ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.31

The Texas Ethics Commission (the Commission) adopts amendments to Texas Ethics Commission rules in Chapter 18. Specifically, the Commission amends §18.31, regarding Adjustments to Reporting Thresholds. The amendment is adopted without changes to the proposed text as published in the June 27, 2025, issue of the *Texas Register* (50 TexReg 3711). The rule will not be republished.

Section 571.064(b) of the Government Code requires the Commission to annually adjust reporting thresholds upward to the nearest multiple of $10 in accordance with the percentage increase for the previous year in the Consumer Price Index for Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor. The laws under the Commission's authority that include reporting thresholds are Title 15 of the Election Code (campaign finance law), Chapter 305 of the Government Code (lobby law), Chapter 572 of the Government Code (personal financial statements), Chapters 302 and 303 of the Government Code (speaker election, governor for a day, and speaker's reunion day ceremony reports), and section 2155.003 of the Government Code (reporting requirements applicable to the comptroller).

The Commission first adopted adjustments to reporting thresholds in 2019, which were effective on January 1, 2020. These new adjustments will be effective on January 1, 2026, to apply to contributions and expenditures that occur on or after that date.

No public comments were received on this amended rule.

The amended rule is adopted under Texas Government Code Section 571.062, which authorizes the Commission to adopt rules to administer Title 15 of the Election Code, Chapters 302, 303, 305, 572, and section 2155.003 of the Government Code. The amended rule affects Title 15 of the Election Code, Chapters 302, 303, 305, 572, and section 2155.003 of the Government Code.

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

Filed with the Office of the Secretary of State on October 23, 2025.

TRD-202503819

Amanda Arriaga
General Counsel
Texas Ethics Commission
Effective date: January 1, 2026
Proposal publication date: June 27, 2025
For further information, please call: (512) 463-5800

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

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

SUBCHAPTER A. APPLICATION PROCEDURES

7 TAC §2.108

The Finance Commission of Texas (commission) adopts amendments to §2.108 (relating to Military Licensing) in 7 TAC Chapter 2, concerning Residential Mortgage Loan Originators Regulated by the Office of Consumer Credit Commissioner.

The commission adopts the amendments to §2.108 without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5513). The amendments will not be republished.

The rules in 7 TAC Chapter 2 govern residential mortgage loan originators (RMLOs) licensed by the Office of Consumer Credit Commissioner (OCCC) under Texas Finance Code, Chapter 180. In general, the purpose of the adopted rule changes is to specify RMLO licensing requirements for military service members, military veterans, and military spouses, in accordance with Chapter 55 of the Texas Occupations Code, as amended by HB 5629 and SB 1818 (2025).

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review. The OCCC did not receive any precomments from stakeholders on the draft of the proposed changes.

Chapter 55 of the Texas Occupations Code describes licensing requirements for military service members, military veterans, and military spouses. Chapter 55 applies to licenses that "must be obtained by an individual to engage in a particular business." Tex. Occ. Code §55.001(3). Chapter 55 includes an expedited

license application procedure for certain previously licensed individuals and authorizes certain individuals licensed in other states to engage in licensed occupations in Texas.

HB 5629, which the Texas Legislature passed in 2025, amends various provisions in Chapter 55. Specifically, HB 5629 revises language in Texas Occupations Code, §55.004, on issuing a license to a service member, veteran, or spouse holding a license issued by another state. HB 5629 also amends Texas Occupations Code, §55.0041, to specify documentation required for a service member or spouse to obtain an authorization to practice in Texas based on holding a license in another state. In addition, HB 5629 adds new Texas Occupations Code, §55.0042, describing how a state agency determines whether a person is "in good standing" with another state's licensing authority. Finally, HB 5629 amends Texas Occupations Code, §55.005, to specify a 10-business-day period for issuing a license to an applicant who qualifies under Texas Occupations Code, §55.004. HB 5629 was approved by the governor and went into effect on September 1, 2025.

SB 1818, which the Texas Legislature passed in 2025, also amends Chapter 55. Specifically, SB 1818 amends Texas Occupations Code, §55.004 and §55.0041, to describe circumstances where an agency issues a provisional license and the duration of a provisional license. SB 1818 was approved by the governor and went into effect on September 1, 2025.

Adopted amendments to §2.108 implement the statutory amendments from HB 5629 and SB 1818 for RMLOs licensed by the OCCC. Amendments to §2.108(b) clarify that the term "in good standing" has the meaning provided by Texas Occupations Code, §55.0042 (a new statutory section added by HB 5629). Amendments to §2.108(d) specify the expedited licensing procedure under Texas Occupations Code, §55.004 and §55.005 (as amended by HB 5629 and SB 1818). Finally, amendments to §2.108(e) specify the recognition of out-of-state under Texas Occupations Code, §55.0041 (as amended by HB 5629 and SB 1818). This includes HB 5629's technical changes and SB 1818's changes related to provisional licenses. Other clarifying amendments throughout §2.108 improve the section's structure and readability.

The commission did not receive any official comments on the proposed amendments.

The rule amendments are adopted under Texas Occupations Code, §55.004 and §55.0041 (as amended by HB 5629 and SB 1818), which authorize a state agency to adopt rules implementing requirements of Texas Occupations Code, Chapter 55. The rule amendments are also adopted under Section 7 of HB 5629, which authorizes a state agency to adopt or modify rules to implement HB 5629's changes, and Section 3 of SB 1818, which authorizes a state agency to adopt rules to implement SB 1818's changes. In addition, Texas Finance Code, §180.004 authorizes the commission to implement rules to comply with Texas Finance Code, Chapter 180.

The statutory provisions affected by the adoption are contained in Texas Occupations Code, Chapter 55 and Texas Finance Code, Chapter 180.

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

Filed with the Office of the Secretary of State on October 24, 2025.

TRD-202503846
Matthew Nance
General Counsel, Office of Consumer Credit Commissioner
Finance Commission of Texas
Effective date: November 13, 2025
Proposal publication date: August 29, 2025
For further information, please call: (512) 936-7660

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PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

CHAPTER 55. RESIDENTIAL MORTGAGE LOAN ORIGINATORS

SUBCHAPTER B. LICENSING

7 TAC §55.110

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (SML), adopts amendments to 7 TAC §55.110, concerning Licensing of Military Service Members, Military Veterans, and Military Spouses. The commission's proposal was published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5515). The rule is adopted without changes to the published text and will not be republished.

Explanation of and Justification for the Rule

Preexisting §55.110 specifies licensing requirements for military service members, military veterans, and military spouses applying for an individual residential mortgage loan originator (originator) license, in accordance with Occupations Code Chapter 55.

Changes Concerning Implementation of HB5629 and SB1818

House Bill 5629 (HB5629) and Senate Bill 1818 (SB1818) were enacted during the 89th Legislature, Regular Session (2025) and became effective September 1, 2025. HB5629 and SB1818 amended Occupations Code Chapter 55. The adopted rule is designed to implement the requirements of HB5629 and SB1818. The adopted rule: in subsection (b), adds a new definition for "in good standing" by adopting by reference the definition in Occupations Code §55.0042; in subsection (d)(3), provides that within 10 business days after the date SML receives a complete license application and written request for military licensing review from a qualifying applicant, SML will approve the application and issue a license to the applicant, issue a provisional license to the applicant pending a final decision on the application, or notify the applicant that the license held by the individual in another state is not similar in scope of practice to an originator license issued by SML, if applicable; in subsection (d)(4), provides that, if a provisional license is issued, SML will make a final decision on the application within 120 days after the date the provisional license is issued; in subsection (d)(5), provides that, if an applicant holds a license in good standing in another state that is similar in scope of practice to an originator license issued by SML, the applicant will be assigned a license status in NMLS that confers temporary authority to act as an originator in accordance with Finance Code §180.0511 and 7 TAC §55.109 (relating to Temporary Authority); and, in subsection (e), clarifies that recognition of a license held in

another state is based on whether the license is similar in scope of practice to an originator license issued by SML.

Other Modernization and Update Changes

The adopted rule makes changes to modernize and update the rule, including: adding and replacing language for clarity and readability; removing unnecessary or duplicative provisions; and updating terminology.

Summary of Public Comments

Publication of the commission's proposal set a deadline of 30 days to receive public comments. No comments were received.

Statutory Authority

The rule is adopted under the authority of: Government Code §2001.004(1), requiring a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Finance Code §157.0023, authorizing the commission to adopt rules necessary to implement or fulfill the purposes of Finance Code Chapter 157, the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act, and as required to carry out the intentions of the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (12 U.S.C. §§5101-5117); and Finance Code §180.004(b), authorizing the commission to implement rules necessary to comply with Finance Code Chapter 180, the Texas Secure and Fair Enforcement for Mortgage Licensing Act of 2009. The rule is also adopted under the authority of, and to implement, Occupations Code Chapter 55.

The adopted rule affects the statutes in Finance Code Chapters 157 and 180.

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

Filed with the Office of the Secretary of State on October 27, 2025.

TRD-202503898
Iain A. Berry
General Counsel
Department of Savings and Mortgage Lending
Effective date: November 16, 2025
Proposal publication date: August 29, 2025
For further information, please call: (512) 475-1535

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS

SUBCHAPTER A. RULES OF OPERATION FOR PAWNSHOPS

DIVISION 3. PAWNSHOP EMPLOYEE LICENSE

7 TAC §85.309

The Finance Commission of Texas (commission) adopts amendments to §85.309 (relating to Military Licensing) in 7 TAC Chapter 85, Subchapter A, concerning Rules of Operation for Pawnshops.

The commission adopts the amendments to §85.309 without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5517). The amendments will not be republished.

The rules in 7 TAC Chapter 85, Subchapter A govern pawnshops and pawnshop employees licensed by the Office of Consumer Credit Commissioner (OCCC) under Texas Finance Code, Chapter 371. In general, the purpose of the adopted rule changes is to specify pawnshop employee licensing requirements for military service members, military veterans, and military spouses, in accordance with Chapter 55 of the Texas Occupations Code, as amended by HB 5629 and SB 1818 (2025).

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review. The OCCC received an informal precomment from an association of pawnbrokers supporting the proposed changes. The OCCC appreciates the thoughtful input of stakeholders.

Chapter 55 of the Texas Occupations Code describes licensing requirements for military service members, military veterans, and military spouses. Chapter 55 applies to licenses that "must be obtained by an individual to engage in a particular business." Tex. Occ. Code §55.001(3). Chapter 55 includes an expedited license application procedure for certain previously licensed individuals and authorizes certain individuals licensed in other states to engage in licensed occupations in Texas.

HB 5629, which the Texas Legislature passed in 2025, amends various provisions in Chapter 55. Specifically, HB 5629 revises language in Texas Occupations Code, §55.004, on issuing a license to a service member, veteran, or spouse holding a license issued by another state. HB 5629 also amends Texas Occupations Code, §55.0041, to specify documentation required for a service member or spouse to obtain an authorization to practice in Texas based on holding a license in another state. In addition, HB 5629 adds new Texas Occupations Code, §55.0042, describing how a state agency determines whether a person is "in good standing" with another state's licensing authority. Finally, HB 5629 amends Texas Occupations Code, §55.005, to specify a 10-business-day period for issuing a license to an applicant who qualifies under Texas Occupations Code, §55.004. HB 5629 was approved by the governor and went into effect on September 1, 2025.

SB 1818, which the Texas Legislature passed in 2025, also amends Chapter 55. Specifically, SB 1818 amends Texas Occupations Code, §55.004 and §55.0041, to describe circumstances where an agency issues a provisional license and the duration of a provisional license. SB 1818 was approved by the governor and went into effect on September 1, 2025.

Adopted amendments to §85.309 implement the statutory amendments from HB 5629 and SB 1818 for pawnshop employees licensed by the OCCC. Amendments to §85.309(b) clarify that the term "in good standing" has the meaning provided by Texas Occupations Code, §55.0042 (a new statutory section added by HB 5629). Amendments to §85.309(d) specify the expedited licensing procedure under Texas Occupations Code, §55.004 and §55.005 (as amended by HB 5629 and SB 1818). Finally, amendments to §85.309(e) specify the recognition of

out-of-state under Texas Occupations Code, §55.0041 (as amended by HB 5629 and SB 1818). This includes HB 5629's technical changes and SB 1818's changes related to provisional licenses. Other clarifying amendments throughout §85.309 improve the section's structure and readability.

The commission did not receive any official comments on the proposed amendments.

The rule amendments are adopted under Texas Occupations Code, §55.004 and §55.0041 (as amended by HB 5629 and SB 1818), which authorize a state agency to adopt rules implementing requirements of Texas Occupations Code, Chapter 55. The rule amendments are also adopted under Section 7 of HB 5629, which authorizes a state agency to adopt or modify rules to implement HB 5629's changes, and Section 3 of SB 1818, which authorizes a state agency to adopt rules to implement SB 1818's changes. The rule amendments are also adopted under Texas Finance Code, §371.006, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 371. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Chapter 14 and Title 4.

The statutory provisions affected by the adoption are contained in Texas Occupations Code, Chapter 55 and Texas Finance Code, Chapter 371.

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

Filed with the Office of the Secretary of State on October 24, 2025.

TRD-202503847
Matthew Nance
General Counsel
Office of Consumer Credit Commissioner
Effective date: November 13, 2025
Proposal publication date: August 29, 2025
For further information, please call: (512) 936-7660

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER N. GENERAL EDUCATION CURRICULUM ADVISORY COMMITTEE

19 TAC §§1.180 - 1.184

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 1, Subchapter N, §§1.180 - 1.184, General Education Curriculum Advisory Committee, without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5520). The rules will not be republished.

The new sections establish the General Education Curriculum Advisory Committee, in accordance with statutory changes made by Senate Bill (SB) 37, 89th Texas Legislature, Regular Session, adopting new Texas Education Code (TEC), §61.0522.

Rule 1.180, Authority and Specific Purposes of the General Education Curriculum Advisory Committee, establishes the statutory authority for the new advisory committee, which comes from TEC, §61.0522, adopted in SB 37. It also states that the purpose of the new advisory committee is to provide advice to the Coordinating Board for its report to the Legislature about which courses should be included in the general education curriculum of Texas institutions of higher education, which courses might implement new TEC, §51.315, and how general education curriculum may be condensed, including methods for considering a shorter core curriculum.

Rule 1.181, Definitions, contains definitions for common terms used in this subchapter. These definitions parallel definitions used in the TEC and in other parts of the Texas Administrative Code and provide clarity to the reader by distinguishing between the governing board and the agency as a whole.

