E) controlling the discipline and demeanor of each student and instructor during class;

(F) distributing a current version of the Texas Occupations Code, Chapter 1701 and commission rules to all students at the time of admission to any course that may result in the issuance of a license;

(G) distributing learning objectives to all students at the beginning of each course;

(H) ensuring that all learning objectives are taught and evaluated;

(I) proctoring or supervising all examinations to ensure fair, honest results; and

(J) maintaining training files, records of tests, and other evaluation instruments for a period of five years;

(5) [~~(4)~~] receive all commission notices on behalf of the training provider and forward each notice to the appointing authority;

(6) [~~(5)~~] attend or have a designee attend each academy coordinator's workshop conducted by the commission. No person may serve as a representative for more than one provider per conference. Each representative must be affiliated with the training provider; and

(7) [~~(6)~~] notify the commission of any failed medical (L-2) or psychological (L-3) examination within 30 days on a form prescribed by the commission.

(c) If the position of training coordinator becomes vacant, upon written request from the chief administrator of the training provider the commission may, at the discretion of the executive director, waive the requirements for a period not to exceed six months.

(d) Upon written request from the chief administrator of a training provider that does not have a full-time paid staff, the commission may, at the discretion of the executive director, waive the requirements in subsection (a) of this section.

(e) The effective date of this section is November 1, 2025 [~~May 1, 2025~~].

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

Filed with the Office of the Secretary of State on July 14, 2025.

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Gregory Stevens
Executive Director
Texas Commission on Law Enforcement
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For further information, please call: 5129367700

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CHAPTER 223. ENFORCEMENT

37 TAC §223.19

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §223.19, License Revocation. The proposed amended rule would require the Commission to revoke the license of a licensee that is convicted or placed on community supervision for an offense under Chapter 39 of the Texas Penal Code. This conforms with the Commission's standard practice of seeking revocation for abuse of office offenses. The proposed amended rule would also allow the Commission to revoke the license of a licensee that is convicted or placed on community supervision for an offense committed against a vulnerable person, as defined, or any offense involving cruelty to animals because Commission licensees, in their position of authority, need to be trusted to safely and ethically exercise care, custody, or control over members of the public.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be a positive benefit to the public by ensuring that Texas is served by ethical law enforcement professionals and by removing licensees that have demonstrated a possible danger to the public. There will be no anticipated economic costs to persons required to comply with the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

(1) the proposed rule does not create or eliminate a government program;

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

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

(4) the proposed rule does not require an increase or decrease in fees paid to the agency;

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

(6) the proposed rule does expand an existing regulation, but does not limit or repeal an existing regulation, by allowing for revocation of a license for certain offenses that previously would have resulted in license suspension;

(7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and

(8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed amended rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rule is proposed pursuant to Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and Texas Occupations Code §1701.501, Disciplinary Action. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701 and to establish minimum standards relating to the competence and reliability, including the education, training, physical, and mental standards, for licensing as an officer, county jailer, or telecommunicator. Texas Occupations Code §1701.501 authorizes the Commission to establish procedures for the revocation of a license and to adopt other necessary enforcement procedures.

The amended rule as proposed affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, and Texas Occupations Code §1701.501, Disciplinary Action. No other code, article, or statute is affected by this proposal.

The proposed amended rule has been reviewed by legal counsel and has been found to be within the Commission's authority to adopt.

§223.19. License Revocation.

(a) The license of a person convicted of a felony shall be immediately revoked.

(b) The license of a person convicted or placed on community supervision for an offense directly related to the duties and responsibilities of any related office held by that person may be revoked. In determining whether an offense directly relates to such office, the commission will consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purpose for requiring a license for such office;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of such office.

(c) The license of a person convicted or placed on community supervision for any offense involving family violence shall be revoked.

(d) The license of a person convicted or placed on community supervision for any offense under Chapter 39 of the Texas Penal Code shall be revoked.

(e) The license of a person convicted or placed on community supervision for any offense committed against a vulnerable person may be revoked. A vulnerable person includes, but is not limited to:

(1) a person under the age of 18;

(2) a person over the age of 65;

(3) a disabled person;

(4) an intoxicated or incapacitated person; and

(5) a person under the care, custody, or control of the actor.

(f) The license of a person convicted or placed on community supervision for any offense involving cruelty to animals may be revoked.

(g) [~~(d)~~] The license of a person who is noncompliant for the third time in obtaining continuing education shall be revoked.

(h) [~~(e)~~] The license of a person who has received a dishonorable discharge from the armed forces of the United States shall be revoked.

(i) [~~(f)~~] The license of a person who has made, submitted, caused to be submitted, or filed a false or untruthful report to the commission may be revoked.

(j) [~~(g)~~] The license of a person who has been found to be in unauthorized possession of any commission licensing examination or portion of a commission licensing examination, or a reasonable facsimile shall be revoked.

(k) [~~(h)~~] Revocation permanently bars the person from any future licensing or certification by the commission.

(l) [~~(i)~~] A revoked license cannot be reinstated unless the licensee provides proof of facts supporting the revocation have been negated, such as:

(1) the felony conviction has been reversed or set aside on direct or collateral appeal, or a pardon based on subsequent proof of innocence has been issued;

(2) the dishonorable or bad conduct discharge has been upgraded to above dishonorable or bad conduct conditions; or

(3) the report alleged to be false or untruthful was found to be truthful.

(m) [~~(j)~~] During the direct appeal of any appropriate conviction, a license may be revoked pending resolution of the mandatory direct appeal. The license will remain revoked unless and until the holder proves that the conviction has been set aside on appeal.

(n) [~~(k)~~] The holder of any revoked license may informally petition the executive director for reinstatement of that license based upon proof by the licensee that the facts supporting the revocation have been negated.

(o) [~~(l)~~] If granted, the executive director shall inform the commissioners of such action no later than at their next regular meeting.

(p) [~~(m)~~] If denied, the holder of a revoked license may petition the commission for a hearing to determine reinstatement based upon the same proof.

(q) [~~(n)~~] The effective date of this section is November 1, 2025 [~~June 1, 2022~~].

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

Filed with the Office of the Secretary of State on July 14, 2025.

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Gregory Stevens
Executive Director
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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 211. CRIMINAL HISTORY OFFENSE AND ACTION ON LICENSE

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code, (TAC) §211.1 and §211.2; repeal of §§211.3 - 211.6; and new §§211.10 - 211.13. The proposed amendments, repeals, and new sections are necessary to: organize the rules into two subchapters for consistency with other chapters in TAC Title 43, clarify the types of licenses to which the chapter applies, clarify which crimes relate to the duties and responsibilities of these license holders, delete duplicative language found in statute, conform rule language with statutory changes, clarify existing requirements, and modernize language and improve readability. Proposed language also conforms with Senate Bill (SB) 224, 88th Legislature, Regular Session (2023), which amended the Penal Code to add felony offenses involving damage to motor vehicles during the removal or attempted removal of a catalytic converter. The proposed language implements SB 2587, 89th Legislature, Regular Session (2025), which clarified the persons from whom the department could require a fingerprint-based criminal history background check; and SB 1080, 89th Legislature, Regular Session (2025), which added circumstances in which a state agency is required to revoke a license upon imprisonment of the license holder.

EXPLANATION. The department is conducting a review of its rules under Chapter 211 in compliance with Government Code, §2001.039. Notice of the department's plan to conduct this review is also published in this issue of the *Texas Register*. As a part of the review, the department is proposing necessary amendments, repeals, and new sections as detailed in the following paragraphs.

Occupations Code, Chapter 53 and §§2301.651, 2302.104, 2302.105, and 2302.108, and Transportation Code, §503.034 and §503.038 authorize the department and its board to in-

vestigate and act on a license application, or on a license, when a person has committed a criminal offense. Chapter 211 allows the department to maintain fitness standards for license holders with prior criminal convictions while implementing the legislature's stated statutory intent in Occupations Code, §53.003 to enhance opportunities for a person to obtain gainful employment after the person has been convicted of an offense and discharged the sentence for the offense.

The department must follow the requirements of Occupations Code, Chapter 53 to determine whether a person's past criminal history can be considered in evaluating the person's fitness for licensing.

Occupations Code, §53.021 gives a licensing authority the power to suspend or revoke a license, to disqualify a person from receiving a license, or to deny a person the opportunity to take a licensing examination on the grounds that the person has been convicted of: (1) an offense that directly relates to the duties and responsibilities of the licensed occupation; (2) an offense listed in Article 42A.054, Code of Criminal Procedure; or (3) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure. The department's evaluation of past criminal history applies to all license applications. Under Occupations Code, §53.021(a)(1), the department is responsible for determining which offenses directly relate to the duties and responsibilities of a particular licensed occupation.

Occupations Code, §53.022 sets out criteria for determining whether an offense directly relates to the duties and responsibilities of the licensed occupation. Based on those criteria, the department has determined that certain offenses directly relate to the duties and responsibilities of an occupation licensed by the department. However, conviction of an offense that directly relates to the duties and responsibilities of the licensed occupation or is listed in Occupations Code, §53.021(a)(2) and (3) is not an automatic bar to licensing; the department must consider the factors listed under Occupations Code, §53.023 in making its fitness determination. The factors include, among other things, the person's age when the crime was committed, rehabilitative efforts, and overall criminal history. The department is required to publish guidelines relating to its practice under this chapter in accordance with Occupations Code, §53.025.

The proposed rule amendments also conform with SB 1080, 89th Legislature, Regular Session (2025) which amended Occupations Code, §53.021 effective May 27, 2025, to add circumstances in which a state agency must revoke a license upon imprisonment of a license holder, and SB 2587, 89th Legislature, Regular Session (2025), which amended Government Code, §411.12511, effective September 1, 2025, and clarified which persons the department could obtain fingerprint-based criminal history record information.

Proposed New Subchapter A, General Provisions

Chapter 211 currently contains only one subchapter. The proposed amendments would divide Chapter 211 into two subchapters. A proposed amendment would retitle Subchapter A "General Provisions," consistent with the organization and naming conventions found in Chapters 215 and 221 of this title. This proposed amendment would provide consistency and improve readability because Chapter 211 applies to the same applicants and license holders as Chapters 215 and 221. Sections 211.1 and 211.2 are proposed for inclusion in retitled Subchapter A for consistency and ease of reference.

A proposed amendment to the title of §211.1 would add "Purpose and" to the section title to indicate that proposed amendments to this section include the purpose for the chapter in addition to definitions. This proposed change would place the chapter purpose description in the same subchapter and in the same order as similar language in Chapters 215 and 221 of this title for improved understanding and readability. Proposed new §211.1(a) would describe the purpose of Chapter 211 by incorporating existing language from current §211.3(a). The proposed amendments would add at the end of proposed new §211.1(a) new language describing the department's obligation to review the criminal history of license applicants before issuing a new or renewal license and the option for the department to act on the license of an existing license holder who commits an offense during the license period, consistent with Occupations Code, Chapter 53 and §§2301.651, 2302.104, 2302.105, and 2302.108, and Transportation Code, §503.034 and §503.038, and existing department procedures.

A proposed amendment to §211.1 would reorganize the current definitions into a subsection (b). Proposed amendments to §211.1(b)(2) would delete references to "registration, or authorization," add an "or" to §211.1(b)(2)(B), delete an "or" and add sentence punctuation in §211.1(b)(2)(C), and delete §211.1(b)(2)(D). These proposed amendments would clarify that Chapter 211 only applies to licenses issued by the department under Transportation Code, Chapter 503 and Occupations Code, Chapters 2301 and 2302, and does not apply to registrations the department may issue under the authority of another Transportation Code chapter. Registrations or permits that the department issues under other Transportation Code chapters do not currently require a review of an applicant's criminal history. Proposed amendments to §211.1(b)(3) would delete the current list of specific retail license types and define the term "retail" by listing only those license types that are not considered to be retail. This proposed amendment would shorten the sentence to improve readability without changing the meaning or scope of the definition. Additionally, this proposed amendment would eliminate the need to update the rule if a future statutory change created a new type of vehicle or retail license type or changed the name of an existing vehicle type or retail licensing type.

A proposed amendment to the title of §211.2 would substitute "Chapter" for "Subchapter" for consistency with the rule text. A proposed amendment in §211.2(b) would add a comma after Occupations Code for consistency in punctuation.

The remaining sections in Subchapter A are proposed for repeal as each of these sections are proposed for inclusion in new Subchapter B.

Proposed New Subchapter B, Criminal History Evaluation Guidelines and Procedures

A proposed amendment would add a new subchapter, Subchapter B. Criminal History Evaluation Guidelines and Procedures. Proposed for inclusion in new Subchapter B are new sections §§211.10- 211.13. These new proposed sections would contain the guidelines and procedures rule language currently found in §§211.3-211.6 with the addition of the proposed changes described below.

Proposed new §211.10 would include the rule text of current §211.3 with changes as follows. Current §211.3(a) would be deleted because that language has been incorporated into proposed new §211.1(a), which describes the purpose of Chapter 211. Proposed new §211.10(a) would incorporate the language

of current §211.3(b), except for the last sentence which duplicates a statutory requirement in Occupations Code, §53.022 and does not need to be repeated in rule. Proposed new §211.10(b) would recodify language that is currently in §211.3(c), except for §§211.3(c)(1) and (2), which are redundant and unnecessary statutory references.

Proposed new §211.10(c) would incorporate §211.3(d) with the following changes. Proposed new §211.10(c) would add a comma to correct missing punctuation after "Occupations Code" and would delete three sentences that specify which offenses apply to a license type. Proposed new §211.10(c) would include clarifying paragraph numbers: paragraph (1) would identify offenses that apply to all license types, and paragraph (2) would separate and identify additional offenses that apply only to retail license types. The proposed new language would add clarity and improve readability. Proposed new language would divide the offense categories currently in §§211.3(d)(1)- (16) between the new paragraphs as relettered subparagraphs of §211.10(c)(1) and (2).

Proposed new §211.10(c)(1)(B), would incorporate language currently in §211.3(d)(2) and add language to clarify that offenses involving forgery, falsification of records, or perjury include the unauthorized sale, manufacturing, alteration, issuance, or distribution of a license plate or temporary tag. This proposed clarifying language provides additional notice to applicants and license holders that the department considers forging or falsification of license plates or temporary tags to be a serious and potentially disqualifying offense.

Proposed new §211.10(c)(1)(E) would incorporate language currently in §211.3(d)(5) and add possession and dismantling of motor vehicles to the list of felony offenses under a state or federal statute or regulation that could potentially be disqualifying. Proposed new §211.10(c)(1)(E) would also include motor vehicle parts to clarify that disqualifying felony offenses include crimes related to motor vehicle parts as well as to motor vehicles. These two proposed amendments are important due to the consumer harm caused by "chop shops" that dismantle stolen vehicles and illegally sell parts, and the increasing frequency of motor vehicle parts theft, including catalytic converters, tailgates, batteries, wheel rims, and tires.

Proposed new §211.10(c)(1)(G) would incorporate language currently in §211.3(d)(7) and would clarify that an offense committed while engaged in a licensed activity or on a licensed premises includes falsification of a motor vehicle inspection required by statute. This clarification is important because emissions inspections in certain counties are required by law and harm the health and safety of Texas citizens if not performed.

Proposed new §211.10(c)(1)(I) would add that offenses of attempting or conspiring to commit any of the foregoing offenses are potentially disqualifying offenses because the person intended to commit an offense. This proposed new language incorporates language from current §211.3(d)(16). The language regarding conspiracies or attempts to commit the offenses must be included in the paragraph that applies to all license holders and the paragraph that applies to retail license types because the related crimes for each are proposed to be reorganized into separate paragraphs to improve readability.

Proposed new §211.10(c)(2)(E) would make felony offenses under Penal Code, §28.03 potentially disqualifying when a motor vehicle is damaged, destroyed, or tampered with during the removal or attempted removal of a catalytic converter. This new amendment aligns with SB 224, 88th Legislature, Regular Session (2023), which amended Penal Code, §28.03 to create a state jail felony for damage to a motor vehicle because of removal or attempted removal of the catalytic converter.

Proposed new §211.10(c)(2)(D) would incorporate §211.3(d)(12) and would add two additional offenses against the family: Penal Code, §25.04 and §25.08. Penal Code, §25.04 includes offenses involving the enticement of a child away from the parent or other responsible person, and Penal Code, §25.08 includes offenses related to the sale or purchase of a child. These offenses are relevant to the retail professions licensed by the department because parents frequently bring children to a dealership when considering a vehicle purchase, and a retail license holder may have unsupervised access to a child while a parent test-drives a vehicle or is otherwise engaged in viewing or inspecting a vehicle offered for sale. License holders also have access to the parent's motor vehicle records, including the family's home address. A person with a predisposition to commit these types of crimes would have the opportunity to engage in further similar conduct.

Proposed new §211.10(c)(2)(F) would incorporate the language of current §211.3(d)(13), and clarify that the department would consider any offense against the person to be potentially be disqualifying, would add a reference to Penal Code, Title 5, and would further clarify that an offense in which use of a firearm resulted in fear, intimidation, or harm of another person would be included in the list of potentially disqualifying crimes. Additionally, proposed new §211.10(c)(2)(F) would clarify that a felony offense of driving while intoxicated that resulted in harm to another person may also be potentially disqualifying. The department considers these offenses to be related to the occupations of retail license holders because these license holders have direct contact with members of the public during vehicle test drives or other settings in which no one else is present, and retail license holders have access to an individual's motor vehicle records, including the individual's home address. A person with a predisposition for violence or a tendency toward intoxicated driving would have the opportunity in these situations to engage in further similar conduct. These proposed amendments would further clarify which offenses against a person the department considers directly related to the licensed occupation and therefore potentially disqualifying. The department's consideration of these crimes is subject to certain limitations in Occupations Code, Chapter 53.

Proposed new §211.11 would incorporate language from current §211.4, with the addition of proposed new §211.11(a), which would clarify that the department will deny a pending application if an applicant or an applicant's representative as defined in §211.2(a)(2) is imprisoned. Occupations Code, §53.021(b) requires an agency to revoke a license holder's license on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision. Because the department also determines licensure eligibility based on individuals serving as representatives for the license holder, the department will consider the effect of imprisonment of those persons on a license holder. Because license revocation for a felony conviction is mandatory in Occupations Code, §53.021(b), the department must also deny a pending application. An applicant who is imprisoned may reapply once the applicant is no longer imprisoned and an applicant whose application is denied based on an imprisoned individual serving in a representative capacity may choose a different representative and reapply for licensure. Proposed new §211.11(b) would implement SB 1080, 89th Leg-

islature (2025), which amended Occupations Code, §53.021 to require the department to revoke a license if the license holder is imprisoned following a felony conviction for an offense that directly relates to the duties and responsibilities of the licensed occupation, an offense in Code of Criminal Procedure, Article 42A.054, or a sexually violent offense in Code of Criminal Procedure, Article 62.001. Proposed amendments to new §211.11(b) would also incorporate the existing language from current §211.4(c) as phrased in Occupations Code, §53.021(b). Proposed new §211.11(c) incorporates language from current §211.4(d). Proposed new §211.11(d) incorporates language from current §211.4(c).

Proposed new §211.12 would incorporate without change the language in current §211.5 that addresses the procedure for a person to obtain a criminal history evaluation letter from the department. This process allows a person to request an evaluation prior to applying for a license if the person so desires.

Proposed new §211.13(a) would incorporate the current language of §211.6(a) and would clarify that fingerprint requirements apply to "an applicant for a new or renewal license" to improve readability without changing meaning. Proposed §211.13(b) would move the introductory phrase "Unless previously submitted for an active license issued by the department," to proposed §211.13(c) to improve readability and to allow the department to further clarify submission requirements in §211.13(c). Proposed new §211.13(b)(1) would incorporate the language of current §211.6(b)(1) and would clarify that an applicant includes an owner, member, partner, or trust beneficiary. This is a clarification rather than an extension of the existing requirements for the fingerprinting of applicants, because each of these categories has an ownership interest in the license. If the owner is a trust, the license is a trust asset, and each beneficiary is an equitable owner of the trust's assets. It is necessary for the department to fingerprint trust beneficiaries along with other owners because doing so will prevent a bad actor with a history of criminal offenses that directly relate to the duties and responsibilities of a license holder from obtaining a license from the department by using a trust to hide the bad actor's identity and then using that license to perpetrate, or benefit from, fraudulent and criminal actions, or otherwise take advantage of the position of trust created by the license. These proposed amendments are consistent with Government Code, §411.12511, as amended by SB 2587, 89th Regular Session (2025).

Proposed new §211.13(b)(2) would incorporate the language of current §211.6(b)(2) and would clarify that a person acting in a representative capacity includes an officer, director, manager, trustee, principal, manager of business affairs, or other employee whose act or omission in the course or scope of the representation would be cause for denying, revoking, or suspending a license. The proposed language recognizes that many license holders are small businesses that may employ only one or a few employees and may assign or delegate key management tasks such as administering the temporary tag or license plate system for the license holder, and that a principal may be a representative and not necessarily an owner of the applicant. These proposed amendments are consistent with Government Code, §411.12511, as amended by SB 2587, 89th Regular Session (2025).

Proposed new §211.13(c) would incorporate the current language of §211.6(c) and the introductory phrase from §211.6(b), and would further clarify that the department will not require a person to submit fingerprints if the person previously submitted a complete and acceptable set of fingerprints, and the person remains fully enrolled in the Texas Department of Public Safety's (DPS) criminal history clearinghouse and validly subscribed in the federal criminal history database maintained by the Federal Bureau of Investigation (FBI). This clarification is important as DPS or the FBI may change the enrollment or subscription status of a person previously fingerprinted if, for example, a court expunges a crime from a person's criminal history record. If DPS or the FBI change a person's enrollment or subscription status, the department must require the person to be fingerprinted again, or the department will not be able to access that person's criminal history records for use in evaluating the license application.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the proposal will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Monique Johnston, Director of the Motor Vehicle Division, has determined that there will be no significant impact on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Johnston also determined that, for each year of the first five years the proposal is in effect, public benefits are anticipated, and that applicants and license holders will not incur costs to comply with the proposal. The anticipated public benefits include reduced opportunity for fraud and related crime, and improved public safety. Requiring fingerprints for a trust beneficiary will benefit the public by preventing bad actors with a history of criminal offenses that directly relate to the duties and responsibilities of a license holder from obtaining licenses by using a trust to hide their identity and then using those licenses to perpetrate, or benefit from, fraud and criminal actions, or otherwise take advantage of the position of trust created by the license.

Ms. Johnston anticipates that there will be no additional costs on regulated persons to comply with the submission and evaluation of information under this proposal because the rules do not establish any new requirements or costs for regulated persons unless the person commits a crime. The proposed requirement in §211.13(b)(1) for the fingerprinting of trust beneficiaries is a clarification of the existing requirement that applicant owners must be fingerprinted, as trust beneficiaries are equitable owners of the trust's assets. It therefore does not create a new fingerprinting requirement. Similarly, the proposed new language that allows the department to fingerprint an employee, who the applicant designates as an authorized representative in the application and whose acts or omission would be cause for denying, revoking, or suspending a license, is a clarifying example of "a person acting in a representative capacity" and not a new fingerprinting requirement. Additionally, Ms. Johnston anticipates that there will be no additional costs to regulated persons to comply with the fingerprint requirements under this proposal as the new section does not establish fees for fingerprinting or processing criminal background checks. Fees for fingerprinting and access to criminal history reports are established by DPS under the authority of Texas Government Code, Chapter 411.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that this proposal will not have an adverse economic effect or disproportionate

economic impact on small or micro businesses. The department has also determined that the proposed amendments will not have an adverse economic effect on rural communities because rural communities are exempt from the requirement to hold a license under Transportation Code, §503.024. Therefore, under Government Code, §2006.002, the department is not required to perform a regulatory flexibility analysis.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that for each year of the first five years the proposed repeal and amendments are in effect the amendments will not create or eliminate a government program; will not require the creation of new employee positions and will not require the elimination of existing employee positions; will not require an increase or decrease in future legislative appropriations to the department; will not require an increase in fees paid to the department; will create new regulations and expand existing regulations, as described in the explanation section of this proposal; will repeal existing regulations in §§211.3 - 211.6; will increase the number of individuals subject to the rule's applicability regarding fingerprinting; and will not significantly benefit or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on August 25, 2025. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §211.1, §211.2

STATUTORY AUTHORITY. The department proposes amendments to Chapter 211 under Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, as amended by Senate Bill (SB) 2587, 89th Legislative Session (2025), which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302, Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, to revoke or suspend a license, to place on probation, or to reprimand a license holder if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302, Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 411; Occupations Code, Chapters 53, 2301 and 2302; Transportation Code, Chapters 503 and 1002; Penal Code, Chapters 25, 28, 43, 49 and Title 5; and Code of Criminal Procedure, Article 42A and 62.

§211.1. Purpose and Definitions.

(a) The licenses issued by the department create positions of trust. License holder services involve access to confidential information; conveyance, titling, and registration of private property; possession of monies belonging to or owed to private individuals, creditors, and governmental entities; and compliance with federal and state environmental and safety regulations. License holders are provided with opportunities to engage in fraud, theft, money laundering, and related crimes, and to endanger the public through violations of environmental and safety regulations. Many license holders provide services directly to the public, so licensure provides persons predisposed to commit assaultive or sexual crimes with greater opportunities to engage in such conduct. To protect the public from these harms, the department shall review the criminal history of license applicants before issuing a new or renewal license and may take action on a license holder who commits an offense during the license period based on the guidelines in this chapter.

(b) When used in this chapter, the following words and terms have the following meanings, unless the context clearly indicates otherwise.

(1) "Department" means the Texas Department of Motor Vehicles.

(2) "License" means any license[, ~~registration, or authorization,~~] issued by the department under:

(A) Transportation Code, Chapter 503;

(B) Occupations Code, Chapter 2301; or

(C) Occupations Code, Chapter 2302.[~~; or~~]

[~~(D) any other license, registration, or authorization, that the department may deny or revoke because of a criminal offense of the applicant or license holder.~~]

(3) "Retail license types" means those license [~~holder~~] types which require holders to [~~that~~] interact directly with the public, [~~including salvage dealers, converters, independent mobility motor vehicle dealers, lease facilitators, and general distinguishing number holders for the following vehicle categories: all-terrain vehicle, light truck, motorcycle, motorhome, moped/motor scooter, medium~~

~~duty truck, neighborhood vehicle, other, passenger auto, recreational off-highway vehicle, and towable recreational vehicle,~~] but does not include other license types that do not generally interact directly with the public, including manufacturers, distributors, and general distinguishing number holders for the following vehicle categories: ambulance, axle, bus, engine, fire truck/fire fighting vehicle, heavy duty truck, transmission, wholesale motor vehicle dealer, and wholesale motor vehicle auction.

§211.2. Application of Chapter [~~Subchapter~~].

(a) This chapter applies to the following persons:

(1) applicants and holders of any license; and

(2) persons who are acting at the time of application, or will later act, in a representative capacity for an applicant or holder of a license, including the applicant's or holder's officers, directors, members, managers, trustees, partners, principals, or managers of business affairs.

(b) In this chapter a "conviction" includes a deferred adjudication that is considered to be a conviction under Occupations Code, §53.021(d).

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

Filed with the Office of the Secretary of State on July 10, 2025.

TRD-202502328
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 465-4160

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43 TAC §§211.3 - 211.6

STATUTORY AUTHORITY. The department proposes repeals to Chapter 211 under Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, to revoke or suspend a license, to place on probation, or to reprimand a license holder if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; and Transportation Code, §1002.001, which authorizes the board to adopt or rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 411; Occupations Code, Chapters 53, 2301 and 2302; Transportation Code, Chapters 503 and 1002; Penal Code, Chapters 25, 28, 43, 49 and Title 5; and Code of Criminal Procedure, Article 42A and 62.

§211.3. Criminal Offense Guidelines.

§211.4. Imprisonment.

§211.5. Criminal History Evaluation Letters.

§211.6. Fingerprint Requirements for Designated License Types.

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

Filed with the Office of the Secretary of State on July 10, 2025.

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 465-4160

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SUBCHAPTER B. CRIMINAL HISTORY EVALUATION GUIDELINES AND PROCEDURES

43 TAC §§211.10 - 211.13

STATUTORY AUTHORITY. The department proposes new sections to Chapter 211 under Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution,

sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, to revoke or suspend a license, to place on probation, or to reprimand a license holder if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 411; Occupations Code, Chapters 53, 2301 and 2302; Transportation Code, Chapters 503 and 1002; Penal Code, Chapters 25, 28, 43, 49 and Title 5; and Code of Criminal Procedure, Article 42A and 62.

§211.10. Criminal Offense Guidelines.

(a) Under Occupations Code, Chapter 53, the department may suspend or revoke an existing license or disqualify an applicant from receiving a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the licensed occupation.

(b) The department has determined under the factors listed in Occupations Code, §53.022 that offenses detailed in subsection (c) of this section directly relate to the duties and responsibilities of license holders, either because the offense entails a violation of the public trust, issuance of a license would provide an opportunity to engage in further criminal activity of the same type, or the offense demonstrates the person's inability to act with honesty, trustworthiness, and integrity. Such offenses include crimes under the laws of another state, the United States, or a foreign jurisdiction, if the offense contains elements that are substantially similar to the elements of an offense under the laws of this state. The list of offenses in subsection (c) of this section is in addition to offenses that are independently disqualifying under Occupations Code, §53.021.

(c) The list of offenses in this subsection is intended to provide guidance only and is not exhaustive of the offenses that may relate to a particular regulated occupation. After due consideration of the circumstances of the criminal act and its relationship to the position of trust involved in the particular licensed occupation, the department may find that an offense not described below also renders a person unfit to hold a license based on the criteria listed in Occupations Code, §53.022.

(1) The following offenses apply to all license types:

(A) offenses involving fraud, theft, deceit, misrepresentation, or that otherwise reflect poorly on the person's honesty or trustworthiness, including an offense defined as moral turpitude;

(B) offenses involving forgery, falsification of records, perjury, or the unauthorized sale, manufacturing, alteration, issuance, or distribution of a license plate or temporary tag;

(C) offenses involving the offering, paying, or taking of bribes, kickbacks, or other illegal compensation;

(D) felony offenses against public administration;

(E) felony offenses under a state or federal statute or regulation involving the manufacture, sale, finance, distribution, repair, salvage, possession, dismantling, or demolition, of motor vehicles or motor vehicle parts;

(F) felony offenses under a state or federal statute or regulation related to emissions standards, waste disposal, water contamination, air pollution, or other environmental offenses;

(G) offenses committed while engaged in a licensed activity or on licensed premises, including the falsification of a motor vehicle inspection required by statute;

(H) felony offenses involving the possession, manufacture, delivery, or intent to deliver controlled substances, simulated controlled substances, dangerous drugs, or engaging in an organized criminal activity; and

(I) offenses of attempting or conspiring to commit any of the foregoing offenses.

(2) The following additional offenses apply to retail license types:

(A) felony offenses against real or personal property belonging to another;

(B) offenses involving the sale or disposition of another person's real or personal property;

(C) a reportable felony offense conviction under Chapter 62, Texas Code of Criminal Procedure for which the person must register as a sex offender;

(D) an offense against the family as described by Penal Code, §§25.02, 25.04, 25.07, 25.072, 25.08, or 25.11;

(E) felony offenses under Penal Code, §28.03 involving a motor vehicle that is damaged, destroyed, or tampered with during the removal or attempted removal of a catalytic converter;

(F) offenses against the person under Penal Code, Title 5, including offenses in which use of a firearm resulted in fear, intimidation, or harm of another person, and in Penal Code, Chapter 49, a felony offense of driving while intoxicated that resulted in the harm of another person;

(G) a felony stalking offense as described by Penal Code, §42.072;

(H) a felony offense against public order and decency as described by Penal Code §§43.24, 43.25, 43.251, 43.26, 43.261, or 43.262; and

(I) offenses of attempting or conspiring to commit any of the foregoing offenses.

(d) When determining a person's present fitness for a license, the department shall also consider the following evidence:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(7) other evidence of the person's present fitness, including letters of recommendation.

(e) It is the person's responsibility to obtain and provide to the licensing authority evidence regarding the factors listed in subsection (d) of this section.

§211.11. Imprisonment.

(a) The department shall deny a license application if the applicant or a person described by §211.2(a)(2) of this chapter (relating to Application of Chapter) is imprisoned while a new or renewal license application is pending.

(b) The department shall revoke a license upon the imprisonment of a license holder following a:

(1) felony conviction for:

(A) an offense that directly relates to the duties and responsibilities of the licensed occupation;

(B) an offense listed in Article 42A.054, Code of Criminal Procedure; or

(C) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure;

(2) felony community supervision revocation;

(3) revocation of parole; or

(4) revocation of mandatory supervision.

(c) A person currently imprisoned because of a felony conviction may not obtain a license, renew a previously issued license, or act in a representative capacity for an application or license holder as described by §211.2(a)(2).

(d) The department may revoke a license upon the imprisonment for a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision of a person described by §211.2(a)(2) of this chapter who remains employed with the license holder.

§211.12. Criminal History Evaluation Letters.

(a) Pursuant to Texas Occupations Code, Chapter 53, Subchapter D, a person may request that the department evaluate the person's eligibility for a specific occupational license regulated by the department by:

(1) submitting a request on a form approved by the department for that purpose; and

(2) paying the required Criminal History Evaluation Letter fee of $100.

(b) The department shall respond to the request not later than the 90th day after the date the request is received.

§211.13. Fingerprint Requirements for Designated License Types.

(a) The requirements of this section apply to an applicant for a new or renewal license for the license types designated in Chapter 215 or Chapter 221 of this title as requiring fingerprints for licensure.

(b) The following persons may be required to submit a complete and acceptable set of fingerprints to the Texas Department of Public Safety and pay required fees for purposes of obtaining criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation:

(1) a person, including an owner, member, partner, or trust beneficiary, applying for a new license, license amendment due to change in ownership, or license renewal; and

(2) a person acting in a representative capacity for an applicant or license holder who is designated as an authorized representative on a licensing application, including an officer, director, manager, trustee, principal, manager of business affairs, or other employee whose act or omission in the course or scope of the representation would be cause for denying, revoking, or suspending a license.

(c) After reviewing a licensure application and licensing records, the department will notify the applicant or license holder of which persons in subsection (b) of this section are required to submit fingerprints to the Texas Department of Public Safety. The department will not require a person to submit fingerprints if the person previously submitted a complete and acceptable set of fingerprints for a currently active license issued by the department, and the person remains fully enrolled in the Texas Department of Public Safety's criminal history clearinghouse and validly subscribed in the federal criminal history database maintained by the Federal Bureau of Investigation.

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

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CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code (TAC) Subchapter B. Licenses, Generally, §215.83 and proposes new §215.91; proposes amendments to Subchapter D, General Distinguishing Numbers and In-Transit Licenses, §§215.133, 215.140, 215.141, 215.144, 215.150 - 215.152, 215.155, and 215.158; and proposes new §215.163. These amendments and new sections are necessary to implement House Bill (HB) 718, 88th Legislature, Regular Session (2023), Senate Bill (SB) 1902, 89th Legislature, Regular Session (2025), HB 5629, 89th Legislature, Regular Session (2025) and SB 1818, 89th Legislature, Regular Session (2025).

HB 5629 and SB 1818 amend Occupations Code, Chapter 55, effective September 1, 2025, to change state agency licensing requirements for military service members, military veterans, and military spouses. Because these requirements apply to all licenses issued by the department, a new rule, §215.91, is proposed in Subchapter B, Licenses, Generally, which would apply to all licenses issued by the department under Occupations Code, Chapter 2301, and Transportation Code, Chapter 503.

Proposed amendments to §215.83 would prevent any conflict or confusion with proposed new §215.91.

HB 718 amended Transportation Code, Chapter 503 to eliminate the use of temporary tags when purchasing a motor vehicle and replaced these tags with categories of license plates, effective July 1, 2025. HB 718 requires the department to determine new distribution methods, systems, and procedures, and set certain fees. Section 34 of HB 718 grants the department authority to adopt rules necessary to implement or administer these changes in law and required the department to adopt related rules by December 1, 2024. The department did so by publishing proposed rules in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2717), and publishing adopted rules in the November 8, 2024, issue of the *Texas Register* (49 TexReg 8953). HB 718 required a Texas dealer, beginning July 1, 2025, to ensure that an assigned general issue license plate or set of license plates stayed with the vehicle if that vehicle is later sold to another Texas buyer.

However, SB 1902 changed that process to require a dealer to transfer a removed license plate to another vehicle of the same class within 10 days or dispose of the license plate according to department rules. SB 1902, effective July 1, 2025, requires the department to adopt implementing rules by October 1, 2025. Amendments to §§215.140, 215.141, 215.150 - 215.152, 215.155, and 215.158 are proposed to implement SB 1902.

In §215.151, amendments are also proposed to implement HB 718 to address circumstances in which the department would permit a dealer to mail or deliver a license plate or set of license plates to a buyer or a converter for attachment to a vehicle. These amendments are necessary because in prior rulemaking the department did not address circumstances in which a person other than a dealer should be able to affix a license plate to a vehicle because the vehicle is not at the dealer's location.

Proposed new §215.163, implements both HB 718 and SB 1902 to address license plate disposition when a license holder offers a vehicle for sale at auction or on consignment. This new rule is necessary because the department did not address disposition of license plates for these types of sales in prior rulemaking. During the rulemaking process, license holders raised questions about disposition of license plates when motor vehicles are sold at auctions or on consignment based on concerns that the department may require operational changes that would increase business costs. In November 2024, the department provided an early draft of this proposed new rule to the Motor Vehicle Industry Regulation Advisory Committee (MVIRAC). Committee members voted on formal motions and provided informal comments. The department incorporated input from this committee into this rule proposal, as well as comments from license holders that regularly hold or participate in motor vehicle auctions. In proposing this rule, the department seeks to minimize opportunities for license plate fraud related to auction and other consignment sales and to eliminate any unnecessary operational or cost impacts to license holders.

In June 2025, the MVIRAC reviewed drafts of the proposed revisions to §§215.141, 215.150, 215.151, 215.152, 215.155, 215.158, 215.163 and provided the department with feedback on those provisions. The department incorporated the feedback from the committee into this rule proposal.

Nonsubstantive amendments are proposed in §215.133 and §215.144 to modify language to improve readability by using consistent terminology.

EXPLANATION.

§215.83

Proposed amendments to §215.83 would delete subsection (i) and amend subsection (h) to replace specific requirements with a cross-reference to proposed new §215.91. These proposed amendments would ensure that the licensure requirements for military service members, military spouses and military veterans are consolidated into proposed new §215.91. These proposed amendments would thus avoid any confusion or conflict between §215.83 and proposed new §215.91.

§215.91

Proposed new §215.91(a) would implement Occupations Code, §55.002, which exempts an individual that holds a license from incurring a penalty for failing to renew a license in a timely manner because the individual was on active duty. Proposed new §215.91(b) would implement Occupations Code, §55.0041(a) and §55.0041(b), as amended by HB 5629 which require a state agency to issue a license to a military service member or military spouse within ten days if the member or spouse holds a current license issued by another state that is similar in the scope of practice to Texas requirements and is in good standing, or held the same Texas license within the past five years, if a military service member or military spouse submits an application and other required documents described in Occupations Code, §55.0041(b). Proposed new §215.91(b)(1) would describe the application and documents the military service member or military spouse must submit to the department. Proposed new §215.91(b)(2) would describe the department's review process after receiving an application and related documents, including confirming licensure and good standing in the other state and comparing licensing requirements to determine if the other state's requirements are similar in scope of practice. Proposed new §221.17(b)(2)(C) would state that the department will issue a provisional license upon receipt of a license application from a military service member, military veteran, or military spouse. This new provision would implement Occupations Code, §55.0041, as amended by SB 1818. Proposed new §215.91(b)(3) would inform an applicant that within 10 days, the department will either issue a license if the applicant meets the requirements in Occupations Code, §55.0041 or notify the applicant why the department is unable to issue a license. Proposed new §215.91(b)(3) would also inform an applicant that the license is subject to the requirements of this chapter and Occupations Code, Chapter 2301, and Transportation Code, Chapter 503, unless exempted or modified under Occupations Code, Chapter 55, consistent with Occupations Code, §55.0041(c). Proposed new §215.91(b) is necessary to implement Occupations Code, §55.0041 as amended by HB 5629. Proposed new §215.91(c) would inform a military service member, military veteran, or military spouse that this rule establishes requirements and procedures authorized or required by Texas law and does not affect any rights under federal law. Proposed new §215.91 would implement Occupations Code, Chapter 55, as amended by HB 5629, and would inform military service members, veterans, and military spouses regarding eligibility for special licensing consideration.

§215.133

Proposed amendments to §215.133(i), (j), and (k) would add "dealer" to describe the type of independent motor vehicle general distinguishing number (GDN) referenced in these subsec-

tions for consistency with phrasing in other rule subsections and to improve readability without changing meaning.

§215.140

A proposed amendment to §215.140(a)(6)(E) would delete a reference to dealer license plate storage requirements for assigned license plates for vehicles in inventory and add a reference to unassigned license plates. SB 1902 eliminated the requirement for a dealer to keep an inventory of assigned license plates. Instead, SB 1902 requires a dealer to keep a license plate removed from a sold vehicle and reassign that license plate to a sold vehicle of the same class within ten days or dispose of the license plate according to department rules.

§215.141

A proposed amendment to §215.141(a)(26) would expand the sanction for failure to securely store a license plate after July 1, 2025, to include failure to destroy a previously issued but not currently assigned license plate within the time prescribed by statute. This proposed amendment would implement SB 1902, which amended Transportation Code, §504.901 to require a dealer to either transfer a license plate removed from a vehicle to the same class of vehicle within ten days or dispose of the license plate no later than the tenth day after the license plate was removed from the vehicle.

A proposed amendment to §215.141(a)(34) would delete a sanction for failure to remove a license plate from a vehicle sold to an out-of-state buyer or from a vehicle sold for export and substitute a sanction for failure to remove a license plate from a vehicle as required by statute or rule. This proposed amendment is necessary to conform the language to the requirements of SB 1902, which requires dealers to remove a license plate from a vehicle that is transferred to or purchased by the dealer, and is necessary to conform with proposed new §215.163 which requires a dealer to remove a license plate from a vehicle in certain other circumstances such as before a vehicle is offered for sale at auction or on consignment.

§215.144

Proposed amendments to §215.144(i)(2) would add the phrase "GDN holder that acts as a " to clarify the type of motor vehicle auction referenced in subsection (i). Proposed amendments to §215.144(i)(2)(A) would substitute the phrase "before offering a vehicle for sale at auction" for "it offers for sale." These proposed amendments would improve readability by using consistent terminology without changing meaning.

§215.150

Proposed amendments to §215.150(a) and §215.150(e) would add a reference to a general issue license plate as a type of license plate that a buyer can transfer to a newly purchased vehicle, to implement SB 1902 because SB 1902 allows a dealer to transfer an existing buyer's general issue license plate to a purchased vehicle of the same class within ten days. A proposed amendment to §215.150(a)(2) would delete a reference to issuing a license plate if the vehicle did not come with a buyer's license plate because SB 1902 eliminated the requirement for a license plate to remain with a vehicle upon subsequent retail sale. A proposed amendment to §215.150(d)(3) would add a closed GDN to the list of circumstances in which a GDN dealer could no longer issue a buyer's license plate. The amendment recognizes that a dealer may choose to close a GDN issued by the department at any time, and after closure the person would not be a licensed GDN dealer under Transportation Code, Chapter 503, and therefore not authorized to issue a buyer's license plate or a buyer's temporary license plate. Proposed amendments to §215.150(f)(4) would delete a reference to license plates assigned to vehicles in inventory, delete unnecessary punctuation, and add a reference to unassigned license plates. SB 1902 eliminated the requirement for a dealer to keep an inventory of assigned license plates. Rather, SB 1902 requires a dealer to reassign a removed license plate within a ten-day window before disposing of the license plate.

§215.151

Proposed amendments throughout §215.151(a) and in §215.151(c) would add a reference to a general issue license plate as a type of license plate that a buyer can transfer to a newly purchased vehicle. These amendments implement SB 1902 because SB 1902 allows a dealer to transfer an existing buyer's general issue license plate to a purchased vehicle within ten days. Proposed amendments to §215.151(a)(3) would delete a reference to when a dealer must, or a governmental agency may, issue a buyer's license plate to the buyer of a used vehicle, and replace that language with issuing a buyer's license plate when the buyer does not have a general issue, specialty, personalized or other qualifying license plate to transfer to the vehicle. These amendments implement SB 1902, which no longer requires a license plate to remain with a vehicle and allows a previously issued general issue license plate to be reassigned to a different vehicle of the same class within ten days.

A proposed amendment to §215.151(c) would delete a reference to a vehicle that has an assigned license plate because SB 1902 eliminated the requirement for a license plate to remain assigned to a vehicle upon subsequent retail sale. Proposed amendments to §215.151(c) would add language to require the removal of any previously assigned license plate and require the dealer to reassign that license plate to a vehicle of the same class within ten days before disposing of that license plate when a buyer provides a different qualifying license plate to be assigned to a purchased vehicle. This proposed amendment would implement the requirements for plate transfer or disposal by a dealer in Transportation Code, §504.901, as amended by SB 1902. Proposed amendments to §215.151(d) would implement the requirements of SB 1902 by adding language that would allow a dealer to reassign a license plate to a vehicle of the same class within ten days, and deleting references to providing an assigned license plate to a Texas retail buyer or Texas dealer and references to voiding plates for vehicles sold to out-of-state or exporting buyers. These proposed amendments are necessary because SB 1902 eliminated the requirement for a license plate to remain assigned to a vehicle upon subsequent retail sale and instead requires a dealer to dispose of any license plate that is not reassigned after ten days according to department rules.

Proposed amendments would add new §215.151(e) to describe circumstances in which a dealer is not required to secure or affix an assigned license plate to a vehicle after a lawful sale. Proposed new §215.151(e)(1) would allow a retail buyer who purchases a vehicle for direct delivery to the buyer to authorize the dealer in writing to mail or securely deliver the dealer-assigned buyer's license plate to the buyer. Proposed new §215.151(e)(1) is necessary to accommodate lawful sales in which vehicles are shipped directly to a retail buyer, which is common in multi-vehicle or fleet purchases. Proposed new §215.151(e)(2) would allow a retail buyer to authorize a dealer in writing to mail or securely deliver a license plate or set of license plates to a licensed

converter who could then affix the assigned buyer's license plate to the vehicle once the vehicle is complete prior to delivery to the customer, or allow the converter to provide the license plate to the customer at vehicle delivery. Proposed new §215.151(e)(1) and new §215.151(e)(2) are necessary to facilitate delivery of a dealer-assigned buyer's license plate when a vehicle is sold in a retail transaction, but the purchased vehicle is not located at the dealer's licensed location.

§215.152

Proposed amendments to §215.152(c) and §215.152(d) would add "new" to describe the type of buyer's license plates that the department will be allocating to each dealer and would delete the term unassigned. These amendments would implement SB 1902, which amended Transportation Code, §504.901, to require a dealer to transfer an unassigned license plate to a purchased vehicle of the same class within 10 days or destroy the license plate.

A proposed amendment to §215.152(d)(4) would add "or decrease" to allow the department to decrease the annual allotment of license plates for dealers based on changes in the market, temporary conditions, or other relevant factors in the state, county, or other geographical or population area. For example, sales may decline during an economic recession, resulting in dealers needing fewer plates to assign to new cars. When this happens, the state should not incur the expense to manufacture or distribute license plates that will not be used, and a dealer should not be required to undergo the expense or effort to store and track a larger supply of license plates than what the dealer will likely use. To address this, a proposed amendment to §215.152(g) would allow a new dealer to request fewer buyer's license plates or buyer's temporary license plates than what would be allocated under §215.152(e).

Proposed new §215.152(i) describes the circumstances in which a dealer would not be eligible to receive a quarterly allocation of buyer's license plates delivered to the dealer's licensed physical location. These circumstances are: if the dealer's license has been closed, canceled, or revoked in a final order; if the department has issued a notice of department decision for a violation of premises requirements because the dealer appears to have abandoned the licensed location; if the dealer has been denied access to the temporary tag system or the license plate system; if a dealer fails a compliance review performed by the department under Transportation Code, §503.063(d); if the dealer's license expires during that quarter and a renewal application has not been submitted to the department; if a dealer does not have an owner or bona fide employee at the licensed location during posted business hours to accept a license plate delivery; or if a dealer fails to keep license plates or the license plate system secure. In accordance with Occupations Code, §2301.152, the department is responsible for reducing the opportunities for license plate fraud or misuse. This proposed new subsection is necessary for the department to fulfill that obligation.

Proposed new §215.152(j) would allow a dealer with an active license and access to the license plate database who is ineligible to receive a quarterly license plate allocation under subsection (i) to request that the department conduct a compliance review under Transportation Code, §503.063(d) to determine if the dealer is eligible to receive a future allocation. A dealer would be able to request a compliance review by submitting an email request to DealerCompliance@txdmv.gov, and the department will perform the requested compliance review within 14 days. This subsection would allow a dealer to become eligible for a future license plate allocation once the dealer passes a compliance review performed by the department, consistent with Transportation Code, §503.063(d).

Proposed new §215.152(k) would allow the department to require a dealer with an active license to obtain buyer's license plates from a county tax assessor-collector or department regional service center if the dealer is not eligible to receive license plates under §215.152(i). This proposed new subsection would allow a licensed dealer to continue to operate while the dealer addresses a security or other operational issue that would prevent the department from securely delivering license plates to the licensed location. A proposed amendment would reletter §215.152(i) to (l) to accommodate the three new proposed subsections described above.

A proposed amendment would add new §215.152(m), which would describe when a dealer may request fewer buyer's license plates or buyer's temporary license plates. A dealer may request fewer license plates after using less than 50 percent of the quarterly allocation of general issue license plates or buyer temporary license plates in a quarter, or after using less than 50 percent of the allotted annual maximum number of general issue license plates or buyer temporary license plates in a year. A dealer should not be required to undergo the expense or effort to store and track a significantly larger supply of license plates than what the dealer will use. Proposed amendments would reletter §215.152(j) to (n) and reletter remaining subsections accordingly to accommodate the new proposed subsections described above.

Proposed amendments to relettered §215.152(n) would add a reference to a dealer being able to request a decrease in a quarterly or annual allocation by submitting a request in the department's designated license plate system, and delete a reference to subsection (i). These amendments are necessary to inform a dealer how to request a decrease in a quarterly or annual buyer's license plate or buyer's temporary license plate allocation.

A proposed amendment to relettered §215.152(o) would add "or decrease" in recognition that a dealer may request a decrease in a maximum annual allotment. Proposed amendments throughout relettered §215.152(o) would delete "additional" to describe license plates because amendments to this rule are proposed to allow a dealer to request fewer license plates. A proposed amendment to relettered §215.152(o)(2) would delete the phrase "for more license plates" to describe the type of additional requests a dealer may submit because a dealer may submit additional requests for fewer license plates. A proposed amendment to relettered §215.152(o)(3)(D) would delete a reference to issuing no additional license plates because a dealer may request to reduce the number of license plates, and the department may deny that request. Proposed amendments to relettered §215.152(o)(3)(E)(ii) would delete a reference to additional license plates being added to the dealer's allocation and would substitute text to state that the dealer's allocation will be adjusted. These proposed amendments would recognize that a dealer's request for fewer license plates may be adjusted by the designated director in the department's Vehicle Titles and Registration Division. A proposed amendment to relettered §215.152(o)(3)(E)(ii) would add "informed about" to improve readability without changing meaning. A proposed amendment to relettered §215.152(o)(5) would delete a reference to additional license plates because this proposal would allow a dealer to submit a subsequent request for fewer license plates during a calendar year.

§215.155

Proposed amendments to §215.155(c) would delete §215.155(c)(2), which requires a selling dealer to provide a license plate to a purchasing dealer for placement on the vehicle at time of retail sale, and would modify related punctuation and numbering. These proposed amendments would implement SB 1902, which eliminated the requirement for an assigned license plate to stay with a vehicle upon a subsequent retail sale of the vehicle.

§215.158

Proposed amendments to §215.158(b) would delete a reference to removing a previously assigned buyer's license plate or other type of license plate for a vehicle sold to an out-of-state buyer or for another reason allowed by rule and would simplify the subsection to apply only when a dealer is required to void a previously assigned buyer's license plate from a vehicle. These proposed amendments would align the rule text with Transportation Code, §504.901, as amended by SB 1902, which requires a dealer to void a previously assigned buyer's license plate within 10 days unless the dealer has reassigned that license plate to another vehicle of the same class.

§215.163

Proposed new §215.163 would address how a license holder must manage a license plate or set of license plates for motor vehicles sold at auction or on consignment. Proposed new §215.163 is necessary to clarify license plate disposition and the reporting responsibilities of a dealer and a wholesale motor vehicle auction GDN holder when offering a motor vehicle for sale at a wholesale auction, and to clarify a dealer's responsibilities when offering a motor vehicle for sale at auction or on consignment at the dealer's licensed location consistent with the requirements of Transportation Code, §§503.063, 503.0633, and 504.901 as amended by HB 718 and SB 1902, effective July 1, 2025.

Proposed new §215.163(a) would address license plate disposition requirements for motor vehicles offered for sale at a wholesale motor vehicle auction, in which only dealers are allowed to purchase a motor vehicle under Transportation Code, §503.037. Proposed new §215.163(a) would require a wholesale motor vehicle auction GDN holder who receives a motor vehicle on consignment from a person who is not a GDN holder to remove and mark any license plate with the vehicle as void; and destroy, recycle, or return any license plate in keeping with the requirements of §215.158 (relating to General Requirements for Buyer's License Plates). Proposed new §215.163(a) is necessary to prevent Texas license plates from being distributed out-of-state or exported and used fraudulently. These proposed amendments are also consistent with Transportation Code, §503.063 and §504.901, as amended by HB 718 and SB 1902, which authorizes dealers to issue a buyer's license plate and access the license plate system but does not authorize motor vehicle auction license holders to do so.

Proposed new §215.163(b) would describe a dealer's license plate disposition responsibilities if a motor vehicle with a license plate is sold at a public auction, at which members of the public can bid on and purchase a motor vehicle. Proposed new §215.163(b) would require a dealer who is authorized to sell a consigned vehicle to return an assigned license plate to the vehicle's owner in keeping with Transportation Code §504.901(b), or destroy, recycle, or return the license plate in accordance with §215.158 (relating to General Requirements for Buyer's License Plates). The option for a dealer to destroy an assigned license plate is necessary because in some circumstances a dealer may be unable to return an assigned plate to the vehicle's owner. For example, a dealer could not do so if the vehicle's owner has died or the vehicle's owner relocated without a forwarding address. If a dealer offers a motor vehicle from the dealer's inventory for sale at a public auction, the dealer is required to remove and securely store the license plate before offering the vehicle for sale at a public auction as required in proposed 43 TAC §215.150(f) (relating to Dealer Authorization to Issue License Plates) and may reassign the license plate within ten days. If the purchaser is a Texas retail buyer, the dealer must issue a buyer's license plate to the purchaser and update the license plate database unless the buyer has a general issue, specialty, personalized, or other qualifying license plate to transfer, consistent with proposed amendments to 43 TAC §215.151 (relating to License Plate General Use Requirements). If the purchaser at the public auction is a dealer, export buyer, or out-of-state buyer, the selling dealer must not issue a buyer's license plate. Additionally, if the purchaser at an auction is an out-of-state buyer, the dealer may only issue a buyer's temporary license plate if the buyer requires this license plate to transport the vehicle to another state in accordance with Transportation Code, §503.063, as amended by HB 718, and with 43 TAC §215.150(c) (relating to Dealer Authorization to Issue License Plates). Proposed new §215.163(b) is necessary to clarify license plate disposition for different types of sales that can occur at a public auction and to minimize potential fraud or misuse of license plates that may occur, consistent with the requirements of Transportation Code, §503.063 and §504.901, as amended by HB 718 and SB 1902, and of proposed amendments to 43 TAC §§215.150, 215.151, and 215.158.

Proposed new §215.163(c) would implement dealer requirements for other types of consignment sales which occur at a dealer's licensed location and not at auction. Proposed new §215.163(c) is necessary to address license plate disposition for other types of consignment sales and to minimize potential fraud or misuse of license plates, consistent with the requirements of Transportation Code, §503.063 and §504.901, as amended by HB 718 and SB 1902, and the requirements of the department's adopted and proposed rules implementing HB 718. Proposed new §215.163(c)(1) would require a dealer to remove and return any license plate to the vehicle's owner. Proposed new §215.163(c)(1) would further clarify that a dealer may use its dealer's temporary license plate to demonstrate the consigned vehicle to a potential purchaser, in accordance with 43 TAC §215.138 (relating to Use of Dealer's License Plates).

Proposed new §215.163(c)(2) would align the requirements for dealer consignment sales with the general license plate disposition requirements in the department's rules implementing HB 718 adopted effective July 1, 2025. Proposed new §215.163(c)(2) would require a dealer, upon the sale of a consigned motor vehicle, to assign a license plate to a Texas retail buyer that purchases the vehicle unless the buyer has a general issue, specialty, personalized, or other qualifying license plate to transfer and to update the license plate database, consistent with 43 TAC §215.151 (relating to License Plate General Use Requirements). If the vehicle is sold to an out-of-state buyer, for export, or to a Texas dealer, a dealer may not issue a buyer's license plate and may only issue a buyer's temporary license plate if the out-of-state purchaser requires a license plate to transport the vehicle to another state for titling and registration in that jurisdiction.

Proposed new §215.163(c)(3) is necessary to clarify license plate disposition requirements for independent motor vehicle dealers whose business includes the sale of salvage vehicles or total loss vehicles as defined by the applicable insurance contract, and who may receive consignments from non-GDN holders such as insurance or finance companies. In these situations, an independent motor vehicle dealer must remove and destroy, recycle, or return the license plate as required in §215.158 (relating to General Requirements for Buyer's License Plates). Under Occupations Code, §2302.009, an independent motor vehicle dealer that acts as a salvage vehicle dealer or displays a motor vehicle as an agent of an insurance company must comply with Occupations Code, Chapter 2302, including the requirement to immediately remove any unexpired license plate. Requiring an independent motor vehicle dealer to either transfer or void, destroy, recycle, or return the license plate as required in §215.158 (relating to General Requirements for Buyer's License Plates) is necessary to reduce the risk of fraud or misuse of the plates, since salvage or total loss vehicles may not be driven on Texas roads. Proposed new §215.163(c) is necessary to minimize potential fraud or misuse of these license plates and is consistent with the requirements of Occupations Code, Chapter 2302, and Transportation Code, §503.063 and §504.901, as amended by HB 708 and SB 1902.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the rule will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal.

Monique Johnston, Director of the Motor Vehicle Division (MVD), Annette Quintero, Director of the Vehicle Titles and Registration Division (VTR), and Corrie Thompson, Director of the Enforcement Division (ENF), have determined that there will be not be a measurable effect on local employment or the local economy as a result of the proposal because the overall number of motor vehicle sales will not be affected.

PUBLIC BENEFIT AND COST NOTE. Ms. Johnston, Ms. Quintero, and Ms. Thompson have also determined that, for each year of the first five years amended and new sections are in effect, there are multiple public benefits anticipated because of the reduction in opportunities for license plate fraud, and that certain applicants and license holders may incur costs to comply with the proposal. The department prioritized the public benefits associated with reducing fraud and related crime and improving public health and safety, while carefully considering potential costs to license holders consistent with board and department responsibilities.

Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include limiting the criminal activity of a small subset of dealers who may fraudulently obtain, sell, or issue license plates to persons seeking to engage in violent criminal activity, including armed robbery, human trafficking, and assaults on law enforcement, or to criminally operate uninsured and uninspected vehicles as a hazard to Texas motorists and the environment.

Anticipated Costs to Comply With The Proposal. Ms. Quintero anticipates that certain license holders may incur costs to comply with these proposed rules. In proposed new §215.151(e), a dealer could incur a fee to mail a license plate or set of license plates to a buyer or a converter when the buyer authorizes the dealer to do so in writing because the vehicle is being delivered directly to the buyer by a transporter or converter. Department research suggests that the average cost to mail a set of license plates is $10.10. Ms. Quintero has determined that the cost for a license holder to mail or otherwise securely transfer a license plate to a buyer or converter would be offset by a dealer's cost savings in not having to travel to a buyer's or converter's location to affix the assigned license plate, and is necessary to facilitate lawful sales in which the purchased vehicle is not at the dealer's licensed location. A dealer may choose to affix a buyer's license plate to a sold vehicle, or mail or securely transfer a license plate to a buyer or converter and can choose the method that is operationally efficient and cost effective. Industry stakeholders have requested this flexibility in affixing license plates to facilitate these types of vehicle sales.

Regarding proposed new §215.163, Ms. Quintero anticipates that while dealer GDN holders will not incur additional costs to comply with the proposed rule, wholesale motor vehicle auction GDN holders may incur costs to comply with this proposed rule. For dealers, proposed new §215.163 does not have any new cost requirements because the same requirements are already in place under other previously adopted rules or existing statutes.

However, this proposal may require wholesale motor vehicle auction GDN holders to make an operational change or incur a cost. The department can estimate certain associated costs. Proposed new §215.163 would require a wholesale motor vehicle auction GDN holder to permanently mark the front of license plates with the word "void" or a large "X". Department research suggests that the cost of a permanent marker is $1.35 per marker. Proposed new §215.163 would also require a wholesale motor vehicle auction GDN holder to destroy a void buyer's license plate, recycle a void plate with a registered metal recycler, or return the void plate to the department, or to a county tax assessor-collector. Aviation tin snips may be used to destroy a void license plate. Department research suggests that the cost of tin snips, which can cut metal, is approximately $18.50. A motor vehicle auction GDN holder may choose to recycle void license plates. Department research suggests that the cost of doing so through a metal recycler will vary by locality and the availability of local recycling facilities, with some regions benefitting from free curbside-pickup recycling programs and others requiring license holders to expend transportation costs to take the plates to a recycling facility. Department research also suggests that scrap aluminum, such as voided license plates, is currently worth an average of about $.65 per pound when sold to a metal recycler. Lastly, a motor vehicle auction GDN holder may return a void buyer's license plate to the department, including one of the regional service centers, or a county tax assessor-collector office, or mail a void plate to the department. Department research suggests that a typical average cost to mail a set of license plates is $10.10. The proposed rules provide a motor vehicle auction GDN holder with multiple options for responsible disposal of void license plates and each license holder may choose which option is least expensive or most convenient based on the license holder's operation. Ms. Quintero has reviewed the department research regarding the cost of marking and the options for destroying, recycling, or returning void license plates and has determined that these costs are reasonable and necessary to reduce the potential for fraudulent plate use and to protect the public, including law enforcement personnel. Indeed, it is possible that many wholesale motor vehicle auction GDN holders will incur no costs as a result of the proposed rule: the wholesale motor vehicle auction GDN holders who commented or provided informal feedback

on the draft rule stated that they already have existing systems in place to collect and dispose of license plates and to report vehicle transfers using the currently available web-based tools.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS.

As required by Government Code, §2006.002, the department has determined that this proposal may have an adverse economic effect or disproportionate economic impact on small or micro-businesses. More specifically, the department believes that the requirements in proposed new §215.163 for wholesale motor vehicle auction GDN holders may have an adverse impact if any motor vehicle auction GDN holder is a small or micro-business. The department does not believe the costs associated with shipping plates when requested by a buyer under certain circumstances in proposed amended §215.151 will create an adverse economic impact because the department believes the costs will be completely offset by the savings for a dealer from not having to travel to a buyer's or converter's location to affix a license plate to a sold vehicle. The department has determined that the proposed amendments will not have an adverse economic effect on rural communities because rural communities are exempt from the requirement to hold a GDN under Transportation Code, §503.024.

The cost analysis in the Public Benefit and Cost Note section of this proposal determined that the proposed new rule may result in additional costs for existing license holders. Based on data from the Comptroller and the Texas Workforce Commission, the department cannot determine if any wholesale motor vehicle auctions are small or micro-businesses but can estimate that most dealers are small or micro-businesses. The department has tried to minimize costs to both wholesale motor vehicle auction and dealer GDN holders. The proposed new requirements are designed to set minimum standards that will prevent license plate fraud and protect public health and safety and to allow these license holders to operate without incurring significant ongoing or unreasonable costs. These requirements do not include requirements that will cause a license holder to incur unnecessary or burdensome costs, such as employing additional persons.

Under Government Code, §2006.002, the department must perform a regulatory flexibility analysis. The department considered the alternatives of not adopting amendments, exempting small and micro-business license holders from these amendments, and adopting a limited version of these amendments for small and micro-business applicants and license holders. The department rejected all three options. The department reviewed licensing records, including records for license holders who have been denied access to the temporary tag system, and determined that small and micro-business license holders are largely the bad actors who have historically perpetrated fraud. The department, after considering the purpose of the authorizing statutes, does not believe it is feasible to waive or limit the requirements of the proposed amendments for small or micro-business GDN holders. Also, Government Code, §2006.002(c-1) does not require the department to consider alternatives that might minimize possible adverse impacts on small businesses and micro-businesses if the alternatives would not be protective of the health and safety of the state.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed new sections and amendments are in effect, no government program would be created or eliminated. Implementation of the proposed new sections and amendments would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or a decrease of fees paid to the department. The proposed rules create new regulations, specifically proposed new §215.91 and §215.163. It would limit existing regulations by allowing dealers to ship or deliver license plates to be affixed by others in certain situations in proposed amendments to §215.151, and by allowing for lesser license plate allocations in proposed amendments to §215.152. The proposed rule revisions would not expand or repeal an existing regulation. Lastly, the proposed new sections do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on August 25, 2025. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER B. LICENSES, GENERALLY

43 TAC §215.83, §215.91

STATUTORY AUTHORITY. The department proposes amendments and a new section to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, as amended by Senate Bill (SB) 2587, 89th Legislature (2025), which authorizes the department to

obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §55.004, as amended by House Bill (HB) 5629, 89th Legislature, which requires the department to adopt rules for the issuance of a license to military service members, military veterans, or military spouses that allow licensure if the applicant holds a current license issued by another state that is similar in scope to the license in Texas and is in good standing with that state's licensing authority, or has held a license in Texas within the preceding five years; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.0296, which requires the board to adopt a rule requiring that an applicant for an original or renewal general distinguishing number who proposes to be an independent motor vehicle dealer complete web-based education and training developed or approved by the department; Transportation Code, §503.033, which authorizes the board to adopt rules prescribe the form of the notice of a surety bond and the procedure by which a claimant may recover against the surety bond; Transportation Code, §503.061, which requires the board to adopt rules regulating the issuance of dealer's license plates; and Transportation Code, §§503.0626, 503.0631, and 503.0632, which require the board to adopt rules necessary to implement and manage the department's temporary tag databases; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also proposes amendments and a new rule under the authority of Transportation Code, §501.0041 and §502.0021; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. This proposed new section would implement Government Code, Chapters 411 and 2001; Occupations Code, Chapters 53, 55, and 2301; and Transportation Code, Chapters 501-503, and 1002.

§215.83. License Applications, Amendments, or Renewals.

(a) An application for a new license, license amendment, or license renewal filed with the department must be:

(1) filed electronically in the department-designated licensing system on a form approved by the department;

(2) completed by the applicant, license holder, or authorized representative who is an employee, a licensed attorney, or a certified public accountant;

(3) accompanied by the required fee, paid by credit card or by electronic funds transfer, drawn from an account held by the applicant or license holder, or drawn from a trust account of the applicant's attorney or certified public accountant; and

(4) accompanied by proof of a surety bond, if required.

(b) An authorized representative of the applicant or license holder who files an application with the department on behalf of an applicant or license holder may be required to provide written proof of authority to act on behalf of the applicant or license holder.

(c) The department will not provide information regarding the status of an application, application deficiencies, or pending new license numbers to a person other than a person listed in subsection (a)(2) of this section, unless that person files a written request under Government Code, Chapter 552.