Rule 1.182, Committee Membership and Officers, states the membership requirements of the new committee and the appointment process. The membership requirements are designed to ensure the committee consists of members who represent the interests of two- and four-year institutions of higher education. The rule establishes an advisory committee of fourteen members, a majority of which shall constitute a quorum.

Rule 1.183, Duration of Meetings, states that the committee will continue until September 1, 2027, as required by SB 37. The rule provides for regular meetings of the committee, which shall meet not less than monthly and upon the call of the presiding officer.

Rule 1.184, Tasks Assigned to the Committee, sets out the tasks assigned to the committee, which include providing advice to the Coordinating Board on the items required by SB 37 related to the content and length of courses offered in the general education and core curriculum by institutions of higher education, and into inform the Coordinating Board's required report and recommendations to the Legislature in advance of the 90th legislative session.

No comments were received regarding the adoption of the new rule.

The new sections are adopted under Texas Education Code, Section 61.0522, and Texas Government Code, Chapter 2110.

The adopted new sections affect Texas Education Code, §§61.052, 61.0522, 61.059, and Chapter 61, Subchapter S; Texas Government Code, Chapter 2110; and Texas Administrative Code, Chapter 1, Subchapter N.

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

Filed with the Office of the Secretary of State on October 24, 2025.

TRD-202503827

Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 13, 2025
Proposal publication date: August 29, 2025
For further information, please call: (512) 427-6182

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

19 TAC §1.195

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 1, Subchapter P, §1.195, Lower-Division Academic Course Guide Manual Advisory Committee, without changes to the proposed text as published in the July 25, 2025, issue of the *Texas Register* (50 TexReg 4158). The rules will not be republished.

This amendment continues 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 adopted 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.

No comments were received regarding the adoption of the amendments.

The amended section is adopted under Texas Government Code, Chapter 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 adopted amendment affects Texas Administrative Code, Chapter 1, Subchapter P.

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

Filed with the Office of the Secretary of State on October 24, 2025.

TRD-202503828
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 13, 2025
Proposal publication date: July 25, 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) adopts amendments to Title 19, Part 1, Chapter 2, Subchapter O, §2.358, Effective Dates, with changes to the proposed text as published in the July 25, 2025, issue of the *Texas Register* (50 TexReg 4158). The rule will be republished. Section 2.357, Reporting of Approved Self-Supporting Courses, Certificates and Degree Programs, is adopted without changes and will not be republished.

Specifically, this amendment removes the requirement that public institutions of higher education report self-supporting courses to the Coordinating Board.

Subsequent to the posting of the rules in the *Texas Register,* the following changes are incorporated into the adopted rules.

Section 2.358(b) is revised to correct the required reporting for §2.357 to begin in 2026 instead of 2025.

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, 2.3 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.

No comments were received regarding the adoption of the amendments.

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

§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, 2026.

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

Filed with the Office of the Secretary of State on October 24, 2025.

TRD-202503830
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 13, 2025
Proposal publication date: July 25, 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 B. TRANSFER OF CREDIT, CORE CURRICULUM AND FIELD OF STUDY CURRICULA

19 TAC §4.27

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to, Title 19, Part 1, Chapter 4, Subchapter B §4.27, Resolution of Transfer Disputes for Lower-Division Courses, without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5521). The rule will not be republished.

Texas Education Code, §61.826, authorizes the Board to adopt rules regarding the procedures for resolution of transfer disputes.

Section 4.27, Resolution of Transfer Disputes for Lower-Division Courses, is amended to clarify that the institution proposing to deny the credit must notify the Coordinating Board of the dispute if it is not resolved to the satisfaction of the student or the institution that awarded the credit, as required by statute.

No comments were received regarding the adoption of amendments.

The amendment is adopted under Texas Education Code, Section 61.826, which authorizes the Coordinating Board to adopt rules regarding the procedures for resolution of transfer disputes.

The adopted amendment affects Texas Education Code, Section 61.826, and Texas Administrative Code, Title 19, Part 1, §4.27

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

Filed with the Office of the Secretary of State on October 24, 2025.

TRD-202503831
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 13, 2025
Proposal publication date: August 29, 2025
For further information, please call: (512) 427-6182

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SUBCHAPTER C. TEXAS SUCCESS INITIATIVE

19 TAC §4.52

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to, Title 19, Part 1, Chapter 4, Subchapter C, §4.52, Texas Success Initiative, with changes to the proposed text as published in the July 25, 2025, issue of the *Texas Register* (50 TexReg 4159). The rule will be republished.

This amendment excludes students who are public officers and employees from the statutory requirements Texas Success Initiative.

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 clarify that the requirements for assessing college readiness under the Texas Success Initiative does not apply to entering undergraduate students who are emergency medical technicians employed by a political subdivision, fire protection personnel, or peace officers.

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 employed by a political subdivision, fire protection personnel, and peace officers.

Subsequent to the posting of the rules in the *Texas Register*, the following changes are incorporated into the adopted rules.

Rule 4.52(b) is amended to clarify when an institution should determine whether a student is required to meet the college readiness standards.

Rule 4.52(b)(7)(B) is amended to further clarify eligibility related to employment by a political subdivision. This criteria references the definition of "employment" in the Local Government Code.

The following comments were received regarding the adoption of the amendments.

Comment: Dallas College requested clarification on whether the exemption is determined as a one-time eligibility at initial enrollment based on certification and employment status at that time, or will institutions be required to verify continued certification and employment each semester or academic year to maintain the exemption.

Response: The Coordinating Board has provided clarity to verify qualifications for non-applicability based on the new categories as outlined in §4.52(b)(7) - (9), eligibility will need to be determined at each registration period.

Comment: Grayson College requested a clear application and definition in §4.52(7)(B) for "political subdivision."

Response: The Coordinating Board proposes language will reflect requested clarify language.

The amendment is adopted 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 adopted 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. To verify qualification under §4.52(b)(7) - (9), eligibility should be determined at each registration period. The following figure contains the full list of student categories to whom this subchapter does not apply.

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;

(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 more than 20 hours a week by a political subdivision, according to Texas Local Government Code, §172.003;

(8) A student who is employed more than 20 hours a week as fire protection personnel by Section 419.021, Government Code; or

(9) A student who is elected, appointed, or employed more than 20 hours a week 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 adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 24, 2025.

TRD-202503833
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 13, 2025
Proposal publication date: July 25, 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) adopts new rules in Title 19, Part 1, Chapter 4, Subchapter P, §§4.250 - 4.254, Program or Study Institutional Requirements, without changes to the proposed text as published in the July 25, 2025, issue of the *Texas Register* (50 TexReg 4160). The rules will not be republished.

Specifically, the new section reconstitutes 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.

No comments were received regarding the adoption of the new rules.

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

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

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SUBCHAPTER 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) adopts new rules in, Title 19, Part 1, Chapter 4, Subchapter Z, §§4.390 - 4.393, Uniform Standards for Publication of Cost of Attendance and Financial Aid Information, without changes to the proposed text as published in the July 25, 2025, issue of the *Texas Register* (50 TexReg 4163). The rules will not be republished.

This new section establishes 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 standard.

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.

No comments were received regarding the adoption of new rule.

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

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

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CHAPTER 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) adopts repeal of Title 19, Part 1, Chapter 6, Subchapter A, §§6.1 - 6.10, the Family Practice Residency Program, without changes to the proposed text as published in the July 25, 2025 issue of the *Texas Register* (50 TexReg 4165). The rule will not be republished.

This repeal removes existing rules that have been replaced with new rules in Chapter 10, Subchapter B.

The adopted 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.

No comments were received regarding the adoption of the repeal.

The repeal is adopted 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 adopted repeal affects Texas Education Code, §§61.501 - 61.506.

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

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CHAPTER 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) adopts new rules in Title 19, Part 1, Chapter 10, Subchapter SS, §10.890 - 10.898, Texas Reskilling and Upskilling Through Education (TRUE) Grant Program, without changes to the proposed text as published in the July 25, 2025, issue of the *Texas Register* (50 TexReg 4165). The rules will not be republished.

Specifically, this new section consolidates 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 adopted new subchapter establishes 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).

No comments were received regarding the adoption of the new rules.

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

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

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CHAPTER 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) adopts amendments to, Title 19, Part 1, Chapter 12, Subchapter A, §12.5, Opportunity High School Diploma, with changes to the proposed text as published in the July 25, 2025, issue of the *Texas Register* (50 TexReg 4168). The rule will be republished.

The adopted amendment updates the list of approved assessments for the program. It also includes a technical correction to meet the intent of correct level of attainment for the STAAR EOC exams.

The Coordinating Board adopts an amendment to the Opportunity High School Diploma program rules to update the figure containing the list of approved assessments and documentation to determine student achievement for public junior colleges approved to offer the Opportunity High School Diploma. The adopted amendment also lists the minimum score for STAAR EOC exams as 'Approaches Grade Level' as this is the level that was determined appropriate for the attainment of credit based

on Texas Education Agency's STAAR EOC Performance Level Categories and is the level in the currently approved rule. The rule was inadvertently published with the *Texas Register* listing the minimum score as "Meets Grade Level". The technical correction sets the minimum score as "Approaches Grade Level", which is the correct standard of attainment required for a high school student to receive course credit under the Foundation High School 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.

No comments were received regarding the adoption of the amendment.

The amendment is adopted 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 adopted amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 12, Subchapter A, Section 12.5.

§12.5. Program Requirements.

(a) General Requirements. The Opportunity High School Diploma Program is an alternative competency-based high school diploma program to be offered for concurrent enrollment to an adult student without a high school diploma who is concurrently enrolled in a career and technical education program at a public junior college. The program may include any combination of instruction, curriculum, internships, or other means by which a student may attain the knowledge sufficient to adequately prepare the student for postsecondary education or additional workforce education.

(b) A student shall be concurrently enrolled in a program that is defined as a CTE certificate in §2.262 of this title (relating to Certificate Titles, Length, and Program Content), other than a Level 2 Certificate, Enhanced Skills Certificate, or an Advanced Technical Certificate.

(c) Curricular Requirements. An approved public junior college shall embed required instructional outcomes and performance expectations in the program. A public junior college may also add curricular elements designed to meet regional employers' needs or specific workforce needs. Required instructional outcomes and performance expectations are detailed at https://reportcenter.highered.texas.gov/contracts/workforce-education/opportunity-high-school-diploma-instructional-outcomes-and-performance-expectations/ for the five core program competencies. Core program competencies shall include:

(1) Quantitative Reasoning, including the application of mathematics to the analysis and interpretation of theoretical and real-world problems to draw relevant conclusions or solutions.

(2) Communication Skills, including reading, writing, listening, speaking, and non-verbal communication.

(3) Civics, including the structure of government, processes to make laws and policies, constitutional principles of checks and balances, separation of powers, federalism, and rights and responsibilities of a citizen.

(4) Scientific Reasoning, including problem-solving that involves forming a hypothesis, testing the hypothesis, determining and analyzing evidence, and interpreting results.

(5) Workplace Success Skills, including dependability, adaptability, working with others, initiative, resilience, accountability, critical thinking, time management, organizing, planning, problem-solving, conflict resolution, and self-awareness.

(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)

(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) Instructional Outcomes. A public junior college that is approved to offer the program shall embed the required instructional outcomes into their curriculum as required under subsection (c) of this section.

(f) Performance Expectations. A public junior college that is approved to offer the program shall embed the performance expecta-

tions into their curriculum as required under subsection (c) of this section.

(g) Location of Program. Subject to approval under this subchapter, a public junior college may enter into agreement with one or more public junior colleges, general academic teaching institutions, public school districts, or nonprofit organizations to offer this program. The public junior college may offer this program at any campus of an entity subject to an agreement to offer this program.

(h) Award of High School Diploma. A public junior college participating in the program shall award a high school diploma to a student enrolled in this program if the student satisfactorily completes an approved assessment that provides evidence of competence in the five core program requirements as required under this rule. A high school diploma awarded under this program is equivalent to a high school diploma awarded under Texas Education Code, §28.025.

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

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CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER K. DETERMINATION OF RESIDENT STATUS

19 TAC §§13.191 - 13.203

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in, Title 19, Part 1, Chapter 13, Subchapter K, §§13.191, 13.192, 13.194 - 13.197, and 13.200, Determination of Resident Status, with changes to the proposed text as published in the September 5, 2025, issue of the *Texas Register* (50 TexReg 5861). The rules will be republished. Sections 13.193, 13.198, 13.199, and 13.201 - 13.203, are adopted without changes and will not be republished.

This new section consolidates existing rules relating to tuition and fees with the rules determining resident status, as the two concepts are inextricably linked, provide greater clarity to rules relating to determining resident status, and codify the current practices relating to documentation needed to establish domicile. The rules also incorporate the requirements of a court order interpreting federal law related to establishing lawful presence as a condition of eligibility for resident tuition. The Coordinating Board is authorized by Texas Education Code, §54.075, to adopt rules to carry out the purposes of Texas Education Code, Chapter 54, Subchapter B, Tuition Rates.

Rule 13.191, Authority and Applicability, is the reconstituted §21.21, and establishes the general statutory authority, Texas Education Code (TEC), §54.075, for the provisions of the subchapter and makes it clear that this new chapter applies to public, private, and independent institutions of higher education when determining a person's entitlement to resident status under any provision of the TEC.

Rule 13.192, Definitions, is the reconstituted §21.22, and establishes definitions for words and terms used throughout the subchapter and adds new terms. Definitions that now appear in Chapter 13, Subchapter A, have been removed from this section. Definitions that are no longer relevant because the corresponding rules that used the term have been revised or removed, such as "clear and convincing evidence," have also been removed. New language was added to the definition of "private high school" to specify that it includes a homeschool. The definition of "temporary absence" was modified to make clear that the phrase "short duration" applies to the length of absence and not to the intent to return to Texas. When definitions are defined in TEC, §54.0501, reference was made to the statute. References to the Probate Code were deleted because the Probate Code no longer exists in Texas. Also, the concepts of "possessory conservator" and other similar terms have been removed. In addition, a new definition for "lawful presence" was added to comply with requirements of federal law and implement a court order effective for Fall 2025 resident tuition determinations.

Rule 13.193, Effective Date of this Subchapter, is the reconstituted §21.23, and makes clear when changes to this subchapter are effective as it relates to making resident status decisions and provides clarification to institutions who made resident status determinations before the effective date.