(d) Prior to the expiration of a license, a license holder or authorized representative must electronically file with the department a sufficient license renewal application. Failure to receive notice of license expiration from the department does not relieve the license holder from the responsibility to timely file a sufficient license renewal application. A license renewal application is timely filed if the department receives a sufficient license renewal application on or before the date the license expires.

(e) An application for a new license, license amendment, or license renewal filed with the department must be sufficient. An application is sufficient if the application:

(1) includes all information and documentation required by the department; and

(2) is filed in accordance with subsection (a) of this section.

(f) If an applicant, license holder, or authorized representative does not provide the information or documentation required by the department, the department will issue a written notice of deficiency. The information or documentation requested in the written notice of deficiency must be received by the department within 20 calendar days of the date of the notice of deficiency, unless the department issues a written extension of time. If an applicant, license holder, or authorized representative fails to respond or fully comply with all deficiencies listed in the written notice of deficiency within the time prescribed by this subsection, the application will be deemed withdrawn and will be administratively closed.

(g) The department will evaluate a sufficient application for a new license, license amendment, or license renewal in accordance with applicable rules and statutes to determine whether to approve or deny the application. If the department determines that there are grounds for denial of the application, the department may pursue denial of the application in accordance with Subchapter G of this chapter (relating to Administrative Sanctions).

(h) The department will process an application for a new license, license amendment, or license renewal filed by a military service member, military spouse, or military veteran in accordance with Occupations Code, Chapter 55 and §215.91 of this title (relating to License Processing for Military Service Members, Spouses, and Veterans). [~~A license holder who fails to timely file a sufficient application for a license renewal because that license holder was on active duty is exempt~~

from any increased fee or penalty imposed by the department for failing to renew the license in a timely manner.]

[(i) A military service member or military spouse may engage in a business or occupation for which a department issued license is required if the military service member or military spouse meets the requirements of Occupations Code, §55.0041 and this section. This section establishes requirements and procedures authorized or required by Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.]

[(1) A military service member or military spouse must submit to the department:]

[(A) notice of the military service member or military spouse's intent to engage in a business or occupation in Texas for which a department issued license is required;]

[(B) proof of the military service member or military spouse's being stationed in Texas and a copy of the military service member or military spouse's military identification card; and]

[(C) documentation demonstrating that the military service member or military spouse is licensed and in good standing in another jurisdiction for the relevant business or occupation.]

[(2) Upon receipt of the notice and documentation required by paragraphs (1)(B) and (1)(C) of this subsection, the department shall:]

[(A) confirm with the other licensing jurisdiction that the military service member or military spouse is currently licensed and in good standing for the relevant business or occupation; and]

[(B) conduct a comparison of the other jurisdiction's license requirements, statutes, and rules with the department's licensing requirements to determine if the requirements are substantially equivalent.]

[(3) If the department confirms that a military service member or military spouse is currently licensed in good standing in another jurisdiction with substantially equivalent licensing requirements, the department shall issue a license to the military service member or military spouse for the relevant business or occupation within 30 days. The license is subject to requirements in Chapter 215 of this title and Occupations Code, Chapter 2301 in the same manner as a license issued under the standard application process, unless modified or exempted under Occupations Code, Chapter 55.]

(i) [(j)] A license holder who timely files a sufficient license renewal application in accordance with subsection (d) of this section may continue to operate under the expired license until the license renewal application is determined in accordance with Government Code §2001.054.

(j) [(k)] A license holder who fails to timely file a sufficient license renewal application in accordance with subsection (d) of this section is not authorized to continue licensed activities after the date the license expires. A license holder may dispute a decision that a license renewal application was not timely or sufficient by submitting evidence to the department demonstrating that the license renewal application was timely and sufficient. Such evidence must be received by the department within 15 days of the date the department issues notice that a timely or sufficient license renewal application was not received by the department.

(k) [(l)] The department shall accept a late license renewal application up to 90 days after the date the license expires. In accordance with subsection (k) of this section, the license holder is not authorized to continue licensed activities after the date the license expires until the department approves the late license renewal application. If the department grants a license renewal under this section, the licensing period begins on the date the department issues the renewed license. The license holder may resume licensed activities upon receipt of the department's written verification or upon receipt of the renewed license.

(l) [(m)] If the department has not received a late license renewal application within 90 days after the date the license expires, the department will close the license. A person must apply for and receive a new license before that person is authorized to resume activities requiring a license.

(m) [(n)] A dealer's standard license plate issued in accordance with Transportation Code, Chapter 503, Subchapter C expires on the date the associated license expires, is canceled, or when a license renewal application is determined, whichever is later.

§215.91. License Processing for Military Service Members, Spouses, and Veterans.

(a) The department will process a license, amendment, or renewal application submitted for licensing of a military service member, military spouse, or military veteran in accordance with Occupations Code, Chapter 55. A license holder who fails to timely file a sufficient renewal application because the license holder was on active duty is exempt from any increased fee or penalty imposed by the department.

(b) A military service member or military spouse may engage in a business or occupation for which a department-issued license is required if the military service member or military spouse meets the requirements of Occupations Code, §55.0041 and this section.

(1) A military service member or military spouse must submit to the department:

(A) a sufficient application as described in §215.83(e) of this title (relating to License Applications, Amendments, or Renewals);

(B) proof of the military service member being stationed in Texas and a copy of the military service member or military spouse's military identification card;

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

(D) a notarized affidavit as required by Occupations Code, § 55.0041(b)(3).

(2) Upon receipt of the application and documentation required by paragraph (1) of this subsection the department shall:

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

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

(C) issue a provisional license.

(3) If the department confirms that a military service member or military spouse is currently licensed in good standing in another state with licensing requirements that are similar in scope and practice, or was licensed in good standing in Texas in the last five years, the department shall issue a license to the military service member or military spouse for the relevant business or occupation, or notify the applicant why the department is currently unable to issue a license pursuant to Occupations Code, §55.0041(b-1), within 10 days. The license is subject to the requirements of this chapter and Occupations Code, Chapter

2301, and Transportation Code, Chapter 503, in the same manner as a license issued under the standard application process, unless exempted or modified under Occupations Code, Chapter 55.

(c) This section establishes requirements and procedures authorized or required by Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

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

Filed with the Office of the Secretary of State on July 10, 2025.

TRD-202502331
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 465-4160

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SUBCHAPTER D. GENERAL DISTINGUISHING NUMBERS AND IN-TRANSIT LICENSES

43 TAC §§215.133, 215.140, 215.141, 215.144, 215.150 - 215.152, 215.155, 215.158, 215.163

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts amendments and new sections to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Transportation Code, §503.061, which allows the board to adopt rules regulating the issuance and use of dealer's license plates; Transportation Code, §503.0631, which requires the department to adopt rules to implement and manage the department's database of dealer-issued buyer's license plates; Transportation Code, §503.0633, which allows the department to establish the maximum number of license plates or sets of license plates a dealer may obtain annually under Transportation Code, §503.063 and §503.065; Transportation Code, §504.0011, which allows the board to adopt rules to implement and administer Chapter 504; Transportation Code, §520.0071, which requires the board to adopt rules classifying deputies performing titling and registration duties, the duties and obligations of these deputies, the type and amount of bonds that may be required by a county tax assessor-collector for a deputy performing titling and registration duties, and the fees that may be charged or retained by deputies; Transportation Code, §520.021, which allows the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts amendments under the authority of Transportation Code, §§501.0041, 502.0021, 503.002, 504.0011, and 520.003; and Government Code, §2001.004 and §2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503. Transportation Code, §504.0011 authorizes the board to adopt rules to implement and administer Chapter 504. Transportation Code, §520.003 authorizes the department to adopt rules to administer Chapter 520.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These adopted new sections and amendments implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2305; and Transportation Code, Chapters 501 - 504, 520, and 1002.

§215.133. GDN Application Requirements for a Dealer or a Wholesale Motor Vehicle Auction.

(a) No person may engage in business as a dealer or as a wholesale motor vehicle auction unless that person has a valid GDN assigned by the department for each location from which the person engages in business. A dealer must also hold a GDN for a consignment location, unless the consignment location is a wholesale motor vehicle auction.

(b) Subsection (a) of this section does not apply to a person exempt from the requirement to obtain a GDN under Transportation Code §503.024.

(c) A GDN dealer or wholesale motor vehicle auction application must be on a form prescribed by the department and properly completed by the applicant as required under §215.83 of this title (relating to License Applications, Amendments, or Renewals). A GDN dealer or wholesale motor vehicle auction application must include all required information, required supporting documents, and required fees and must be submitted to the department electronically in the licensing system designated by the department. A GDN dealer or wholesale motor vehicle auction GDN holder renewing or amending its GDN must verify current license information, provide related information and documents for any new requirements or changes to the GDN, and pay required fees including any outstanding civil penalties owed the department under a final order. An applicant for a new dealer or wholesale motor vehicle auction GDN must provide the following:

(1) Required information:

(A) type of GDN requested;

(B) business information, including the name, physical and mailing addresses, telephone number, Secretary of State file number (as applicable), and website address, as applicable;

(C) contact name, email address, and telephone number of the person submitting the application;

(D) contact name, email address, and telephone number of a person who can provide information about business operations and the motor vehicle products or services offered;

(E) the name, social security number, date of birth, identity document information, and ownership percentage for each owner, partner, member, or principal if the applicant is not a publicly traded company;

(F) the name, social security number, date of birth, and identity document information for each officer, director, manager, trustee, or other representative authorized to act on behalf of the applicant if the applicant is owned in full or in part by a legal entity;

(G) the name, employer identification number, ownership percentage, and non-profit or publicly traded status for each legal entity that owns the applicant in full or in part;

(H) the name, social security number, date of birth, and identity document information of at least one manager or other bona fide employee who will be present at the established and permanent place of business if the owner is out of state or will not be present during business hours at the established and permanent place of business in Texas;

(I) if a dealer, the name, telephone number, and business email address of the account administrator for the temporary tag database prior to July 1, 2025, or for the license plate system on or after July 1, 2025, designated by the applicant who must be an owner or representative listed in the application;

(J) criminal history record information under the laws of Texas, another state in the United States, the United States, and any foreign jurisdiction for each person listed in the application, including offense description, date, and location;

(K) military service status;

(L) licensing history required to evaluate fitness for licensure under §215.89 of this title (relating to Fitness);

(M) information about the business location and business premises, including whether the applicant will operate as a salvage vehicle dealer at the location;

(N) history of insolvency, including outstanding or unpaid debts, judgments, or liens, unless the debt was discharged under 11 U.S.C. §§101 et seq. (Bankruptcy Act) or is pending resolution under a case filed under the Bankruptcy Act;

(O) signed Certification of Responsibility, which is a form provided by the department; and

(P) if a dealer, whether the applicant repairs a motor vehicle with a catalytic converter in Texas, and if so, the physical address where the repair is performed; and

(Q) any other information required by the department to evaluate the application under current law and board rules.

(2) A legible and accurate electronic image of each applicable required document:

(A) proof of a surety bond if required under §215.137 of this title (relating to Surety Bond);

(B) the certificate of filing, certificate of incorporation, or certificate of registration on file with the Secretary of State, as applicable;

(C) each assumed name certificate on file with the Secretary of State or county clerk;

(D) at least one of the following unexpired identity documents for each natural person listed in the application:

(i) driver license;

(ii) Texas Identification Card issued by the Texas Department of Public Safety under Transportation Code, Chapter 521, Subchapter E;

(iii) license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(iv) passport; or

(v) United States military identification card.

(E) a certificate of occupancy, certificate of compliance, or other official documentation confirming the business location complies with municipal ordinances, including zoning, occupancy, or other requirements for a vehicle business;

(F) documents proving business premises ownership, or lease or sublease agreement for the license period;

(G) business premises photos and a notarized affidavit certifying that all premises requirements in §215.140 of this title (relating to Established and Permanent Place of Business Premises Requirements) are met and will be maintained during the license period;

(H) evidence of franchise if applying for a franchised motor vehicle dealer GDN;

(I) proof of completion of the dealer education and training required under Transportation Code §503.0296, if applicable; and

(J) any other documents required by the department to evaluate the application under current law and board rules.

(3) Required fees:

(A) the fee for each type of license requested as prescribed by law; and

(B) the fee, including applicable taxes, for each dealer's standard plate, and dealer's temporary license plate on or after July 1, 2025, requested by the applicant as prescribed by law.

(d) An applicant for a dealer or wholesale auction GDN must also comply with fingerprint requirements in §211.6 of this title (relating to Fingerprint Requirements for Designated License Types), as applicable.

(e) An applicant for a GDN operating under a name other than the applicant's business name shall use the assumed name under which the applicant is authorized to do business, as filed with the Secretary of State or county clerk, and the assumed name of such legal entity shall be recorded by the applicant on the application using the letters "DBA." The applicant may not use a name or assumed name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public.

(f) A wholesale motor vehicle dealer GDN holder may sell or exchange vehicles with licensed or authorized dealers only. A wholesale motor vehicle dealer GDN holder may not sell or exchange vehicles at retail.

(g) An independent mobility motor vehicle dealer shall retain and produce for inspection all records relating to the license requirements under Occupations Code, §2301.002(17-b) and all information and records required under Transportation Code §503.0295.

(h) In evaluating a new or renewal GDN application or an application for a new GDN location, the department may require a site visit to determine if the business location meets the requirements in §215.140. The department will require the applicant or GDN holder to provide a notarized affidavit confirming that all premises requirements are met and will be maintained during the license period.

(i) A person holding an independent motor vehicle dealer GDN does not have to hold a salvage vehicle dealer's license to:

(1) act as a salvage vehicle dealer or rebuilder; or

(2) store or display a motor vehicle as an agent or escrow agent of an insurance company.

(j) A person holding an independent motor vehicle dealer GDN and performing salvage activities under subsection (i) must apply for a National Motor Vehicle Title Information System (NMVTIS) identification number and provide the number to the department in the GDN application.

(k) To be eligible for an independent motor vehicle dealer GDN, a person must complete dealer education and training specified by the department, except as provided in this subsection:

(1) once a person has completed the required dealer education and training, the person will not have to retake the dealer education and training for subsequent GDN renewals, but may be required to provide proof of dealer education and training completion as part of the GDN renewal process;

(2) a person holding an independent motor vehicle dealer GDN for at least 10 years as of September 1, 2019, is exempt from the dealer education and training requirement; and.

(3) a military service member, military spouse, or military veteran will receive appropriate credit for prior training, education, and professional experience and may be exempted from the dealer education and training requirement.

§215.140. Established and Permanent Place of Business Premises Requirements.

(a) A dealer must meet the following requirements at each licensed location and maintain the requirements during the term of the license. If multiple dealers are licensed at a location, each dealer must maintain the following requirements during the entire term of the license.

(1) Business hours for retail dealers.

(A) A retail dealer's office must be open at least four days per week for at least four consecutive hours per day and may not be open solely by appointment.

(B) The retail dealer's business hours for each day of the week must be posted at the main entrance of the retail dealer's office in a manner and location that is accessible to the public. The owner or a bona fide employee of the retail dealer shall be at the retail dealer's licensed location during the posted business hours for the purposes of buying, selling, exchanging, or leasing vehicles. If the owner or a bona fide employee is not available to conduct business during the retail dealer's posted business hours due to special circumstances or emergencies, a separate sign must be posted indicating the date and time the retail dealer will resume operations. Regardless of the retail dealer's business hours, the retail dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able to speak to a natural person or leave a message during these hours.

(2) Business hours for wholesale motor vehicle dealers. A dealer that holds only a wholesale motor vehicle dealer's GDN must post its business hours at the main entrance of the wholesale motor vehicle dealer's office in a manner and location that is accessible to the public. A wholesale motor vehicle dealer or bona fide employee shall be at the wholesale motor vehicle dealer's licensed location at least two weekdays per week for at least two consecutive hours per day. A wholesale motor vehicle dealer may not be open solely by appointment. Regardless of the wholesale motor vehicle dealer's business hours, the wholesale motor vehicle dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able to speak to a natural person or leave a message during these hours.

(3) Business sign requirements for retail dealers.

(A) A retail dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the retail dealer's business name or assumed name substantially similar to the name reflected on the retail dealer's GDN under which the retail dealer conducts business. A business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main entrance of the business office. A business sign is considered permanent only if it is made of durable, weather-resistant material.

(B) The sign must be permanently mounted at the physical address listed on the application for the retail dealer's GDN. A business sign is considered permanently mounted if bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign support permanently installed in the ground.

(C) A retail dealer may use a temporary sign or banner if that retail dealer can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(D) A retail dealer is responsible for ensuring that the business sign complies with municipal ordinances, and that any lease signage requirements are consistent with the signage requirements in this paragraph.

(4) Business sign requirements for wholesale motor vehicle dealers.

(A) Exterior Sign

(i) A wholesale motor vehicle dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the wholesale motor vehicle dealer's business name or assumed name substantially similar to the name reflected on the wholesale motor vehicle dealer's GDN under which the wholesale motor vehicle dealer conducts business. Effective September 1, 2023, the sign must also include the statement that "Purchasers must be Licensed Dealers" in letters at least three inches in height. A business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main entrance of the business office. A business sign is considered permanent only if it is made of durable, weather-resistant material.

(ii) The sign must be permanently mounted on the business property at the physical address listed on the application. A business sign is considered permanently mounted if bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign support permanently installed in the ground. A wholesale motor vehicle dealer may use a temporary exterior sign or banner if the wholesale motor vehicle dealer can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(B) Interior Sign

(i) If the wholesale motor vehicle dealer's office is located in an office building with one or more other businesses and an outside sign is not permitted by the property owner, a conspicuous permanent business sign permanently mounted on or beside the main door to the wholesale motor vehicle dealer's office with letters at least two inches in height is acceptable. Effective September 1, 2023, the sign must also include the statement that "Purchasers must be Licensed Dealers" in letters at least one inch in height.

(ii) An interior business sign is considered conspicuous if it is easily visible to the public within 10 feet of the main entrance of the wholesale motor vehicle dealer's office. An interior sign is considered permanent if made from durable material and has lettering that cannot be changed. An interior sign is considered permanently mounted if bolted or otherwise permanently affixed to the main door or nearby wall. A wholesale motor vehicle dealer may use a temporary interior sign or banner if the wholesale motor vehicle dealer can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(C) A wholesale motor vehicle dealer is responsible for ensuring that the business sign complies with municipal ordinances and that any lease signage requirements are consistent with the signage requirements in this paragraph.

(5) Office requirements for a retail dealer and a wholesale motor vehicle dealer.

(A) A dealer's office must be located in a building with a permanent roof and connecting exterior walls on all sides.

(B) A dealer's office must comply with all applicable municipal ordinances, including municipal zoning ordinances. The dealer is responsible for obtaining a certificate of occupancy, certificate of compliance, or other required document issued by a municipal government to show compliance, including a new certificate or document when the building is altered or remodeled, or when the building use changes.

(C) A dealer's office may not be located in a residence, apartment, hotel, motel, rooming house, or any room or building not open to the public.

(D) A dealer's office may not be located in a restaurant, gas station, or convenience store, unless the office has a separate entrance door that does not require a dealer's customer to pass through the other business.

(E) A dealer's office may not be virtual or provided by a subscription for office space or office services. Access to an office space or office services is not considered an established and permanent location.

(F) The physical address of the dealer's office must be in Texas and recognized by the U.S. Postal Service, be capable of receiving U.S. mail, and have an assigned emergency services property address. The department will not mail a dealer's or buyer's license plate to an out-of-state address and will only mail or deliver a license plate to a dealer's physical location.

(G) A portable-type office building may qualify as an office only if the building meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(H) The dealer's office space must:

(i) include at least 100 square feet of interior floor space, exclusive of hallways, closets, or restrooms;

(ii) have a minimum seven-foot-high ceiling;

(iii) accommodate required office equipment; and

(iv) allow a dealer and customer to safely access the office and conduct business in private while seated.

(6) Required office equipment for a retail dealer and a wholesale motor vehicle dealer. At a minimum, a dealer's office must be equipped with:

(A) a desk;

(B) two chairs;

(C) internet access;

(D) a working telephone number listed in the business name or assumed name under which the dealer conducts business; and

(E) a locked and secured room or closet or at least one securely locked, substantially constructed safe or steel cabinet bolted or affixed to the floor or wall in such a way that the safe or steel cabinet cannot be readily removed and of sufficient size to store all dealer's and buyer's license plates in a dealer's possession including [~~both assigned plates for vehicles in inventory and~~] unissued and unassigned buyer's license plates.

(7) Number of retail dealers in one building. Not more than four retail dealers may be located in the same building. Each retail dealer located in the same building must meet the requirements of this section.

(8) Number of wholesale motor vehicle dealers in one office building. Not more than eight wholesale motor vehicle dealers may be located in the same office building. Each wholesale motor vehicle dealer located in the same office building must meet the requirements of this section.

(9) Office sharing prohibition for retail dealers and wholesale motor vehicle dealers. Unless otherwise authorized by the Transportation Code, a retail dealer and a wholesale motor vehicle dealer licensed after September 1, 1999, may not be located in the same building.

(10) Dealer housed with other business.

(A) If a person conducts business as a dealer in conjunction with another business owned by the same person and under the same name as the other business, the same telephone number may be used for both businesses. If the name of the dealer differs from the name of the other business, a separate telephone listing and a separate sign for each business are required.

(B) A person may conduct business as a dealer in conjunction with another business not owned by that person only if the dealer owns the property on which business is conducted or has a separate lease agreement from the owner of that property that meets the requirements of this section. The same telephone number may not be

used by both businesses. The dealer must have separate business signs, telephone listings, and office equipment required under this section.

(C) A dealer's office must have permanent interior walls on all sides and be separate from any public area used by another business.

(11) Display area and storage lot requirements.

(A) A wholesale motor vehicle dealer is not required to have display space at the wholesale motor vehicle dealer's business premises.

(B) A retail dealer must have an area designated as display space for the retail dealer's inventory. A retail dealer's designated display area must comply with the following requirements.

(i) The display area must be located at the retail dealer's physical business address or contiguous to the retail dealer's physical address. The display area may not be in a storage lot.

(ii) The display area must be of sufficient size to display at least five vehicles of the type for which the GDN is issued. The display area must be reserved exclusively for the retail dealer's inventory and may not be used for customer parking, employee parking, general storage, or shared or intermingled with another business or a public parking area, a driveway to the office, or another dealer's display area.

(iii) The display area may not be on a public easement, right-of-way, or driveway unless the governing body having jurisdiction of the easement, right-of-way, or driveway expressly consents in writing to use as a display area. If the easement, right-of-way, or driveway is a part of the state highway system, use as a display area may only be authorized by a lease agreement.

(iv) If a retail dealer shares a display or parking area with another business, including another dealer, the dealer's vehicle inventory must be separated from the other business's display or parking area by a material object or barrier that cannot be readily removed. A barrier that cannot be readily removed is one that cannot be easily moved by one person and typically weighs more than 50 pounds. A material object or barrier must be in place on all sides except for the space necessary to allow for entry and exit of vehicle inventory.

(v) If a dealer's business location includes gasoline pumps or a charging station or includes another business that sells gasoline or has a charging station, the dealer's display area may not be part of the parking area for fuel or charging station customers and may not interfere with access to or from the gasoline pumps, fuel tanks, charging station, or fire prevention equipment.

(vi) The display area must be adequately illuminated if the retail dealer is open at night so that a vehicle for sale can be properly inspected by a potential buyer.

(vii) The display area may be located inside a building; however, if multiple dealers are displaying vehicles inside a building, each dealer's display area must be separated by a material object or barrier that cannot be readily removed. A barrier that cannot be readily removed is one that cannot be easily moved by one person and typically weighs more than 50 pounds. A material object or barrier must be in place on all sides except for the space necessary to allow for entry and exit of vehicle inventory.

(C) A GDN holder may maintain a storage lot only if the storage lot is not accessible to the public and no sales activity occurs at the storage lot. A sign stating the license holder's name, contact information, and the fact the property is a storage lot is permissible. A storage lot must be fenced or in an access-controlled location to be considered not accessible to the public. A GDN holder or applicant must disclose the address of a storage lot or the location of a vehicle in inventory upon request by the department.

(12) Dealers authorized to sell salvage motor vehicles. If an independent motor vehicle dealer offers a salvage motor vehicle for sale on the dealer's premises, the vehicle must be clearly and conspicuously marked with a sign informing a potential buyer that the vehicle is a salvage motor vehicle.

(13) Lease requirements. If the premises from which a dealer conducts business, including any display area, is not owned by the dealer, the dealer must maintain a lease that is continuous during the period of time for which the dealer's license will be issued. The lease agreement must be on a properly executed form containing at a minimum:

(A) the name of the property owner as the lessor of the premises and the name of the dealer as the tenant or lessee of the premises;

(B) the period of time for which the lease is valid;

(C) the street address or legal description of the property, provided that if only a legal description of the property is included, a dealer must attach a statement verifying that the property description in the lease agreement is the physical street address identified on the application as the physical address for the established and permanent place of business;

(D) the signature of the property owner as the lessor and the signature of the dealer as the tenant or lessee; and

(E) if the lease agreement is a sublease in which the property owner is not the lessor, the dealer must also obtain a signed and notarized statement from the property owner including the following information:

(i) property owner's full name, email address, mailing address, and phone number; and

(ii) property owner's statement confirming that the dealer is authorized to sublease the location and may operate a vehicle sales business from the location.

(14) Dealer must display GDN and bond notice. A dealer must display the dealer's GDN issued by the department at all times in a manner that makes the GDN easily readable by the public and in a conspicuous place at each place of business for which the dealer's GDN is issued. A dealer required to obtain a surety bond must post a bond notice adjacent to and in the same manner as the dealer's GDN is displayed. The notice must include the bond company name, bond identification number, and procedure by which a claimant can recover under the bond. The notice must also include the department's website address and notify a consumer that a dealer's surety bond information may be obtained by submitting a request to the department. If the dealer's GDN applies to more than one location, a copy of the GDN and bond notice must be displayed in each supplemental location.

(b) Wholesale motor vehicle auction premises requirements. A wholesale motor vehicle auction must comply with the following premises requirements:

(1) a wholesale motor vehicle auction GDN holder must hold a motor vehicle auction on a regular periodic basis at the licensed location, and an owner or bona fide employee must be available at the business location during each auction and during posted business hours. If the owner or a bona fide employee is not available to conduct business during the posted business hours due to special circumstances or emergencies, a separate sign must be posted indicating the date and time operations will resume.

(2) the business telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able to speak to a natural person or leave a message during these hours.

(3) a wholesale motor vehicle auction GDN holder must display a business sign that meets the following requirements:

(A) The sign must be a conspicuous, permanent sign with letters at least six inches in height showing the business name or assumed name substantially similar to the name reflected on the GDN under which the GDN holder conducts business. A business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main entrance of the business office. A business sign is considered permanent only if it is made of durable, weather-resistant material.

(B) The sign must be permanently mounted at the physical address listed on the application for the wholesale motor vehicle auction GDN. A business sign is considered permanently mounted if bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign support permanently installed in the ground.

(C) An applicant may use a temporary sign or banner if the applicant can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(D) An applicant or holder is responsible for ensuring that the business sign complies with municipal ordinances, and that any lease signage requirements are consistent with the signage requirements in this paragraph.

(4) The business office of a wholesale motor vehicle auction GDN applicant and holder must meet the following requirements:

(A) The office must be located in a building with a permanent roof and connecting exterior walls on all sides.

(B) The office must comply with all applicable municipal ordinances, including municipal zoning ordinances. The wholesale motor vehicle auction is responsible for obtaining a certificate of occupancy, certificate of compliance, or other required document issued by a municipal government to show compliance, including a new certificate or document when the building is altered or remodeled, or when the building use changes.

(C) The office may not be located in a residence, apartment, hotel, motel, rooming house, or any room or building not open to the public.

(D) The office may not be located in a restaurant, gas station, or convenience store, unless the office has a separate entrance door that does not require a customer to pass through the other business.

(E) The office may not be virtual or provided by a subscription for office space or office services. Access to office space or office services is not considered an established and permanent location.

(F) The physical address of the office must be in Texas and recognized by the U.S. Postal Service, capable of receiving U.S. mail, and have an assigned emergency services property address.

(G) A portable-type office building may qualify as an office only if the building meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(5) A wholesale motor vehicle auction GDN applicant and holder must have the following office equipment:

(A) a desk;

(B) a chair;

(C) internet access; and

(D) a working telephone number listed in the business name or assumed name under which business is conducted.

(6) A wholesale motor vehicle auction must meet the following display area and storage lot requirements:

(A) The area designated as display space for inventory must be located at the physical business address or contiguous to the physical address. The display area may not be in a storage lot.

(B) The display area must be of sufficient size to display at least five vehicles. Those spaces must be reserved exclusively for inventory and may not be used for customer parking, employee parking, general storage, or shared or intermingled with another business or a public parking area, or a driveway to the office.

(C) The display area may not be on a public easement, right-of-way, or driveway unless the governing body having jurisdiction of the easement, right-of-way, or driveway expressly consents in writing to use as a display area. If the easement, right-of-way, or driveway is a part of the state highway system, use as a display area may only be authorized by a lease agreement.

(D) If the business location includes gasoline pumps or a charging station or includes another business that sells gasoline or has a charging station, the display area may not be part of the parking area for fuel or charging station customers and may not interfere with access to or from the gasoline pumps, fuel tanks, charging station, or fire prevention equipment.

(E) The display area must be adequately illuminated if open at night so that a vehicle for sale can be properly inspected by a potential buyer.

(F) The display area may be located inside a building.

(G) A wholesale motor vehicle auction may maintain a storage lot only if the storage lot is not accessible to the public and no sales activity occurs at the storage lot. A sign stating the business name, contact information, and the fact the property is a storage lot is permissible. A storage lot must be fenced or in an access-controlled location to be considered not accessible to the public. A GDN holder or applicant must disclose the address of a storage lot or the location of a vehicle in inventory upon request by the department.

(7) A wholesale motor vehicle auction must meet the following lease requirements if the business premises, including any display area, is not owned by the wholesale motor vehicle auction:

(A) the applicant or holder must maintain a lease that is continuous during the period of time for which the GDN will be issued;

(B) The lease agreement must be on a properly executed form containing at a minimum:

(i) the name of the property owner as the lessor of the premises and the name of the GDN applicant or holder as the tenant or lessee of the premises;

(ii) the period of time for which the lease is valid;

(iii) the street address or legal description of the property, provided that if only a legal description of the property is included, a wholesale motor vehicle auction must attach a statement verifying that the property description in the lease agreement is the physical street address identified on the application as the physical address for the established and permanent place of business;

(iv) the signature of the property owner as the lessor and the signature of the applicant or holder as the tenant or lessee; and

(C) if the lease agreement is a sublease in which the property owner is not the lessor, the wholesale motor vehicle auction must also obtain a signed and notarized statement from the property owner including the following information:

(i) property owner's full name, email address, mailing address, and phone number; and

(ii) property owner's statement confirming that the wholesale motor vehicle auction is authorized to sublease the location and may operate a wholesale motor vehicle auction business from the location.

§215.141. Sanctions.

(a) The board or department may take the following actions against a license applicant, a license holder, or a person engaged in business for which a license is required:

(1) deny an application;

(2) revoke a license;

(3) suspend a license;

(4) assess a civil penalty;

(5) issue a cease and desist order; or

(6) or take other authorized action.

(b) The board or department may take action described in subsection (a) of this section if a license applicant, a license holder, or a person engaged in business for which a license is required:

(1) fails to maintain a good and sufficient bond or post the required bond notice if required under Transportation Code §503.033 (relating to Security Requirement);

(2) fails to meet or maintain the requirements of §215.140 of this title (relating to Established and Permanent Place of Business Premises Requirements);

(3) fails to maintain records required under this chapter;

(4) refuses or fails to comply with a request by the department for electronic records or to examine and copy electronic or physical records during the license holder's business hours at the licensed business location:

(A) sales records required to be maintained by §215.144 of this title (relating to Vehicle Records);

(B) ownership papers for a vehicle owned by that dealer or under that dealer's control;

(C) evidence of ownership or a current lease agreement for the property on which the business is located; or

(D) the Certificate of Occupancy, Certificate of Compliance, business license or permit, or other official documentation confirming compliance with county and municipal laws or ordinances for a vehicle business at the licensed physical location.