Rule 13.194, Determination of Resident Status, is the reconstituted §21.24(a) and (e) to reflect TEC, §54.052, and to reflect a recent court order implementing the requirements of federal law. A person must be able to demonstrate, and each institution must verify, that the person is lawfully present in the United States and also meets one of the three classifications of resident status defined in TEC, §54.052(a)(1) - (3). Subsection (a)(1) contains language to clarify that a person cannot be a dependent if they seek to qualify for resident status under TEC, §54.052(a)(1). Subsection (a)(3) contains language to comply with a recent court order implementing the requirements of federal law that, in order to be eligible for in-state tuition, a person must be lawfully present in the United States, in addition to meeting the other requirements set forth in the new rule. As to the separate requirement of domicile, subsection (b) captures the presumption stated in TEC, §54.052(b), that the domicile of a dependent's parent is presumed to be the domicile of the dependent. This presumption of domicile is reiterated in rule to specifically correlate to a person who seeks to establish resident status under TEC, §54.052(a)(2).

Rule 13.195, Core Residency Questions, reconstitutes §21.25, to reflect TEC, §54.053. The Coordinating Board promulgates the core residency questions, and each person who applies to a Texas institution must complete the Core Residency questions, either through the ApplyTexas application or with the institution directly. Institutions may not establish their own set of residency questions. The requirements outlined in TEC, §54.053(1) - (3) as they relate to the determination of resident status classifications are incorporated into the core residency questions. Furthermore, this rule provides that non-citizen students seeking resident status under TEC, §54.052(a)(3) shall also provide to the institution an affidavit attesting to lawful presence so that an institution can make an initial determination of the person's resident status. Institutions may request any documentation when that information is necessary to substantiate information a person has listed in the "general comments" section of the Core Residency Ques-

tions, which provides the opportunity for a person to provide additional information or background commentary to substantiate their resident status claim.

Rule 13.196, Information Needed to Document Resident Status, is the reconstituted §21.24(b) - (d) and (f) - (i). The rule details the documents a person must provide to demonstrate domicile as one condition of eligibility for resident status depending upon which of the two resident categories under TEC, §54.052(a)(1) - (2), for which the person is seeking to establish resident status, depending on whether the person is claiming domicile based on the person's own domicile or, in the case of a dependent, based on the domicile of the person's parent. The documentation, which must be at least one of the four options (significant gainful employment, residential real property, marriage, or ownership of a business), must be for the consecutive twelve-month period immediately preceding the census date of the academic term the person seeks to enroll at an institution.

Subsection (a) addresses the four categories of information a person may provide to demonstrate they are domiciled in Texas under TEC, §54.052(a)(1). The four categories are substantially similar to former rule §21.24(f). Demonstrating domicile through "significant gainful employment" which is a defined term, now requires the person to show the salary they earned in Texas. For a person who is self-employed, the person must show federal tax documentation showing domicile in Texas. For Subsection (a)(2), residential real property has been broadened to account for a person who leases or rents, in addition to owning property. Subsection (b) establishes that a person who has demonstrated domicile, as outlined in at least one of the four listed factors, and who resides in Texas, is considered to have been domiciled in Texas for that period of time.

Subsection (c) addresses the four categories of information a dependent may provide to an institution to demonstrate that their parents have established domicile in Texas under TEC, §54.052(a)(2). Subsection (d) establishes that a dependent whose parent has demonstrated domicile, as outlined in at least one of the four listed factors, and who resides in Texas, is considered to have been domiciled in Texas for that period of time.

The rule also details the documents a person must provide to demonstrate the person has maintained a residence as one condition of eligibility for resident status under TEC, §54.052(a)(3). The documentation, which must be at least one of the eight options (utility bills, Texas high school transcripts, Texas voter registration card, Texas vehicle registration that was issued at least twelve months immediately preceding the census date, valid Texas driver's license or Texas identification card, lease or rental of residential real property, or other documentation used by the student to establish eligibility to enroll in the school district where the student attended high school) must be for the consecutive twelve-month period immediately preceding the census date of the academic term the person seeks to enroll at an institution. The rule also establishes that once a person demonstrates domicile under at least one of the four categories, they are considered to have maintained domiciled for that time.

Subsection (e) specifies the necessary evidence a person may use to support a claim of residence under TEC, §54.052 (a)(3)(B)(i), which mentions the "three years preceding the date of graduation or receipt of the diploma equivalent." Subsection (f) outlines options institutions may use as the necessary evidence for a person to support a claim of residence under TEC, §54.052(a)(3)(B)(ii), which reconstitutes §21.24(b), with some changes. For example, "cancelled checks" was removed from the list to support a claim of residence under TEC, §54.052(a)(3)(B)(ii), because the use of checks is now minimal and no longer as relevant. Similarly, credit reports were also removed since reports can be delayed, there may be a cost, and the report may contain sensitive information that is not relevant to the demonstration of residency. Instead of these, the rule includes new categories of information, such as a Texas driver's license, and a broad category that allows for any other documentation used by the student to establish eligibility to enroll in the school district where the student attended high school.

Subsection (g) maintains the clause under §21.24(g), and applies to all persons, no matter which category they seek to establish resident status under TEC, §54.052 (a)(1) - (3), in asserting that a person whose initial reason is to attend higher education in Texas is presumed not to make Texas their domicile.

Subsection (h) maintains the clause under §21.24(h), and applies to all persons, no matter which category they seek to establish resident status under TEC, §54.052(a)(1) - (3), in asserting that a person that a person may not establish domicile by fulfilling an educational objection or other activities that are generally performed only by temporary residents of Texas.

Subsection (i) maintains the clause under §21.24(i), exactly regarding the rights of members of the United States Armed Forces for purposes of the determination of Texas resident status.

Subsection (j) reinforces TEC, §54.075(b), that an institution cannot require evidence of resident status beyond what is stated in administrative rules. Subsection (k) is a reconstitution of §21.30(a), which serves as a reminder to institutions that they must retain documentation provided to them according to their record retention schedule. Current §21.24(d)(1) - (7), is no longer included in the determination of resident status rules, and former guidance that THECB may have issued on this subject is no longer relevant.

Rule 13.197, Continuing Resident Status, reconstitutes §21.26, to reflect TEC, §54.054. Once an institution classifies a person as a resident of Texas, the person is entitled to continue to be classified as a resident without submitting additional information, unless information is identified that would lead to a reclassification or the correction of an error, or if a person is not enrolled in a Texas institution for two or more consecutive regular semesters. The rule clarifies that both the person and the institution may identify information that warrants a change in resident status. The rule also incorporates required compliance with the standard of lawfully present.

Rule 13.198, Reclassification Based on Changed or Additional Information, reconstitutes §21.27, to reflect TEC, §54.055. Reclassification is based on new or changed information. Errors in classification, including errors due to failure of a person to provide information, are addressed in subsequent sections. Institutions are permitted to reclassify a person's status from resident to nonresident, or vice-versa, based on additional or changed information. Individuals are required to provide timely information which may affect their resident or nonresident status. Such reclassification takes effect in the current semester if the reclassification occurs prior to the census date. Otherwise, it takes effect in the first succeeding academic term. A change in eligibility for resident tuition based on the June 2025, court order implementing federal law would require each institution to reclas-

sify students and charge the correct tuition during the Fall 2025 semester.

Rule 13.199, Errors in Classification for Nonresident Tuition, reconstitutes aspects of §21.28(a), to better reflect TEC, §54.056(a). Institutions are responsible for charging a person nonresident tuition beginning with the first academic term that begins after the date the institution discovers that the institution erroneously classified a person as a Texas resident. Liability for unpaid tuition due to an error in classification is limited by §13.200, and an institution may not request payment of the unpaid tuition until the first day of the academic term after the error is discovered.

Rule 13.200, Liability for Errors in Classification, reconstitutes additional aspects of §21.28(a), to reflect TEC, §54.057 and aspects of §54.056(a). The rule outlines those situations when a person is liable for errors in classification. Persons are liable to pay the difference in resident and nonresident tuition resulting from an erroneous classification in situations where a person failed to provide new or changed information or provided false information that the person reasonably should have known would result in a change of classification. An institution may not require a person to pay unpaid tuition owed as a condition for any subsequent enrollment by the person in the institution. However, persons who do not pay the tuition for which they are liable are restricted from receiving a certificate, diploma, or transcript under certain circumstances. Persons who are entitled to have their nonresident tuition reduced to the level of resident tuition are not liable under this section.

Rule 13.201, Institutional Errors in Classification for Resident Tuition, reconstitutes §21.28(b), to reflect TEC, §54.056(b). An institution must begin charging resident tuition in the academic term in which the institution identifies that a person was erroneously classified as a nonresident and must immediately refund the amount the person paid in excess of resident tuition.

Rule 13.202, Resident Status Determination Official, reconstitutes §21.29. Each institution must employ at least one person to serve as the resident status determination official who shall be familiar with these rules and corresponding statutes, as well as applicable state and federal laws.

Rule 13.203, Required Notification Regarding Permanent Residency, reconstitutes rule §21.30(b). An institution must notify students who are not U.S. citizens or permanent residents, and who demonstrated lawful presence, of their duty to apply for permanent resident status as soon as they are able. Institutions must notify such students upon admission, annually while the student is enrolled, and upon graduation or separation from the institution.

Subsequent to the posting of the rules in the *Texas Register*, the following changes are incorporated into the adopted rule.

Section 13.191(b) is amended, in response to a comment received, to more specifically describe the specific circumstances in which the subchapter's provisions would pertain to private and independent institutions of higher education.

Section 13.192 is amended to correct a drafting error that resulted in the definition of "Significant Gainful Employment" being listed out of alphabetical order, consistent with the Coordinating Board's usual rule formatting. This has been corrected, with "Significant Gainful Employment" now defined in 13.192(12), and the section is renumbered accordingly.

Section 13.192(6) is amended, in response to a comment received, to clarify in the definition of "Parent" that a stepparent is not considered a parent unless the stepparent is a natural or adoptive parent, managing or possessory conservator, or legal guardian of the person.

Section 13.192(11) is amended, in response to a comment received, to clarify in the definition of "Residential Real Property" that the purchase of unimproved land with no habitable dwelling structure ordinarily will not support a claim of domicile

Section 13.192(13) is amended, in response to a comment received, to clarify in the definition of "Temporary Absence" that the short duration limitation does not apply to certain absences.

Section 13.194(a) is amended, in response to a comment received, to clarify that applicants for resident status have the burden to prove by clear and convincing evidence both their lawful presence in the United States and their statutory entitlement to resident status.

Section 13.194(b) is amended, in response to a comment received, to clarify that an institution may require applicants to provide filed copies of their and/or their parents' tax returns in order to help the institution determine if the applicant is or is not a dependent of one or both parents, as provided by the federal tax code.

Section 13.194(c) is amended, in response to a comment received, to allow institutions sufficient flexibility in requesting relevant documentation or information to make resident status determinations under this subchapter.

Section 13.194(d) is amended to simplify and clarify the applicable legal burden of the student under this subchapter.

Section 13.195(c) is amended, in response to a comment received, to allow institutions sufficient flexibility in requesting relevant documentation or information to clarify student responses on the Core Residency Questions.

Section 13.196(a)(1)(A) is amended, in response to a comment received, to clarify that non-salary earnings must meet the same minimum threshold amounts as required for salary

earnings under the definition of "Significant Gainful Employment."

Section 13.196(a)(4) is amended, in response to a comment received, to specify that residency based on business ownership must be ongoing, continuous, substantial and more than de minimis for the purpose of establishing Texas residency.

Section 13.196(c)(1)(A) is amended, in response to a comment received, to clarify that non-salary earnings must meet the same minimum threshold amounts as required for salary

earnings under the definition of "Significant Gainful Employment."

Section 13.196(c)(4) is amended, in response to a comment received, to specify that residency based on a dependent's parent's business ownership must be ongoing, continuous, substantial and more than de minimis for the purpose of establishing Texas residency.

Section 13.196(d) is amended with clarifying edits to improve the readability of the rule.

Section 13.196(f) is amended with clarifying edits to improve the readability of the rule.

Section 13.196(j) is amended, in response to a comment received, to allow institutions sufficient flexibility in requesting relevant documentation or information to make resident status determinations.

Section 13.197(a) is amended to refer to new subsection (c), to clarify the proper application of the continuing status designation in the context of the lawfully present determination. This is necessary to ensure ongoing compliance with federal law.

Section 13.200(a)(2) is amended to eliminate the unintentional use of the word "knowingly" and more closely align the text with statute.

The following comments were received regarding the adoption of the new rules.

The Coordinating Board has proposed the adoption of new rules as necessary to comply with the order and final judgment entered June 4, 2025, by the United States District Court in United States of America v. State of Texas, 2025 WL 1583869, Civil No. 7:25-cv-00055 (N.D. Tex., Wichita Falls Div.), hereafter the "Federal Order." The Federal Order declared that Texas Education Code, §54.051(m) and §54.052(a), "as applied to aliens who are not lawfully present in the United States, violate the Supremacy Clause and are unconstitutional and invalid." The Federal Order also permanently enjoined the State of Texas from enforcing §54.051(m) and §54.052(a), "as applied to aliens who are not lawfully present in the United States.

Comment: The Coordinating Board received a number of comments that: set forth policy positions regarding the Texas Dream Act; object to the decision of the Court and interpretation of the applicable state and federal law as set forth in the Federal Order on policy, procedural, and substantive grounds; request that the Coordinating Board's rules depart from the Federal Order by allowing in-state tuition and other education benefits be extended to those not lawfully present; and request that the Coordinating Board's rules permit institutions to delay compliance with the Federal Order, including by "grandfathering" existing students, for a period of time, including while any appeals of the Federal Order are ongoing.

The Coordinating Board received such comments from a number of individuals and organizations, including: FIEL Houston, IDRA, Texas Unitarian Universalist Justice Ministry, First Unitarian Universalist Church of Houston, Westside Unitarian Universalist Church of Fort Worth, National Council of Jewish Women - Greater Dallas Section, Eta Alpha Chapter of Sigma Lambda Beta International Fraternity at the University of Texas at Austin, Xi Chapter of Sigma Lambda Gamma National Sorority at the University of Texas at Austin, U.S. Africa Institute, Rooted Collective, Texas Citizen, TheDream.US, FWD.US, Texas Civil Rights Project, Children's Defense Fund, and Laredo Alliance, as well as Austin Community College.