(5) refuses or fails to timely comply with a request for records made by a representative of the department;

(6) holds a wholesale motor vehicle dealer's license and sells or offers to sell a motor vehicle to a person other than a licensed or authorized dealer;

(7) sells or offers to sell a type of vehicle that the person is not licensed to sell;

(8) fails to submit a license amendment application in the electronic licensing system designated by the department to notify the department of a change of the license holder's physical address, mailing address, telephone number, or email address within 10 days of the change;

(9) fails to submit a license amendment application in the electronic licensing system designated by the department to notify the department of a license holder's name change, or management or ownership change within 10 days of the change;

(10) issues more than one buyer's license plate or buyer's temporary license plate for a vehicle sold on or after July 1, 2025, or more than one temporary tag for a vehicle sold before July 1, 2025, for the purpose of extending the purchaser's operating privileges for more than 60 days;

(11) fails to remove a license plate or registration insignia from a vehicle that is displayed for sale;

(12) misuses a dealer's license plate, or a temporary tag before July 1, 2025;

(13) fails to display a dealer's license plate, or temporary tag before July 1, 2025, as required by law;

(14) holds open a title or fails to take assignment of a certificate of title, manufacturer's certificate, or other basic evidence of ownership for a vehicle acquired by the dealer, or fails to assign the certificate of title, manufacturer's certificate, or other basic evidence of ownership for a vehicle sold;

(15) fails to remain regularly and actively engaged in the business of buying, selling, or exchanging vehicles of the type for which the GDN is issued by the department;

(16) violates a provision of Occupations Code, Chapter 2301; Transportation Code Chapters 503 and 1001-1005; a board order or rule; or a regulation of the department relating to the sale, lease, distribution, financing, or insuring of vehicles, including advertising rules under Subchapter F of this chapter (relating to Advertising);

(17) is convicted of an offense that directly relates to the duties or responsibilities of the occupation in accordance with §211.3 of this title (relating to Criminal Offense Guidelines);

(18) is determined by the board or department, in accordance with §215.89 of this title (relating to Fitness), to be unfit to hold a license;

(19) has not assigned at least five vehicles in the prior 12 months, provided the dealer has been licensed more than 12 months;

(20) files or provides a false or forged:

(A) title document, including an affidavit making application for a certified copy of a title; or

(B) tax document, including a sales tax statement or affidavit;

(21) uses or allows use of that dealer's license or location for the purpose of avoiding a provision of Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1001 - 1005; or other laws;

(22) omits information or makes a material misrepresentation in any application or other documentation filed with the department including providing a false or forged identity document or a false or forged photograph, electronic image, or other document;

(23) fails to remit payment as ordered for a civil penalty assessed by the board or department;

(24) sells a new motor vehicle without a franchised dealer's license issued by the department;

(25) fails to comply with a dealer responsibility under §215.150 of this title (relating to Dealer Authorization to Issue License Plates);

(26) on or after July 1, 2025, fails to securely store a license plate or fails to destroy a previously issued but currently unassigned license plate within the time prescribed by statute;

(27) fails to maintain a record of dealer license plates as required under §215.138 of this title (relating to Use of Dealer's License Plates);

(28) on or after July 1, 2025, fails to file or enter a vehicle transfer notice;

(29) fails to enter a lost, stolen, or damaged license plate in the electronic system designated by the department within the time limit prescribed by rule;

(30) violates any state or federal law or regulation relating to the sale of a motor vehicle;

(31) knowingly fails to disclose that a motor vehicle has been repaired, rebuilt, or reconstructed and issued a title under Transportation Code, §501.100 (relating to Application for Regular Certificate of Title for Salvage Vehicle);

(32) fails to issue a refund as ordered by the board or department; or

(33) fails to acquire or maintain a required certificate of occupancy, certificate of compliance, business license or permit, or other official documentation for the licensed location confirming compliance with county or municipal laws or ordinances or other local requirements for a vehicle business;

(34) on or after July 1, 2025, fails to remove a license plate from a vehicle as required by statute or rule [~~sold to an out-of-state buyer or from a vehicle sold for export~~]; or

(35) fails to keep or maintain records required under Occupations Code, Chapter 2305, Subchapter D or to allow an inspection of these records by the department.

§215.144. Vehicle Records.

(a) Purchases and sales records. A dealer and wholesale motor vehicle auction shall maintain a complete record of all vehicle purchases and sales for a minimum period of 48 months and make the record available for inspection and copying by the department during business hours.

(b) Independent mobility motor vehicle dealers. An independent mobility motor vehicle dealer shall keep a complete written record of each vehicle purchase, vehicle sale, and any adaptive work performed on each vehicle for a minimum period of 36 months after the date the adaptive work is performed on the vehicle. An independent mobility motor vehicle dealer shall also retain and produce for inspection all records relating to license requirements under Occupations Code, §2301.002(17-b) and all information and records required under Transportation Code §503.0295.

(c) Location of records. A dealer's record reflecting purchases and sales for the preceding 13 months must be maintained at the dealer's licensed location. Original titles are not required to be kept at the licensed location but must be made available to the agency upon reasonable request. A dealer's record for prior time periods may be kept off-site.

(d) Request for records. Within 15 days of receiving a request from a representative of the department, a dealer shall deliver a copy of the specified records to the address listed in the request. If a dealer has a concern about the origin of a records request, the dealer may verify that request with the department prior to submitting its records.

(e) Content of records. A dealer's complete record for each vehicle purchase or vehicle sale must contain:

(1) the date of the purchase;

(2) the date of the sale;

(3) the VIN;

(4) the name and address of the person selling the vehicle to the dealer;

(5) the name and address of the person purchasing the vehicle from the dealer;

(6) the name and address of the consignor if the vehicle is offered for sale by consignment;

(7) except for a purchase or sale where the Tax Code does not require payment of motor vehicle sales tax, a county tax assessor-collector receipt marked paid;

(8) a copy of all documents, forms, and agreements applicable to a particular sale, including a copy of:

(A) the title application;

(B) the work-up sheet;

(C) the front and back of the manufacturer's certificate of origin or manufacturer's statement of origin, unless the dealer obtains the title through webDEALER as defined in §217.71 of this title (relating to Automated and Web-Based Vehicle Registration and Title Systems);

(D) the front and back of the title for the purchase and the sale, unless the dealer enters or obtains the title through webDEALER as defined in §217.71 of this title;

(E) the factory invoice, if applicable;

(F) the sales contract;

(G) the retail installment agreement;

(H) the buyer's order;

(I) the bill of sale;

(J) any waiver;

(K) any other agreement between the seller and purchaser;

(L) the purchaser's photo identification;

(M) the odometer disclosure statement signed by the buyer, unless the vehicle is exempt; and

(N) the rebuilt salvage disclosure, if applicable.

(9) the original manufacturer's certificate of origin, original manufacturer's statement of origin, or original title for a motor vehicle offered for sale by a dealer which must be properly stamped if the title transaction is entered into webDEALER as defined in §217.71 of this title by the dealer;

(10) the dealer's monthly Motor Vehicle Seller Financed Sales Returns, if any; and

(11) if the vehicle sold is a motor home or a towable recreational vehicle subject to inspection under Transportation Code, Chapter 548, a copy of the written notice provided to the buyer at the time of the sale, notifying the buyer that the vehicle is subject to inspection requirements.

(f) Title assignments.

(1) For each vehicle a dealer acquires or offers for sale, the dealer must properly take assignment in the dealer's name of any:

(A) title;

(B) manufacturer's statement of origin;

(C) manufacturer's certificate of origin; or

(D) other evidence of ownership.

(2) Unless not required by Transportation Code, §501.0234(b), a dealer must apply in the name of the purchaser of a vehicle for the title and registration, as applicable, of the vehicle with a county tax assessor-collector.

(3) To comply with Transportation Code, §501.0234(f), a title or registration is considered filed within a reasonable time if filed within:

(A) 30 days of the vehicle sale date; or

(B) 45 days of the vehicle sale date for a dealer-financed transaction; or

(C) 60 days of the vehicle sale date for a vehicle purchased by a member or reserve member of the United States armed forces, Texas National Guard, or National Guard of another state serving on active duty.

(4) The dealer is required to provide to the purchaser the receipt for the title and registration application.

(5) The dealer is required to maintain a copy of the receipt for the title and registration application in the dealer's sales file.

(g) Out-of-state sales. For a sale involving a vehicle to be transferred out of state, the dealer must:

(1) within 30 days of the date of sale, either file the application for certificate of title on behalf of the purchaser or deliver the properly assigned evidence of ownership to the purchaser; and

(2) maintain in the dealer's record at the dealer's licensed location a photocopy of the completed sales tax exemption form for out of state sales approved by the Texas Comptroller of Public Accounts.

(h) Consignment sales. A dealer offering a vehicle for sale by consignment must have a written consignment agreement or a power of attorney for the vehicle, and shall, after the sale of the vehicle, take assignment of the vehicle in the dealer's name and, pursuant to subsection (f), apply in the name of the purchaser for transfer of title and registration, if the vehicle is to be registered, with a county tax assessor-collector. The dealer must, for a minimum of 48 months, maintain a record of each vehicle offered for sale by consignment, including the VIN and the name of the owner of the vehicle offered for sale by consignment.

(i) Public motor vehicle auctions.

(1) A GDN holder that acts as a public motor vehicle auction must comply with subsection (h) of this section.

(2) A GDN holder that acts as a public motor vehicle auction:

(A) is not required to take assignment of title of a vehicle before offering the vehicle [~~it offers~~] for sale at auction;

(B) must take assignment of title of a vehicle from a consignor prior to making application for title on behalf of the buyer; and

(C) must make application for title on behalf of the purchaser and remit motor vehicle sales tax within a reasonable time as defined in subsection (f) of this section.

(3) A GDN holder may not sell another GDN holder's vehicle at a public motor vehicle auction.

(j) Wholesale motor vehicle auction records. A wholesale motor vehicle auction license holder shall maintain, for a minimum of 48 months, a complete record of each vehicle purchase and sale occurring through the wholesale motor vehicle auction. The wholesale motor vehicle auction license holder shall make the record available for inspection and copying by the department during business hours.

(1) A wholesale motor vehicle auction license holder shall maintain at the licensed location a record reflecting each purchase and sale for at least the preceding 24 months. Records for prior time periods may be kept off-site.

(2) Within 15 days of receiving a department request, a wholesale motor vehicle auction license holder shall deliver a copy of the specified records to the address listed in the request.

(3) A wholesale motor vehicle auction license holder's complete record of each vehicle purchase and sale must, at a minimum, contain:

(A) the date of sale;

(B) the VIN;

(C) the name and address of the person selling the vehicle;

(D) the name and address of the person purchasing the vehicle;

(E) the dealer's license number of both the selling dealer and the purchasing dealer, unless either is exempt from holding a license;

(F) all information necessary to comply with the federal odometer disclosure requirements in 49 CFR Part 580;

(G) auction access documents, including the written authorization and revocation of authorization for an agent or employee, in accordance with §215.148 of this title (relating to Dealer Agents);

(H) invoices, bills of sale, checks, drafts, or other documents that identify the vehicle, the parties, or the purchase price;

(I) any information regarding the prior status of the vehicle such as the Reacquired Vehicle Disclosure Statement or other lemon law disclosures; and

(J) a copy of any written authorization allowing an agent of a dealer to enter the auction.

(k) Electronic records. A license holder may maintain a record in an electronic format if the license holder can print the record at the licensed location upon request by the department, except as provided by subsection (l) of this section.

(l) Use of department electronic titling and registration systems:

(1) webDEALER. A license holder utilizing the department's web-based title application known as webDEALER, as defined in §217.71 of this title (relating to Automated and Web-Based Vehicle Registration and Title Systems), shall comply with §217.74 of this title (relating to Access to and Use of webDEALER). Original hard copy titles are not required to be kept at the licensed location but must be made available to the department upon request.

(2) License Plate System. A license holder must comply with §215.151 of this title (relating to Buyer's License Plates General Use Requirements) regarding requirements to enter information into the department-designated electronic system for license plates.

§215.150. Dealer Authorization to Issue License Plates.

(a) A dealer that holds a GDN must issue a buyer's license plate for a vehicle type the dealer is authorized to sell to:

(1) a buyer of a new vehicle to be titled and registered in Texas, unless the buyer has a general issue license plate or a specialty, personalized, or other qualifying license plate eligible to be assigned to the vehicle with approval of the department; or

(2) a buyer of a used vehicle to be titled and registered in Texas if [~~a buyer's license plate did not come with the vehicle and~~] the buyer does not have a general issue license plate or a specialty, personalized, or other qualifying license plate eligible to be assigned to the vehicle with approval of the department.

(b) Notwithstanding subsection (a), a dealer that holds a GDN is not required to issue a buyer's license plate to a vehicle sold to a commercial fleet buyer authorized as a Dealer Deputy under §217.166 of the title (relating to Dealer Deputies).

(c) A dealer that holds a GDN must issue a buyer's temporary license plate to an out-of-state buyer for a vehicle that is to be registered in accordance with the laws of the buyer's state of residence.

(d) A dealer may issue a license plate under Transportation Code §503.063 until:

(1) the department denies access to the license plate system under Transportation Code §503.0633(f) and §224.58 of this title (relating to Denial of Dealer Access to License Plate System);

(2) the dealer issues the maximum number of license plates authorized under Transportation Code, §503.0633(a) - (d); or

(3) the GDN is closed, canceled, revoked, or suspended.

(e) A governmental agency that is exempt under Transportation Code, §503.024 from the requirement to obtain a dealer general distinguishing number may issue a buyer's license plate or a buyer's temporary license plate to the buyer of a vehicle owned by the governmental agency unless the buyer has a general issue license plate or a specialty, personalized, or other qualifying license plate that is eligible to be assigned to the vehicle with approval of the department. A governmental agency that issues a buyer's license plate or buyer's temporary license plate under this subsection:

(1) is subject to the provisions of Transportation Code §503.0631 and §503.0671 applicable to a dealer; and

(2) is not required to charge the registration fee authorized under Transportation Code §503.063(g) and specified in §215.155(g) of this title (relating to Buyer's License Plates).

(f) A dealer is responsible for all use of and access to all license plates in the dealer's possession and the license plate system under the dealer's account, including access by any user or unauthorized person. Dealer duties include monitoring license plate storage and issuance, managing account access, and taking timely and appropriate actions to maintain license plate and system security, including:

(1) establishing and following reasonable password policies, including preventing the sharing of passwords;

(2) limiting authorized users to owners and bona fide employees with a business need to access license plates and the license plate system;

(3) removing users who no longer have a legitimate business need to access the system;

(4) securing all license plates, including [~~license plates assigned to vehicles in inventory,~~] dealer's license plates[~~,~~] and unissued or unassigned buyer's license plates, by storing license plates in a locked and secured room or closet or one or more securely locked, substantially constructed safes or steel cabinets bolted or affixed to the floor or wall of sufficient size to store all dealer and buyer's license plates in a dealer's possession, and by promptly marking and destroying, recycling, or returning void license plates as required under §215.158 of this title (relating to General Requirements for Buyer's License Plates; and

(5) securing equipment used to access the license plate system.

§215.151. License Plate General Use Requirements.

(a) If a buyer purchases a vehicle to be registered in Texas, a dealer must secure, or a government agency may secure, a license plate to the vehicle in accordance with §217.27 of this title (relating to Vehicle Registration Insignia) and update the license plate system accordingly.

(1) A dealer must secure, or a governmental agency may secure, a buyer-provided license plate on the purchased vehicle if a buyer provides a general issue, or specialty, personalized, or other qualifying license plate that is eligible to be assigned to the vehicle with approval of the department and update the license plate system accordingly.

(2) A dealer must issue a buyer's license plate to the buyer if a buyer purchases a new vehicle from a dealer and the buyer does not have a general issue, specialty, personalized, or other qualifying license plate to transfer to the vehicle.

(3) A dealer must issue, or a governmental agency may issue, a buyer's license plate to a buyer purchasing a used vehicle if [~~the vehicle does not have an assigned license plate in the license plate system or the assigned license plate is missing or damaged and~~] the buyer does not have a general issue, specialty, personalized, or other qualifying license plate to transfer to the vehicle.

(b) If a non-resident buyer purchases a vehicle to be titled and registered in accordance with the laws of the buyer's state of residence, a dealer must issue, or a governmental agency may issue, a buyer's temporary license plate and secure the temporary license plate to the rear of a vehicle in accordance with §217.27 of this title and update the license plate system accordingly.

(c) If [~~a vehicle has an assigned license plate and~~] the buyer provides a general issue, specialty, personalized, or other qualifying license plate to transfer to the vehicle, a dealer must update the license plate status in the license plate system, remove any previously assigned general issue [~~mark the~~] license plate and reassign that license plate to a vehicle of the same class within ten days, before marking as void and destroy, recycle, or return the license plate as required in §215.158 of the title (relating to General Requirements for Buyer's License Plates).

(d) A dealer, including a wholesale dealer, must remove a buyer's license plate from a purchased vehicle and store the license plate in a secure location in accordance with §215.150(f) of this title (relating to Dealer Authorization to Issue License Plates). [~~Upon vehicle sale,~~] The [~~the~~] dealer must update the license plate database and may:

(1) reassign the [~~provide the assigned~~] license plate to a vehicle of the same class within 10 days if purchased by a Texas retail buyer [~~that purchases the vehicle~~]; or

(2) [~~if the vehicle is sold to a Texas dealer, securely transfer the assigned license plate to the purchasing dealer; or~~]

[~~(3)~~] [~~if the vehicle is sold to an out-of-state buyer or for export,~~] mark the license plate as void and destroy, recycle, or return the license plate as required in §215.158 of this title.

(e) Notwithstanding subsection (a) or subsection (b) of this section, a dealer is not required to secure an assigned buyer's license plate to a lawfully purchased vehicle in the following circumstances:

(1) when a retail buyer purchases a vehicle for direct delivery to the buyer and the buyer authorizes the dealer in writing to mail or securely deliver the assigned license plate to the buyer; or

(2) when a retail buyer purchases a vehicle to be converted and authorizes the dealer in writing to mail or securely deliver the assigned license plate to a licensed converter who will affix the license plate to the completed vehicle prior to delivery to the buyer.

§215.152. Obtaining Dealer-Issued Buyer's License Plates.

(a) A dealer or governmental agency is required to have internet access to connect to webDEALER and the license plate system maintained by the department and is responsible for verifying receipt of license plates in the license plate system.

(b) Except as provided by §215.157 of this title (relating to Issuing Buyer's License Plates and License Plate Receipts When Internet Not Available) before a license plate may be issued or secured on a vehicle, a dealer or governmental agency must enter in the license plate system true and accurate information about:

(1) the vehicle;

(2) the buyer; and

(3) the license plate number issued or assigned to the vehicle.

(c) The department will inform each dealer annually of the maximum number of new buyer's license plates the dealer is authorized to obtain during the calendar year under Transportation Code, §503.063, including:

(1) an allotment of [~~unassigned~~] buyer's license plates to be issued to a buyer of a vehicle that is to be titled and registered in Texas, and

(2) a separate allotment of buyer's temporary license plates to be issued to a non-resident buyer for a vehicle that will be registered and titled in another state.

(d) The department will calculate a dealer's maximum annual allotment of new [~~unassigned~~] buyer's license plates and buyer's temporary license plates based on the following formula:

(1) Vehicle title transfers, sales, or license plate issuance data determined from the department's systems from the previous fiscal year;

(2) the total value of paragraph (1) of this subsection will be increased by a multiplier based on the dealer's time in operation giving a 10 percent increase for each year the dealer has been in operation up to 10 years; and

(3) the total value of paragraph (2) of this subsection will be increased by a multiplier that is the greater of:

(A) the dealer's actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of in-state or out-of-state sales transactions processed through the department-designated registration and title system or license plate system, except that it may not exceed 200 percent; or

(B) the statewide actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of relevant transactions processed through the department-designated registration and title system or license plate system, not less than zero, to determine the dealer's annual allotment; and

(4) the department may increase or decrease the annual allotment for dealers in the state, in a geographic or population area, or in a county, based on:

(A) changes in the market;

(B) temporary conditions that may affect sales; and

(C) any other information the department considers relevant.

(e) A dealer licensed after the commencement of a calendar year shall be allocated the number of buyer's license plates and buyer's temporary plates allocated in this subsection prorated on all or part of the remaining months until the commencement of the calendar year after the dealer's initial license expires. The initial allocations shall be as determined by the department in granting the license, but not more than:

(1) 200 buyer's license plates and 100 buyer's temporary license plates for a franchised dealer unless the dealer provides credible information indicating that a greater number of buyer's license plates is warranted based on anticipated sales, and growth, to include new and used vehicle sales, including information from the manufacturer or distributor, or as otherwise provided in this section.

(2) 100 buyer's license plates and 48 buyer's temporary license plates for a nonfranchised dealer unless the dealer provides credible information indicating that a greater number of license plates is warranted based on anticipated sales as otherwise provided in this section.

(f) An existing dealer that is:

(1) moving its operations from one location to a different location will continue with its allotment of buyer's license plates and buyer's temporary license plates and not be allocated license plates under subsection (e) of this section;

(2) opening an additional location will receive a maximum allotment of buyer's license plates and buyer's temporary license plates based on the greater of the allotment provided to existing locations, including franchised dealers opening additional locations for different line makes, or the amount under subsection (e) of this section;

(3) purchased as a buy-sell ownership agreement will receive the maximum allotment of buyer's license plates and buyer's temporary license plates provided to the location being purchased and not be allocated license plates under subsection (e) of this section; and

(4) inherited by will or laws of descent will receive the maximum allotment of buyer's license plates and buyer's temporary license plates provided to the location being inherited and not be allocated license plates under subsection (e) of this section.

(g) A new dealer may also provide credible information supporting a request for additional or fewer buyer's license plates and buyer's temporary license plates to the amount allocated under subsection (e) of this section based on:

(1) franchised dealer, manufacturer, or distributor sales expectations;

(2) a change in GDN required by death or retirement, except as provided in subsection (f) of this section;

(3) prior year's sales by a dealer moving into the state; or

(4) other similar change of location or ownership that indicates some continuity in existing operations.

(h) The annual allotment of buyer's issue license plates and buyer's temporary license plates will each be divided by four and allocated to a dealer on a quarterly basis, unless a dealer sells only antique or special interest vehicles as defined by Transportation Code, §683.077(b), in which case each allocation may be divided by two and allocated on a half-yearly basis. A dealer's remaining unissued license plates at the end of the allocation period will count towards the dealer's next allotment.

(i) A dealer is not eligible to receive a quarterly allocation in the following circumstances:

(1) the dealer's license has been closed, canceled, or revoked in a final order;

(2) the department has issued a notice of department decision under §224.56 of this title (relating to Notice of Department Decision), alleging that the dealer is in violation of §215.140 of this title (relating to Established and Permanent Place of Business Premises Requirements) and appears to have abandoned the licensed location;

(3) the department has denied the dealer access to the temporary tag system or the license plate system in accordance with §224.58 of this title (relating to Denial of Dealer Access to License Plate System) and Transportation Code, §503.0633(f);

(4) a dealer fails a compliance review performed by the department under Transportation Code, §503.063(d);

(5) the dealer license expires during that quarter and the dealer has not submitted a license renewal application to the department;

(6) a dealer does not have an owner or bona fide employee at the licensed location during posted business hours to accept a license plate delivery; or

(7) a dealer fails to keep license plates or the license plate system secure.

(j) A dealer with an active license and access to the license plate database who is ineligible to receive a quarterly allocation under subsection (i) of this section may request the department conduct a compliance review under Transportation Code, §503.063(d) to determine if the dealer is eligible to receive a future allocation by submitting a request to DealerCompliance@txdmv.gov. The department will conduct the compliance review within 14 days of the dealer's request.

(k) A dealer who has an active license but is not eligible to receive a quarterly allocation under subsection (i) of this section may obtain buyer's license plates from a county tax assessor-collector or department regional service center, as directed by the department.

(l) [~~(i)~~] A dealer may request more buyer's license plates or buyer's temporary license plates:

(1) after using 50 percent of the quarterly allocation of general issue plates or buyer temporary plates, a dealer may request an advance on the next quarter's allotment; or

(2) after using 50 percent of the allotted annual maximum number of general issue plates or buyer temporary plates a dealer may request an increase in the annual allotted number of license plates.

(m) A dealer may request fewer buyer's license plates or buyer's temporary license plates:

(1) after using less than 50 percent of the quarterly allocation of general issue license plates or buyer temporary license plates in a quarter; or

(2) after using less than 50 percent of the allotted annual maximum number of general issue license plates or buyer temporary license plates in a year.

(n) [~~(j)~~] To receive more buyer's license plates or buyer's temporary license plates or to request a decrease in a quarterly or annual allocation [~~under subsection (i)~~], a dealer must submit a request in the department's designated license plate system.

(o) [~~(k)~~] A dealer requesting an increase or decrease in the maximum annual allotment of buyer's license plates or buyer's temporary license plates must provide information demonstrating the need for additional license plates results from business operations, including anticipated needs, as required by Transportation Code, §503.0633(c). Information may include documentation of sales and tax reports filed as required by law, information of anticipated need, or other information of the factors listed in Transportation Code, §503.0633(b).

(1) The department shall consider the information presented and may consider information not presented that may weigh for or against granting the request that the department in its sole discretion determines to be relevant in making its determination. Other relevant information may include information of the factors listed in Transportation Code, §503.0633(b), the timing of the request, and the requestor's license plate activity.

(2) The department may allocate a lesser or greater number of [~~additional~~] license plates than the amount requested. Allocation of a lesser or greater number of [~~additional~~] license plates is not a denial of the request. Allocation of [~~additional~~] license plates under this paragraph does not limit the dealer's ability to submit additional requests [~~for more license plates~~].

(3) If a request is denied, the denial will be sent to the dealer by email to the requestor's email address.

(A) A dealer may appeal the denial to the designated director in the Vehicle Titles and Registration Division.

(B) The appeal must be requested though the designated license plate system within 15 days of the date the department emailed the denial to the dealer.

(C) The appeal may discuss information provided in the request but may not include additional information.

(D) The designated director in the Vehicle Titles and Registration Division will review the appeal and any additional statements concerning the information submitted in the original request and render an opinion within 15 days of receiving the appeal. The designated director in the Vehicle Titles and Registration Division may decide to deny the appeal [~~and issue no additional license plates~~] or award an amount of [~~additional~~] license plates that is lesser, equal to, or greater than the request.

(E) The requesting dealer will be notified as follows:

(i) If the designated director in the Vehicle Titles and Registration Division decides to deny the appeal, the department will contact the requesting dealer by email regarding the decision and options to submit a new request with additional relevant credible supporting documentation or to pursue a claim in district court; or

(ii) If the designated director in the Vehicle Titles and Registration Division awards an amount of [~~additional~~] license plates that is lesser, equal to, or greater than the request, the [~~additional license plates will be added to the~~] dealer's allocation will be adjusted and the dealer will be contacted by email regarding the decision, informed that the request has not been denied, and informed about options to submit a new request.

(4) The designated director in the Vehicle Titles and Registration Division's decision on appeal is final.

(5) Once a denial is final, a dealer may only submit a subsequent request [~~for additional license plates~~] during that calendar year if the dealer is able to provide additional information not considered in a prior request.

(p) [~~(l)~~] A change in the allotment under subsection (i) of this section does not create a dealer base for subsequent year calculations.

(q) [~~(m)~~] The department may at any time initiate an enforcement action against a dealer if license plate system activity suggests that misuse or fraud has occurred as described in Transportation Code §503.0633(f) or §503.0671.

§215.155. Buyer's License Plates.

(a) A dealer may issue and secure a buyer's license plate or a buyer's temporary license plate only on a vehicle:

(1) from the selling dealer's inventory; and

(2) that can be legally operated on the public streets and highways; and

(3) for which a sale or lease has been consummated; and

(4) that has a valid inspection in accordance with Transportation Code Chapter 548, unless:

(A) an inspection is not required under Transportation Code §503.063(i) or (j); or

(B) the vehicle is exempt from inspection under Chapter 548.

(b) A dealer may not issue a buyer's general issue or temporary license plate to the buyer of a vehicle that is to be titled but not registered.

(c) For a wholesale transaction,[~~:~~]

[~~(1)~~] a dealer may not issue a buyer's license plate; rather the purchasing dealer places on the motor vehicle its own:

(1) [~~(A)~~] dealer's temporary license plate; or

(2) [~~(B)~~] dealer's standard or personalized prestige license plate.

[~~(2) if a general issue plate is assigned to a vehicle, the selling dealer must provide the license plate to the purchasing dealer for placement on the vehicle at time of retail sale.~~]

(d) A buyer's temporary license plate is valid until the earlier of:

(1) the date on which the vehicle is registered; or

(2) the 60th day after the date of purchase.

(e) A dealer shall charge a buyer a fee of $10, unless the vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456. A dealer shall remit the fee to the county with the title transfer application for deposit to the credit of the Texas Department of Motor Vehicles fund. If the vehicle is sold by a dealer to an out-of-state resident:

(1) the dealer shall remit the entire fee to the department for deposit to the credit of the Texas Department of Motor Vehicles fund if payment is made through the department's designated electronic system; or

(2) the dealer shall remit the fee to the county for deposit to the credit of the Texas Department of Motor Vehicles fund.

(f) A governmental agency may charge a buyer a fee of $10 unless the vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456. If collected by a governmental agency, the fee must be sent to the county for deposit to the credit of the Texas Department of Motor Vehicles fund.

§215.158. General Requirements for Buyer's License Plates.

(a) A dealer or governmental agency is responsible for the safekeeping of all license plates in the dealer's or governmental agency's possession consistent with the requirements in §215.150 of this title (relating to Dealer Authorization to Issue License Plates). A dealer or governmental agency shall report any loss, theft, or destruction of a buyer's license plate or buyer's temporary license plate to the department in the system designated by the department within 24 hours of discovering the loss, theft, or destruction.

(b) When a dealer is required to [~~remove and~~] void a previously assigned buyer's license plate or other type of license plate from a vehicle [~~sold to an out-of-state buyer or for another reason allowed by rule~~], the dealer shall render a void plate unusable by permanently marking the front of the plate with the word "VOID" or a large "X"; and within 10 days:

(1) destroy the license plate; or

(2) recycle the license plate using a metal recycler registered under Occupations Code, Chapter 1956; or

(3) return the license plate to the department or county tax assessor-collector.

(c) A dealer or governmental agency must return all license plates in the dealer's possession to the department within 10 days of closing the associated license or within 10 days of the associated license being revoked, canceled, or closed by the department.

§215.163. License Plate Disposition for Motor Vehicles Sold at Auction or on Consignment.

(a) Wholesale motor vehicle auctions. A wholesale motor vehicle auction GDN holder who receives a consignment and delivery of a motor vehicle from a person who is not a GDN holder for the purpose of sale at auction shall:

(1) remove and mark any license plate as void; and

(2) destroy, recycle, or return any license plate as required in §215.158 of this title (relating to General Requirements for Buyer's License Plates).

(b) Public auctions.

(1) Before offering a consigned vehicle for sale at a public auction, a dealer must remove any license plate and return the license plate to the vehicle's owner or destroy, recycle, or return the license plate in accordance with §215.158 of this title.

(2) If the purchaser at a public auction is a Texas retail buyer, a dealer shall issue a buyer's license plate to the purchaser, unless the buyer has a general issue, specialty, personalized, or other qualifying license plate to transfer, and update the license plate database in accordance with §215.151 of this title (relating to License Plate General Use Requirements).

(3) If the purchaser at the public auction is a dealer, export buyer, or out-of-state buyer, the selling dealer shall not issue a buyer's license plate.

(4) Notwithstanding §215.150(c) of this title (relating to Dealer Authorization to Issue License Plates), if the purchaser at a public auction is an out-of-state buyer, the dealer shall issue a buyer's temporary license plate only if the purchaser requires this license plate to transport the vehicle to another state in which the vehicle will be titled and registered in accordance with the laws of that state.

(c) Other consignment sales.

(1) Before offering for sale a consigned motor vehicle with a license plate owned by a person who is not a GDN holder, the dealer shall remove and return the license plate to the vehicle's owner. The dealer to whom the vehicle is consigned may use its dealer's temporary license plate to demonstrate the consigned motor vehicle to a potential purchaser.

(2) Upon the sale of a consigned motor vehicle owned by a person who is not a GDN holder:

(A) a dealer shall issue a buyer's license plate to a Texas retail buyer who purchases the consigned vehicle, unless the buyer has a general issue, specialty, personalized, or other qualifying license plate to transfer, and update the license plate database in accordance with §215.151 of this title;

(B) a dealer shall not issue a buyer's license plate If the purchaser of the consigned vehicle is a dealer, export buyer, or out-of-state buyer; and

(C) notwithstanding §215.150(c) of this title, if the purchaser of a consigned vehicle is an out-of-state buyer, the dealer shall issue a buyer's temporary license plate only if the purchaser requires this license plate to transport the vehicle to another state in which the vehicle will be titled and registered in accordance with the laws of that state.

(3) An independent motor vehicle dealer who receives consignment and delivery of a salvage vehicle or total loss vehicle (as defined by the applicable insurance contract) for sale from a person who is not a GDN holder shall remove any license plate and destroy, recycle, or return the license plate as required in §215.158 of this title.

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

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General Counsel
Texas Department of Motor Vehicles
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CHAPTER 217. VEHICLE TITLES AND REGISTRATION

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code (TAC) Subchapter B, Motor Vehicle Registration, §§217.27, 217.52, and 217.53; and Subchapter I, Processing and Handling Fees, §217.185.

The proposed amendments are necessary to implement legislation, to clarify rule language, and to remove a fee discount that is no longer necessary to incentivize online registration transactions.

EXPLANATION.

Proposed amendments to §217.27(c)(2)(B) would delete references to Transportation Code, §548.102, the language pertaining to an outstanding inspection period, and the language regarding an application for registration in the name of the purchaser. Proposed amendments would also insert reference to Transportation Code, §502.044(a-1) for the authority to register certain motor vehicles for a period of 24 consecutive months. These proposed amendments are necessary to implement Senate Bill (SB) 1729, 89th Legislature, Regular Session (2025), which amended Transportation Code, §502.044 to designate a motor vehicle registration period of 24 consecutive months for new passenger cars and light trucks sold in Texas or purchased by a commercial fleet buyer described by Transportation Code, §501.0234(b)(4) for use in Texas. The proposed amendments to §217.27(c)(2)(B) are also necessary to delete references to Transportation Code, §548.102 because House Bill (HB) 3297, 88th Legislature, Regular Session (2023) repealed Transportation Code, §548.102, pertaining to the initial two-year inspection period for passenger cars and light trucks.

Proposed amendments to §217.52(n)(1)(B) would clarify that the fee for restyling a multi-year vendor specialty license plate to an embossed license plate is $75, regardless of whether the specialty license plate from which the person is restyling was embossed or non-embossed. This reflects the higher costs of the embossing process on the new plate, which the department's vendor incurs regardless of whether the original plate that the person is seeking to replace was embossed. When current §217.52(n)(1)(B) was originally adopted, embossed plates were new and all restyling to an embossed plate was from a non-embossed plate. As embossed plates become more prevalent, this proposed clarification of the rule is necessary to prevent confusion and accurately reflect the fee for the restyling of an embossed plate to a new style of embossed plate.

Proposed amendments to §217.53 are necessary to implement SB 1902, 89th Legislature, Regular Session (2025), which amended Transportation Code, §504.901 to require a motor vehicle dealer who has purchased a vehicle to remove the assigned general-issue license plates from the vehicle and either transfer the license plates within 10 days to another motor vehicle purchased from their inventory, or destroy the plates. Proposed amendments to §217.53(a) would modify the language to require a dealer, upon receiving a motor vehicle in their inventory by sale or transfer, to remove the plates and remove and dispose of the registration insignia from the vehicle. A proposed amendment to §217.53(a) would also clarify that the dealer must either transfer or dispose of the general-issue license plates removed from the motor vehicle in accordance with 43 TAC §215.151(d), relating to License Plate General Use Requirements. In addition, a proposed amendment would add

standard language to state that §215.151(d) is contained in Title 43.