Response: The Coordinating Board appreciates these comments. Although the Coordinating Board was not a party to the underlying litigation, it is legally bound by the judgment, as an agency of the State of Texas. Accordingly, the Coordinating Board must ensure that its rules comport with the Court's ruling and the construction of the applicable law set forth therein. Additionally, the Coordinating Board does not have the authority to permit any other person or institution that may be separately and independently bound by federal law and the Federal Order to delay or avoid compliance. The Coordinating Board takes no action as a result of this group of comments.

Comment: Texas Immigration Law Council (joined by IDRA, Fellowship Southwest, Every Texan, Breakthrough Central Texas, Texans for Economic Growth, Children's Defense Fund-Texas, Grantmakers Concerned with Immigrants and Refugees (GCIR), RISE for Immigrants, EdTrust in Texas, UnidosUS, Laredo Immigrant Alliance, Local Progress Texas, and Common Defense) commented that §13.191(b) extends the provisions of the subchapter to private and independent institutions of higher education in a nonspecific manner, recommending the rule be revised to note specific applications of the rule for these institutions.

Response: The Coordinating Board appreciates the comment and has considered the perspectives set forth, including the concern about potential confusion on the scope of application to private and independent institutions of higher education. Accordingly, §13.191(b) has been revised to clarify the limited circumstances in which the subchapter's provisions would pertain to private and independent institutions of higher education, namely, when a private or independent institution of higher education chooses to participate in a program or activity authorized by Texas Education Code, Title 3, that requires a determination of entitlement to resident status.

Comment: Several commenters have requested that the rules be amended to include a standardized definition of "lawful presence" and that the rules should include more guidance on the scope of the term to ensure consistent application and avoid confusion.

Additionally, several commenters expressed concern that institutions may be taking conflicting views concerning whether Deferred Action for Childhood Arrivals (DACA) students are eligible for Texas resident tuition because some institutions are classifying such students as not lawfully present while others are classifying such students as lawfully present. Commenters sought clarification as to whether the rule permits students who received DACA status to be categorized as lawfully present and thus eligible for Texas resident tuition.

The Coordinating Board received comments on this issue from: the Texas Immigration Law Council, Texas Civil Rights Project, IDRA, Fellowship Southwest, Every Texan, First Unitarian Universalist Justice Ministry, Westside Unitarian Universalist Church of Fort Worth, First Unitarian Universalist Church of Dallas, National Council of Jewish Women - Greater Dallas Section, Eta Alpha Chapter of Sigma Lambda Beta International Fraternity at the University of Texas at Austin, Xi Chapter of Sigma Lambda Gamma National Sorority at the University of Texas at Austin, Sigma Lambda Gamma National Sorority, Inc., U.S. Africa Institute, Rooted Collective, TheDream.US, FWD.US, and the Laredo Immigrant Alliance, as well as several individuals.

Response: The Coordinating Board appreciates the comments. The Federal Order pertains to persons who are "not lawfully present in the United States." The terms "lawfully present" and "not lawfully present" are complex and uniquely federal concepts, defined by Congress and implemented and interpreted by federal courts and agencies. The Coordinating Board, as a state agency, is not best positioned to create its own interpretation of these federal law terms or provide additional guidance. Each institution should confer with counsel to determine the status(es) that may be considered lawfully present during a given academic year. Accordingly, the Coordinating Board takes no action based on these comments.

With respect to DACA: The Coordinating Board appreciates these comments. Each institution of higher education is required to comply with federal court rulings in making determinations of lawful presence. As noted above, it is beyond the role of the Coordinating Board to attempt to provide a comprehensive definition of lawful presence, which is governed by federal law. Each institution must consult with its legal counsel to ensure that its determinations of eligibility for resident tuition reflect current law, including applicable case law and federal orders. See, e.g., Texas v. United States, 50 F.4th 498, 525 - 528 (5th Cir. 2022); Texas v. United States, 809 F.3d 134, 178 - 186 (5th Cir. 2015) (holding that DACA recipients are not lawfully present and thus ineligible to receive the benefit of Texas resident tuition on that basis), aff'd 579 U.S. 547, 548 (2016) (per curiam); see also Texas v. United States, 126 F.4th 392, 417 - 418, 420 (5th Cir. 2025) (holding that lawful presence is different from forbearance) (quoting DHS v. Regents of the Univ. of Cal., 591 U.S. 1, 26 n.5 (2020)).

Comment: The University of Texas at Austin proposed revising the definition of "Parent" to clarify that a stepparent who would otherwise satisfy the definition of "parent" (such as by being a child's legal guardian) is not disqualified solely by virtue of their stepparent status.

Response: The Coordinating Board appreciates and agrees with the comment. The definition of "Parent" in §13.192 has been revised to make this clarification.

Comment: The University of Texas at Austin proposed revising the definition of "Residential Real Property" to clarify that the purchase of unimproved land with no habitable dwelling structure ordinarily will not support a claim of domicile.

Response: The Coordinating Board appreciates and agrees with the comment. The definition of "Residential Real Property" in §13.192 has been revised to add this clarification.

Comment: The University of Texas at Austin proposed revising the definition of "Temporary Absence" to clarify that absences resulting from military and similar service to the federal government do not result in the loss of resident status for a person who otherwise has not

taken steps to change their Texas domicile.

Response: The Coordinating Board appreciates and agrees with the comment. The definition of "Temporary Absence" in §13.192 has been revised to add this clarification.

Comment: The University of Texas at Austin proposed revising §13.194(a) to clarify that applicants for resident status have the burden to prove by clear and convincing evidence both their lawful presence in the United States and their statutory entitlement to resident status.

Response: The Coordinating Board appreciates and agrees with the comment. The Coordinating Board has revised §13.194(a), to include the clear and convincing evidence standard.

Comment: The University of Texas at Austin proposed revising §13.194(b) to clarify that an institution may require applicants to provide filed copies of their and/or their parents' tax returns in order to help the institution determine if the applicant is or is not a dependent of one or both parents.

Response: The Coordinating Board appreciates and agrees with the comment. The Coordinating Board has revised §13.194(d) to clarify that an institution may collect information or documentation necessary to establish entitlement to resident tuition.

Comment: The University of Texas at Austin proposed revising §13.194(c) to clarify that institutions may require applicants to provide relevant documentation, including documents not specifically identified in the residency rules, in order to help universities make residency-related determinations contemplated under those rules.

Response: The Coordinating Board appreciates and agrees with the comment. While Texas Education Code, §54.075(b), limits institutions' ability to "require a person to provide evidence of resident status that is not required by Coordinating Board rule," the Coordinating Board recognizes that properly determining a student's resident status in accordance with applicable laws can be a complex and dynamic process. Accordingly, §13.194(c) has been revised to allow institutions sufficient flexibility in requesting relevant documentation or information to make resident status determinations.

Comment: The Coordinating Board received several comments expressing concerns about students' or potential students' data privacy, protection of their rights under FERPA (Family Education Rights and Privacy Act, see 34 C.F.R. 99), including requesting that THECB's rules prohibit or prevent institutions from sharing data with the U.S. government, specifically in relation to immigration enforcement.

These comments were received from: Texas Immigration Law Council, Texas Civil Rights Project, IDRA, First Unitarian Universalist Justice Ministry, Westside Unitarian Universalist Church of Fort Worth, First Unitarian Universalist Church of Dallas, Eta Alpha Chapter of Sigma Lambda Beta International Fraternity at the University of Texas at Austin, Xi Chapter of Sigma Lambda Gamma National Sorority at the University of Texas at Austin, U.S. Africa Institute, TheDream.US, and the Laredo Immigrant Alliance, as well as several individuals.

Response: The Coordinating Board appreciates the comments. The Coordinating Board and institutions are subject to state and federal privacy laws, including FERPA. The Coordinating Board does not have the authority, in its rules, to affect or restrict its own or any institution's obligations under applicable state or federal law. Institutions should in all circumstances consult with their own legal counsel to determine their legal obligations with respect to FERPA and other privacy laws and regulations. Accordingly, the Coordinating Board takes no action based on these comments.

Comment: The University of Texas at Austin proposed revising §13.195(c) to clarify that institutions may require applicants to provide relevant documentation, including documents not specifically identified in the residency rules, to help institutions make determinations contemplated under those rules.

Response: The Coordinating Board appreciates and agrees with the comment. While Texas Education Code, §54.075(b), limits institutions' ability to "require a person to provide evidence of resident status that is not required by Coordinating Board rule," the Coordinating Board recognizes that properly determining a student's resident status in accordance with applicable laws can be a complex and dynamic process. Accordingly, the Coordinating Board has revised §13.195(c) to allow institutions sufficient flexibility in requesting relevant documentation or information to clarify student responses on the Core Residency Questions.

Comment: The Coordinating Board received several comments raising concerns about proposed amendments to the core residency questionnaire as well as its use generally. Some commenters have recommended that it be modernized, amended to

be clearer or reflect a different interpretation of the law, delayed in practice pending further rulings of the federal appeals court, or eliminated altogether.

These comments were received from: Texas Immigration Law Council, IDRA, Fellowship Southwest, Texas First Unitarian Universalist Justice Ministry, Eta Alpha Chapter of Sigma Lambda Beta International Fraternity at the University of Texas at Austin, Xi Chapter of Sigma Lambda Gamma National Sorority at the University of Texas at Austin, U.S. Africa Institute, and TheDream.US, as well as several individuals.

Response: The Coordinating Board appreciates this feedback. The Coordinating Board is reviewing and considering future potential action with respect to the core residency questionnaire; however, please note that, in addition to the attendant legal complexities, any such action would require adjustments to the Coordinating Board's information technology systems, which would require additional time and resources to undertake. The Coordinating Board will continue to evaluate what actions pertaining to the core residency questionnaire may be feasible or advisable in the future.

Comment: The University of Texas at Austin proposed revising §13.196(a)(1)(A) to clarify that non-salary earnings must meet the same minimum threshold amounts as required for salary

earnings under the definition of "Significant Gainful Employment."

Response: The Coordinating Board appreciates and agrees with the comment. The Coordinating Board will revise §13.196(a)(1)(A) to establish that non-salary earnings are held to the same threshold as salary earnings.

Comment: The University of Texas at Austin proposes revising §13.196(a)(2) to clarify that a rental or lease agreement covering time enrolled as a student would not qualify for resident status, consistent with the presumption in §13.196(g).

Response: The Coordinating Board appreciates the comment. The concept referenced in the comment is already present in the preceding language of the same section as well as the overarching application of §13.196(g). Accordingly, the Coordinating Board takes no action based on the comment.

Comment: The University of Texas at Austin proposes revising §13.196(a)(4) to clarify that a person's non-majority ownership interest in a business does not qualify for purposes of establishing domicile under this provision, and to provide an illustrative, non-exhaustive list of the kinds of documents a university may require applicants to provide to show customary management or continuous operation of a business.

Response: The Coordinating Board appreciates the comment. While the Coordinating Board agrees that business ownership should be more than de minimis for the purpose of establishing entitlement to resident status, the Coordinating Board believes that a majority ownership could be an overly burdensome standard in some cases. Accordingly, the Coordinating Board will revise §13.196 to provide that residency based on business ownership must be ongoing, continuous, substantial and more than de minimis for the purpose of establishing Texas residency.

Comment: The University of Texas at Austin proposes revising §13.196(c)(1)(A) and §13.196(c)(4) to make clarifications to the provisions for parental establishment of domicile parallel to the changes it proposed to the corresponding provisions of subsections §13.196(a)(1)(A) and §13.196(a)(4) describing establishment of domicile by non-dependent applicants.

Response: The Coordinating Board appreciates and agrees with the comment. Section 13.196(c)(1)(A) and §13.196(c)(4) are revised to mirror the changes in §13.196(a)(1)(A) and §13.196(a)(4).

Comment: The University of Texas at Austin proposed revising §13.196(j) to clarify that universities may require applicants to provide relevant documentation, including documents not specifically identified in the residency rules, in order to help universities make determinations contemplated under those rules.

Response: The Coordinating Board appreciates and agrees with the comment. While Texas Education Code, §54.075(b), limits institutions' ability to "require a person to provide evidence of resident status that is not required by Coordinating Board rule," the Coordinating Board recognizes that properly determining a student's resident status in accordance with applicable laws can be a complex and dynamic process. Accordingly, §13.196(j) has been revised to allow institutions sufficient flexibility in requesting relevant documentation or information to make resident status determinations.

Comment: The University of Texas at Austin proposed revising §13.203 to clarify that universities may discharge their duty to notify students who are lawfully present aliens of the students'

obligation to apply for Permanent Resident status at the earliest opportunity by posting notice of the application obligation in a prominent and appropriate location on an institutional webpage.

Response: The Coordinating Board appreciates the comment. Given the significance of the student's obligation to apply for Permanent Resident status at the earliest opportunity, the Coordinating Board has determined that requiring institutions to provide regular, direct notices to applicable students of their responsibilities does not present an undue administrative burden. Accordingly, the Coordinating Board takes no action based on this comment.

Comment: The Coordinating Board received several comments expressing objections to the adoption of the proposed rules due to the potential fiscal impact on individuals, communities, and institutions.

These comments were received from: Texas Civil Rights Project, IDRA, Texas First Unitarian Universalist Justice Ministry, First Unitarian Universalist Church of Houston, First Unitarian Universalist Church of Dallas, National Council of Jewish Women - Greater Dallas Section, U.S. Africa Institute, TheDream.US, and Laredo Immigrant Alliance, Texas Immigration Law Council (joined by IDRA, Fellowship Southwest, Every Texan, Breakthrough Central Texas, Texans for Economic Growth, Children's Defense Fund-Texas, Grantmakers Concerned with Immigrants and Refugees (GCIR), RISE for Immigrants, EdTrust in Texas, UnidosUS, Laredo Immigrant Alliance, Local Progress Texas, and Common Defense), as well as several individuals.

Response: The Coordinating Board appreciates these comments. As noted above, the promulgation of these rules is undertaken to comply with federal law. Additionally, the anticipated fiscal impact as set forth in comments is speculative at this point in time as it relates to the factors contemplated in Texas Government Code, Chapter 2001. Accordingly, the Coordinating Board takes no action based on these comments.

Comment: The Coordinating Board received comments expressing the desire that the proposed rules require additional steps and assistance from institutions in implementing the rules (and the underlying Federal Order), including that the process be made more accessible to students, that institutions provide specific administrative guidance and training and take the burden of completing necessary documents, with additional assistance for certain students.

Comments on this issue were received from: Texas Civil Rights Project, Fellowship Southwest, IDRA, Eta Alpha Chapter of Sigma Lambda Beta International Fraternity at the University of Texas at Austin, Xi Chapter of Sigma Lambda Gamma National Sorority at the University of Texas at Austin, Sigma Lambda Gamma National Sorority, Inc., U.S. Africa Institute, Rooted Collective, and Laredo Immigrant Alliance.

Response: The Coordinating Board appreciates the comments. Because the essence of such comments relates to the implementation at the institution level, and because the institutions are also subject to compliance with the Federal Order and must seek their own legal and compliance counsel regarding that obligation, the Coordinating Board has not amended its proposed rules to implement these particular recommendations into the rules but will consider these concerns for potential future action where deemed appropriate.

The new section is adopted under Texas Education Code, Section 54.075, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, Chapter 54, Subchapter B.

The adopted new section affects Texas Education Code, Title 19, Part 1, Chapters 13 and 22.

§13.191. Authority and Applicability.

(a) Authority. Texas Education Code, §54.075, authorizes the Board to adopt rules to carry out the purposes of Texas Education Code, chapter 54, subchapter B, concerning the determination of resident status.

(b) Applicability. Each institution of higher education shall use the provisions of this subchapter for the determination of the entitlement to resident status under any provision of the Texas Education Code, Title 3. To the extent that a private or independent institution of higher education chooses to participate in a program or activity authorized by Texas Education Code, Title 3 that requires a determination of entitlement to resident status, the institution shall use the provisions of this subchapter for that purpose.

§13.192. Definitions.

In addition to the words and terms defined in §13.1 of this chapter (relating to Definitions), the following terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise or the relevant subchapter specifies a different definition:

(1) Core Residency Questions--Board promulgated questions that a person completes for an institution's use in determining if the person is a Texas resident. The Core Residency Questions shall be included in the ApplyTexas Application and posted on the Board's website.

(2) Dependent--A person who:

(A) is less than 18 years of age and has not been emancipated by marriage or by court order; or

(B) is eligible to be claimed as a dependent of a parent of the person for purposes of determining the parent's income tax liability under the Internal Revenue Code of 1986 26 U.S. Code §152, regardless whether another person has claimed the dependent.

(3) Domicile--A person's principal, permanent residence to which the person intends to return after any temporary absence, as defined in Texas Education Code, §54.0501(3).

(4) Lawfully Present Alien--A non-U.S. citizen who seeks resident tuition and who proves by clear and convincing evidence that the alien is lawfully present in the United States as required by 8 U.S.C. §1623(a).

(5) Nonresident Tuition--The amount of tuition paid by a person who is not a Texas resident and who is not entitled or permitted to pay resident tuition under this subchapter and as defined in Texas Education Code, §54.0501(4).

(6) Parent--A natural or adoptive parent, managing or possessory conservator, or legal guardian of a person. Parent does not otherwise include a stepparent.

(7) Private High School--A private, parochial, or home school in Texas.

(8) Regular Semester--A fall or spring regular semester typically consisting of sixteen weeks.

(9) Residence--A person's home or other dwelling unit, as defined in Texas Education Code, §54.0501(6).

(10) Resident Tuition--The amount of tuition paid by a person who is a resident of Texas, as defined in Texas Education Code, §54.0501(7).

(11) Residential Real Property--Land and improvements that include a dwelling intended for long-term human habitation.

(12) Significant Gainful Employment--Employment, including self-employment, intended to provide an income to a person or allow a person to avoid the expense of paying another person to perform the tasks (as in child care) that is sufficient to provide at least one-half of the person's tuition, fees and living expenses as determined in keeping with the institution's student financial aid budget or that represents an average of at least twenty hours of employment per week. A person who is living off his/her earnings (present or past - such as pensions, veterans' benefits, social security, and savings from previous earnings) may be considered gainfully employed for purposes of establishing domicile, as may a person whose primary support is public assistance. Employment conditioned on student status, such as work study, internships, the receipt of stipends, fellowships, or research or teaching assistantships does not constitute gainful employment for purposes of resident determination.

(13) Temporary Absence--When a person who has previously met the criteria for resident status but is absent only for a short duration (i.e., less than one year) from the state of Texas and the person has the intention to return to the person's domicile in Texas. The short duration limitation on temporary absences does not apply to absences resulting from a person's or dependent's parent's service in the U.S. Armed Forces, U.S. Public Health Service, or U.S Department of State, due to employment assignment, or for educational purposes.

§13.194. Determination of Resident Status.

(a) Persons Classified as Texas Residents. Subject to other applicable provisions of this subchapter, for an institution to classify a person as a resident of Texas, the person must demonstrate by clear and convincing evidence, and each institution shall verify, that the person is a U.S. citizen or lawfully present alien and falls within at least one of the following categories:

(1) a person, other than a dependent, who qualifies for resident status pursuant to Texas Education Code, §54.052(a)(1), and who:

(A) established a domicile in Texas not later than one year (12 months) before the census date of the academic term in which the person is enrolled in an institution; and

(B) maintained that domicile continuously for the year (12 months) preceding that census date;

(2) a dependent whose parent:

(A) established a domicile in Texas not later than one year (12 months) before the census date of the academic term in which the dependent is enrolled in an institution; and

(B) maintained the domicile continuously for the year (12 months) preceding the census date; or

(3) a person who:

(A) is a U.S. Citizen, permanent resident, or is otherwise lawfully present in the United States, and graduated from a public or private high school in Texas or received a State of Texas Certificate of High School Equivalency or other diploma or high school degree recognized by the state; and

(B) maintained a residence continuously in Texas for:

(i) the three years (36 months) preceding the date of graduation or receipt of the diploma equivalent, as applicable; and

(ii) the year (12 months) preceding the census date of the academic term in which the person is enrolled in an institution.

(b) Presumption of Domicile. Pursuant to Texas Education Code, §54.052(b), the domicile of a dependent's parent, as established in accordance with §13.196(c) of this subchapter (relating to Information Needed to Document Resident Status), is presumed to be the domicile of the dependent, except when the person establishes eligibility of resident status under subsection (a)(3) of this section. An institution may require copies of a person's (and/or one or both of their parents') filed tax returns as evidence that the person is or is not a dependent.

(c) Except as provided in subsection (d) of this section, an institution may not require a person to provide evidence of resident status beyond what is necessary to make determinations under this subchapter.

(d) A person seeking resident tuition has the burden of proof to show by clear and convincing evidence that the person is eligible for resident tuition.

(1) An institution may collect information necessary to determine that a person is eligible for resident tuition.

(2) An institution may request any additional information reasonably necessary to verify that a student seeking resident tuition pursuant to Texas Education Code, §54.052(a)(3), is lawfully present. An institution may verify lawful presence by confirming an applicant's eligibility with the United States Citizenship and Immigration Services (USCIS).

§13.195. Core Residency Questions.

(a) In order for an institution to make an initial determination regarding a person's resident status under §13.194 of this subchapter (relating to Determination of Resident Status), the institution shall require each student who seeks resident tuition to complete the set of Core Residency Questions provided in Figure: 19 TAC §13.195(a), which is incorporated into this subchapter for all purposes, and evidence described in §13.196 of this subchapter (relating to Information Needed to Document Resident Status).

Figure: 19 TAC §13.195(a)

(b) Additionally, each student seeking resident tuition under §13.194(a)(3) of this subchapter shall also provide the institution with an affidavit in the form promulgated by the Board and provided in Figure: 19 TAC §13.195(b), which is incorporated into this subchapter for all purposes, stating that the person is able to demonstrate that he or she: is a lawfully present alien, can provide any documentation necessary for the institution to verify the contents of the affidavit required by this section, and will apply to become a permanent resident of the United States as soon as the person is eligible to do so.
Figure: 19 TAC §13.195(b)

(c) Clarifying Core Residency Questions. In instances where answers to the Core Residency Questions under "General Comments" are unclear, an institution may request information necessary to support or clarify a person's original answers, in accordance with §13.194(d).

§13.196. Information Needed to Document Resident Status.

(a) Evidence Supporting Domicile in Texas Pursuant to Texas Education Code, §54.052(a)(1). Each institution shall use the factors described by paragraphs (1) - (4) of this subsection for the consecutive twelve-month period immediately preceding the census date of the academic term in which a person seeks to enroll at an institution in determining a person's claim of domicile in Texas.

(1) Significant Gainful Employment:

(A) An employer's statement of dates of employment and salary earned in Texas (beginning and current or ending dates) that encompass at least the twelve consecutive months immediately preceding the census date of the academic term in which the person enrolls showing the salary the person earned or pay stubs for twelve consecutive months immediately preceding the census date, reflecting significant gainful employment in Texas or proof of other equivalent income earned such as pensions, veterans' benefits, social security, and savings from previous earnings for twelve consecutive months immediately preceding the census date of the academic term in which the person enrolls.

(B) For a person who is unemployed and living on public assistance, written statements from the office of one or more social service agencies located in Texas that attest to the provision of services to the person for at least the twelve consecutive months immediately preceding the census date of the academic term in which the person enrolls.

(C) For a person who is self-employed, federal tax documents showing significant gainful employment and domicile in Texas (beginning and current or ending dates) that encompass at least the twelve consecutive months immediately preceding the census date of the academic term in which the person enrolls.

(2) Residential Real Property. Sole or joint marital ownership, lease, or rental of residential real property in Texas with documentation, such as a warranty deed, lease agreement, or rental agreement, to verify ownership, renting, or leasing, with the person having established and maintained domicile at that residence during at least the twelve consecutive months immediately preceding the census date of the academic term in which the person enrolls.

(3) Marriage. Marriage certificate or declaration of registration of informal marriage with documentation to support that the spouse has established and maintained domicile in Texas for the twelve consecutive months prior to the census date of the academic term in which the person enrolls.

(4) Ownership of a Business. Documents that evidence the organization of the business in Texas for twelve consecutive months

prior to the census date of the academic term in which the person enrolls that reflect the person's continuous, substantial economic interest and customary management of the business with evidence of intended continuous operation for the foreseeable future. An institution may request any documents necessary to establish entitlement to resident tuition in accordance with Section 13.194(d).

(b) A person who has established domicile by satisfying at least one of the factors described in subsection (a)(1) - (4) of this section, and who continues to` reside in Texas, except for temporary absences, is considered to have maintained domicile for the period of time unless the person takes steps to the contrary.

(c) Evidence Supporting a Dependent Pursuant to Texas Education Code, §54.052(a)(2). Each institution shall use the factors described by paragraphs (1) - (4) of this subsection for the consecutive twelve-month period immediately preceding the census date of the academic term in which a dependent seeks to enroll at an institution in determining a dependent's parent's claim of domicile in Texas.

(1) Significant Gainful Employment of the Parent:

(A) An employer's statement of dates of employment and salary earned by the dependent's parent in Texas (beginning and current or ending dates) that encompass at least the twelve consecutive months immediately preceding the census date of the academic term in which the dependent enrolls showing the salary the dependent's parent earned or pay stubs for twelve consecutive months immediately preceding the census date, reflecting significant gainful employment in Texas or proof of other equivalent income such as pensions, veterans' benefits, social security, and savings from previous earnings for twelve consecutive months immediately preceding the census date the dependent enrolls.

(B) For a dependent's parent who is unemployed and living on public assistance, written statements from the office of one or more social service agencies located in Texas that attest to the provision of services to the dependent's parent for the twelve consecutive months immediately preceding the census date of the academic term in which the dependent enrolls.

(C) For a dependent's parent who is self-employed, federal tax documents showing domicile in Texas (beginning and current or ending dates) that encompass at least the twelve consecutive months immediately preceding the census date of the academic term in which the dependent enrolls.

(2) Residential Real Property of the Parent. Sole or joint marital ownership, lease, or rental of residential real property in Texas with documentation, such as a warranty deed, lease agreement, or rental agreement, to verify ownership, rental, and leasing with the dependent's parent having established and maintained domicile at that residence during at least the twelve consecutive months immediately preceding the census date of the academic term in which the dependent enrolls.

(3) Marriage of the Parent. Marriage certificate or declaration of registration of informal marriage with documentation to support that the dependent's parent's spouse has established and maintained domicile in Texas for at least the twelve consecutive months immediately preceding the census date of the academic term in which the person enrolls.

(4) Ownership of a Business of the Parent. Documents that evidence the organization of the business in Texas for at least the twelve consecutive months immediately preceding the census date of the academic term in which the dependent enrolls, that reflect the dependent's parent's continuous, substantial economic interest and customary management of the business with evidence of intended continuous operation for the foreseeable future. Documents that may be used to show customary management or continuous operation of a business include client invoices, bank statements, receipts for sales or expenses, and tax documents.

(d) For a dependent whose parent who has demonstrated domicile by satisfying at least one of the factors described in subsection (c)(1) - (4) of this section and continues to reside in Texas, except for temporary absences, the dependent's parent is considered to have maintained domicile for the period of time unless the parent takes steps to the contrary.

(e) Evidence Supporting Residence Pursuant to Texas Education Code, §54.052(a)(3)(B)(i). Each institution should accept a person's high school transcript, GED, or receipt of diploma equivalent showing three years of attendance at a public or private high school in Texas before graduation or receipt of diploma equivalent as evidence supporting a person's claim of residence in Texas. In cases where there may be a gap between a person's high school transcript, GED, or receipt of diploma equivalent, and the person is seeking to establish continuous residence for the three-year period, the person shall use the factors listed in subsection (f) of this section.

(f) Evidence Supporting Residence Pursuant to Texas Education Code, §54.052(a)(3)(B)(ii). Each institution shall require at least one of the following types of evidence in determining a person's claim of residence in Texas:

(1) Utility bills for the twelve consecutive months immediately preceding the census date;

(2) Texas high school transcript(s) for the person's full senior year or twelve months immediately preceding the census date;

(3) Texas voter registration card that was issued at least twelve months preceding the census date;

(4) Texas vehicle registration that was issued at least twelve months immediately preceding the census date;

(5) Possession of a valid Texas driver's license or Texas identification card that was issued at least twelve months immediately preceding the census date;

(6) Lease or rental of residential real property in the name of the person for the twelve consecutive months immediately preceding the census date; or

(7) any other documentation used by the student to establish eligibility to enroll in the school district where the student attended high school.

(g) A person whose initial purpose for moving to Texas is to attend an institution as a full-time student will be presumed not to have the required intent to make Texas his or her domicile; however, the presumption may be overruled by clear and convincing evidence.

(h) A person shall not be able to establish domicile by performing acts which are directly related to fulfilling educational objectives or which are required or routinely performed by temporary residents of the State.