SB 1902 amended Transportation Code, §504.901(b) to require a seller in a transaction where neither party holds a general distinguishing number (GDN) to remove the license plates from the vehicle, and to permit the seller to transfer the removed license plates to another vehicle titled in the seller's name. Proposed amendments to §217.53(b) would implement SB 1902 by deleting the requirement for general issue license plates to remain with a motor vehicle following the sale or transfer of the motor vehicle where neither party in the transaction is a dealer, and replacing it with language requiring the seller or transferor to remove license plates from the motor vehicle. The proposed amendments to §217.53(b) would implement SB 1902 by giving sellers the option of transferring the license plates to a motor vehicle titled in their name as long as the motor vehicle is of the same classification as the motor vehicle the license plates were removed from, and upon acceptance of a request made to a county tax assessor-collector through an application filed under Transportation Code, §501.023 or §502.040.

Proposed amendments to §217.53(c) would implement SB 1902 by requiring that the seller of the vehicle render unusable and dispose of any license plates that are not transferred to another vehicle. An additional amendment to §217.53(c) would create consistency and clarity across the department's rules by replacing a vague description of acceptable plate destruction with specific allowable methods for destroying or disposing of license plates, paralleling the requirements for dealers under §215.158(b) of this title, relating to General Requirements for Buyer's License Plates.

The language in Transportation Code, §504.901(b), as amended by SB 1902, that requires the seller of a motor vehicle, in a transaction where neither party is a dealer, to remove the license plates from the vehicle, is very similar to the language that existed in that statue prior to the amendments of HB 718, 88th Legislative Session (2023). Proposed amendments to §217.53(d) would implement SB 1902 by reverting back to a portion of the language that existed in §217.53(c) prior to the amendments that the department adopted in December 2024 to implement HB 718. The proposed amendments to §217.53(d) would inform a purchaser of a motor vehicle, where neither party is a dealer and the seller has removed the license plates, of the option to secure a vehicle transit permit under Transportation Code, §502.492. This permit would allow the purchaser to operate the motor vehicle legally on the public roadways from the location where they purchased it to their home or to get it titled and registered.

A proposed amendment to §217.185(a)(3) would eliminate the $1 discount on registration transactions processed through Texas by Texas (TxT) or the department's Internet Vehicle Title and Registration Service (IVTRS). The proposed amendment is necessary to address increased costs for processing registration transactions. The current processing and handling fee, and associated online discount, were established in 2016 and implemented in January 2017. The online discount was created to incentivize Texans to use the online system. Subsequently, the department deployed TxT, which is a mobile application through which a registrant may renew their vehicle registration. Since 2017, the fee and online discount amounts have remained the same, while costs for processing registration transactions throughout the state have increased. In accordance with Transportation Code, §502.1911, the processing and handling fee set by rule must be "sufficient to cover the expenses associated with collecting registration fees." The cumulative inflation rate from January 2017 to January 2025 is over 34%, which has translated into increased costs for information technology infrastructure and staffing to support registration transactions statewide. Moreover, the incentive to get Texans to adopt the online system has worked and is no longer needed: around 30% of registration renewal transactions went through TxT and IVTRS in the past three years. Eliminating the discount for transactions processed online will help support the increased costs of collecting registration fees. The established registration fees would remain the same, and this proposal only seeks to eliminate the online registration discount in the amount of $1 per registered vehicle per year.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Annette Quintero, Director of the Vehicle Titles and Registration Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years that the proposed amendments to §217.27 and §217.53 will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration. There will be no foreseeable impact on costs or revenue.

Ms. Bowman has determined that for each year of the first five years that the proposed amendments to §217.52 are in effect, there will be no significant fiscal impact on state or local governments. The proposed amendments to §217.52 clarify that the fee for restyling an embossed specialty plate to another embossed specialty plate is $75 rather than $50, which is the fee to restyle non-embossed plates. This $25 difference in the applicable fee will not result in significant revenue for state government because the embossed plate program is new and the numbers of embossed plates in circulation are small: the state has not yet collected any fees for restyling an embossed specialty plate to another embossed specialty plate so the clarification of the fee cannot create a change in revenue, and only 9,262 vehicles statewide currently have embossed specialty plates. Even if every owner of a vehicle with an embossed specialty plate decided to restyle it to another embossed specialty plate in the same year, the proposed amendments to §217.52 would result in a statewide total revenue increase of only $231,550 per year. The proposed amendments to §217.52 will have no impact on costs to state or local government.

Ms. Bowman has determined that for each year of the first five years the proposed amendments to §217.185 will be in effect, there will be a fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Elimination of the $1.00 online discount will result in additional revenue to the state in the amount of approximately $6,000,000 per year. The proposed amendments to §217.185 will have no impact to costs to state or local government.

PUBLIC BENEFIT AND COST NOTE. Ms. Quintero and Ms. Bowman have also determined that, for each year of the first five years proposed amendments are in effect, there are several public benefits anticipated and no significant economic costs for persons required to comply with the rules.

Anticipated Public Benefits. The proposed amendments to §217.27 would clarify and prevent confusion about the board's rules regarding two-year registration for new vehicles. The proposed amendments to §217.52 would clarify the fees for

restyling a vendor specialty license plate to an embossed plate to prevent confusion for the public. The proposed amendments to §217.53 would clarify and provide easy reference for the public on what to do with the license plates on their vehicle when they sell it, and how to get a temporary permit when they buy a vehicle without plates. The proposed amendments to §217.185 would ensure sufficient funding for the department to continue to provide efficient and accessible vehicle registration services, online, by mail and in-person.

Anticipated Costs to Comply with the Proposal. Ms. Quintero anticipates that only the proposed amendments to §217.185 will create a cost to comply, and that cost would not be significant. The cost to comply with the proposed amendments to §217.185 would only be $1 per year for persons who register their vehicles online, due to the loss of the $1 online discount. The proposed amendments to §217.27 and §217.53 do not create any costs. Compliance is not required for the cost to restyle a vendor specialty plate to an embossed plate style under the proposed amendments to §217.52 because a person can avoid the cost by choosing not to restyle their vendor specialty plate.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. The department does not anticipate an adverse economic impact to small business, micro-businesses or rural communities as a result of the proposed amendments to §§217.27, 217.52 and 217.53. Regarding the proposed amendments in §217.185, the department anticipates an adverse economic effect on small businesses and micro-businesses that own vehicles and renew the registration for those vehicles online. There will be no adverse impact on rural communities from the proposed amendments since rural governments are exempt from vehicle registration fees under Transportation Code, Chapter 502, Subchapter J.

Of the 3.3 million estimated small and micro-businesses in Texas identified in the 2024 U.S. Small Business Administration Report, it is unknown precisely how many own and register vehicles. However, based on the industries represented in the data, it is reasonable to assume that approximately 64% (or 2.1 million) would have dedicated vehicles registered by the business. Online registration transactions make up approximately 30% of total registrations, suggesting that even if every small and micro-business of that estimated 2.1 million with a dedicated vehicle renewed their registrations online, the total would be approximately 739,000, with an expected adverse economic impact of only $1 per vehicle registered online, per year.

Under Government Code, §2006.002, the department must perform a regulatory flexibility analysis for the proposed amendments to §217.185. The department considered alternatives of not adopting the amendments to §217.185, exempting small and micro-businesses from these amendments, and adopting an online discount of less than $1 for small and micro-business applicants. The department rejected all three options. Foregoing or reducing the revenue created by removing the $1 online discount for 739,000 small and micro-businesses would leave the vehicle registration system underfunded and unable to cover costs, which would in turn make vehicle registration less efficient and less reliable, causing negative repercussions for law enforcement's ability to identify and track vehicles and for vehicle safety. The department, after considering the purpose of the authorizing statutes that require it to "set the fee in an amount that…is sufficient to cover expenses associated with collecting registration fees," does not believe it is feasible to waive or limit the requirements of the proposed amendments for small or micro-business GDN dealers.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendments are in effect, no government program would be created or eliminated. Implementation of the proposed amendments would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or a decrease of fees paid to the department. The proposed amendments to §217.52 may result in an increase of fees paid to the department as embossed plates becomes more prevalent and restyling from an embossed plate to another embossed plate becomes more common. The proposed amendments to §217.185 will create an increase of $6,000,000 in fees paid to the department. The proposed amendments to §217.185 would not result in an increase or decrease of a fee, however they would remove an optional online transaction discount, resulting in the department retaining a higher percentage of the unchanged fee. The proposed amendments would not create a new regulation or repeal a regulation. The proposed amendments to §217.52 would expand an existing regulation by including restyling from an embossed plate to another embossed plate design. The proposed amendments to §217.185 would limit an existing regulation by removing the $1 online discount from registration fees. Lastly, the proposed amendments do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on August 25, 2025. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §§217.27, 217.52, 217.53

STATUTORY AUTHORITY. The department proposes amendments to §§217.27, 217.52, and 217.53 under Transportation Code, §502.0021, which gives the department the authority to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §502.044, as amended by Senate Bill 1729, 89th Regular Session (2025), to designate a registration period of 24 consecutive months for certain passenger cars and light trucks; Transportation Code, §504.0011, which gives the board authority to implement and administer Transportation Code, Chapter 504, License Plates; Transportation Code, §504.010, which authorizes the department to adopt rules governing the issuance and placement of license plates on motor vehicles; Transportation Code, §504.0051, which gives the

department authority to issue personalized license plates and forbids the department from issuing replacement personalized license plates unless the vehicle owner pays the statutory fee required under Transportation Code, §504.007; Transportation Code, §504.007, which states that replacement license plates can only be issued if the vehicle owner pays the statutory fee; Transportation Code, §504.6011, which authorizes the sponsor of a specialty license plate to reestablish its specialty license plate under Subchapter J of Transportation Code, Chapter 504, and for the board to establish the fees under Transportation Code, §504.851; Transportation Code, §504.851(a), which allows the department to contract with a private vendor to provide specialty and personalized license plates; Transportation Code, §504.851(b)-(d), which authorize the board to establish fees by rule for the issuance or renewal of personalized license plates that are marketed and sold by the vendor as long as the fees are reasonable and not less than the amounts necessary to allow the department to recover all reasonable costs associated with the procurement, implementation and enforcement of the vendor's contract; Transportation Code, §504.851(i), which requires a contract entered into by the department and a private vendor for the marketing and sale of specialty license plates to allow the vendor to establish a range of premium embossed specialty license plates to be sourced, marketed, and sold by the private vendor; the rulemaking authority provided under Section 3 of Senate Bill 1902, 89th Legislature (2025); and Transportation Code §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout the this preamble.

CROSS REFERENCE TO STATUTE. Transportation Code, Chapters 502, 504, and 1002.

§217.27. Vehicle Registration Insignia.

(a) On receipt of a complete initial application for registration with the accompanying documents and fees, the department will issue vehicle registration insignia to be displayed on or kept in the vehicle for which the registration was issued for the current registration period.

(1) If the vehicle has a windshield, the vehicle registration insignia shall be attached to the inside lower left corner of the vehicle's front windshield in a manner that will not obstruct the vision of the driver, unless the vehicle is registered under Transportation Code, Chapter 504, Subchapter B-1.

(2) If the vehicle has no windshield, the vehicle registration insignia shall be attached to the rear license plate unless the vehicle is registered under Transportation Code, Chapter 504, Subchapter B-1, except that registration receipts, retained inside the vehicle, may provide the record of registration for vehicles with permanent trailer plates.

(3) If the vehicle is registered under Transportation Code, Chapter 504, Subchapter B-1, the registration receipt, symbol, tab, or other device prescribed by and issued by the department must be retained with the vehicle and may provide the record of registration for vehicles with a digital license plate. The expiration month and year must appear digitally on the electronic visual display of the rear digital license plate.

(4) If the vehicle is registered as a former military vehicle as prescribed by Transportation Code, §504.502, the vehicle's registration number shall be displayed instead of displaying a symbol, tab, or license plate.

(A) Former military vehicle registration numbers shall be displayed on a prominent location on the vehicle in numbers and letters of at least two inches in height.

(B) To the extent possible, the location and design of the former military vehicle registration number must conform to the vehicle's original military registration number.

(b) Unless otherwise prescribed by law, each vehicle registered under this subchapter:

(1) must display two license plates that are clearly visible, readable, and legible, one at the exterior front and one at the exterior rear of the vehicle that are securely fastened at the exterior front and rear of the vehicle in an upright horizontal position of not less than 12 inches from the ground, measuring from the bottom; or

(2) must display one plate that is securely fastened at or as close as practical to the exterior rear of the vehicle in a position not less than 12 inches from the ground, measuring from the bottom if the vehicle is a road tractor, motorcycle, trailer or semitrailer, except that a vehicle described by Transportation Code, §621.2061 may place the rear plate so that it is clearly visible, readable, and legible.

(c) Each vehicle registered under this subchapter must display license plates:

(1) assigned by the department for the period; or

(2) validated by a registration insignia issued by the department for a registration period consisting of 12 consecutive months at the time of application for registration, except that:

(A) vehicles described by Transportation Code, §502.0024 may obtain a registration insignia for a period consisting of 12, 24, 36, 48 or 60 consecutive months on payment of all fees for each full year of registration; and

(B) vehicles may be registered for 24 consecutive months in accordance with Transportation Code, §502.044(a-1) [~~§548.102~~] on payment of all fees for each year of registration.[~~, regardless of the number of months remaining on the inspection at the time of registration, provided:~~]

~~f(i)~~ ~~the vehicle receives a two-year inspection under Transportation Code, §548.102; and~~]

~~f(ii)~~ ~~the application for registration is made in the name of the purchaser under Transportation Code, §501.0234.~~]

(d) The department may cancel any license plate issued with a personalized license plate number if the department subsequently determines or discovers that the personalized license plate number did not comply with this section when the license plate was issued, or if due to changing language usage, meaning, or interpretation, the personalized license plate number no longer complies with this section. When reviewing a personalized license plate number, the department need not consider the applicant's subjective intent or declared meaning. The department will not issue any license plate containing a personalized license plate number that meets one or more of the following criteria:

(1) The license plate number conflicts with the department's current or proposed general issue license plate numbering system.

(2) The director or the director's designee finds that the personalized license plate number may be considered objectionable. An objectionable license plate number may include words, phrases, or slang in any language; phonetic, numeric, or reverse spelling; acronyms; patterns viewed in mirror image; or code that only a small

segment of the community may be able to readily decipher. An objectionable pattern may be viewed as:

(A) indecent (defined as including a direct reference or connotation to a sexual act, sexual body parts, excreta, or sexual bodily fluids or functions. Additionally, the license plate number "69" is prohibited unless used with the full year (1969) or in combination with a reference to a vehicle;

(B) vulgar, directly or indirectly (defined as profane, swear, or curse words);

(C) derogatory, directly or indirectly (defined as an expression that is demeaning to, belittles, or disparages any person, group, race, ethnicity, nationality, gender, or sexual orientation. "Derogatory" may also include a reference to an organization that advocates the expressions described in this subparagraph);

(D) a direct or indirect negative instruction or command directed at another individual related to the operation of a motor vehicle;

(E) a direct or indirect reference to gangs, illegal activities, implied threats of harm, or expressions that describe, advertise, advocate, promote, encourage, glorify, or condone violence, crime, or unlawful conduct;

(F) a direct or indirect reference to controlled substances or the physiological state produced by such substances, intoxicated states, or a direct or indirect reference that may express, describe, advertise, advocate, promote, encourage, or glorify such substances or states;

(G) a direct representation of law enforcement or other governmental entities, including any reference to a public office or position exclusive to government; or

(H) a pattern that could be misread by law enforcement.

(3) The license plate number is currently on a license plate issued to another owner.

(e) Notwithstanding the provisions of this section, the department may issue license plates with personalized license plate numbers that refer to:

(1) military branches, military rank, military units, military equipment, or status; or

(2) institutions of higher education, including military academies, whether funded privately, by the state, or by the federal government.

(f) A decision to cancel or not to issue a license plate with a personalized license plate number under subsection (d) of this section may be appealed to the executive director of the department or the executive director's designee within 20 days of notification of the cancellation or non-issuance. All appeals must be in writing, and the requesting party may include any written arguments, but shall not be entitled to a contested case hearing. The executive director or the executive director's designee will issue a decision no later than 30 days after the department receives the appeal, unless additional information is sought from the requestor, in which case the time for decision is tolled until the additional information is provided. The decision of the executive director or the executive director's designee is final and may not be appealed to the board. An appeal to the executive director or the executive director's designee is denied by operation of law 31 days from the receipt of the appeal, or if the requestor does not provide additional requested information within ten days of the request.

(g) The provisions of subsection (a) of this section do not apply to vehicles registered with annual license plates issued by the department.

(h) A person whose initial application has been denied will receive a refund if the denial is not appealed in accordance with subsection (f) of this section. If an existing license plate with a personalized license plate number has been canceled, the person may choose a new personalized license plate number that will be valid for the remainder of the term, or the remaining term of the canceled license plate will be forfeited.

§217.52. Marketing of Specialty License Plates through a Private Vendor.

(a) Purpose and scope. The department will enter into a contract with a private vendor to market department-approved specialty license plates in accordance with Transportation Code, Chapter 504, Subchapter J. This section sets out the procedure for approval of the design, purchase, and replacement of vendor specialty license plates. In this section, the license plates marketed by the vendor are referred to as vendor specialty license plates.

(b) Application for approval of vendor specialty license plate designs.

(1) Approval required. The vendor shall obtain the approval of the board for each license plate design the vendor proposes to market in accordance with this section and the contract entered into between the vendor and the department.

(2) Application. The vendor must submit a written application on a form approved by the executive director to the department for approval of each license plate design the vendor proposes to market. The application must include:

(A) a draft design of the specialty license plate;

(B) projected sales of the license plate, including an explanation of how the projected figure was determined;

(C) a marketing plan for the license plate including a description of the target market;

(D) a licensing agreement from the appropriate third party for any design or design element that is intellectual property; and

(E) other information necessary for the board to reach a decision regarding approval of the requested vendor specialty license plate.

(c) Review and approval process. The board will review vendor specialty license plate applications. The board:

(1) will not consider incomplete applications; and

(2) may request additional information from the vendor to reach a decision.

(d) Board decision.

(1) Decision. The decision of the board will be based on:

(A) compliance with Transportation Code, Chapter 504, Subchapter J;

(B) the proposed license plate design, including:

(i) whether the design meets the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness to ensure that the proposed license plate complies with Transportation Code, §504.852(c);

(iii) whether the license plate design can accommodate the International Symbol of Access (ISA) as required by Transportation Code, §504.201(f);

(iv) the criteria designated in §217.27 of this title (relating to Vehicle Registration Insignia) as applied to the design;

(v) whether a design is similar enough to an existing license plate design that it may compete with the existing license plate sales; and

(vi) other information provided during the application process.

(2) Public comment on proposed design. All proposed license plate designs will be considered by the board as an agenda item at a regularly or specially called open meeting. Notice of consideration of proposed license plate designs will be posted in accordance with Office of the Secretary of State meeting notice requirements. Notice of each license plate design will be posted on the department's Internet web site to receive public comment at least 25 days in advance of the meeting at which it will be considered. The department will notify all specialty license plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design can be submitted in writing through the mechanism provided on the department's Internet web site for submission of comments. Written comments are welcome and must be received by the department at least 10 days in advance of the meeting. Public comment will be received at the board's meeting.

(e) Final approval and specialty license plate issuance.

(1) Approval. The board will approve or disapprove the specialty license plate application based on all of the information provided pursuant to this subchapter in an open meeting.

(2) Application not approved. If the application is not approved, the applicant may submit a new application and supporting documentation for the design to be considered again by the board if:

(A) the applicant has additional, required documentation; or

(B) the design has been altered to an acceptable degree.

(3) Issuance of approved specialty license plates.

(A) If the vendor's specialty license plate is approved, the vendor must submit the non-refundable start-up fee before any further design and processing of the specialty license plate.

(B) Approval of the specialty license plate does not guarantee that the submitted draft specialty license plate design will be used. The board has final approval of all specialty license plate designs and will provide guidance on the submitted draft design to ensure compliance with the format and specialty license plate specifications.

(f) Redesign of vendor specialty license plates.

(1) On receipt of a written request from the vendor, the department will allow a redesign of a vendor specialty license plate.

(2) The vendor must pay the redesign administrative costs as provided in the contract between the vendor and the department.

(g) Multi-year vendor specialty license plates. Purchasers will have the option of purchasing vendor specialty license plates for a one-year, a three-year, or a five-year period.

(h) License plate categories and associated fees. The categories and the associated fees for vendor specialty license plates are set out in this subsection.

(1) Custom license plates. Custom license plates include license plates with a variety of pre-approved background and character color combinations that may be personalized with either three alpha and two or three numeric characters or two or three numeric and three alpha characters. Generic license plates on standard white sheeting with the word "Texas" that may be personalized with up to six alphanumeric characters are considered custom license plates before December 2, 2010. The fees for issuance of Custom and Generic license plates are $150 for one year, $400 for three years, and $450 for five years.

(2) T-Plates (Premium) license plates. T-Plates (Premium) license plates may be personalized with up to seven alphanumeric characters, including the "T," on colored backgrounds or designs approved by the department. The fees for issuance of T-Plates (Premium) license plates are $150 for one year, $400 for three years, and $450 for five years.

(3) Luxury license plates. Luxury license plates may be personalized with up to six alphanumeric characters on colored backgrounds or designs approved by the department. The fees for issuance of luxury license plates are $150 for one year, $400 for three years, and $450 for five years.

(4) Freedom license plates. Freedom license plates include license plates with a variety of pre-approved background and character color combinations that may be personalized with up to seven alphanumeric characters. The fees for issuance of freedom license plates are $195 for one year, $445 for three years, and $495 for five years.

(5) Background-only license plates. Background-only license plates include non-personalized license plates with a variety of pre-approved background and character color combinations and may be embossed or non-embossed.

(A) The fees for issuance of non-embossed, background-only license plates are $50 for one year, $130 for three years, and $175 for five years.

(B) Except as stated in subsection (h)(9)(C), the fees for embossed, background-only license plates are $125 for one year, $205 for three years, and $250 for five years.

(6) Vendor souvenir license plates. Vendor souvenir license plates are replicas of vendor specialty license plate designs that may be personalized with up to 24 alphanumeric characters. Vendor souvenir license plates are not street legal or legitimate insignias of vehicle registration. The fee for issuance of souvenir license plates is $40.

(7) Auction. The vendor may auction department-approved license plate numbers for one, three, or five year terms with options to renew indefinitely at the current price established for a one, three, or five year luxury category license plate. The purchaser of the auction license plate number may select from the vendor background designs, including any embossed license plate designs, at no additional charge at the time of initial issuance. The auction license plate number may be moved from one vendor design plate to another vendor design license plate as provided in subsection (n)(1) of this section. The auction license plate number may be transferred from owner to owner as provided in subsection (l)(2) of this section.

(8) Embossed, personalized specialty license plates. The vendor may sell embossed, personalized specialty license plates with a variety of pre-approved background and character color combinations that may be personalized with up to seven alphanumeric characters. Except as stated in subsection (h)(7) of this section, the fees for issuance of embossed, personalized specialty license plates are $270 for one year, $520 for three years, and $570 for five years. Except as stated in subsection (h)(9)(C) of this section, the fees under subsection (h)(9)

of this section do not apply to an embossed, personalized specialty license plate.

(9) Personalization and specialty license plate fees.

(A) The fee for the personalization of license plates applied for prior to November 19, 2009 is $40 if the license plates are renewed annually.

(B) The personalization fee for license plates applied for after November 19, 2009 is $40 if the license plates are issued pursuant to Transportation Code, Chapter 504, Subchapters G and I.

(C) If the license plates are renewed annually, the personalization and specialty license plate fees remain the same fee as at the time of issuance if a sponsor of a specialty license plate authorized under Transportation Code, Chapter 504, Subchapters G and I signs a contract with the vendor in accordance with Transportation Code, Chapter 504, Subchapter J, even if the board approves the specialty license plate to be an embossed specialty license plate design.

(i) Payment of fees.

(1) Payment of specialty license plate fees. The fees for issuance of vendor specialty license plates will be paid directly to the state through vendor and state systems for the license plate category and period selected by the purchaser. A person who purchases a multi-year vendor specialty license plate must pay upon purchase the full fee which includes the renewal fees.

(2) Payment of statutory registration fees. To be valid for use on a motor vehicle, the license plate owner is required to pay, in addition to the vendor specialty license plate fees, any statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(j) Refunds. Fees for vendor specialty license plate fees will not be refunded after an application is submitted to the vendor and the department has approved issuance of the license plate.

(k) Replacement.

(1) Application. An owner must apply directly to the county tax assessor-collector for the issuance of replacement vendor specialty license plates and must pay the fee described in paragraphs (2) or (3) of this subsection, whichever applies.

(2) Lost or mutilated vendor specialty license plates. To replace vendor specialty license plates that are lost or mutilated, the owner must pay the statutory replacement fee provided in Transportation Code, §504.007.

(3) Optional replacements. An owner of a vendor specialty license plate may replace vendor specialty license plates by submitting a request to the county tax assessor-collector accompanied by the payment of a $6 fee.

(4) Interim replacement tags. If the vendor specialty license plates are lost or mutilated to such an extent that they are unusable, replacement specialty license plates may be remanufactured. The county tax assessor-collector will issue interim replacement tags for use until the replacements are available. The owner's vendor specialty license plate number will be shown on the interim replacement tags.

(5) Stolen vendor specialty license plates. The county tax assessor-collector will not approve the issuance of replacement vendor specialty license plates with the same license plate number if the department's records indicate that the vehicle displaying that license plate number was reported stolen or the license plates themselves were reported stolen to law enforcement.

(l) Transfer of vendor specialty license plates.

(1) Transfer between vehicles. The owner of a vehicle with vendor specialty license plates may transfer the specialty license plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the specialty license plates are transferred:

(A) is titled or leased in the owner's name; and

(B) meets the vehicle classification requirements for that specialty license plate.

(2) Transfer between owners. Vendor specialty license plates may not be transferred between persons unless the specialty license plate number was initially purchased through auction as provided in subsection (h)(7) of this section. An auctioned license plate number may be transferred as a specialty license plate or as a virtual pattern to be manufactured on a new background as provided under the restyle option in subsection (n)(1) of this section. In addition to the fee paid at auction, the new owner of an auctioned license plate number or plate will pay the department a fee of $25 to cover the cost of the transfer, and complete the department's prescribed application at the time of transfer.

(m) Gift license plates.

(1) A person may purchase license plates as a gift for another person if the purchaser submits a statement that provides:

(A) the purchaser's name and address;

(B) the name and address of the person who will receive the license plates; and

(C) the vehicle identification number of the vehicle on which the license plates will be displayed or a statement that the license plates will not be displayed on a vehicle.

(2) To be valid for use on a motor vehicle, the recipient of the license plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(n) Restyled vendor specialty license plates. A person who has purchased a multi-year vendor specialty license plate may request a restyled license plate at any time during the term of the plate.

(1) For the purposes of this subsection, "restyled license plate" is a vendor specialty license plate that has a different style from the originally purchased vendor specialty license plate but:

(A) is within the same price category, except if the license plate number was purchased through auction and has the same alpha-numeric characters and expiration date as the previously issued multi-year license plates; or

(B) is restyling [~~from a non-embossed specialty license plate style~~] to an embossed specialty license plate style and has the same alpha-numeric characters and expiration date as the previously issued multi-year license plates.

(2) The fee for each restyled license plate is:

(A) $50 for restyling under subsection (n)(1)(A) of this section; or

(B) $75 for restyling under subsection (n)(1)(B) of this section.

§217.53. Disposition of License Plates and Registration Insignia upon Sale or Transfer of Motor Vehicle.

(a) Upon the sale or transfer of a motor vehicle to a dealer, the dealer shall remove the license plates and remove and dispose of the registration insignia from the motor vehicle. The dealer shall transfer or dispose of the removed [~~and retain the assigned~~] general issue license plates [~~for disposition at the time of a subsequent purchase~~] in accordance with §215.151(d) of this title (relating to License Plate General Use Requirements)[~~, and the dealer shall remove and dispose of the registration insignia as provided in Transportation Code, §502.491~~].

(b) Upon the sale or transfer of a motor vehicle in which neither party is a dealer, the [~~general issue~~] license plates shall be removed from [~~remain with~~] the motor vehicle by the seller or transferor [~~as provided in Transportation Code, §504.901~~]. The removed license plates may be transferred to another motor vehicle if the following requirements are met:

(1) the motor vehicle is titled in the seller's or transferor's name;

(2) the motor vehicle is of the same vehicle classification as the motor vehicle from which the license plates were removed; and

(3) the county tax assessor-collector with which the application is filed accepts a request to transfer the license plates by as provided by Transportation Code, §501.023 or §502.040, whichever applies.

(c) License plates that are not transferred to another motor vehicle as described in subsection (b) of this section within 10 days after the date the license plate is removed from the motor vehicle [~~A license plate other than a general issue license plate shall be removed by the owner of a motor vehicle that is sold or transferred. Removed license plates may be transferred if eligible; otherwise,~~] must be rendered unusable by permanently marking the front of the plate with the word "VOID" or a large "X" and: [~~disposed of in a manner that renders the license plates unusable or that ensures the license plates will not be available for fraudulent use on a motor vehicle~~].

(1) destroying the license plate;

(2) recycling the license plate using a metal recycler registered under Occupations Code Chapter 1956; or

(3) returning the license plate to the department or county tax assessor-collector.

(d) A person who obtains a motor vehicle in a transaction described by subsection (b) of this section may obtain one vehicle transit permit (temporary single-trip permit), as provided by Transportation Code, §502.492, through the department's website at www.txdmv.gov. [~~If the purchaser at a retail sale chooses to obtain replacement general issue license plates, the replaced license plates must be disposed of in a manner that renders the license plates unusable or that ensures the license plates will not be available for fraudulent use on a motor vehicle.~~]

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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SUBCHAPTER I. PROCESSING AND HANDLING FEES

43 TAC §217.185

STATUTORY AUTHORITY. The department proposes amendments to §217.185 under Transportation Code, §502.0021, which gives the department the authority to adopt rules to administer Transportation Code, Chapter 502; Transportation Code §502.1911, which authorizes the board to adopt rules to set registration processing and handling fees, and Transportation Code §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Transportation Code, Chapters 502 and 1002.

§217.185. Allocation of Processing and Handling Fees.

(a) For registration transactions, except as provided in subsection (b) of this section, the fee amounts established in §217.183 of this title (relating to Fee Amount) shall be allocated as follows:

(1) If the registration transaction was processed in person at the office of the county tax assessor-collector or mailed to an office of the county tax assessor-collector:

(A) the county tax assessor-collector may retain $2.30; and

(B) the remaining amount shall be remitted to the department.

(2) If the registration transaction was processed through the department or the TxFLEET system or is a registration processed under Transportation Code, §§502.0023, 502.091, or 502.255; or §217.46(b)(5) of this title (relating to Commercial Vehicle Registration):

(A) $2.30 will be remitted to the county tax assessor-collector; and

(B) the remaining amount shall be retained by the department.

(3) If the registration transaction was processed through Texas by Texas (TxT) or the department's Internet Vehicle Title and Registration Service (IVTRS), [~~the fee established in §217.183 of this title is discounted by $1~~]:

(A) Texas Online receives the amount set pursuant to Government Code, §2054.2591, Fees;

(B) the county tax assessor-collector may retain $.25; and

(C) the remaining amount shall be remitted to the department.

(4) If the registration transaction was processed by a limited service deputy or full service deputy appointed by the county tax assessor-collector in accordance with Subchapter H of this chapter (relating to Deputies):

(A) the deputy may retain:

(i) the amount specified in §217.168(c) of this title (relating to Deputy Fee Amounts). The deputy must remit the remainder of the processing and handling fee to the county tax assessor-collector; and

(ii) the convenience fee established in §217.168, if the registration transaction is processed by a full service deputy;

(B) the county tax assessor-collector may retain $1.30; and

(C) the county tax assessor-collector must remit the remaining amount to the department.

(5) If the registration transaction was processed by a dealer deputy appointed by the county tax assessor-collector in accordance with Subchapter H of this chapter (relating to Deputies):

(A) the deputy must remit the processing and handling fee to the county tax assessor-collector;

(B) the county tax assessor-collector may retain $2.30; and

(C) the county tax assessor-collector must remit the remaining amount to the department.

(b) For transactions under Transportation Code, §§502.093 - 502.095, the entity receiving the application and processing the transaction collects the $4.75 processing and handling fee established in §217.183:

(1) the entity may retain $4.25;

(2) the entity must remit the remaining amount to the department; and

(3) a full service deputy processing a special registration permit or special registration license plate transaction may not charge a convenience fee for that transaction.

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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CHAPTER 220. AUTOMATED MOTOR VEHICLES

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes new 43 Texas Administrative Code (TAC) Chapter 220, Automated Motor Vehicles; Subchapter A, General Provisions, §220.1 and §220.3; Subchapter B, Authorization to Operate an Automated Motor Vehicle, §§220.20, 220.23, 220.26, 220.28, and 220.30; and Subchapter C, Administrative Sanctions, §220.50, concerning automated motor vehicles.

The proposed new Chapter 220 is necessary to implement Senate Bill 2807, 89th Legislature, Regular Session (2025), which requires a person to hold an automated motor vehicle authorization to operate one or more automated motor vehicles to transport property or passengers in furtherance of a commercial enterprise on highways and streets in Texas without a human driver.

EXPLANATION.

Subchapter A. General Provisions

Proposed new §220.1 would provide the purpose and scope of proposed new Chapter 220. Proposed new §220.3 would specify that the definitions for proposed new Chapter 220 are the definitions contained in Transportation Code, Chapter 545, Subchapter J.

Subchapter B. Authorization to Operate an Automated Motor Vehicle

Proposed new §220.20 would provide the purpose and scope of proposed new Subchapter B regarding the form and manner of an application for authorization to operate one or more automated motor vehicles, as well as the requirements to update certain documents, under Transportation Code, §545.456.