(i) Members of the United States Armed Forces. A member of the United States Armed Services whose Home of Record with the military is Texas is presumed to be a Texas resident, as are his or her spouse and dependent children. A member whose Home of Record is not Texas but who provides the institution Leave and Earnings Statements that show the member has claimed Texas as his or her place of residence for the twelve consecutive months prior to enrollment is presumed to be a Texas resident, as are his or her spouse and dependent children.

(j) An institution may not require a person to provide evidence of resident status beyond what is necessary to make determinations under this subchapter.

(k) Documentation provided to an institution in accordance with this subchapter, must be retained by the institution in paper or electronic format as required by the institution's record retention schedule.

§13.197. Continuing Resident Status.

(a) Except as provided under subsections (b) and (c) of this section, a person classified by an institution as a resident of Texas under this subchapter may, without submitting the information required by §13.195 and §13.196 of this subchapter (relating to Core Residency Questions and Information Needed to Document Resident Status, respectively), be classified as a resident by any institution in each subsequent academic term in which the person enrolls unless the person provides information to the institution, or the institution identifies information, including a change in fact or law, that indicates a change in resident status is appropriate or required as indicated in §13.198 or §13.199 of this subchapter (relating to Reclassification Based on Changed or Additional Information and Errors in Classification for Nonresident Tuition, respectively).

(b) If a person is not enrolled in an institution for two or more consecutive regular semesters, then the person must reapply for resident status and shall submit the information required in §13.195 and §13.196 of this subchapter and satisfy all the applicable requirements to establish resident status.

(c) Institutions shall not apply continuing resident status to students who are not lawfully present.

§13.200. Liability for Errors in Classification.

(a) The following persons are liable to pay the difference between resident and nonresident tuition for each academic term in which the person paid resident tuition as the result of an error in classification under this subchapter:

(1) A person who, upon receiving information that the person reasonably should have known would be relevant to or could lead to a correction or reclassification of the person's resident or nonresident classification status, failed to provide the information to the institution in a timely manner;

(2) A person who provided false information to the institution that the person reasonably knew or should have known could lead to an error in classification by the institution under this subchapter; or

(3) A person whose institution received or discovered information relevant to, or could lead to, a correction of a person's resident or nonresident classification status.

(b) The person liable under subsection (a) of this section shall pay the applicable amount to the institution not later than the 30th day after the date the institution notified a person of the person's liability for the amount owed. After receiving the notice and until the amount is paid in full, the person is not entitled to receive from the institution a certificate or diploma, if not yet awarded on the date of the notice, or official transcript that is based at least partially on or includes credit for courses taken while the person was erroneously classified as a Texas resident. An institution may not withhold a transcript if prohibited by federal law.

(c) Subsequent Enrollment. An institution may not require a person to pay unpaid tuition owed as a condition for any subsequent enrollment by the person in the institution.

(d) A person who an institution erroneously classified as a resident of Texas but who is entitled or permitted to have their nonresident tuition reduced to the same amount as resident tuition is not liable for the difference between resident and nonresident tuition under this section.

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

Filed with the Office of the Secretary of State on October 24, 2025.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: September 5, 2025
For further information, please call: (512) 427-6365

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SUBCHAPTER L. ENGINEERING SUMMER PROGRAM

19 TAC §§13.200 - 13.202

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of Title 19, Part 1, Chapter 13, Subchapter L, §§13.200 - 13.202, Engineering Summer Program without changes to the proposed text as published in the September 5, 2025, issue of the *Texas Register* (50 TexReg 5867). The rules will not be republished.

This repeal eliminates rules related to a program that is not currently funded and has not been funded in recent years.

The Coordinating Board is authorized by Texas Education Code, §61.027, to adopt and publish rules in accordance with Texas Government Code, Chapter 2001.

No comments were received regarding the adoption of repeal.

The repeal is adopted under Texas Education Code, Section 61.027, which provides the Coordinating Board with the authority to adopt and publish rules in accordance with Texas Government Code, Chapter 2001.

The adopted repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter L.

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

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

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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) adopts repeal of Title 19, Part 1, Chapter 13, Subchapter N, §§13.400 - 13.408, Texas Reskilling and Upskilling through Education (TRUE) Grant Program, without changes to the proposed text as published in the July 25, 2025, issue of the *Texas Register* (50 TexReg 4169). The rules will not be republished.

Specifically, this repeal relocates 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.

No comments were received regarding the adoption of the repeal.

The repeal is adopted 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 adopted repeal affects Texas Administrative Code, Title, 19, Part 1, Chapter 13, Subchapter N, §§13.400 - 13.408.

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

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SUBCHAPTER P. TUITION EXEMPTIONS AND WAIVERS

19 TAC §§13.460 - 13.479

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in, Title 19, Part 1, Chapter 13, Subchapter P, §§13.463, 13.466 - 13.470, 13.472, and 13.477 - 13.479, Tuition Exemptions and Waivers, with changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5523). The rules will be republished. Sections 13.460 - 13.462, 13.464, 13.465, 13.471, and 13.473 - 13.476 are adopted without changes and will not be republished.

This new section consolidates all existing rules relating to tuition exemptions and waivers; apply general provisions relating to program classification, reporting, and administration; and establish new rules relating to the Economic Development and Diversification Waiver.

Rule 13.460, Definitions, provides common definitions used across multiple programs in the subchapter, including those for "exemption," "waiver," and "mandatory" and "discretionary" exemptions and waivers to be used for program classification and reporting. Exemptions are non-waiver programs that allow eligible students to pay a reduced amount of tuition and fees. Waivers, by contrast, allow eligible nonresident students to pay the resident tuition rate. Mandatory exemptions and waivers are those that institutions are obligated to offer to eligible students (subject to specific limitations), while institutions are merely authorized (but not obligated) to offer discretionary exemptions and waivers to eligible students.

Rule 13.461, Adoption by Reference, adopts by reference the Exemptions and Waivers Summary, a document published by the Coordinating Board that specifies whether each program authorized by statute is an exemption or a waiver, as well as whether each is mandatory or discretionary. The purpose of this document is to provide greater clarity to institutions regarding the status of the dozens of authorized exemptions and waivers, most of which do not require administrative rules, for reporting, accounting, and other business purposes.

Rule 13.462, Classifications and Reporting, directs institutions to use the Exemptions and Waivers Summary in making certain determinations related to exemptions and waivers. Subsection (b) codifies current practice in directing institutions to report exemptions and waivers as part of its Financial Aid Database, Integrated Fiscal Reporting System, and Annual Financial Reports submissions. To the extent that subsection (b) covers the reporting requirements included in current rules for exemption and waiver programs, those provisions have been eliminated in their respective sections in this subchapter.

Rule 13.463, Satisfactory Academic Progress, provides for the common eligibility requirement that a student receiving an exemption make sufficient progress toward the student's intended degree or certificate. This section aligns with provisions of Texas Education Code, §54.2001. Subsection (b) provides for how a student who does not meet satisfactory academic progress requirements may re-establish eligibility. Subsection (c) provides guidance to institutions regarding how to calculate student grade point averages for this purpose, and subsection (d) clarifies the applicability of the section.

Rule 13.464, Hardship Provisions, outlines the circumstances and procedures by which a student who fails to make satisfactory academic progress or who attempts an excessive number of semester credit hours may continue to receive an exemption. The section aligns both with Texas Education Code, §54.2001, as well as similar provisions in other financial aid programs.

Rule 13.465, Restrictions on Exemptions and Waivers, states two notable restrictions on the offering of exemptions and waivers to students. Subsection (a) aligns with Texas Education Code, §54.2002, and states that an exemption or waiver may not be offered for coursework for which the institution does not receive formula funding, and subsection (b) states the restrictions associated with undergraduate students who have completed an excessive number of semester credit hours. Subsection (c) clarifies that in order to be eligible for exemptions and waivers under this subchapter, a student must be lawfully

present in the United States, pursuant to *United States v. Texas*, No. 7:25-cv-00055-O (N.D. Tex. June 4, 2025).

Rule 13.466, Children of Professional Nursing Program Faculty and Staff Exemption, provides for the mandatory exemption offered to eligible students whose parents are employed by the student's institution as faculty or staff of the professional nursing program. The rule is the reconstituted Chapter 21, Subchapter I, condensed into a single section, reorganized, and with nonsubstantive edits to improve rule clarity and readability, except that erroneous references to the parent's full-time employment status have been removed to align with statute.

Rule 13.467, Clinical Preceptors and Children Exemption, provides for the mandatory exemption to eligible persons serving as clinical preceptors and their children attending institutions of higher education. It is the reconstituted Chapter 21, Subchapter L, condensed into a single section, reorganized, and with nonsubstantive edits to improve rule clarity and readability. There are no substantive changes to the rule.

Rule 13.468, Peace Officers Enrolled in Law Enforcement or Criminal Justice Courses Exemption, provides for the mandatory exemption for eligible peace officers who enroll in coursework related to their employment. It is the reconstituted Chapter 21, Subchapter Q, condensed into a single section, reorganized, and with nonsubstantive edits to improve rule clarity and readability. There are no substantive changes to the rule, except that, in response to a comment received, the existing restriction on general education core curriculum courses has been revised to allow for institutional determination about relevancy to the law enforcement or criminal justice curriculum, aligning with like provisions in similar programs.

Rule 13.469, Firefighters Enrolled in Fire Science Courses Exemption, provides for the mandatory exemption for eligible professional and volunteer firefighters who enroll in coursework related to their employment. It is the reconstituted Chapter 21, Subchapter Z, condensed into a single section, reorganized, and with nonsubstantive edits to improve rule clarity and readability. There are no substantive changes to the rule.

Rule 13.470, Paramedics Enrolled in Emergency Medical Services Courses, provides for the mandatory exemption for eligible paramedics who enrolled in coursework related to their employment. This new rule implements the provisions of Texas Education Code, §54.3532, as established by House Bill 1105, 89th Texas Legislature, Regular Session. Subsection (a) provides for the statutory authority, and subsection (b) establishes the program as a mandatory exemption, with exceptions established in subsections (f) and (g). Subsection (c) provides for student eligibility, including a requirement in (c)(2) that the student must be certified or licensed as a paramedic by the Texas Department of State Health Services. Subsections (d) and (e) relate to institutions identifying, and the Coordinating Board publishing, a list of eligible emergency medical services degree and certificate programs in which an eligible student must be enrolled to receive an exemption. Subsection (f) outlines exceptions to the exemption as provided in Texas Education Code, §54.3532(d) and (e). Subsection (g) provides for a cap on exemptions offered in a certain number of eligible courses offered exclusively via distance education, as described in Texas Education Code, §54.3532(f) and (g)(1)(C).

Rule 13.471, Good Neighbor Program, provides for the discretionary exemption program offered to eligible students who are citizens or permanent residents of other nations in the Western Hemisphere. It is the reconstituted Chapter 21, Subchapter U, condensed into a single section, reorganized, and with nonsubstantive edits to improve rule clarity and readability, except that subsection (f), which relates to the Coordinating Board's selection methodology for nominated students, has been substantively edited to more closely reflect current practice.

Rule 13.472, Educational Aide Exemption, provides for the mandatory (subject to available appropriated funds) exemption program for eligible students who have worked as educational aides. It is the reconstituted Chapter 21, Subchapter II, condensed into a single section, reorganized, and with nonsubstantive edits to improve rule clarity and readability. The only substantive change to the rule is to omit the rule directive to the Coordinating Board to publish an application form for the program annually, which was outdated given changes made to statute regarding institutional responsibility for making eligibility determinations.

Rule 13.473, Dependent Children of Armed Forces Members Deployed on Combat Duty Exemption, provides for the mandatory exemption for eligible students who are the dependent children of a member of the armed forces who is deployed on active duty outside the United States. It is the reconstituted Chapter 21, Subchapter TT, condensed into a single section, reorganized, and with nonsubstantive edits to improve rule clarity and readability. There are no substantive changes to the rule.

Rule 13.474, Reciprocal Educational Exchange Program, provides for the discretionary waiver offered as part of institutions' reciprocity agreements with international institutions for exchange student programs. It is the reconstituted Chapter 21, Subchapter AA, condensed into a single section, reorganized, and with nonsubstantive edits to improve rule clarity and readability. Current §21.909, was eliminated as it provided guidance to institutions that could be construed as a directive to institutions but is better presented as a recommendation in program informational materials.

Rule 13.475, Border County Waiver, provides for mandatory waivers offered to eligible students from Mexico who attend institutions in a county along the Texas-Mexico border. It is the reconstituted Chapter 21, Subchapter TT, condensed into a single section, reorganized, and with nonsubstantive edits to improve rule clarity and readability. Provisions of that subchapter relating to the Citizens of Mexico Pilot Program, which is distinct from the Border County Waiver, have instead been moved into §13.476, for greater clarity. There are no substantive changes to the rule.

Rule 13.476, Citizens of Mexico Waiver Pilot Program, provides for the discretionary waiver pilot program authorized by Texas Education Code, §54.231(c). This program allows general academic teaching institutions and public technical institutions, regardless of geography, to offer a limited number of waivers to eligible students from Mexico who demonstrate financial need. This rule is the reconstituted applicable elements of current Chapter 21, Subchapter BB, condensed into a single section with nonsubstantive edits to improve rule clarity and readability. There are no substantive changes to the operation of the pilot program as a result of this rule change; however, the requirement of full-time enrollment has been removed to align with the authorizing statute.

Rule 13.477, Texas National Student Exchange Program Waiver, provides for discretionary waivers offered to nonresident students who attend Texas institutions as part of the National Stu-

dent Exchange Program. It is the reconstituted Chapter 21, Subchapter EE, condensed into a single section, reorganized, and with nonsubstantive edits to improve rule clarity and readability. There are no substantive changes to the rule.

Rule 13.478, Competitive Scholarships Waiver, provides for discretionary waivers offered to nonresident students who receive a merit-based scholarship from their Texas institution. It is the reconstituted §21.2263, reorganized and with nonsubstantive changes to clarify eligibility requirements.

Rule 13.479, Economic Development and Diversification Waiver, provides for the mandatory waiver offered to nonresident students who have relocated to Texas due to the student's or the student's family's employment by a business that became established in Texas as part of a state economic development or diversification program. This is a new rule, authorized by Texas Education Code, §54.222. Subsection (b) establishes that all institutions of higher education shall offer this waiver to eligible students. Subsection (c) provides for student eligibility, including residency and Selective Service requirements, as well as the conditions of the student's or the student's family's relocation. Subsection (d) clarifies the family members whose relocation may confer eligibility for the waiver to the student. Subsection (e) codifies the Coordinating Board's current practice of publishing a list of relocated companies, the employees (and by extension, their families) of which may receive a waiver, as well as the date by which a student associated with that company must enroll to qualify for a waiver.