Proposed new §220.23 would prescribe the form and manner by which a person may apply to the department for authorization to operate one or more automated motor vehicles, as required by Transportation Code, §545.456(a). The application requirements are similar to the application requirements in the department's rules for other programs, such as operating authority for a motor carrier under 43 TAC Chapter 218. However, the application requirements under §220.23 were customized to comply with Transportation Code, §545.456 and to obtain information that the department needs to comply with new Chapter 220 and Transportation Code, §545.456 and §545.459. The requirement for the applicant to provide the business entity type and Texas Secretary of State file number, as applicable, will assist the department in identifying the applicant and verifying certain application information as necessary.

The vehicle descriptive information specified in proposed new §220.23(b)(1)(B) is consistent with certain data fields that are included on Form 130-U, which is the department's Application for Texas Title and/or Registration. The information required under proposed new §220.23 may also help law enforcement determine whether an automated motor vehicle is operating under an authorization issued by the department under Transportation Code, §545.456, so the law enforcement officer can determine whether to issue a citation to the owner of the vehicle or the authorization holder under Transportation Code, §545.454(b).

Proposed new §220.26 would prescribe the requirements and process regarding an authorized holder's obligation to provide the department with updated documents under Transportation Code, §545.456(e) and §545.456(f)(2). Proposed new §220.26(b)(3) would impose a five-day deadline for an authorization holder to electronically submit an updated or current document when the department requests the authorization holder for an updated or current document under Transportation Code, §545.456(f)(2). The five-day deadline under §545.456(f)(2) is different than the deadline under §545.456(e) to address situations in which the department needs an updated or current document more quickly than 30 days, such as when the operation of an automated motor vehicle endangers the public as stated in Transportation Code, §545.459(a) and (b), or when a law enforcement officer needs updated or current documents to determine whether an automated motor vehicle is operating under an authorization issued by the department under Transportation Code, §545.456. However, proposed new §220.26(b)(3) would also authorize the department to grant an extension on the five-day deadline in response to a written request from the authorization holder.

Proposed new §220.26(b)(4) would require the authorization holder to submit any requests for an extension prior to the department's deadline for the updated or current document.

A request for an extension after the deadline has passed is not a reasonable request. Proposed new §220.26(b)(4) would also require an extension request to be sent to the designated address listed in the department's request to the authorization holder for an updated or current document. This will allow the department flexibility in determining how best to staff and monitor communications with authorization holders. Proposed new §220.26(b)(5) would require the authorization holder's request for an extension to contain an explanation on why five days is not reasonable, why the authorization holder needs more time (including the specific deadline the authorization holder is requesting), and whether the authorization holder's requested deadline is likely to result in harm to the public health, safety, or welfare. Automated motor vehicles are a new and evolving technology. The authorization holder is in the best position to know about the automated motor vehicles that it operates and the automated motor vehicle industry in general. The authorization holder is in the best position to articulate its reasons for an extension on the five-day deadline.

Proposed new §220.28 would provide clarity to the automated motor vehicle industry regarding the computation of time under proposed new Chapter 220, as well as under Transportation Code, §545.456 and §545.459, by aligning the computation with Government Code, §311.014 and specifying calendar days rather than business days.

Proposed new §220.30 would require a written statement and certification required by Transportation Code, §545.456 to contain an authorized signature to ensure that the statement and certification are accurate and enforceable. An electronic signature is legally acceptable under Business and Commerce Code, §322.007.

Subchapter C. Administrative Sanctions

Proposed new §220.50 would state that the department's rules regarding administrative sanctions for authorization holders are located in Chapter 224 of the department's rules. This proposed new section is consistent with other department rules, which state where to find the department's rules relating to adjudicative practice and procedure as a courtesy to the regulated industries and others.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the new sections will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Jimmy Archer, Director of the Motor Carrier Division (MCD), has determined that there will be no significant impact on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Archer has also determined that, for each year of the first five years the new sections are in effect, there are several anticipated public benefits and no costs of compliance.

Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include the safety of the traveling public, and consistent requirements for the automated motor vehicle industry operating in Texas. The application requirements for an authorization under proposed new §220.23, as well as updates to the documents under proposed new §220.26, would provide information to the department that the department needs to impose administrative sanctions against an authorization holder under Chapter 224 of this title, including the suspension, revocation, or cancellation of the authorization, if the department determines that the operation of the automated motor vehicle on a highway or street in this state endangers the public. The information that an applicant must provide to the department under proposed new §220.23, as well as updates to the documents under proposed new §220.26, would provide information for law enforcement to determine whether to issue a citation to the owner or the authorization holder for a violation of traffic or motor vehicle laws related to the vehicle under Transportation Code, §545.454(b).

The proposed new rules in Chapter 220 would provide consistency for the automated motor vehicle industry operating in Texas because the language in proposed new §220.23 would prescribe certain information that an applicant for authorization under Transportation Code, §545.456 must provide to the department, as well as the form by which a person may apply for such authorization, and the form by which an authorization holder shall update a document described by Transportation Code, §545.456(b)(1), (2), or (3).

Anticipated Costs To Comply With The Proposal. Mr. Archer anticipates that there will be no costs to comply with these proposed rules. The proposed rules do not impose a fee on an applicant for authorization under Transportation Code, §545.456. Also, most of the application requirements are specified by Transportation Code, §545.456.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed new sections will not have an adverse economic effect on small businesses, micro-businesses, and rural communities because the rules do not create costs beyond those required by statute. In addition, the requirements under proposed new Chapter 220 are created to ensure the safety of the traveling public in this state, which falls under the exception in Government Code, §2006.002(c-1). Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed new sections are in effect, a new government program would be created. Implementation of the proposed new sections would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed new sections create new regulations, and do not expand, limit or repeal existing regulations. Lastly, the proposed new sections do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on August 25, 2025. A request for a public hearing must be sent separately from your written com-

ments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §220.1, §220.3

STATUTORY AUTHORITY. The department proposes new sections under Transportation Code, §545.456, which requires the board by rule to prescribe the form and manner by which a person may apply to the department for authorization to operate automated motor vehicles to transport property or passengers in furtherance of a commercial enterprise on highways and streets in this state without a human driver; Transportation Code, §545.453, which authorizes the board to adopt rules that are necessary to administer Subchapter J of Chapter 545 of the Transportation Code; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The proposed new sections would implement Transportation Code, Chapter 545, Subchapter J, and §1002.001; and Government Code, Chapter 2001.

§220.1. Purpose and Scope.

This chapter prescribes the form and manner by which a person may apply to the department for authorization to operate one or more automated motor vehicles to transport property or passengers in furtherance of a commercial enterprise on highways and streets in this state without a human driver, as well as the requirements for an authorization holder to provide the department with certain updated documents, under Transportation Code, §545.456. This chapter also references the department's authority to impose administrative sanctions against an authorization holder under Transportation Code, §545.456 and §545.459.

§220.3. Definitions.

The definitions contained in Transportation Code, Chapter 545, Subchapter J govern this chapter. In the event of a conflict, the definitions referenced in Transportation Code, Chapter 545, Subchapter J control.

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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SUBCHAPTER B. AUTHORIZATION TO OPERATE AN AUTOMATED MOTOR VEHICLE

43 TAC §§220.20, 220.23, 220.26, 220.28, 220.30

STATUTORY AUTHORITY. The department proposes new sections under Transportation Code, §545.456, which requires the board by rule to prescribe the form and manner by which a person may apply to the department for authorization to operate automated motor vehicles to transport property or passengers in furtherance of a commercial enterprise on highways and streets in this state without a human driver; Transportation Code, §545.453, which authorizes the board to adopt rules that are necessary to administer Subchapter J of Chapter 545 of the Transportation Code; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The proposed new sections would implement Transportation Code, Chapter 545, Subchapter J, and §1002.001; and Government Code, Chapter 2001.

§220.20. Purpose and Scope.

This subchapter prescribes the form and manner by which an applicant may apply for authorization to operate one or more automated motor vehicles, and the requirements to update certain documents provided to the department, under Transportation Code, §545.456.

§220.23. Application Requirements.

(a) An application for authorization to operate one or more automated motor vehicles under Transportation Code, §545.456 must be:

(1) submitted electronically in the department's designated system; and

(2) completed by the applicant or an authorized representative of the applicant.

(b) An application for authorization to operate one or more automated motor vehicles under Transportation Code, §545.456 must contain the following:

(1) a written statement by the person that includes the following information:

(A) the applicant's name, business entity type (such as sole proprietor, corporation, or limited liability company), telephone number, email address, mailing address, and Texas Secretary of State file number, as applicable; and

(B) the following information for each automated motor vehicle the applicant intends to operate under its authorization:

(i) the vehicle identification number;

(ii) year;

(iii) make; and

(iv) model; and

(2) the written statement and certification required by Transportation Code, §545.456(b)(2) and (3).

(c) An authorized representative of the applicant who submits an application with the department on behalf of an applicant may be required to provide written proof to the department of authority to act on behalf of the applicant.

§220.26. Updates under Transportation Code, §545.456(e) and §545.456(f)(2).

(a) Under Transportation Code, §545.456(e), an authorization holder shall provide the department with an update to a document described by §220.23(b)(1) or (2) of this title (relating to Application Requirements) not later than the 30th day after the date material information changes. The authorization holder shall electronically submit the update in the form and manner, and subject to the requirements specified in §220.23 of this title.

(b) Under Transportation Code, §545.456(f)(2), the department may request the authorization holder to provide the department with an updated or current document described by §220.23(b)(1) or (2) of this title. Such requests are subject to the following requirements:

(1) The department shall make such request by email, using the authorization holder's email address on file in the department's electronic system referenced in §220.23 of this title;

(2) The authorization holder shall electronically submit the updated or current document in the form and manner, and subject to the requirements specified in §220.23 of this title; and

(3) The deadline for the authorization holder to electronically submit the updated or current document is five days from the date of the department's request, unless the department grants an extension on the five-day deadline in response to a written request from the authorization holder for an extension that the department determines is reasonable and unlikely to result in harm to the public health, safety, or welfare.

(4) Any request for an extension must be submitted:

(A) prior to the department's deadline for the updated or current document; and

(B) to the designated address listed in the department's request to the authorization holder for an updated or current document.

(5) Any request for an extension must contain an explanation regarding the following:

(A) why five days is not reasonable;

(B) why the authorization holder needs more time and the specific deadline the authorization holder is requesting; and

(C) whether the authorization holder's requested deadline is likely to result in harm to the public health, safety, or welfare.

§220.28. Computation of Time.

(a) Any time period prescribed or allowed by this chapter or Transportation Code, §545.456 and §545.459 shall be computed in accordance with Government Code, §311.014.

(b) Time shall be computed using calendar days rather than business days, unless otherwise specified in statute.

§220.30. Signature Requirement on Written Statement and Certification.

A written statement and certification required by Transportation Code, §545.456 must be signed by the authorization holder or its authorized representative.

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

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Laura Moriaty
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Texas Department of Motor Vehicles
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SUBCHAPTER C. ADMINISTRATIVE SANCTIONS

43 TAC §220.50

STATUTORY AUTHORITY. The department proposes this new section under Transportation Code, §545.456, which requires the department to prescribe the form and manner by which an authorization holder must update a document described by Transportation Code, §545.456(b)(1) through (3); Transportation Code, §545.453, which authorizes the board to adopt rules that are necessary to administer Subchapter J of Chapter 545 of the Transportation Code; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The proposed new section would implement Transportation Code, Chapter 545, Subchapter J, and §1002.001; and Government Code, Chapter 2001.

§220.50. Administrative Sanctions.

The department may take action against the authorization holder in accordance with Chapter 224 of this title (relating to Adjudicative Practice and Procedure) and Transportation Code, §545.456 and §545.459.

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

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CHAPTER 221. SALVAGE VEHICLE DEALERS

SUBCHAPTER B. LICENSING

43 TAC §221.17

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code (TAC) Subchapter B, Licensing; §221.17, License Processing for Military Service Members, Spouses, and Veterans. These proposed amendments are necessary to implement House Bill (HB) 5629, 89th Legislature (2025), and Senate Bill (SB) 1818, 89th Regular Session (2025), both of which become effective on September 1, 2025. HB 5629 amended

Occupations Code, §55.004 and §55.0041 to change the standard for comparing licensing requirements in other states with Texas requirements and to change license request submission requirements, and added new §55.0042, which describes the standards for when the department may consider an applicant to be in good standing with a licensing authority in another state.

EXPLANATION.

Proposed amendments to §221.17(b)(1)(A) would require a military service member or military spouse to submit to the department a complete application for licensure. This proposed amendment is necessary to implement Occupations Code, §55.0041(b), as amended by HB 5629, which requires a military service member or military spouse to submit an application in a form prescribed by the agency and deletes a requirement to provide a notice. A proposed amendment to §221.17(b)(1)(B) would delete an unnecessary conjunction. To implement Occupations Code, §55.0041(b)(2), as amended by HB 5629, proposed amendments to §221.17(b)(1)(C) would add a requirement for an applicant who is a military spouse to submit a copy of the marriage license to the department and would delete a requirement for a military service member or military spouse to submit documentation demonstrating that the military service member or military spouse is licensed and in good standing in another jurisdiction for the relevant business or occupation. A proposed amendment would add new §221.17(b)(1)(D) to require a notarized affidavit as required by Occupations Code, §55.0041(b)(3), as amended by HB 5629. Proposed amendments to §221.17(b)(2) would substitute "application" for "notice" and update a reference to paragraph (1) consistent with proposed amendments to §221.17(b)(1) and to implement Occupations Code, §55.0041, as amended by HB 5629. Proposed amendments to §221.17(b)(2) and §221.17(b)(3) would substitute "state" for "jurisdiction" consistent with Occupations Code, §55.0041, as amended by HB 5629. Proposed amendments to §221.17(b)(2)(B) and §221.17(b)(3) would replace the phrase "substantially equivalent" to implement Occupations Code, §55.0041, as amended by HB 5629, by describing the revised standard for comparing the license requirements in another state with Texas requirements. Proposed amendments would add new §221.17(b)(2)(C) to state that the department will issue a provisional license upon receipt of a license application from a military service member, military veteran, or military spouse. These amendments would implement Occupations Code, §55.0041, as amended by SB 1818. Proposed amendments to §221.17(b)(3) would add a reference to license eligibility if the applicant was previously licensed in good standing in Texas in the last five years, would add language that the department will notify an applicant why the department is currently unable issue a license, and would change the time for the department to act on an application submitted by a military service member or military spouse from 30 days to 10 days to implement with Occupations Code, §55.0041, as amended by HB 5629.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the amendments will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Monique Johnston, Director of the Motor Vehicle Division (MVD), has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Johnston has also determined that, for each year of the first five years the amended section is in effect, the public may benefit because these amendments may encourage military service members or military spouses to apply for a license and build a business serving Texas citizens.

Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include economic benefits resulting from increasing the number of licensed businesses that serve Texas citizens.

Anticipated Costs to Comply With The Proposal. Ms. Johnston anticipates that there will be no costs to comply with these rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by the Government Code, §2006.002, the department has determined that the proposed amendments will not have an adverse economic effect on small businesses, micro-businesses, and rural communities because rural communities are not subject to licensing requirements and the proposal does not require any additional costs for license holders. The department has an electronic licensing system available to all applicants that allows an applicant to apply online for a license and upload any required documents. This rule proposal does not impact small businesses or micro-businesses. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendments are in effect, no government program would be created or eliminated. Implementation of the proposed amendments would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease in fees paid to the department. The proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation. Lastly, the proposed amendments do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on August 25, 2025. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The department proposes amendments to Chapter 221 under Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Occupations Code, §2302.052, which assigns the board a duty to set reasonable and necessary application fees, license fees, renewal fees, and

other fees as required to implement Chapter 2302; Occupations Code, §2302.103, which requires a salvage vehicle dealer to apply for a license on a form prescribed by the department and pay an application fee; Occupations Code, §2302.104, which prescribes content that must be included in an application; Occupations Code, §2302.105, which requires the department to complete an investigation of the applicant's qualifications before issuing a license; Occupations Code, §2302.108, which authorizes the department to deny, suspend, revoke, or reinstate a license issued under Chapter 2302 consistent with the requirements of Government Code, Chapter 2001; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

The department also proposes amendments and under the authority of Transportation Code, §§501.0041, 502.0021, and 503.002; and Government Code, §§2001.004, and 2001.039, and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the department to adopt rules to administer Transportation Code, Chapter 503.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.039 requires state agencies to readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These rule revisions would implement Government Code, Chapter 2001; Occupations Code, Chapters 53, 55, and 2302; and Transportation Code, Chapters 501-503, and 1002.

§221.17. License Processing for Military Service Members, Spouses, and Veterans

(a) The department will process a license, amendment, or renewal application submitted for licensing of a military service member, military spouse, or military veteran in accordance with Occupations Code, Chapter 55. A license holder who fails to timely file a sufficient renewal application because the license holder was on active duty is exempt from any increased fee or penalty imposed by the department.

(b) A military service member or military spouse may engage in a business or occupation for which a department issued license is required if the military service member or military spouse meets the requirements of Occupations Code, §55.0041 and this section.

(1) A military service member or military spouse must submit to the department:

(A) a complete application [~~notice of the military service member or military spouse's intent to engage in a business or occupation in Texas for which a department issued license is required~~];

(B) proof of the military service member being stationed in Texas and a copy of the military service member or military spouse's military identification card; [~~and~~]

(C) if the applicant is a military spouse, a copy of the military spouse's marriage license; and [~~documentation demonstrating that the military service member or military spouse is licensed and in good standing in another jurisdiction for the relevant business or occupation.~~]

(D) a notarized affidavit as required by Occupations Code, § 55.0041(b)(3).

(2) Upon receipt of the application [~~notice~~] and documentation required by paragraph (1) [~~paragraphs (1)(B) and (1)(C)~~] of this subsection, the department shall:

(A) confirm with the other licensing state [~~jurisdiction~~] that the military service member or military spouse is currently licensed and in good standing for the relevant business or occupation; and

(B) conduct a comparison of the other state's [~~jurisdiction's~~] license requirements, statutes, and rules with the department's licensing requirements to determine if the requirements are similar in scope of practice; and [~~substantially equivalent.~~]

(C) issue a provisional license.

(3) If the department confirms that a military service member or military spouse is currently licensed in good standing in another state [~~jurisdiction~~] with [~~substantially equivalent~~] licensing requirements that are similar in scope and practice, or was licensed in good standing in Texas in the last five years, the department shall issue a license to the military service member or military spouse for the relevant business or occupation, or notify the applicant why the department is currently unable to issue a license pursuant to Occupations Code, §55.0041(b-1), within 10 [~~30~~] days. The license is subject to the requirements of this chapter and Occupations Code, Chapter 2302 in the same manner as a license issued under the standard application process, unless exempted or modified under Occupations Code, Chapter 55.

(c) This section establishes requirements and procedures authorized or required by Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

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

Filed with the Office of the Secretary of State on July 10, 2025.

TRD-202502333
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: August 24, 2025
For further information, please call: (512) 465-4160

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CHAPTER 224. ADJUDICATIVE PRACTICE AND PROCEDURE

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code (TAC) Chapter 224, Adjudicative Practice and Procedure; Subchapter A, General Provisions, §§224.1, 224.5, 224.27, and 224.29; proposes amendments to Subchapter D, Motor Carrier and Oversize or Overweight Vehicle or Load Enforcement, §224.110; proposes amendments to Subchapter E, Contested Cases Referred to SOAH, §§224.150, 224.152, 224.164, and 224.166; proposes amendments to Subchapter F, Board Procedures in Contested Cases, §§224.190, 224.194, 224.198,

224.200, and 224.204; proposes new Subchapter H, Automated Motor Vehicle Authorizations, §§224.290, 224.292, and 224.294; and proposes new Subchapter I, Motor Carrier Division Director Procedures in Contested Cases, §§224.310, 224.312, 224.314, 224.316, 224.318, 224.320, 224.322, 224.324, and 224.326, concerning adjudicative practice and procedure. The amendments and new sections are necessary to implement Senate Bill (SB) 2807, 89th Legislature, Regular Session (2025) regarding administrative sanctions against an automated motor vehicle authorization holder; to provide the requirements when the director of the department's Motor Carrier Division is the final order authority; to provide procedures regarding a special public meeting at which the director of the department's Motor Carrier Division is authorized to review a contested case; and to clean up the rule text.

SB 2807 amends Subchapter J of Chapter 545 of the Transportation Code regarding the operation of automated motor vehicles. The SB 2807 amendments include a requirement for a person to receive and maintain authorization from the department to operate an automated motor vehicle to transport property or passengers in furtherance of a commercial enterprise on a highway or street in Texas without a human driver.

EXPLANATION.

Subchapter A. General Provisions

Proposed amendments to §224.1 would implement SB 2807 by expanding the scope of the subchapter to include the adjudication of a contested case arising under Transportation Code, §545.459(k) regarding the suspension, revocation, or cancellation of an authorization under Transportation Code, §545.456; the imposition of a restriction on the operation of the automated motor vehicle under Transportation Code, §545.459(k); and the rescission of a suspension, revocation, or cancellation of an authorization, or the removal of a restriction on the operation of the automated motor vehicle under Transportation Code, §545.459(k). Proposed amendments to §224.1 would also modify punctuation and language to address the added reference to Transportation Code, §545.459(k).

Proposed amendments to §224.5 would add references to the department's final order authority in subsections (a) and (b) to clean up the rule text to clarify that it applies to the department's Motor Carrier Division Director in contested cases arising under Transportation Code, Chapter 643. The term "final order authority" is defined in §224.3 as the person with authority under statute or a board rule to issue a final order. Although §224.5 currently refers to a board delegate in subsections (a) and (b), the authority of the department's Motor Carrier Division Director to issue final orders under Transportation Code, Chapter 643 was provided by the department's executive director under Transportation Code, §643.001(2), rather than by delegation of the board. These proposed amendments would clarify that Government Code, §2001.061, regarding the prohibition against ex parte communications concerning a contested case, apply to a contested case under Transportation Code, Chapter 643 for which the department's Motor Carrier Division Director has final order authority.

Under proposed amendments to §224.27 and §224.29, and under proposed new §224.294(j), the final order authority for contested cases under Transportation Code, §545.459(k) would be the department's Motor Carrier Division Director or the board, depending on whether the administrative law judge from the State Office of Administrative Hearings (SOAH) issued a proposal for decision and whether the proposal for decision is for a default proceeding under 1 TAC §155.501. If the SOAH administrative law judge issued a proposal for decision that is not based on a default proceeding at SOAH, the board is the final order authority for the contested case. If the proposal for decision is based on a default proceeding at SOAH or if there is not a proposal for decision, the department's Motor Carrier Division Director is the final order authority for the contested case, including contested cases resolved under 1 TAC §155.503 (Dismissal) or Government Code, §2001.056 (Informal Disposition of Contested Cases).

A proposed amendment to §224.27(b) would implement SB 2807 by stating that the board has final order authority under a contested case filed under Transportation Code, §545.459(k), except as provided by §224.29. Proposed amendments to §224.27 would also modify language and punctuation due to the proposed reference to Transportation Code, §545.459(k).

A proposed amendment to §224.29(c) would delete a reference to "any power relating to a contested case" because §224.29 is specifically about final order authority. Other sections in Chapter 224 govern other authority regarding a contested case, such as §224.13, which sets out the authority for certain department staff to issue a subpoena or commission to take a deposition in a contested case. A proposed amendment to §224.29(c) would also delete a comma due to the proposed deletion of language from this subsection. In addition, a proposed amendment to §224.29(c) would clarify that Transportation Code, §643.001(2) is the other statutory authority under which final order authority may be delegated to the director of the department's Motor Carrier Division.

Proposed amendments to §224.29 would add new subsection (d) to delegate authority to the department's Motor Carrier Division Director to issue a final order under Transportation Code, §545.459(k) in a contested case in which the administrative law judge at SOAH has not submitted a proposal for decision to the department for consideration by the final order authority, and a contested case in which the administrative law judge at SOAH submitted a proposal for decision regarding a default proceeding to the department for consideration by the final order authority, as explained above. This delegation is authorized by Transportation Code, §1003.005. In addition, proposed amendments to §224.29 would re-letter current subsection (d) to subsection (e), and update references in that subsection due to the proposed addition of new subsection (d).

Subchapter D. Motor Carrier and Oversize or Overweight Vehicle or Load Enforcement

A proposed amendment to §224.110 regarding the purpose and scope of Subchapter D would replace the reference to Subchapter F with a reference to proposed new Subchapter I regarding the procedures in contested cases in which the director of the department's Motor Carrier Division, rather than the board, is the final order authority.

Subchapter E. Contested Cases Referred to SOAH

A proposed amendment to §224.150(a) would add a reference to proposed new §224.294, relating to suspension, revocation, or cancellation of authorization under Transportation Code, §545.459 to operate one or more automated motor vehicles. The proposed amendments to §224.150(a) would modify the scope of Subchapter E of Chapter 224 to include contested cases involving authorizations to operate autonomous vehicles. This change is necessary to implement SB 2807 because

Transportation Code, §545.459(k) states that an authorization holder who is aggrieved by an action of the department under Transportation Code, §545.459(h) may submit a written request for a hearing at SOAH. Also, Transportation Code, §545.459(l) states that the contested case provisions of Government Code, Chapter 2001 apply to a proceeding under Transportation Code, §545.459(k).

A proposed amendment to §224.150(c) would add a reference to new Subchapter I of Chapter 224, regarding procedures in contested cases when the board is not the final order authority. The language in current Subchapter F regarding board procedures in contested cases includes certain terms, such as "board chair," as well as certain references, such as a reference to a board meeting under 43 TAC §206.22, that do not apply to the final order authority of the department's Motor Carrier Division Director under this chapter or Transportation Code, Chapter 643. Proposed new Subchapter I would include modified language from current Subchapter F to address the procedures in contested cases when the board is not the final order authority, so it is necessary to propose amendments to §224.150(c) to reference proposed new Subchapter I of Chapter 224.

A proposed amendment to §224.152(a) would implement SB 2807 by adding a reference to Transportation Code, §545.459(k) regarding the department's requirement to refer contested cases to SOAH when an authorization holder timely submits a written request for a hearing.

Proposed amendments to §224.164(d) would authorize a party to a contested case to raise an issue regarding a final proposal for decision before the department's Motor Carrier Division Director during oral presentation at a special public meeting, if any, under proposed new Subchapter I of Chapter 224. This would allow parties in contested cases that are decided by the department's Motor Carrier Division Director the same right to raise issues with a final proposal for decision as parties in a case decided by the board if a special public meeting is held.

Proposed amendments to §224.166(b) and (d) would refer to the department's Motor Carrier Division Director under Chapter 224, and a proposed amendment to §224.166(d) would refer to proposed new Subchapter I of Chapter 224 regarding the transfer of jurisdiction from SOAH to the person with final order authority. These changes are necessary to create similar processes for contested cases decided by a final order authority as already exist for cases decided by the board.

Subchapter F. Board Procedures in Contested Cases

A proposed amendment to §224.190 would clarify that Subchapter F does not apply to a contested case in which a SOAH administrative law judge has submitted a final proposal for decision for consideration by the department in a case in which the department's Motor Carrier Division Director is the final order authority as provided in proposed new §224.310. Although the department's Motor Carrier Division Director is a board delegate under Chapter 224 for certain contested cases, Subchapter I of this title (relating to Motor Carrier Division Director Procedures in Contested Cases) governs the procedures for certain contested cases in which the department's Motor Carrier Division Director is the final order authority.

A proposed amendment to §224.194 would remove subsection (b) because the executive director, rather than the board, delegated final order authority to the department's Motor Carrier Division Director for contested cases under Transportation Code, Chapter 643. Also, proposed new Subchapter I would include language regarding a special public meeting during which the department's Motor Carrier Division Director may review a contested case for which that director is the final order authority. A proposed amendment to §224.194 would also remove the subsection letter for current subsection (a) due to the proposed deletion of subsection (b).

Proposed amendments to §§224.198, 224.200, and 224.204 would implement SB 2807 by adding a reference to the scope of the board's authority to act under Transportation Code, §545.459(k). Proposed amendments to §§224.198, 224.200, and 224.204 would also modify language and punctuation due to the proposed reference to Transportation Code, §545.459(k). In addition, a proposed amendment to §224.200(a) would correct a grammatical error by changing the word "Chapter" to "Chapters."

Subchapter H. Automated Motor Vehicle Authorizations

Proposed amendments would implement SB 2807 by adding new Subchapter H regarding automated motor vehicle authorization under Transportation Code, §545.456 and §545.459. Proposed new §224.290 would provide the purpose and scope of proposed new Subchapter H for clarity.

Proposed new §224.292 would provide the procedures, authority, and requirements regarding the suspension, revocation, or cancellation of an authorization under Transportation Code, §545.456(f), as well as the rescission of a suspension, revocation, or cancellation under Transportation Code, §545.456(g). A determination under Transportation Code, §545.456(f) is not a contested case under Government Code, Chapter 2001, according to Transportation Code, §545.456(h), so proposed new §224.292(a) would state that no other section in Chapter 224 applies to this section, other than §224.290 regarding the purpose and scope of Subchapter H. Proposed new §224.292(b) and (c) would require the department to notify the authorization holder of certain actions by email because the word "immediately" in Transportation Code, §545.456(f) and the word "promptly" in Transportation Code, §545.456(g) require these processes to be done quickly. Proposed new §224.292(b) and (c) would also state that the action or the recission, respectively, is effective when the notice is emailed by the department to avoid any delay to the process that mail might cause. Proposed new §224.292(d) would require the department to also mail the notification to the authorization holder by first-class mail to ensure that the authorization holder received notice. Proposed new §224.292(e) grants the department's Motor Carrier Division Director the authority to decide suspensions, revocations and cancellations under Transportation Code, §545.456(f) and the recissions of those same decisions under Transportation Code, §545.456(g). Proposed new §224.292(f) and (g) clarify requirements for computation of time, aligning them with the requirements of Government Code, §311.014 and defining the unit of measurement as calendar days rather than business days.

Proposed new §224.292(h) and §224.294(l) would clarify that a reference in rule or in a department communication to an "authorization holder" whose authorization is currently suspended, revoked, or cancelled does not rescind or invalidate the suspension, revocation, or cancellation of the authorization. Transportation Code, §545.456(d) states that an authorization does not expire, and it remains active unless suspended, revoked, or canceled by the department. Also, Transportation Code, §545.459(k) refers to an "authorization holder," even though the authorization has been suspended, revoked, or

cancelled under subsection (h). In addition, the suspension, revocation, or cancellation of an authorization may be rescinded under Transportation Code, §545.456(g) and §545.459(j).

Proposed new §224.294 would implement SB 2807 by providing the procedures, authority, and requirements regarding the suspension, revocation, or cancellation of an authorization under Transportation Code, §545.459, as well as the imposition of one or more restrictions on the operation of the automated motor vehicle under Transportation Code, §545.459. Proposed new §224.294(a) would state which subchapters in Chapter 224 apply to contested cases before SOAH and the board or the department's Motor Carrier Division Director brought under Transportation Code, §545.459.

Proposed new §224.294(b) would specify that the notice of intent to sanction, required by Transportation Code, §545.459(a) and (c) shall be sent by certified mail, return receipt requested so that it can also serve as the notice to a licensee of an intended suspension, revocation, or cancellation required by Government Code, §2001.054. Proposed new §224.294(b) would also require the department to send the notice of intent by email to the authorization holder's email address on file in the department's designated system, so the authorization holder receives notice as quickly as possible due to public safety concerns as described in Transportation Code, §545.459(a) and (b).

Proposed new §224.294(c) would require the authorization holder to submit any request for an extension on the department's deadline for corrective action and certification under Transportation Code, §545.459(c)(2) and (e) to be submitted prior to the department's deadline listed in the department's notice of intent. Proposed new §224.294(c) would also require the authorization holder's request for an extension to include an explanation regarding why the department's deadline is not reasonable, why the authorization holder needs more time (including the specific deadline the authorization holder is requesting), and whether the authorization holder's requested deadline is likely to result in harm to the public health, safety, or welfare. Automated motor vehicles are a new and evolving technology. The authorization holder is in the best position to know about the automated motor vehicles that it operates and the automated motor vehicle industry in general. The authorization holder is in the best position to articulate its reasons for an extension on the department's deadline. A request for an extension after the deadline has passed is not a reasonable request under Transportation Code, §545.459(e). The department will only send a notice of intent if the department determines that an authorization holder's automated motor vehicle is not in safe operational condition and the operation of the vehicle on a highway or street in Texas endangers the public. When determining whether an authorization holder's request for an extension is reasonable, the department must consider the public health, safety, and welfare. Although the department will consider the nature of the issues the authorization holder must correct, it is incumbent on the authorization holder to timely request an extension.

Proposed new §224.294(d) would require the department to send notice to the authorization holder of a decision that suspended, revoked, or cancelled the authorization or imposed a restriction on the operation of the automated motor vehicle by both email and first-class mail, to ensure that the authorization holder is as likely as possible to actually receive the notice. The date of the decision issuance would be the date the department sends the email, to avoid any delay or uncertainty that might arise from waiting for the arrival of the regular mail. Proposed new §224.294(e) would specify that the department will designate the address for the authorization holder to submit requests under Transportation Code, §545.459 to extend the compliance period, for review of the decision, for removal or recission of a sanction, or for a hearing. This will allow the department flexibility in determining how best to staff and monitor communications with authorization holders.

Proposed new §224.294(f) would allow the department to request proof that a representative has authority to represent the authorization holder, to prevent confusion, miscommunication, or fraud. Proposed new §224.294(g) would require authorization holders to electronically file certifications under Transportation Code, §545.459(d) by following the requirements of §224.11, relating to Filing and Service of Documents, to ensure uniform evidence of when and what was filed, as well as service to all parties involved.

Proposed new §224.294(h) would make the department's Motor Carrier Division Director the decision authority for determinations under Transportation Code, §545.459(g). Proposed new §224.294(i) would also make the Motor Carrier Division Director the decision authority for final determinations under Transportation Code, §545.459(h) following a timely request to review the decision, similar to the exceptions process under Government Code, §2001.062 and SOAH rules. Proposed new §224.294(j) would make the department's board the final order authority for contested cases under Transportation Code, §545.459(k) when the SOAH administrative law judge issued a proposal for decision, but would empower the Motor Carrier Division Director to make decisions regarding the recission of a sanction or the removal of a restriction under Transportation Code, §545.459(j) to allow for faster decision-making in those situations without the need to call a public meeting of the board.