Subsequent to the posting of the rules in the *Texas Register*, the following changes are incorporated into the adopted rule.

Section 13.463(b)(2) is amended to clarify the language through a non-substantive citation adjustment.

Section 13.466(f) is amended to clarify the language through a non-substantive citation adjustment.

Section 13.467(d)(4)(B) is amended to clarify the language through a non-substantive citation adjustment.

Section 13.467(e) is amended to clarify the language through a non-substantive citation adjustment.

Section 13.468(f)(2) is amended to state that courses making up the general education core curriculum are not subject to the exemption described by that section unless the institution identifies the courses as being part of the criminal justice or law enforcement curriculum, allowing for institutional flexibility in determining whether the exemption is administered at the program or course level.

Section 13.469(e)(2) is amended to state that courses making up the general education core curriculum are not subject to the exemption described by that section unless the institution identifies the courses as being part of the fire science curriculum, allowing for institutional flexibility in determining whether the exemption is administered at the program or course level.

Section 13.470(e)(2) is amended to state that courses making up the general education core curriculum are not subject to the exemption described by that section unless the institution identifies the courses as being part of the emergency medical services curriculum, allowing for institutional flexibility in determining whether the exemption is administered at the program or course level.

Section 13.472(c)(2)(B) is amended to clarify the language through a non-substantive citation adjustment.

Section 13.472(f)(2) is amended to clarify the language through a non-substantive citation adjustment.

Section 13.479(d) is amended to clarify the language through a non-substantive citation adjustment.

Section 13.477(e) is renumbered to 13.477(f) due to the addition set forth below.

Section 13.477 is amended to add 13.477(e) stating that a student participating in the Texas National Student Exchange Program Waiver from another state is exempt from Texas Education Code, chapter 51, subchapter F-1, unless such student becomes a degree -seeking undergraduate student at a Texas institution of higher education.

Section 13.478(c)(4) is amended to clarify that an eligible competitive scholarship must be available, rather than offered, to both residents and nonresidents. This is to ensure the rule reflects the Coordinating Board's existing understanding and practice that, for example, an otherwise eligible competitive scholarship for which there is only one recipient per year can qualify a student for the waiver, provided both resident and nonresident students could have received the scholarship.

The following comments were received regarding the adoption of the new rules.

The Coordinating Board has proposed amendments to these rules as necessary to comply with the order and final judgment entered June 4, 2025, by the United States District Court in United States of America v. State of Texas, 2025 WL 1583869, Civil No. 7:25-cv-00055 (N.D. Tex., Wichita Falls Div.), hereafter the "Federal Order." The Federal Order declared that Texas Education Code, §54.051(m) and §54.052(a), "as applied to aliens who are not lawfully present in the United States, violate the Supremacy Clause and are unconstitutional and invalid." The Federal Order also permanently enjoined the State of Texas from enforcing §54.051(m) and §54.052(a), "as applied to aliens who are not lawfully present in the United States."

Comment: The Coordinating Board received a number of comments that: set forth policy positions regarding the Texas Dream Act; object to the decision of the Court and interpretation of the applicable state and federal law as set forth in the Federal Order on policy, procedural, and substantive grounds; request that the Coordinating Board's rules depart from the Federal Order by allowing in-state tuition and other education benefits be extended to those not lawfully present; and request that Coordinating Board's rules permit institutions to delay compliance with the Federal Order, including by "grandfathering" existing students, for a period of time, including while any appeals of the Federal Order are ongoing.

The Coordinating Board received such comments from a number of individuals and organizations, including: FIEL Houston, IDRA, Texas Unitarian Universalist Justice Ministry, First Unitarian Universalist Church of Houston, Westside Unitarian Universalist Church of Fort Worth, National Council of Jewish Women - Greater Dallas Section, Eta Alpha Chapter of Sigma Lambda Beta International Fraternity at the University of Texas at Austin, Xi Chapter of Sigma Lambda Gamma National Sorority at the University of Texas at Austin, U.S. Africa Institute, Rooted Collective, Texas Citizen, TheDream.US, FWD.US, Texas Civil Rights Project, Children's Defense Fund, and Laredo Alliance, as well as Austin Community College.

Response: Although the Coordinating Board was not a party to the underlying litigation, it is legally bound by the judgment, as

an agency of the State of Texas. Accordingly, the Coordinating Board must ensure that its rules comport with the Court's ruling and the construction of the applicable law set forth therein. Additionally, the Coordinating Board does not have the authority to permit any other person or institution that may be separately and independently bound by federal law and the Federal Order to delay or avoid compliance.

Comment: Several commenters have requested that the rules be amended to include a standardized definition of "lawful presence" and that the rules should include more guidance on the scope of the term to ensure consistent application and avoid confusion.

Additionally, several commenters expressed concern that institutions may be taking conflicting views concerning whether Deferred Action for Childhood Arrivals (DACA) students are eligible for Texas resident tuition because some institutions are classifying such students as not lawfully present while others are classifying such students as lawfully present. Commenters sought clarification as to whether the rule permits students who received DACA status to be categorized as lawfully present and thus eligible for Texas resident tuition.

The Coordinating Board received comments on this issue from: the Texas Immigration Law Council, Texas Civil Rights Project, IDRA, Fellowship Southwest, Every Texan, First Unitarian Universalist Justice Ministry, Westside Unitarian Universalist Church of Fort Worth, First Unitarian Universalist Church of Dallas, National Council of Jewish Women - Greater Dallas Section, Eta Alpha Chapter of Sigma Lambda Beta International Fraternity at the University of Texas at Austin, Xi Chapter of Sigma Lambda Gamma National Sorority at the University of Texas at Austin, Sigma Lambda Gamma National Sorority, Inc., U.S. Africa Institute, Rooted Collective, TheDream.US, FWD.US, and the Laredo Immigrant Alliance, as well as several individuals.

Response: The Coordinating Board appreciates the comments. The Federal Order pertains to persons who are "not lawfully present in the United States." The terms "lawfully present" and "not lawfully present" are complex and uniquely federal concepts, defined by Congress and implemented and interpreted by federal courts and agencies. THECB, as a state agency, is not best positioned to create its own interpretation of these federal law terms nor provide additional guidance. Accordingly, the Coordinating Board takes no action based on these comments.

With respect to DACA: The Coordinating Board appreciates these comments. Each institution of higher education is required to comply with federal court rulings in making determinations of lawful presence. As noted above, it is beyond the role of the Coordinating Board to attempt to provide a comprehensive definition of lawful presence, which is governed by federal law. Each institution must consult with its legal counsel to ensure that its determinations of eligibility for resident tuition reflect current law, including applicable case law and federal orders. See, e.g., Texas v. United States, 50 F.4th 498, 525-528 (5th Cir. 2022); Texas v. United States, 809 F.3d 134, 178 - 186 (5th Cir. 2015) (holding that DACA recipients are not lawfully present and thus ineligible to receive the benefit of Texas resident tuition on that basis), aff'd 579 U.S. 547, 548 (2016) (per curiam); see also Texas v. United States, 126 F.4th 392, 417 - 418, 420 (5th Cir. 2025) (holding that lawful presence is different from forbearance) (quoting DHS v. Regents of the Univ. of Cal., 591 U.S. 1, 26 n.5 (2020)).

Comment: The Coordinating Board received comments expressing the legal and policy position that the requirement in proposed rule §13.465 of lawful presence as a component of eligibility is contrary to or exceeds the spirit and scope of the Federal Order and the Coordinating Board's statutory authority to promulgate rules governing waivers and exemptions.

Comments on this matter were received from: The University of Texas at El Paso and the Texas Immigration Law Council (joined by IDRA, Fellowship Southwest, Every Texan, Breakthrough Central Texas, Texans for Economic Growth, Children's Defense Fund-Texas, Grantmakers Concerned with Immigrants and Refugees (GCIR), RISE for Immigrants, EdTrust in Texas, UnidosUS, Laredo Immigrant Alliance, Local Progress Texas, and Common Defense).

Response: The Coordinating Board appreciates the comments. The Coordinating Board has reviewed all of the concerns expressed but does believe that this eligibility requirement for exemptions and waivers (which allow a student to pay reduced or potentially no tuition) is in alignment with the text and intended scope of the Federal Order and the correct construction of the applicable authorities as set forth by the federal court in its rulings, and also falls within the Coordinating Board's authority under Texas law. In providing rules to govern the application of waivers and extensions, it is incumbent upon the Coordinating Board to ensure its rules are not only in alignment with state law but also federal law. The Coordinating Board takes no action as a result of these comments.

Comment: Texas Tech University commented regarding rule §13.470, requesting that the rule be revised to allow the exemption to be applied at program level, inclusive of core curriculum requirements, rather than being limited to isolated courses.

Response: The Coordinating Board appreciates the comment. The commentor correctly states that the rule as published deviated from existing rules relating to the Firefighters Enrolled in Fire Science Courses Exemption, on which the paramedic exemption was explicitly modeled. Accordingly, subsection (e)(2) of the rule is amended to align with the Firefighters Enrolled in Fire Science Courses Exemption rule that existed prior to adoption, to allow institutions to determine whether general education core curriculum courses are considered part of the emergency medical services curriculum, and thus subject to the exemption.

Moreover, as a result of the comment and in the interests of administrative consistency and flexibility, similar amendments were made to §13.468(f)(2) and §13.469(e)(2), corresponding rule provisions in the Peace Officers Enrolled in Law Enforcement or Criminal Justice Courses Exemption and Firefighters Enrolled in Fire Science Courses Exemption programs, respectively.

The new sections are adopted under Texas Education Code, Sections 51.930, 54.213, 54.222, 54.2031, 54.231, 54.331, 54.353, 54.3531, 54.3532, 54.355, 54.356, and 54.363, which provide the Coordinating Board with the authority to adopt rules relating to the exemption and waiver programs included in the subchapter.

The adopted new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 13.

§13.463. Satisfactory Academic Progress.

(a) Satisfactory Academic Progress. A student who receives an exemption under this subchapter during a semester or term at an institution of higher education may continue to receive the exemption

only if the student maintains a grade point average that satisfies the institution's grade point average requirement for making satisfactory academic progress toward a degree or certificate, unless granted a hardship waiver by the institution in accordance with §13.464 of this subchapter (relating to Hardship Provisions).

(b) Re-Establishing Eligibility. If on the completion of any semester or term a student fails to meet the grade point average requirement described by subsection (a) of this section, the student may not receive the exemption during the following semester or term. The student may become eligible to receive an exemption in a subsequent semester or term if the student:

(1) completes a semester or term during which the student is not eligible for the exemption;

(2) meets the grade point average requirement described by paragraph (b)(1) of this section; and

(3) meets all other eligibility requirements for the exemption.

(c) The institution shall calculate a student's grade point average in accordance with §22.10 of this title (relating to Grade Point Average Calculations for Satisfactory Academic Progress).

(d) Applicability. The provisions of this section do not apply to waivers, as defined in §13.460 of this subchapter (relating to Definitions) or to the exemptions authorized by Texas Education Code, §§54.217; 54.341(a-2)(1)(A), (B), (C), or (D) and (b)(1)(A), (B), (C), or (D); 54.342; 54.366; or 54.367.

§13.466. Children of Professional Nursing Program Faculty and Staff Exemption.

(a) Authority. Authority for this section is provided in the Texas Education Code, §54.355.

(b) Definitions. In addition to the words and terms defined in §13.460 of this subchapter (relating to Definitions), the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Child--A child 25 years or younger, including an adopted child.

(2) Graduate Professional Nursing Program--An educational program of a public institution of higher education that prepares students for a master's or doctoral degree in nursing.

(3) Undergraduate Professional Nursing Program--A public educational program for preparing students for initial licensure as registered nurses.

(c) Participating Institutions. An institution of higher education, as defined by §13.1 of this chapter (relating to Definitions), that offers an undergraduate or graduate professional nursing program, as defined in subsection (b) of this section, shall provide an exemption to eligible students in accordance with this section.

(d) Eligible Students. To be eligible for an exemption under this section, a student must:

(1) be a Resident of Texas, as defined in §22.1 of this title (relating to Definitions);

(2) not have been granted a baccalaureate degree;

(3) be enrolled at an institution of higher education that offers an undergraduate or graduate program of professional nursing;

(4) meet applicable standards outlined in §22.3 of this title (relating to Student Compliance with Selective Service Registration);

(5) be the child of an individual who:

(A) at the beginning of the semester or other academic term for which an exemption is sought:

(i) holds a master's or doctoral degree in nursing, and who is employed by an undergraduate or graduate professional nursing program at a participating institution as a member of the faculty or staff, with duties that include teaching, performing research, serving as an administrator, or performing other professional services; or

(ii) holds a baccalaureate degree in nursing, and who is employed by a professional nursing program at a participating institution as a full-time teaching assistant; or

(B) during all or part of the semester or other academic term for which an exemption is sought:

(i) holds a master's or doctoral degree in nursing, and who has contracted with an undergraduate or graduate professional nursing program in this state to serve as a member of its faculty or staff with duties that include teaching, performing research, serving as an administrator, or performing other professional services; or

(ii) holds a baccalaureate degree in nursing, and who has contracted with a professional nursing program offered by a participating institution to serve as a teaching assistant;

(6) be enrolled at the same institution of higher education at which the student's parent is currently employed or with which the parent has contracted, as described in paragraph (5) of this subsection; and

(7) meet the satisfactory academic progress requirements described by §13.463 of this subchapter (relating to Satisfactory Academic Progress) unless granted a hardship waiver by the institution in accordance with §13.464 of this subchapter (relating to Hardship Provisions).

(e) Discontinuation of Eligibility. In addition to the limitations on eligibility described by §13.465 of this subchapter (relating to Restrictions on Exemptions and Waivers), a person's eligibility for an exemption under this section ends after the person has received exemptions under this section for 10 semesters or summer sessions. For the purposes of this subsection, a summer session that is less than nine weeks in duration is considered one-half of a summer session.

(f) Proration of Exemption. If the student's parent described by paragraph (d)(5) of this section is employed on less than a full-time basis, the institution shall prorate the value of the exemption in accordance with the parent's employment load. Regardless of the employment load, the exemption shall not be for less than 25 percent of the student's tuition.

(g) Application. To apply for an exemption under this section, a student shall submit to his or her institution a completed Professional Nursing Faculty and Staff Exemption Application, which the Coordinating Board shall publish on its website.