Proposed new §224.294(k) would set the process the department will follow to dismiss the case and notify the authorization holder if the SOAH hearing is not held within 60 days of the Motor Carrier Division Director's final determination under Transportation Code, §545.459(h). Notice would be sent by email for expediency in that situation. Proposed new §224.294(m) would exempt certifications or communications regarding a recission or removal of a sanction under Transportation Code, §545.459(j) from the filing requirements of §224.11(a) through (g), relating to Filing and Service of Documents, so that the authorization holder could simply send the documents and request to the designated email address, as prescribed by proposed new §224.294(e), to make the process as efficient and expedited as possible.

Subchapter I. Motor Carrier Division Director Procedures in Contested Cases

Proposed amendments would add new Subchapter I regarding contested cases for which the department's director of the Motor Carrier Division is the final order authority, rather than the board. Proposed new Subchapter I would include modified language from current Subchapter F, which addresses board procedures in contested cases. Proposed new §224.310 would provide the purpose and scope of proposed new Subchapter I.

Proposed new §224.312 would provide an overview of the process for the contested case review by the department's final order authority, including the final order authority's discretion to schedule a special public meeting to review the contested case. Public meetings may be appropriate in matters of great public interest that do not require expedited decisions, but they will

be inappropriate when a decision is routine or must be made quickly to protect public health or safety.

Proposed sections throughout proposed new Subchapter I regarding a special public meeting would only apply if the department's final order authority schedules a special public meeting. Proposed new §224.314 would provide the procedure and deadlines regarding a request for oral presentation, if there is a special public meeting. Proposed new §224.314(a) would require the department to provide notice by email to the parties 20 days before a special public meeting, to allow the parties time to prepare any oral presentations and written materials for the special public meeting. Proposed new §224.314(b) would require a party to notify the department and all other parties of its intent to make an oral presentation at least seven days in advance of the meeting, to allow both the parties and the department time to prepare accordingly. Proposed new §224.314(c) would allow parties that are not affected by the proposal for decision to have flexibility to agree to the order of their presentations, but would set the order of presentations in proposed new §224.320, relating to Order of Oral Presentations to the Final Order Authority, as the default order if the parties do not file their agreed order of presentations at the same time they file their intent to make oral presentation under proposed new §224.314(b). Proposed new §224.314(d) would clarify that a party that fails to make a timely written request for oral presentation under proposed new §224.314(b) will not be allowed to present at the special public meeting, to ensure predictability in procedure during the meeting and an opportunity for all parties to prepare in advance of the meeting. Proposed new §224.314(e) would specify that there would be no public comment at special public meetings and that non-parties would not be allowed to give oral presentations. This would prevent extraneous information that is not in the SOAH record from influencing the final order authority in violation of Government Code, Chapter 2001, and would allow for more efficient meetings.

Proposed new §224.316 would provide the procedure and deadline for the provision of written materials for a special public meeting. Proposed new §224.316(a) would require a party that wants to provide written materials to the final order authority at a special public meeting to file them with the department at least 14 days prior to the meeting and provide copies to the other parties. This would allow both the parties and the department adequate time to prepare in advance of the special meeting. Proposed new §224.316(b) would specify that written materials can only contain information from the SOAH record, so as to avoid exposing the final order authority to information that is not in the SOAH record from influencing the final order authority in violation of Government Code, Chapter 2001. Similarly, proposed new §224.316(e) would specify that non-parties are not authorized to provide written materials, to prevent extraneous information that is outside the SOAH record from influencing the final order authority. Proposed new §224.316(c) would require the parties to provide citations to the SOAH record for all written materials, so that the parties and the department can verify that the written materials are all within the SOAH record. Proposed new §224.316(d) would set size, font, and page count limitations for the written materials, to require parties to streamline their documentary presentations so that the presentations during the special public meeting are both efficient and effective.

Proposed new §224.318 would provide the requirements for an oral presentation at a special public meeting. Proposed new §224.318(a) would limit oral presentations to information within the SOAH record and to the scope of the final order authority's powers under Government Code, §2001.058(e), so as to prevent the final order authority from violating Government Code, Chapter 2001 by relying on evidence that is not in the record or taking action that is not within the department's jurisdiction. Proposed new §224.318(b) would allow a party during oral presentation to recommend that the final order authority remand the case to SOAH, to the extent allowed under the SOAH rules in 1 TAC Chapter 155 and Government Code, Chapter 2001. Remand to SOAH can be necessary when the administrative law judge failed to make findings regarding specific allegations. Proposed new §224.318(c) would require the parties to object when another party goes outside the SOAH record, so that the final order authority will be able to identify and disregard information that is outside the record. Proposed new §224.318(d) would set a 15-minute time limit for each party's oral presentation, clarify that additional rebuttal statements or a closing statement are not allowed, and clarify that time spent responding to questions or making objections does not count against the 15 minutes. These guidelines would ensure that oral presentations in special public meetings proceed efficiently but fairly.

Proposed new §224.320 would provide the order of presentation for an oral presentation at a special public meeting. Proposed new §224.320(a) would require the department to provide a presentation of the procedural history and summary of the contested case. Proposed new §224.320(b) would require that the adversely affected party present first, but allows the final order authority to determine the order of presentations if it is not clear which party is adversely affected or if it appears that there is more than one adversely affected party. This would parallel the current order of presentation for parties making an oral presentation at board meetings under §224.202, regarding Order of Oral Presentations to the Board. Proposed new §224.320(c) would require the parties that are not adversely affected to present in alphabetical order, assuming they had not previously agreed to an order under proposed new §224.314.

Proposed new §224.322 would describe the final order authority's conduct and the limits on any discussions when reviewing a contested case. Proposed new §224.322(a) would specify the legal limitations of the final order authority's review. Proposed new §224.322(b) would allow the final order authority to ask the parties questions, but only within the relevant legal limitations. Proposed new §224.322(c) would allow the final order authority to use personal expertise in the industry in deciding a contested case, but only within the relevant legal limitations. Proposed new §224.322 would provide clarity and ease of reference for parties and the final order authority alike regarding the laws that apply to and limit the final order authority's review of the proposal for decision.

Proposed new §224.324 would provide the requirements regarding a final order issued by the department's director of the Motor Carrier Division under proposed new Subchapter I. Proposed new §224.324(a) would require that the final decision from the final order authority be in writing and signed, in keeping with the requirements of Government Code, §2001.141(a). Proposed new §224.324(b) would require the department to email and send by certified mail the final order to the parties in the contested case, to maximize the opportunities for the parties to receive notice of the decision and allow the department to ascertain whether and on what date an impacted party received the decision for purposes of Government Code, §2001.142(c). Proposed new §224.324(c) and (d) would clarify that the Government Code governs the issuance of a final order by the final order authority, the parties' motions for rehearing, and when the decision becomes final.

Proposed new §224.326 would address public access to a special public meeting. Proposed new §224.326 would contain modified versions of portions of 43 TAC §206.22, regarding Public Access to Board Meetings, which only applies to board meetings. Proposed new §224.326(a) would require persons in need of special accommodations who plan to attend the special public meeting to send a request to the department two days in advance, to allow the department time to arrange the accommodation. Proposed new §224.326(b) would specify that members of the public may not question parties or the final order authority in a contested case, to maintain decorum in the meeting and to avoid exposing the final order authority to information that is outside the SOAH record. Proposed new §224.326(c) would require a person who disrupts a special public meeting to leave the premises, to maintain decorum and safety in the meeting.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the amendments and new sections will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Corrie Thompson, Director of the Enforcement Division (ENF), has determined that there will be no significant impact on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Thompson has also determined that, for each year of the first five years that the amended and new sections are in effect, there is an anticipated public benefit because the proposal provides clarity for the regulated industries that are governed by these provisions, and negligible associated costs to comply.

Anticipated Public Benefits. The public benefit anticipated as a result of the proposal includes clarity for the regulated industries regarding the procedures, requirements, and restrictions regarding the matters governed by this proposal.

Anticipated Costs to Comply with the Proposal. Ms. Thompson anticipates that there will be no significant costs to comply with this proposal. The department has drafted the rules so as to eliminate cost by allowing authorization holders to use online document filing and email as service for requests rather than mail.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed new sections and amendments will not have an adverse economic effect on small businesses, micro-businesses, and rural communities because the requirements are minimal. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendments and new sections are in effect, a government program would be created to implement Senate Bill 2807. Implementation of the proposed amendments and new sections would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendments and new sections create new regulations to implement Senate Bill 2807, and expand an existing regulation to provide the procedures in certain contested cases for which the director of the department's Motor Carrier Division is the final order authority, rather than the board. The proposed rules would not limit or repeal regulations. Lastly, the proposed amendments and new sections do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on August 25, 2025. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §§224.1, 224.5, 224.27, 224.29

STATUTORY AUTHORITY. The department proposes amendments under Transportation Code, §545.453, which authorizes the board to adopt rules that are necessary to administer Subchapter J of Chapter 545 of the Transportation Code; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; Transportation Code, §1003.005, which authorizes the board by rule to delegate any power relating to a contested case, including the power to issue a final order, to certain department staff; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The proposed amendments would implement Transportation Code, Chapter 545, Subchapter J; §1002.001, and §1003.005; and Government Code, Chapter 2001.

§224.1. Purpose and Scope.

This subchapter describes the procedures by which the department will adjudicate a contested case arising under Occupations Code, Chapters 2301 or 2302; [~~, or~~] Transportation Code, Chapters 502, 503, 621-623, 643, 645, or 1001-1005; or Transportation Code, §545.459(k), consistent with the requirements of Government Code, Chapter 2001. Unless expressly excluded or limited, this subchapter applies to every contested case in which the department has jurisdiction.

§224.5. Prohibited Communication.

(a) No person, party, attorney of record, or authorized representative in any contested case shall violate Government Code, §2001.061 by directly or indirectly engaging in ex parte communication concerning a contested case with an ALJ, board member, board delegate, final order authority, or a hearings examiner assigned to

render a decision or make findings of fact and conclusions of law in a contested case.

(b) Unless prohibited by Government Code, §2001.061, department staff who did not participate in the hearing may advise a board member, a board delegate, a final order authority, or a hearings examiner, regarding a contested case and any procedural matters.

(c) Department staff shall not recommend a final decision to the board unless the department is a party to the contested case.

(d) A violation of this section shall be promptly reported to the board chair or chief hearings examiner, as applicable, and the general counsel of the department.

(e) The general counsel shall ensure that a copy or summary of the ex parte communication is included with the record of the contested case and that a copy is forwarded to all parties or their authorized representatives.

(f) The general counsel may take any other appropriate action otherwise provided by law.

§224.27. Final Order; Motion for Rehearing.

(a) The provisions of Government Code, Chapter 2001, Subchapter F, govern the issuance of a final order issued under this subchapter and a motion for rehearing filed in response to a final order.

(b) Except as provided by subsection (c) of this section and §224.29 of this title (relating to Delegation of Final Order Authority), the board has final order authority in a contested case filed under Occupations Code, Chapters 2301 or 2302; [, ~~or under~~] Transportation Code, Chapters 502, 503, 621-623, 643, 645, and 1001-1005; or Transportation Code, §545.459(k).

(c) The hearings examiner has final order authority in a contested case filed under Occupations Code, §2301.204 or Occupations Code Chapter 2301, Subchapter M.

(d) A department determination and action denying access to the license plate system becomes final within 26 days of the date of the notice denying access to a database, unless the dealer:

(1) requests a hearing regarding the denial of access, or

(2) enters into a settlement agreement with the department.

(e) Unless a timely motion for rehearing is filed with the appropriate final order authority as provided by law, an order shall be deemed final and binding on all parties. All administrative remedies are deemed to be exhausted as of the effective date of the final order.

(f) If a timely motion for rehearing is not filed, the final order shall be deemed final and binding in accordance with the provisions of Government Code, §2001.144.

(g) If a final and binding order includes an action on a license, the department may act on the license on the date the final order is deemed final and binding, unless the action is stayed by a court order.

§224.29. Delegation of Final Order Authority.

(a) In accordance with Occupations Code, §2301.154(c) and Transportation Code, §1003.005(b), except as provided by subsection (b) of this section, the director of the division that regulates the distribution and sale of motor vehicles is authorized to issue, where there has not been a decision on the merits, a final order in a contested case under Subchapters B and C, including, but not limited to a contested case resolved:

(1) by settlement;

(2) by agreed order;

(3) by withdrawal of the complaint;

(4) by withdrawal of a protest;

(5) by dismissal for want of prosecution including:

(A) failure of a complaining or protesting party to participate in scheduling mediation or to appear at mediation as required under Subchapter C of this chapter (relating to Contested Cases Between Motor Vehicle Industry License Holders or Applicants);

(B) failure of a complaining or protesting party to respond to department requests for information or scheduling matters;

(C) failure of a complaining or protesting party to dismiss a contested case that has been resolved by the parties;

(6) by dismissal for want of jurisdiction;

(7) by summary judgment or summary disposition;

(8) by default judgment; or

(9) when a party waives opportunity for a contested case hearing.

(b) In accordance with Occupations Code, §2301.704 and §2301.711, a hearings examiner is authorized to issue a final order in a contested case brought under Occupations Code, §2301.204 or §§2301.601-2301.613.

(c) In accordance with Transportation Code, §1003.005, the director of the department's Motor Carrier Division is delegated [~~any power relating to a contested case, including~~] the authority to issue a final order[,] in contested cases under Subchapter D of this chapter to the extent that delegation of such authority is not already provided under Transportation Code, §643.001(2). [~~by statute.~~]

(d) In accordance with Transportation Code, §1003.005, the director of the department's Motor Carrier Division is authorized to issue a final order in a contested case under §224.294 of this title (relating to Suspension, Revocation, or Cancellation of Automated Motor Vehicle Authorization under Transportation Code, §545.459) when:

(1) a SOAH ALJ has not submitted a proposal for decision to the department for consideration by the final order authority; or

(2) a SOAH ALJ submits a proposal for decision regarding a default proceeding to the department for consideration by the final order authority.

(e) [~~(d)~~] In a contested case in which the board has delegated final order authority under subsection (a), (c) or (d) [~~or (c)~~] of this section, a motion for rehearing shall be filed with and decided by the final order authority delegate.

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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SUBCHAPTER D. MOTOR CARRIER AND OVERSIZE OR OVERWEIGHT VEHICLE OR LOAD ENFORCEMENT

43 TAC §224.110

STATUTORY AUTHORITY. The department proposes amendments under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §502.091(b), which authorizes the department to adopt and enforce rules to carry out IRP; Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.2526, which authorizes an applicant to appeal the denial of an application for registration, renewal of registration, or reregistration under Transportation Code, Chapter 643, and which authorizes a motor carrier to appeal the revocation or suspension of a registration or placement on probation of the motor carrier as requested by the Texas Department of Public Safety under Transportation Code, §643.252(b); Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; Transportation Code, §1003.001, which states that the department is subject to Government Code, Chapter 2001, except as specifically provided by law; Transportation Code, §1003.005, which authorizes the board by rule to delegate any power relating to a contested case, including the power to issue a final order, to certain department staff; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The proposed amendments would implement Government Code, Chapter 2001; and Transportation Code, Chapters 502, 621, 622, 623, 643, and 645; Transportation Code, §§1002.001, 1003.001, and 1003.005.

§224.110. Purpose and Scope.

This subchapter and Subchapters A, E, and I [F] of this chapter describe the procedures by which the department will adjudicate alleged violations and claims under Transportation Code, Chapters 502, 621-623, 643, and 645. These contested cases involve registrants under the International Registration Plan, motor carriers, motor carrier leasing businesses, motor transportation brokers, and household goods carriers. Contested cases involving persons operating oversize or overweight vehicles or moving oversize or overweight loads are also included.

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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SUBCHAPTER E. CONTESTED CASES REFERRED TO SOAH

43 TAC §§224.150, 224.152, 224.164, 224.166

STATUTORY AUTHORITY. The department proposes amendments under Transportation Code, §545.453, which authorizes the board to adopt rules that are necessary to administer Subchapter J of Chapter 545 of the Transportation Code; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §502.091(b), which authorizes the department to adopt and enforce rules to carry out IRP; Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; Transportation Code, §623.271, which states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty or the revocation of a permit under §623.271; Transportation Code, §623.272, which states that the notice and hearing requirements under Transportation Code, §643.2525 apply to the imposition of an administrative penalty under §623.272; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.2525, which provides the process for an administrative hearing under Transportation Code, Chapter 643; Transportation Code, §643.2526, which authorizes an applicant to appeal the denial of an application for registration, renewal of registration, or reregistration under Transportation Code, Chapter 643, and which authorizes a motor carrier to appeal the revocation or suspension of a registration or placement on probation of the motor carrier as requested by the Texas Department of Public Safety under Transportation Code, §643.252(b); Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; Transportation Code, §1003.001, which states that the department is subject to Government Code, Chapter 2001, except as specifically provided by law; Transportation Code, §1003.005, which authorizes the board by rule to delegate any power relating to a contested case, including the power to issue a final order, to certain department staff; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The proposed amendments would implement Transportation Code, Chapter 545, Subchapter J; Transportation Code, Chapters 621, 622, 623,

643, and 645; Transportation Code, §§502.091(b), 1002.001, 1003.001, and 1003.005; and Government Code, Chapter 2001.

§224.150. Purpose and Scope.

(a) This subchapter describes department practice and procedures for referring a contested case to SOAH for a hearing, including a contested case under Subchapter B (relating to Motor Vehicle, Salvage Vehicle, and Trailer Industry Enforcement), Subchapter C (relating to Contested Cases Between Motor Vehicle Industry License Holders or Applicants), and Subchapter D (Motor Carrier and Oversize or Overweight Vehicle or Load Enforcement) of this chapter, as well as §224.294 of this title (relating to Suspension, Revocation, or Cancellation of Automated Motor Vehicle Authorization under Transportation Code, §545.459).

(b) When SOAH accepts a referral from the department, jurisdiction of the contested case transfers to SOAH, and practice and procedure in contested cases heard by SOAH are addressed in:

(1) 1 TAC Chapter 155, and

(2) subchapter A and this subchapter, where not in conflict with SOAH rules.

(c) When SOAH disposes of a contested case, jurisdiction transfers from SOAH back to the department. The department will issue a final order under §224.29 of this title (relating to Delegation of Final Order Authority), [~~or~~] under Subchapter F of this chapter (relating to Board Procedures in Contested Cases), or under Subchapter I of this chapter (relating to Motor Carrier Division Director Procedures in Contested Cases).

§224.152. Referral to SOAH.

(a) The department shall refer contested cases to SOAH upon determination that a hearing is appropriate under Occupations Code, Chapter 2301 or 2302; [~~,~~ ~~or~~] Transportation Code, Chapters 502, 503, 621-623, 643, 645, or 1001-1005; or Transportation Code, §545.459(k), including contested cases relating to:

(1) an enforcement complaint on the department's own initiative;

(2) a notice of protest that has been timely filed in accordance with §215.106 of this title (relating to Time for Filing Protest);

(3) a protest filed under Occupations Code, §2301.360 or a protest or complaint filed under Occupations Code, Chapter 2301, Subchapters I or J;

(4) a department-issued cease and desist order; or

(5) any other contested matter that meets the requirements for a hearing at SOAH.

(b) The department will follow SOAH procedures to file a Request to Docket Case and related documents and request a setting of a hearing.

(c) SOAH will provide the department with the date, time, and place of the initial hearing.

§224.164. Issuance of a Proposal for Decision.

(a) After a hearing on the merits, the ALJ shall submit a proposal for decision in a contested case to the department and all parties.

(b) The parties may submit to the ALJ exceptions to the proposal for decision and replies to exceptions to the proposal for decision in accordance with the SOAH rules.

(c) The ALJ will review all exceptions and replies and notify the department and parties whether the ALJ recommends any changes to the proposal for decision.

(d) The parties are not entitled to file exceptions or briefs in response to a final [~~an amended~~] proposal for decision but may raise an issue regarding the final proposal for decision before the following:

(1) the board as allowed at the time of oral presentation under Subchapter F of this chapter; or

(2) the final order authority as allowed at the time of an oral presentation at a special public meeting, if any, under Subchapter I of this chapter (relating to Motor Carrier Division Director Procedures in Contested Cases).

§224.166. Transfer of Jurisdiction for Final Decision.

(a) A party may appeal an interlocutory order issued under Occupations Code, Chapter 2301 to the board under §224.192 of this title (relating to Appeal of an Interlocutory Order). SOAH retains jurisdiction on all other pending matters in the contested case, except as provided otherwise in this chapter.

(b) If a contested case includes a hearing on the merits, SOAH's jurisdiction transfers to the board or other final order authority when the ALJ confirms that the proposal for decision is final.

(c) Once jurisdiction transfers, no new testimony, witnesses, or information may be considered by the board or board delegate with final order authority.

(d) After SOAH transfers the SOAH administrative record to the department, the board or the department's director of the Motor Carrier Division [~~or board delegate with final order authority~~] will consider the contested case under the provisions of Subchapter F of this chapter (relating to Board Procedures in Contested Cases) or Subchapter I of this chapter (relating to Motor Carrier Division Director Procedures in Contested Cases).

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

SUBCHAPTER F. BOARD PROCEDURES IN CONTESTED CASES

43 TAC §§224.190, 224.194, 224.198, 224.200, 224.204

STATUTORY AUTHORITY. The department proposes amendments under Transportation Code, §545.453, which authorizes the board to adopt rules that are necessary to administer Subchapter J of Chapter 545 of the Transportation Code; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; Transportation Code, §1003.001, which states that the department is subject to Government Code, Chapter 2001, except as specifically provided by law; Transportation Code, §1003.005, which authorizes the board by rule to delegate any power relating to a contested case,

including the power to issue a final order, to certain department staff; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The proposed amendments would implement Transportation Code, Chapter 545, Subchapter J; Transportation Code, §§1002.001, 1003.001, and 1003.005; and Government Code, Chapter 2001.

§224.190. Purpose and Scope.

This subchapter describes procedures for the board to review and issue a final order in a contested case in which:

(1) a SOAH ALJ has submitted a final proposal for decision for consideration by the board or board delegate with final order authority, except as stated otherwise in §224.310 of this title (relating to Purpose and Scope),

(2) a party has appealed an interlocutory cease-and-desist order issued by an ALJ, or

(3) a party affected by a statutory stay order issued by an ALJ requested a hearing to modify, vacate, or clarify the extent and application of the statutory stay order.

§224.194. Contested Case Review.

[~~(a)~~] After SOAH submits a final proposal for decision and transfers SOAH's administrative record to the department, the board has jurisdiction and the record required to issue a final order and will review the contested case during the public session of a board meeting, in accordance with the APA.

[~~(b) For a contested case in which the board has delegated final order authority to the Director of the Motor Carrier Division, a special public meeting may be scheduled.~~]

§224.198. Written Materials and Evidence.

(a) If a party wants to provide written materials at the board meeting, the party must provide the written materials to the department and all other parties in accordance with §224.11 of this title (relating to Filing and Service of Documents) at least 21 days prior to the date of the board meeting. If a party fails to timely provide written materials to the department or any other party, the department shall not provide the written materials to the board and the party shall not provide the written materials to the board at the board meeting. Non-parties are not authorized to provide written materials to the board.

(b) For the purposes of this section, written materials are defined as language or images including photographs or diagrams, that are contained in the SOAH administrative record and recorded in paper form except as stated otherwise in this subsection. The language or images in the written materials must be taken without changes from the SOAH administrative record; however, proposed final orders and draft motions for possible board action are allowed to be included in a party's written materials even if they contain arguments or requests that are not contained in the SOAH administrative record. Written materials shall be limited to evidence contained in the SOAH administrative record and consistent with the scope of the board's authority to act under Government Code, §2001.058(e); [~~and~~] Occupations Code, Chapters 2301 and 2302; [~~, and~~] Transportation Code, Chapters 502, 503, 621-623, 643, 645, or 1001-1005; and Transportation Code, §545.459(k), as applicable.

(c) All information in the written materials shall include a citation to the SOAH administrative record on all points to specifically identify where the information is located. The citations may be provided in an addendum to the written materials that is not counted against the 15-page limit under subsection (d) of this section; however, the addendum must not include any information other than a heading that lists the name of the party, the caption for the contested case, and text that lists the citations and page numbers.

(d) Written materials shall be 8.5 inches by 11 inches and single-sided. Written materials must be double-spaced and at least 12-point type if in text form. Written materials are limited to 15 pages per party. If a party provides the department with written materials that contain more pages than the maximum allowed, the department shall not provide the written materials to the board and a party shall not provide the written materials to the board at the board meeting.

§224.200. Oral Presentation Limitations and Responsibilities.

(a) A party to a contested case under review by the board shall limit oral presentation and discussion to evidence in the SOAH administrative record. Also, oral presentation and discussion shall be consistent with the scope of the board's authority to act under Government Code, §2001.058(e); Occupations Code, Chapters 2301 and 2302; [~~and~~] Transportation Code Chapters [~~Chapter~~] 502, 503, 621-623, 643, 645, or 1001-1005; and Transportation Code, §545.459(k), as applicable.

(b) A party may argue that the board should remand the contested case to SOAH.

(c) Each party is responsible for objecting when another party attempts to make arguments or engage in discussion regarding evidence that is not contained in the SOAH administrative record.

(d) A party's presentation to the board is subject to the following limitations and conditions:

(1) Each party shall be allowed a maximum of 15 minutes for their oral presentation. The board chair may increase this time.

(2) No party is allowed to provide a rebuttal or a closing statement.

(3) An intervenor of record from the SOAH proceeding supporting another party shall share that party's time.

(4) Time spent by a party responding to a board question is not counted against their presentation time.

(5) During an oral presentation, a party to the contested case before the board may object that a party presented material or argument that is not in the SOAH administrative record. Time spent discussing such objections is not counted against the objecting party's time.

§224.204. Board Conduct and Discussion When Reviewing a Contested Case or Interlocutory Order.

(a) The board shall conduct its contested case review in compliance with Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2302; [~~and~~] Transportation Code Chapters 502, 503, 621, 623, 643, 645, or 1001-1005; and Transportation Code, §545.459(k), as applicable, including the limitations on changing a finding of fact or conclusion of law made by a SOAH ALJ, and the prohibition on considering evidence outside of the SOAH administrative record.

(b) A board member may question a party or the department on any matter that is relevant to the proposal for decision; however, a question shall be consistent with the scope of the board's authority to take action under Government Code, §2001.058(e); Occupations Code, Chapters 2301 and 2302; [~~and~~] Transportation Code, Chapters 502, 503, 621-623, 643, 645, or 1001-1005; and Transportation Code, §545.459(k), as applicable; a question must be limited to evidence contained in the SOAH administrative record; and the communication

must comply with §224.5 of this title (relating to Prohibited Communication). In considering a contested case, a board member is authorized to ask a question regarding a request to remand the case to SOAH, including a remand to SOAH for further consideration of the evidence.

(c) A board member may use personal expertise in the industry to understand a contested case and make effective decisions, consistent with the scope of the board's authority to act under Government Code, §2001.058(e); Occupations Code, Chapters 2301 and 2302; [~~and~~] Transportation Code Chapters 502, 503, 621-623, 643, 645, or 1001-1005; and Transportation Code, §545.459(k), as applicable. However, a board member is not an advocate for a particular industry. A board member is an impartial public servant who takes an oath to preserve, protect, and defend the Constitution and laws of the United States and Texas.

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

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General Counsel
Texas Department of Motor Vehicles
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SUBCHAPTER H. AUTOMATED MOTOR VEHICLE AUTHORIZATIONS

43 TAC §§224.290, 224.292, 224.294

STATUTORY AUTHORITY. The department proposes new sections under Transportation Code, §545.453, which authorizes the board to adopt rules that are necessary to administer Subchapter J of Chapter 545 of the Transportation Code; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2001.054, which specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; Transportation Code, §1003.001, which states that the department is subject to Government Code, Chapter 2001, except as specifically provided by law; Transportation Code, §1003.005, which authorizes the board by rule to delegate any power relating to a contested case, including the power to issue a final order, to certain department staff; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The proposed new sections would implement Transportation Code, Chapter 545, Subchapter J; Transportation Code, §§1002.001, 1003.001, and 1003.005; and Government Code, Chapter 2001.

§224.290. Purpose and Scope.

This subchapter prescribes the procedures for:

(1) the suspension, revocation, or cancellation of an automated motor vehicle authorization issued under Transportation Code, §545.456;

(2) the imposition of a restriction on the operation of the automated motor vehicle under Transportation Code, §545.459;

(3) the rescission of a suspension, revocation, or cancellation of an automated motor vehicle authorization under Transportation Code, §545.456 or §545.459; and

(4) the removal of a restriction on the operation of the automated motor vehicle under Transportation Code, §545.459.

§224.292. Immediate Suspension, Revocation, or Cancellation of an Automated Motor Vehicle Authorization under Transportation Code, §545.456(f).

(a) No other section in this chapter applies to a suspension, revocation, or cancellation of an automated motor vehicle authorization under Transportation Code, §545.456(f), except for §224.290 of this title (relating to Purpose and Scope).

(b) The department may immediately suspend, revoke, or cancel an automated motor vehicle authorization under Transportation Code, §545.456(f) by sending notice to the authorization holder's email address on file in the department's designated system referenced in §220.23 of this title (relating to Application Requirements). The action described in the notice is effective when the notice is emailed by the department.

(c) The department shall promptly notify the authorization holder of a rescission of a suspension, revocation, or cancellation of an automated motor vehicle authorization under Transportation Code, §545.456(g) by sending notice to the authorization holder's email address on file in the department's designated system referenced in §220.23 of this title. The recission described in the notice is effective when the notice is emailed by the department.

(d) In addition to emailing a notice to the authorization holder under this section, the department shall also mail a notice to an authorization holder by first-class mail using the authorization holder's mailing address on file in the department's designated system referenced in §220.23 of this title.

(e) The director of the department's Motor Carrier Division is authorized to make the decisions under this section regarding a suspension, revocation, cancellation, or rescission.

(f) Any time period prescribed or allowed by this section or by any applicable statute regarding this section shall be computed in accordance with Government Code, §311.014.

(g) Time under this section shall be computed using calendar days rather than business days, unless otherwise specified in statute.

(h) A reference in rule or a department communication to an "authorization holder" whose authorization is currently suspended, revoked, or cancelled does not rescind or invalidate the suspension, revocation or cancellation of the authorization.

§224.294. Suspension, Revocation, or Cancellation of Automated Motor Vehicle Authorization under Transportation Code, §545.459.

(a) Subchapters A, E, F, and I of this chapter apply to a suspension, revocation, or cancellation of an authorization under Transportation Code, §545.459, and the imposition of one or more restrictions on the operation of the automated motor vehicle under Transportation Code, §545.459.

(b) The department shall send the notice of intent required under Transportation Code, §545.459(a) and (c) to the authorization holder by certified mail, return receipt requested consistent with Government Code, §2001.054. The department shall also send the notice of intent to the authorization holder's email address on file in the depart-

ment's designated system referenced in §220.23 of this title (relating to Application Requirements).

(c) Any request for an extension on the department's deadline for corrective action and certification under Transportation Code, §545.459(c)(2) and (e) must be submitted prior to the department's deadline listed in the department's notice of intent and must contain an explanation regarding the following:

(1) why the department's deadline is not reasonable;

(2) why the authorization holder needs more time, and the specific deadline the authorization holder is requesting; and

(3) whether the authorization holder's requested deadline is likely to result in harm to the public health, safety, or welfare.

(d) The department shall promptly provide notice to the authorization holder of the department's action under this section and Transportation Code, §545.459, using the authorization holder's email address on file in the department's designated system referenced in §220.23 of this title, except as otherwise provided by statute or rule, including §224.154 of this title (relating to Notice of Hearing) and §224.206 of this title (relating to Final Orders). The department shall also promptly mail such notice by first-class mail to an authorization holder using the authorization holder's mailing address on file in the department's designated system referenced in §220.23. The date the department emails a decision or final determination is the date the department issues a decision or final determination for the purposes of Transportation Code, §545.459(g), (h), and (i), as applicable.

(e) The authorization holder shall submit any requests to the department under Transportation Code, §545.459 to the designated address listed in the department's notice to the authorization holder.

(f) A representative of an authorization holder may be required to provide written proof to the department of authority to act on behalf of the authorization holder.

(g) An authorization holder shall electronically file any certification under Transportation Code, §545.459(d) in the department's designated system and include an authorized signature on the certification, in accordance with §224.11 of this title (relating to Filing and Service of Documents).

(h) The director of the department's Motor Carrier Division is authorized to issue a decision under Transportation Code, §545.459(g).

(i) The director of the department's Motor Carrier Division shall review the decision and issue a final determination under Transportation Code, §545.459(h) if the authorization holder timely submits a written request to the department for review.

(j) Except as otherwise provided under §224.29 of this title (relating to Delegation of Final Order Authority), the board has final order authority in a contested case under Transportation Code, §545.459(k). However, the director of the department's Motor Carrier Division shall take the actions required under Transportation Code, §545.459(j) regarding the rescission of a suspension, revocation, or cancellation, or the removal of a restriction, regardless of whether the board issued the final order.

(k) If a hearing is not timely held as required by Transportation Code, §545.459(k), the department shall take the following actions:

(1) request the State Office of Administrative Hearings to dismiss the contested case; and

(2) promptly notify the authorization holder that the authorization is automatically reinstated and that any restriction is automatically removed, using the authorization holder's email address on file in the department's designated system referenced in §220.23 of this title.

(l) A reference to an "authorization holder" in rule or department communication whose authorization is currently suspended, revoked, or cancelled does not rescind or invalidate the suspension, revocation, or cancellation of the authorization.

(m) Unless otherwise requested by the department in writing, §224.11(a) through (g) of this title do not apply to a certification or communication from the authorization holder to the department regarding the following under Transportation Code, §545.459(j):

(1) a potential rescission of a suspension, revocation, or cancellation; or

(2) a potential removal of a restriction.

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

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Laura Moriaty
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SUBCHAPTER I. MOTOR CARRIER DIVISION DIRECTOR PROCEDURES IN CONTESTED CASES

43 TAC §§224.310, 224.312, 224.314, 224.316, 224.318, 224.320, 224.322, 224.324, 224.326

STATUTORY AUTHORITY. The department proposes new sections under Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §502.091(b), which authorizes the department to adopt and enforce rules to carry out IRP; Transportation Code, §621.008, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 621; Transportation Code, §622.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 622; Transportation Code, §623.002, which authorizes the board to adopt rules that are necessary to implement and enforce Transportation Code, Chapter 623; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.2525, which addresses the final order issued by the department for a contested case under Transportation Code, Chapter 643; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; Transportation Code, §1003.001, which states that the department is subject to Government Code, Chapter 2001, except as specifically provided by law; Transportation Code, §1003.005, which authorizes the board by rule to delegate

any power relating to a contested case, including the power to issue a final order, to certain department staff; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The proposed new sections would implement Transportation Code, Chapters 621, 622, 623, 643, and 645; Transportation Code, §§502.091(b), 1002.001, 1003.001, and 1003.005; and Government Code, Chapter 2001.

§224.310. Purpose and Scope.

This subchapter describes the procedures for the department's director of the Motor Carrier Division to review and issue a final order in a contested case in which the following conditions are met:

(1) the department's director of the Motor Carrier Division is the final order authority pursuant to a delegation under this chapter or as designated under Transportation Code, §643.001(2); and

(2) a SOAH ALJ has submitted a final proposal for decision for consideration by a person with such final order authority.

§224.312. Contested Case Review.

(a) After SOAH submits a final proposal for decision and transfers SOAH's administrative record to the department, the final order authority has jurisdiction and the record required to issue a final order and will review the contested case in accordance with the APA.

(b) The final order authority may schedule a special public meeting to review the contested case, as specified under this subchapter; however, the final order authority may also review SOAH's administrative record in a contested case and issue a final order without holding a special public meeting. The provisions in this subchapter regarding a special public meeting only apply if the final order authority schedules a special public meeting.

§224.314. Request for Oral Presentation.

(a) At least 20 days prior to the scheduled date of a special public meeting, the department shall notify the parties regarding the opportunity to attend and provide an oral presentation concerning a proposal for decision before the final order authority. The department will deliver notice electronically to the last known email address provided to the department by the party or party's authorized representative in accordance with §224.11 of this title (relating to Filing and Service of Documents).

(b) If a party intends to make an oral presentation at the special public meeting, a party must submit a written request for an oral presentation to the department's contact listed in the notice provided under subsection (a) of this section and copy all other parties in accordance with §224.11 of this title at least seven days prior to the date of the special public meeting at which the party's contested case will be reviewed.

(c) If more than one party was not adversely affected by the proposal for decision, such parties may agree on the order of their presentations in lieu of the order prescribed under §224.320 of this title (relating to Order of Oral Presentations to the Final Order Authority). These parties must submit the agreed order of their presentations along with their requests to make an oral presentation under subsection (b) of this section. The order of presentations will be determined under §224.320 of this title if the parties who were not adversely affected by the proposal for decision do not timely provide the department and the other parties with notice regarding their agreed order of presentation.

(d) If a party timely submits a written request for an oral presentation, that party may make an oral presentation before the final order authority at the special public meeting. If a party fails to submit a written request for an oral presentation timely, that party shall not make an oral presentation at the special public meeting.

(e) Non-parties are not authorized to provide an oral presentation or public comment to the final order authority at a special public meeting.

§224.316. Written Materials and Evidence.

(a) If a party wants to provide written materials at the special public meeting, the party must provide the written materials to the department and all other parties in accordance with §224.11 of this title (relating to Filing and Service of Documents) at least 14 days prior to the date of the special public meeting. If a party fails to timely provide written materials to the department or any other party, the department shall not provide the written materials to the final order authority and the party shall not provide the written materials to the final order authority at the special public meeting. Non-parties are not authorized to provide written materials to the final order authority.

(b) For the purposes of this section, written materials are defined as language or images including photographs or diagrams, that are contained in the SOAH administrative record and recorded in paper form except as stated otherwise in this subsection. The language or images in the written materials must be taken without changes from the SOAH administrative record; however, proposed final orders are allowed to be included in a party's written materials even if they contain arguments or requests that are not contained in the SOAH administrative record. Written materials shall be limited to evidence contained in the SOAH administrative record and consistent with the scope of the final order authority's authority to act under Government Code, §2001.058(e) and the applicable law that governs the subject matter of the contested case, such as Transportation Code, Chapters 621-623, 643, or 645.

(c) All information in the written materials shall include a citation to the SOAH administrative record on all points to specifically identify where the information is located. The citations may be provided in an addendum to the written materials that is not counted against the 15-page limit under subsection (d) of this section; however, the addendum must not include any information other than a heading that lists the name of the party, the caption for the contested case, and text that lists the citations and page numbers.

(d) Written materials shall be 8.5 inches by 11 inches and single-sided. Written materials must be double-spaced and at least 12-point type if in text form. Written materials are limited to 15 pages per party. If a party provides the department with written materials that contain more pages than the maximum allowed, the department shall not provide the written materials to the final order authority and a party shall not provide the written materials to the final order authority at the special public meeting.

(e) Non-parties are not authorized to provide written materials to the final order authority at a special public meeting.

§224.318. Oral Presentation Limitations and Responsibilities.

(a) A party to a contested case under review by the final order authority shall limit oral presentation and discussion to evidence in the SOAH administrative record. Also, oral presentation and discussion shall be consistent with the scope of the final order authority's authority to act under Government Code, §2001.058(e) and the applicable law that governs the subject matter of the contested case, such as Transportation Code, Chapters 621-623, 643, or 645.

(b) A party may argue that the final order authority should remand the contested case to SOAH.

(c) Each party is responsible for objecting when another party attempts to make arguments or engage in discussion regarding evidence that is not contained in the SOAH administrative record.

(d) A party's presentation to the final order authority is subject to the following limitations and conditions:

(1) Each party shall be allowed a maximum of 15 minutes for their oral presentation. The final order authority may increase this time.

(2) No party is allowed to provide a rebuttal or a closing statement.

(3) An intervenor of record from the SOAH proceeding supporting another party shall share that party's time.

(4) Time spent by a party responding to a question from the final order authority is not counted against such party's presentation time.

(5) During an oral presentation, a party to the contested case before the final order authority may object that a party presented material or argument that is not in the SOAH administrative record. Time spent discussing such objections is not counted against the objecting party's time.

§224.320. Order of Oral Presentation to the Final Order Authority.

(a) The department will present the procedural history and summary of the contested case.

(b) The party that is adversely affected may present first. However, the final order authority is authorized to determine the order of each party's presentation if:

(1) it is not clear which party is adversely affected;

(2) it appears that more than one party is adversely affected; or

(3) different parties are adversely affected by different portions of the contested case under review.

(c) The other party or parties not adversely affected will then have an opportunity to make a presentation. If more than one party is not adversely affected, each party will have an opportunity to respond in alphabetical order based on the name of the party in the pleadings in the SOAH administrative record, except as stated otherwise in §224.314 of this title (relating to Request for Oral Presentation).

§224.322. Final Order Authority Conduct and Discussion When Reviewing a Contested Case.

(a) The final order authority shall conduct its contested case review in compliance with Government Code, Chapter 2001; and the applicable law that governs the subject matter of the contested case, such as Transportation Code, Chapters 621-623, 643, or 645, including the limitations on changing a finding of fact or conclusion of law made by a SOAH ALJ, and the prohibition on considering evidence outside of the SOAH administrative record.

(b) The final order authority may question a party or the department on any matter that is relevant to the proposal for decision; however, a question shall be consistent with the scope of the board's authority to take action under Government Code, §2001.058(e) and the applicable law that governs the subject matter of the contested case, such as Transportation Code, Chapters 621-623, 643, or 645; a question must be limited to evidence contained in the SOAH administrative record; and the communication must comply with §224.5 of this title (relating to Prohibited Communication). In considering a contested case, the final order authority is authorized to ask a question regarding a request to remand the case to SOAH, including a remand to SOAH for further consideration of the evidence.

(c) The final order authority may use personal expertise in the industry to understand a contested case and make effective decisions, consistent with the scope of the final order authority's authority to act under Government Code, §2001.058(e) and the applicable law that governs the subject matter of the contested case, such as Transportation Code, Chapters 621-623, 643, or 645.

§224.324. Final Orders.

(a) A final decision or order in a contested case reviewed by the final order authority shall be in writing and shall be signed by the final order authority.

(b) The department shall email a copy of the final order to the parties in the contested case and send a copy of the final order by certified mail, return receipt requested.

(c) The provisions of Government Code, Chapter 2001, Subchapter F govern:

(1) the issuance of a final order issued under this subchapter; and

(2) motions for rehearing filed in response to a final order.

(d) A decision or order in a contested case is final in accordance with Government Code, §2001.144.

§224.326. Public Access to Special Public Meetings.

(a) Persons who have special communication or accommodation needs and who plan to attend a special public meeting may contact the department's contact listed in the posted meeting agenda for the purpose of requesting auxiliary aids or services. Requests shall be made at least two days before a special public meeting. The department shall make every reasonable effort to accommodate these needs.

(b) Members of the public are not authorized to question the parties to the contested case or the final order authority regarding the contested case.

(c) A person who disrupts a special public meeting shall leave the meeting room and the premises if ordered to do so by the final order authority.

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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SUBCHAPTER B. MOTOR VEHICLE, SALVAGE VEHICLE, AND TRAILER INDUSTRY ENFORCEMENT

43 TAC §224.58

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes to amend 43 Texas Administrative Code

(TAC) Subchapter B, Motor Vehicle, Salvage Vehicle, and Trailer Industry Enforcement, §224.58, concerning denial of access to the license plate system. These amendments are necessary to implement Senate Bill (SB) 1902, 89th Legislature, Regular Session (2025), which became effective July 1, 2025. In SB 1902, Section 3, the legislature directed the department to adopt implementing rules by October 1, 2025. Transportation Code, §503.0633(f), as amended by SB 1902, allows the department to deny access to the license plate database if a dealer has been denied access to the temporary tag database under former Transportation Code, §503.0632(f).

EXPLANATION.

As the department transitioned from paper temporary tags to metal license plates on July 1, 2025, in accordance with House Bill 718, 88th Legislature, Regular Session, the temporary tag database has been replaced with the license plate database. Under Transportation Code 503.0633(f), as amended by SB 1902, the department may deny a dealer access to the license plate system if the department determines that the dealer has acted fraudulently. A proposed amendment to §224.58(b) would add denial of access to the temporary tag system as a basis for the department to deny a dealer access to the license plate system. These amendments implement SB 1902, which added this basis as one the department could consider in denying access to the license plate database under Transportation Code, §503.0633(f). The proposed amendment would allow the department to deny access to the license plate system if the dealer had been denied access to temporary tag database prior to July 1, 2025, after providing the dealer with notice.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the amendment will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Corrie Thompson, Director of the Enforcement Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the amendment will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Corrie Thompson, Director of the Enforcement Division, has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Thompson has also determined that, for each year of the first five years the amendment is in effect, public benefits include limiting the criminal activity of a small subset of dealers who fraudulently obtain and sell license plates to persons seeking to engage in violent criminal activity, including armed robbery, human trafficking, and assaults on law enforcement, or to persons seeking to criminally operate uninsured and uninspected vehicles as a hazard to Texas motorists and the environment.

Anticipated Costs to Comply with the Proposal. Ms. Thompson anticipates that there will be no costs to comply with this proposed rule as the proposed rule only applies when a dealer's actions indicate fraud.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed amendment will not have an adverse economic effect on small businesses or micro-businesses because the rule does not change the underlying statutory policy-that the department may deny a dealer the ability to issue vehicle registration credentials if the dealer has committed fraud. This fraud prevention tool first applied to temporary tags and will now apply to license plates obtained or issued by a dealer. The amendment will also not have an adverse impact on rural communities because rural communities are not required to hold a general distinguishing number. The proposed amendment does not require small businesses or micro-businesses to pay a fee or incur any new costs to comply with this amendment, as any costs will be the same as those under the existing rule regarding temporary tags. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed amendment is in effect, no government program would be created or eliminated. Implementation of the proposed amendment would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed amendment does not create a new regulation and does not expand, limit, or repeal an existing regulation. Lastly, the proposed amendment does not increase the number of individuals subject to the rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on August 25, 2025. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to rules@txdmv.gov or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department proposes amendments to §224.58 under Transportation Code, §§503.002, 503.0631, and 1002.001. Transportation Code, §503.002 authorizes the department to adopt rules to administer Transportation Code Chapter 503. Transportation Code, §503.0631(e) authorizes the department to adopt rules and prescribe procedures as necessary to implement §503.0631. Transportation Code, §1002.001 authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

The department also proposes amendments under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor

vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; and Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE. These proposed revisions implement Government Code, Chapter 2001; Occupations Code, Chapter 2301; and Transportation Code, Chapters 501-504, and 1002.

§224.58. Denial of Dealer Access to License Plate System.

(a) In this section "fraudulently obtained license plates from the license plate system" means misuse by a dealer account user of the license plate system authorized under Transportation Code, §503.063, §503.0631, or §503.065 to obtain or issue:

(1) an excessive number of license plates relative to dealer sales;

(2) a license plate for a vehicle or vehicles not in the dealer's inventory (a vehicle is presumed not to be in the dealer's inventory if the vehicle is not listed in the relevant monthly Vehicle Inventory Tax Statement);

(3) access to the license plate system for a fictitious user or person using a false identity;

(4) a license plate for a vehicle or a motor vehicle when a dealer is no longer operating at a licensed location;

(5) a license plate for a vehicle or a motor vehicle not located at the dealer's licensed location or storage lot; or

(6) a license plate for a vehicle or motor vehicle that is not titled or permitted by law to be operated on a public highway.

(b) The department shall deny a dealer access to the license plate system effective on the date the department sends notice electronically and by certified mail to the dealer that the department has determined, directly or through an account user, that the dealer has fraudulently obtained or issued a license plate in the license plate system or has been denied access to the temporary tag database. A dealer may seek a negotiated resolution with the department by demonstrating the dealer took corrective action or that the department's determination was incorrect.

(c) Notice shall be sent to the dealer's last known mailing address and last known email address in the department-designated licensing system.

(d) A dealer may request a hearing on the denial of access to the license plate system, as provided by Subchapter O, Chapter 2301, Occupations Code. The request must be in writing and the dealer must request a hearing under this section. The department must receive the written request for a hearing within 26 days of the date of the notice denying access to the license plate system. The request for a hearing does not stay the denial of access under subsection (b) of this section. A dealer may continue to seek a negotiated resolution with the department after a request for hearing has been submitted under this subsection by demonstrating the dealer took corrective action or that the department's determination was incorrect.

(e) The department may also issue a Notice of Department Decision stating administrative violations as provided in §224.56 of this title (relating to Notice of Department Decision) concurrently with the notice of denial of access under this section. A Notice of Department Decision may include notice of any violation, including a violation listed under subsection (a) of this section.

(f) A department determination and action denying access to the license plate system becomes final if the dealer does not request a hearing or enter into a settlement agreement with the department within 26 days of the date of the notice denying access to the license plate system.

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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SUBCHAPTER D. MOTOR CARRIER AND OVERSIZE OR OVERWEIGHT VEHICLE OR LOAD ENFORCEMENT

43 TAC §§224.116, 224.121, 224.124

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code (TAC) Chapter 224, Subchapter D, Motor Carrier and Oversize or Overweight Vehicle or Load Enforcement, §224.116 and §224.124, and proposes new §224.121, regarding the requirements and procedures under Transportation Code, §643.2526. The proposed amendments and new section are necessary to implement House Bill (HB) 1672, 89th Legislature, Regular Session (2025), which requires that the department adopt rules to create the requirements and procedures for revocation, suspension, or probation of a motor carrier's registration, and the motor carrier's appeal of the revocation, suspension, or probation. Proposed amendments are also necessary to clean up the rule text.

EXPLANATION.

HB 1672 became effective on May 24, 2025, and requires the department to adopt rules to create the requirements and procedures for the following under Transportation Code, §643.2526: 1) the revocation or suspension of a motor carrier's registration; 2) the placement of a motor carrier on probation whose registration is suspended; and 3) the motor carrier's appeal of the revocation, suspension or probation.

Proposed amendments to §224.116 would implement HB 1672 by modifying the title of the section and adding new subsection (h) to clarify that these administrative procedures do not apply to a proceeding under Transportation Code, §643.2526. Section 224.116 provides the administrative procedures for a proceeding under laws that require the department to provide written notice to the person and an opportunity for the person to request a hearing before the department takes an administrative action against

the person. Because Transportation Code, §643.2526 states that a department action under §643.2526 is not required to be preceded by notice and an opportunity for hearing, the department proposes amendments to §224.116 that would clarify that this section does not apply to a proceeding under §643.2526. Proposed amendments to §224.116(a) would also clean up the rule text by adding a hyphen to the term "first class mail" to read "first-class mail."

Proposed new §224.121 and proposed amendments to §224.124 are necessary to implement amendments made by HB 1672 to Transportation Code, §643.2526. These proposed revisions would govern the requirements and procedures under Transportation Code, §643.2526, which authorizes the department to deny an application for registration, renewal of registration, or reregistration under Transportation Code, Chapter 643 (Motor Carrier Registration) prior to providing the person with notice and an opportunity for hearing. Upon request by the Texas Department of Public Safety (DPS) under Transportation Code, §643.252(b) and prior to providing the person with notice and an opportunity for hearing, the department is also authorized under Transportation Code, §643.2526 to revoke or suspend the registration of a motor carrier or to place a motor carrier on probation whose registration is suspended, if the motor carrier has an unsatisfactory safety rating under 49 C.F.R. Part 385 (Safety Fitness Procedures), which is determined by the Federal Motor Carrier Safety Administration (FMCSA); or multiple violations of Transportation Code, Chapter 644 (Commercial Motor Vehicle Safety Standards), a rule adopted under Chapter 644, or Subtitle C (Rules of the Road) of Transportation Code, Title 7 (Vehicles and Traffic), which is determined by DPS. The references to registration under Transportation Code, Chapter 643 are references to operating authority to operate as a motor carrier, rather than vehicle registration under Transportation Code, Chapter 502.

Proposed new §224.121 would provide the requirements and procedures regarding the department's action under Transportation Code, §643.2526. Proposed new §224.121(a) would state that the department will only revoke a motor carrier's registration under Transportation Code, §643.2526 pursuant to a request from DPS under Transportation Code, §643.252(b). Although Transportation Code, §643.252(b) authorizes DPS to request the department to suspend or revoke a registration issued to a motor carrier under Transportation Code, Chapter 643, or to place on probation a motor carrier whose registration is suspended, the department will only revoke the registration of a motor carrier under Transportation Code, §643.252(b). The department's current system is not programmed to suspend a motor carrier's registration, so revocation is the only option.

Also, the DPS rule regarding DPS's request to the department under Transportation Code, §643.252(b) only refers to a revocation of the motor carrier's registration. *See* 37 TAC §4.19(a). Transportation Code, §644.051(b) states that a DPS rule adopted under Transportation Code, Chapter 644 must be consistent with federal regulations. Section 4.19(a), which was adopted under the DPS rulemaking authority in Transportation Code, §644.051, is consistent with 49 C.F.R. §385.13(e), which states that if an interstate motor carrier has a final unsatisfactory safety rating, FMCSA will provide notice to the motor carrier and issue an order revoking the motor carrier's interstate registration, which is also known as operating authority to operate as a motor carrier in interstate transportation. Because DPS does not administer Transportation Code, Chapter 643, DPS must request the department to revoke a motor carrier's registration for intrastate transportation.

Proposed new §224.121(a) would also state that the department will not take action under Transportation Code, §643.252(b) until FMCSA or DPS, as applicable, issues an order regarding the laws referenced in §643.252(b). This requirement is necessary to help protect the person's due process rights because Transportation Code, §643.2526 authorizes the department to take action against the person prior to providing notice and an opportunity for a hearing. FMCSA and DPS are required to comply with the due process requirements under the laws that govern their actions when issuing an order under the laws referenced in Transportation Code, §643.252(b). The process set out in proposed new §224.121(a) would ensure that while a motor carrier may not receive notice and an opportunity for a hearing from the department before the department revokes the motor carrier's registration, the motor carrier should have received full due process on the same factual and legal allegations from either FMCSA or DPS.

The FMCSA order under 49 C.F.R. §385.13(d)(1) is called an out-of-service order, which prohibits the motor carrier from engaging in interstate transportation. *See* 49 U.S.C. §31144(c) and 49 C.F.R. §385.1(a) and §385.13(d)(1). The FMCSA procedures and proceedings regarding an out-of-service order are governed by 49 U.S.C. §31144, 49 C.F.R. Part 385 (Safety Fitness Procedures), and 49 C.F.R. Part 386 (Rules of Practice for FMCSA Proceedings).

The DPS order under Transportation Code, §644.155 and 37 TAC §4.15 is called an order to cease, which prohibits the motor carrier from operating a commercial motor vehicle in intrastate transportation. The DPS proceedings regarding an order to cease are governed by 37 TAC §4.15 and §4.18. The DPS order to cease tells the motor carrier that it must immediately cease all intrastate transportation until such time as DPS determines the motor carrier's safety rating is no longer unsatisfactory.

Proposed new §224.121(b) would state that the department will issue notice of the department's action under Transportation Code, §643.2526 to the person by email and first class mail using the person's last known address in the department's records. The notice requirements under Government Code, §2001.054(c) do not apply to the department's notice regarding the department's action under Transportation Code, §643.2526 because Transportation Code, §643.2526(a) says that the department's action under Transportation Code, §643.252(b) is not required to be preceded by notice and an opportunity for hearing, notwithstanding other law. Also, the motor carrier should have already received due process under the DPS or FMCSA proceeding that resulted in an order to cease or out-of-service order, respectively.

Proposed amendments to §224.124 would implement HB 1672 by modifying the title of the section to refer to an appeal of a department action. Proposed amendments to §224.124 would delete subsection (a), and amend current subsections (b) and (c) to expand the scope of the rule to be consistent with the expanded scope of Transportation Code, §643.2526 as amended by HB 1672. A proposed amendment to current subsection (b) would clarify that Subchapter E of Chapter 224 of this title is not the only subchapter in Chapter 224 that would apply to an appeal to the department under Transportation Code, §643.2526. Proposed amendments to §224.124 would also re-letter existing subsections (b), (c), and (d) due to the proposed deletion of subsection (a).

Proposed new §224.124(d) would state that on appeal under Transportation Code, §643.2526, the department will not rescind a revocation under Transportation Code, §643.252(b), based on the motor carrier taking corrective action that results in an upgrade to its unsatisfactory safety rating after the department has issued notice to the motor carrier that it revoked the motor carrier's registration. DPS wants the department to immediately revoke a motor carrier's registration under Transportation Code, Chapter 643 once DPS requests the department to revoke under Transportation Code, §643.252(b). The department will not wait to see if the motor carrier takes either of the following actions prior to revoking the motor carrier's registration: 1) requests DPS or FMCSA, as applicable, to change the final safety rating or to conduct a review regarding the final safety rating; or 2) appeals their final safety rating to a court under the laws that govern the DPS or FMCSA order, as applicable.

FMCSA's regulation states that a motor carrier that has taken action to correct the deficiencies that resulted in a final rating of "unsatisfactory" may request a rating change at any time. *See* 49 C.F.R. §385.17(a). Another FMCSA regulation states as follows: 1) that a motor carrier may request FMCSA to conduct an administrative review if it believes that FMCSA committed an error in assigning the final safety rating; 2) that FMCSA's decision under the administrative review constitutes the final agency action; and 3) that a motor carrier may request a rating change under the provisions of 49 C.F.R. §385.17. *See* 49 C.F.R. §385.15. In addition, federal law authorizes the motor carrier to appeal FMCSA's final order to the applicable United States Court of Appeals under 49 U.S.C. §521(b)(9) and 49 C.F.R. §386.67. Therefore, it is possible that FMCSA could change a motor carrier's safety rating from unsatisfactory to satisfactory or conditional after FMCSA issued the out-of-service order to the motor carrier and after the department revoked the motor carrier's registration pursuant to DPS's request under Transportation Code, §643.252(b).

The DPS administrative rule states that a motor carrier that has taken action to correct the deficiencies that resulted in a final rating of "unsatisfactory" may request a rating change at any time. *See* 37 TAC §4.15(b)(3)(G). The DPS rule also states that the motor carrier may request DPS to conduct a departmental review if the motor carrier believes that DPS has committed error in assigning the final safety rating, that the final safety rating under the DPS departmental review constitutes a final agency decision, and that any judicial review of the DPS final agency decision is subject to Government Code, Chapter 2001. *See* 37 TAC §4.15(b)(3)(H) and (I). Therefore, it is possible that DPS could change a motor carrier's safety rating from unsatisfactory to satisfactory or conditional after DPS issued the order to cease to the motor carrier and after the department revoked the motor carrier's registration pursuant to DPS's request under Transportation Code, §643.252(b).

Once the department issues a revocation under Transportation Code, §643.2526, the revocation is effective and cannot be rescinded unless the motor carrier submits a timely appeal under §643.2526. If the motor carrier timely submits an appeal under Transportation Code, §643.2526, if the underlying order from DPS or FMCSA was issued in compliance with the motor carrier's due process rights, and if the requirements under Transportation Code, §643.252(b) were met at the time DPS requested the department to revoke the motor carrier's registration, the department's revocation will not be rescinded on appeal to the department. If the motor carrier resolves its unsatisfactory safety rating and is no longer subject to the order to cease or out-of-service order after the department revokes the motor carrier's registration, the evidence on appeal will not show any error regarding the department's revocation. However, an appeal of a revocation under Transportation Code, §643.2526 may result in a rescission of the revocation if the underlying order from DPS or FMCSA, as applicable, was issued in violation of the motor carrier's due process rights or was issued to the motor carrier in error.

When determining whether to request the department to revoke the motor carrier's registration under Transportation Code, §643.252(b), it is within DPS's discretion to consider whether the motor carrier's unsatisfactory safety rating might change to a satisfactory or conditional safety rating after the issuance of an order to cease or an out-of-service order. Once the department receives the request from DPS to revoke the motor carrier's registration under Transportation Code, §643.252(b), the department will immediately revoke the registration. If the department revoked a motor carrier's registration pursuant to DPS's request under Transportation Code, §643.252(b), and the motor carrier later improves its safety rating and is no longer subject to an out-of-service order or an order to cease, the department will consider this fact when reviewing the motor carrier's application for reregistration under Transportation Code, §643.0585 or the motor carrier's application for registration under Transportation Code, §643.052.

Proposed new §224.124(e) would require the person who submits an appeal to the department under Transportation Code, §643.2526 to state why the person claims the department's action is erroneous, as well as the legal and factual basis for the claimed error. This information is necessary to enable the department to comply with a requirement to docket the contested case with the State Office of Administrative Hearings under 1 TAC §155.53(a)(1), which requires the Request to Docket Case form to be submitted together with the complaint or other pertinent documents describing the agency action giving rise to the contested case.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the amendments and new section will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Corrie Thompson, Director of the Enforcement Division (ENF), has determined that there will be no significant impact on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Thompson has also determined that, for each year of the first five years the amended and new sections are in effect, there is an anticipated public benefit because the proposal provides clarity for the motor carrier industry that is governed by these provisions.

Anticipated Public Benefits. The public benefit anticipated as a result of the proposal includes clarity for the motor carrier industry regarding the procedures, requirements, and restrictions under Transportation Code, §643.2526.

Anticipated Costs to Comply with the Proposal. Ms. Thompson anticipates that there will be no costs to comply with these rules for the reasons stated in this preamble.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed new section and amendments will not have an adverse economic effect on small businesses, micro-businesses, and rural

communities for the reasons stated in this preamble. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed new section and amendments are in effect, no government program would be created or eliminated. Implementation of the proposed new section and amendments would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease in fees paid to the department. The proposed new section and amendments create a new regulation regarding the revocation of a motor carrier's registration under Transportation Code, §643.2526 pursuant to a request from DPS under Transportation Code, §643.252(b). The proposed new section and amendments expand an existing regulation regarding the department's authority to deny an application for registration, renewal of registration, or reregistration under Transportation Code, §643.2526. The proposed rules would not limit or repeal any regulations. Lastly, the proposed new section and amendments do not affect the number of individuals subject to the rule's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. CDT on August 25, 2025. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The department proposes amendments under Transportation Code, §643.2526(d), which requires the department to adopt rules as necessary to implement §643.2526, including rules governing the requirements and procedures under §643.2526; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643; Transportation Code, §643.252, which authorizes the department to suspend, revoke, or deny a registration issued under Transportation Code, Chapter 643 or place on probation a motor carrier whose registration is suspended; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department; and the statutory authority referenced throughout this preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The proposed amendments would implement Government Code, Chapter 2001; and Transportation Code, §§643.252(b), 643.2526, and 1002.001.

§224.116. Administrative Proceedings, Excluding Proceedings Under Transportation Code, §643.2526.

(a) If the department decides to take an enforcement action under §218.16 of this title (relating to Insurance Requirements) for the revocation of self-insured status, §218.64 of this title (relating to Rates), §218.71 of this title (relating to Administrative Penalties), §219.121 of this title (relating to Administrative Penalties and Sanctions under Transportation Code, §623.271), §218.72 of this title (relating to Administrative Sanctions), or §219.126 of this title (relating to Administrative Penalty for False Information on Certificate by a Shipper), the department shall mail a Notice of Department Decision to the person by first-class [~~first class~~] mail to the last known address as shown in department records. If the enforcement action falls under the Memorandum of Agreement with the Federal Motor Carrier Safety Administration (FMCSA) under §218.71, the department shall mail the Notice of Department Decision to the person by first-class [~~first class~~] mail to the last known address as shown in FMCSA's records.

(b) The Notice of Department Decision shall include:

(1) a brief summary of the alleged violation or enforcement action being proposed;

(2) a statement describing each sanction, penalty, or enforcement action proposed;

(3) a statement informing the person of the right to request a hearing;

(4) a statement of the procedure a person must use to request a hearing, including the deadline for filing a request with the department and the acceptable methods to request a hearing; and

(5) a statement that a proposed penalty, sanction, or enforcement action will become final and take effect on a specific date if the person fails to request a hearing.

(c) A person must submit to the department a written request for a hearing to the address provided in the Notice of Department Decision not later than the 26th day after the date the notice is mailed by the department; however, this requirement does not apply to a contested case that falls under §218.64 and Transportation Code, §643.154.

(d) If a person submits a timely written request for a hearing or the contested case that falls under §218.64 and Transportation Code, §643.154, the department will contact the person and attempt to informally resolve the contested case. If the person and the department cannot informally resolve the contested case, the department will refer the contested case to SOAH to set a hearing date and will give notice of the time and place of the hearing to the person.

(e) Except as provided by Transportation Code, §643.154, if the person does not make a timely request for a hearing or agree to settle a contested case within 26 days of the date the Notice of Department Decision was mailed, the allegations are deemed admitted on the 27th day and a final order including sanctions and penalties may be issued by the final order authority.

(f) Except as provided by statute and the applicable provisions of this chapter, any SOAH proceeding is governed by Government Code, Chapter 2001 and 1 TAC Chapter 155, including the authority of the department to informally dispose of the contested case by stipulation, agreed settlement, consent order, or default. The department will follow the process set forth in Transportation Code, §643.2525 and the applicable provisions of this chapter when enforcing the federal laws and regulations cited in §218.71 to the extent authorized by applicable federal laws and regulations.

(g) The department and the person may informally resolve the contested case by entering into a settlement agreement or agreeing to

stipulations at any time before the director issues a final order. However, the person must pay any penalty in full prior to the execution of a settlement agreement.

(h) This section does not apply to a department action under Transportation Code, §643.2526.

§224.121. Administrative Proceedings under Transportation Code, §643.2526.

(a) The department will only revoke the registration of a motor carrier under Transportation Code, §643.2526 pursuant to a request from the Texas Department of Public Safety under Transportation Code, §643.252(b) after the issuance of an order by the following, as applicable:

(1) the Federal Motor Carrier Safety Administration regarding an unsatisfactory safety rating under 49 C.F.R. Part 385; or

(2) the Texas Department of Public Safety regarding multiple violations of the following:

(A) Transportation Code, Chapter 644;

(B) a rule adopted under Transportation Code, Chapter 644; or

(C) Subtitle C of Title 7 of the Transportation Code.

(b) The department will issue notice of the department's action under Transportation Code, §643.2526 to the person by email and first class mail using the person's last known address in the department's records.

§224.124. Appeal of Department Action [~~of Denial~~] Under Transportation Code, §643.2526.

[~~(a) Pursuant to Transportation Code, §643.2526, an applicant may appeal the denial of an application for registration, renewal of registration, or reregistration under Transportation Code, Chapter 643.~~]

(a) [~~(b)~~] An [~~The~~] appeal to the department under Transportation Code, §643.2526 will be governed by Chapter 224 [, ~~Subchapter E~~] of this title (relating to Adjudicative Practice and Procedure) [~~Contested Cases Referred to SOAH~~)].

(b) [~~(c)~~] An [~~The applicant's~~] appeal will be considered untimely if it is not filed with the department by the 26th day after the date of the department's issuance of notice of the department's action. [~~denial of the application.~~] The department will not consider an untimely appeal.

(c) [~~(d)~~] An application that is withdrawn under Transportation Code, §643.055 is not a denial of an application for the purposes of an appeal under Transportation Code, §643.2526.

(d) On appeal, the department will not rescind a revocation under Transportation Code, §643.252(b) based on the motor carrier taking corrective action that results in an upgrade to its unsatisfactory safety rating after the department has issued notice to the motor carrier that the department revoked the motor carrier's registration.

(e) An appeal under Transportation Code, §643.2526 must state why the person claims the department's action is erroneous, as well as the legal and factual basis for the claimed error.

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160