§13.467. Clinical Preceptors and Children Exemption.

(a) Authority. Authority for this section is provided in the Texas Education Code, §54.356.

(b) Definitions. In addition to the words and terms defined in §13.460 of this subchapter (relating to Definitions), the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Child--A child 25 years or younger, including an adopted child.

(2) Clinical Preceptor or Preceptor--A registered nurse or other licensed health professional who meets the requirements below and who is not paid as a faculty member by an institution of higher education, but who directly supervises a nursing student's clinical learning experience in a manner prescribed by a signed written agreement between the educational institution, preceptor, and affiliating agency. A clinical preceptor has the following qualifications:

(A) competence in designated areas of practice;

(B) a philosophy of health care congruent with that of the nursing program;

(C) current licensure or privilege as a registered nurse in the State of Texas; and

(D) if not a registered nurse, holds a current license in Texas as a health care professional with a minimum of a bachelor's degree in that field.

(c) Participating Institutions. An institution of higher education, as defined in §13.1 of this chapter (relating to Definitions) shall provide an exemption under this section to all eligible persons enrolled at the institution.

(d) Eligible Students. To be eligible for an exemption under this section, a student must:

(1) be a Resident of Texas, as defined in §22.1 of this title (relating to Definitions);

(2) meet applicable standards outlined in §22.3 of this title (relating to Student Compliance with Selective Service Registration);

(3) meet the satisfactory academic progress requirements described by §13.463 of this subchapter (relating to Satisfactory Academic Progress) unless granted a hardship waiver by the institution in accordance with §13.464 of this subchapter (relating to Hardship Provisions); and

(4) be one of the following:

(A) a registered nurse who serves, on average, at least one day per week under a written preceptor agreement with an undergraduate professional nursing program as a clinical preceptor for students enrolled in the program for:

(i) the time period the program conducts clinicals during the semester or other academic term for which the exemption is sought; or

(ii) the time period the program conducted clinicals during a semester or other academic term that ended less than one year prior to the beginning of the semester or term in which the exemption is to be used; or

(B) an undergraduate student who is the child of a clinical preceptor described by subparagraph (d)(4)(A) of this section, regardless of whether the preceptor also is receiving or has received an exemption based on the same period of service.

(e) Discontinuation of Eligibility. In addition to the limitations on eligibility described by §13.465 of this subchapter (relating to Restrictions on Exemptions and Waivers), a person described by subparagraph (d)(4)(B) of this section is no longer eligible to receive an exemption under this section if the person has:

(1) received a baccalaureate degree; or

(2) previously received exemptions under this section for 10 semesters or summer sessions. For the purpose of this subsection, a summer session that is less than nine weeks in duration is considered one-half of a summer session.

(f) Exemption Amount. The value of an exemption granted under this program is equal to $500 or the student's tuition, whichever is less.

(g) Application. To apply for an exemption under this section, a student shall submit to his or her institution a completed Clinical Preceptor Exemption Application, which the Coordinating Board shall publish on its website.

§13.468. Peace Officers Enrolled in Law Enforcement or Criminal Justice Courses Exemption.

(a) Authority. Authority for this section is provided in the Texas Education Code, §54.3531.

(b) Definitions. In addition to the words and terms defined in §13.460 of this subchapter (relating to Definitions), in this section, the term "undergraduate student" means a person who has not previously been awarded a baccalaureate degree.

(c) Participating Institutions. An institution of higher education, as defined in §13.1 of this chapter (relating to Definitions) shall provide an exemption to an eligible student for tuition and laboratory fees associated with eligible courses in accordance with this section. The exemption does not apply to security deposits for the return or proper care of property loaned to the student.

(d) Eligible Student. To be eligible for an exemption under this section, a student must:

(1) be an undergraduate student enrolled in an eligible criminal justice or law enforcement-related degree or certificate program;

(2) be employed as a peace officer, as defined in Texas Code of Criminal Procedure, §2A.001, by this state or by a political subdivision of this state;

(3) apply for the exemption at least one week before the last day of the institution's regular registration period for that semester;

(4) meet applicable standards outlined in §22.3 of this title (relating to Student Compliance with Selective Service Registration); and

(5) meet the satisfactory academic progress requirements described by §13.463 of this subchapter (relating to Satisfactory Academic Progress) unless granted a hardship waiver by the institution in accordance with §13.464 of this subchapter (relating to Hardship Provisions).

(e) Eligible Degree or Certificate Programs. Each institution of higher education shall identify criminal justice or law enforcement-related degree or certificate programs offered by the institution and submit a list of the identified programs to the Coordinating Board. The Coordinating Board shall compile and publish a list of all institutions' identified programs on its website.

(f) Eligible Courses.

(1) An exemption provided under this section applies only to courses pertaining to criminal justice or law enforcement-related degree or certificate programs published by the Coordinating Board in accordance with subsection (e) of this section.

(2) An institution shall not apply an exemption to courses that make up the general education core curriculum required for all degrees unless such courses are identified by the institution as being part of the criminal justice or law enforcement curriculum.

(3) For a given eligible course, not more than 20 percent of the maximum student enrollment designated by the institution may receive an exemption under this section.

(g) Report to Legislature. If the Legislature does not specifically appropriate funds to an institution of higher education in an amount sufficient to pay the institution's costs in complying with this section for a semester, the governing board of the institution shall report to the Senate Finance Committee and the House Appropriations Committee the cost to the institution of complying with this section for that semester.

§13.469. Firefighters Enrolled in Fire Science Courses Exemption.

(a) Authority. Authority for this section is provided in the Texas Education Code, §54.353.

(b) Participating Institutions. An institution of higher education, as defined in §13.1 of this chapter (relating to Definitions) shall provide an exemption to an eligible student for tuition and laboratory fees associated with eligible courses in accordance with this section. The exemption does not apply to security deposits for the return or proper care of property loaned to the student.

(c) Eligible Students. To be eligible for an exemption under this section, a student must:

(1) be enrolled at a participating institution;

(2) be either:

(A) a paid firefighter employed by a political subdivision of the State of Texas; or

(B) a volunteer firefighter who:

(i) is currently, and has been for the past year, an active member of an organized volunteer fire department in this state that participates in the Texas Emergency Services Retirement System or a retirement system established under the Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes); and

(ii) holds one of the following credentials:

(I) an Accredited Advanced level of certification, or an equivalent successor certification, under the State Firemen's and Fire Marshals' Association of Texas volunteer certification program; or

(II) a Phase V (Firefighter II) certification, or an equivalent successor certification, under the Texas Commission on Fire Protection's voluntary certification program under Texas Government Code, §419.071;

(3) meet applicable standards outlined in §22.3 of this title (relating to Student Compliance with Selective Service Registration); and

(4) meet the satisfactory academic progress requirements described by §13.463 of this subchapter (relating to Satisfactory Academic Progress) unless granted a hardship waiver by the institution in accordance with §13.464 of this subchapter (relating to Hardship Provisions).

(d) Eligible Degree or Certificate Program. Each institution of higher education shall identify fire science degree or certificate programs offered by the institution and submit a list of the identified programs to the Coordinating Board. The Coordinating Board shall compile and publish a list of all institutions' identified programs on its website.

(e) Eligible Courses.

(1) An exemption provided under this section applies only to courses pertaining to fire science degree or certificate programs published by the Coordinating Board in accordance with subsection (d) of this section.

(2) An institution shall not apply an exemption to courses that make up the general education core curriculum required for all degrees unless such courses are identified by the institution as being part of the fire science curriculum.

(f) Exception. Notwithstanding subsection (c) of this section, an exemption applied under this section does not apply to any amount of tuition the institution:

(1) elects to charge a resident undergraduate student under Texas Education Code, §54.014(a) or (f); or

(2) charges a graduate student in excess of the amount of tuition charged to similarly situated graduate students because the student has a number of semester credit hours of doctoral work in excess of the applicable number provided by Texas Education Code, §61.059(l)(1) or (2).

§13.470. Paramedics Enrolled in Emergency Medical Services Courses.

(a) Authority. Authority for this section is provided in the Texas Education Code, §54.3532.

(b) Participating Institutions. An institution of higher education, as defined in §13.1 of this chapter (relating to Definitions) shall provide an exemption to an eligible student for tuition and laboratory fees associated with eligible courses in accordance with this section. The exemption does not apply to security deposits for the return or proper care of property loaned to the student.

(c) Eligible Students. To be eligible for an exemption under this section a student must:

(1) be enrolled at a participating institution;

(2) hold an EMT-Paramedic certification or Paramedic license issued by the Texas Department of State Health Services;

(3) be employed as a paramedic by a political subdivision of this state;

(4) meet applicable standards outlined in §22.3 of this title (relating to Student Compliance with Selective Service Registration); and

(5) meet the satisfactory academic progress requirements described by §13.463 of this subchapter (relating to Satisfactory Academic Progress) unless granted a hardship waiver by the institution in accordance with §13.464 of this subchapter (relating to Hardship Provisions).

(d) Eligible Degree or Certificate Program. Each institution of higher education shall identify emergency medical services degree or certificate programs offered by the institution and submit a list of the identified programs to the Coordinating Board. The Coordinating Board shall compile and publish a list of all institutions' identified programs on its website.

(e) Eligible Courses.

(1) An exemption provided under this section applies only to courses pertaining to emergency medical services degree or certificate programs published by the Coordinating Board in accordance with subsection (d) of this section.

(2) An institution shall not apply an exemption to courses that make up the general education core curriculum required for all degrees unless such courses are identified by the institution as being part of the emergency medical services curriculum.

(f) Exceptions. Notwithstanding subsection (b) of this section, an exemption applied under this section does not apply to any amount of tuition the institution:

(1) elects to charge a resident undergraduate student under Texas Education Code, §54.014(a) or (f); or

(2) charges a graduate student in excess of the amount of tuition charged to similarly situated graduate students because the student has a number of semester credit hours of doctoral work in excess of the applicable number provided by Texas Education Code, §61.059(l)(1) or (2).

(g) Distance Education.

(1) Each semester or term, a participating institution may designate up to three eligible courses offered exclusively via distance education as excluded courses.

(2) Notwithstanding subsection (b) of this section, for excluded courses designated under paragraph (1) of this subsection, a participating institution is not required to offer exemptions to students enrolled in the course in excess of 20 percent of the maximum student enrollment designated by the institution for that course.

§13.472. Educational Aide Exemption.

(a) Authority. Authority for this section is provided in the Texas Education Code, §54.363.

(b) Definitions. In addition to the words and terms defined in §13.460 of this subchapter (relating to Definitions), the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Educational Aide--A person who has been employed by a public school district in Texas in a teaching capacity working in the classroom directly with the students for at least one year on a full-time basis. It may include substitute teachers who have been employed by a public school district in Texas for 180 or more full days in a teaching capacity working in the classroom directly with students.

(2) Program--The Educational Aide Exemption Program.

(c) Eligible Institutions.

(1) Eligibility. Any institution of higher education, as defined in §13.1 of this chapter (relating to Definitions), is eligible to participate in the Program.

(2) Participation.

(A) Agreement. Each eligible institution must enter into an agreement with the Board, the terms of which shall be prescribed by the Commissioner, prior to indicating its intent to participate in the program.

(B) Intent to Participate. Subject to subsection (c)(2)(A), to receive an allocation for the forthcoming fiscal year, an eligible institution must indicate its intent to participate in the program in the applicable year in the manner prescribed and by the deadline established by the Coordinating Board.

(3) A participating institution shall offer an exemption under this section to a student meeting the eligibility requirements established in subsection (e) of this section, except that an institution is not required to offer exemptions beyond those funded through appropriations specifically designated for this purpose. An institution may establish criteria by which applicants are prioritized if appropriated funds are insufficient to offer an exemption to all eligible students for a given term.

(4) A participating institution shall use institutional matching funds to cover at least 10 percent of each recipient's exemption.

(d) Institutional Responsibilities. Institutions participating in the Program shall disburse funds in accordance with §22.2 of this title (relating to Timely Disbursement of Funds), retain records in accordance with §22.4 of this title (relating to Records Retention) and comply with the provisions of §22.9 of this title (relating to Institutional Responsibilities) with respect to the Program.

(e) Eligible Students. To be eligible to receive an exemption under this section, a student must:

(1) Submit a completed application for an exemption to the student's institution;

(2) Be a Resident of Texas, as defined in §22.1 of this title (relating to Definitions);

(3) Have met the definition of Educational Aide established in subsection (b) of this section at some time during the last five years preceding the term or semester for which the student would receive an initial exemption;

(4) Be employed in any capacity by a school district or open-enrollment charter school in Texas during the full term for which the student would receive the exemption;

(5) Show financial need, as defined in §13.460 of this subchapter;

(6) be enrolled at an eligible institution in courses required for teacher certification in one or more subject areas determined by the Commissioner of Education to be experiencing a critical shortage at the public schools of this state;

(7) meet the satisfactory academic progress requirements described by §13.463 of this subchapter (relating to Satisfactory Academic Progress) unless granted a hardship waiver by the institution in accordance with §13.464 of this subchapter (relating to Hardship Provisions); and

(8) meet applicable standards outlined in §22.3 of this title (relating to Student Compliance with Selective Service Registration).

(f) Notwithstanding subsection (e)(6) of this section, a student who previously received an exemption under this section remain eligible if the student:

(1) is enrolled at an eligible institution in courses required for teacher certification; and

(2) meets the eligibility requirements of subsection (e) of this section other than the requirement in subsection (e)(6).

(g) Exemption Amount. A student receiving an exemption under this section is exempt from the payment of resident tuition and required fees, other than laboratory and class fees, taken during the relevant term.

(h) Allocations. Allocations are to be determined on an annual basis as follows:

(1) All eligible institutions will be invited annually to participate in the program allocation process, as described by subsection (c)(2)(B) of this section.

(2) The annual appropriation will be divided equally between all participating institutions.

(3) Allocation calculations will be shared with all eligible institutions for comment prior to final posting. Institutions will be given 10 business days, beginning the day of the notice's distribution

and excluding state holidays, to confirm their interest in participating in the program.

(i) Exemption from Student Teaching. A person who has not previously received a baccalaureate degree and who receives a baccalaureate degree required for a teaching certificate on the basis of coursework completed while receiving an exemption under this section may not be required to participate in any field experience of internship consisting of student teaching to receive a teaching certificate.

§13.477. Texas National Student Exchange Program Waiver.

(a) Authority. Authority for this section is provided in the Texas Education Code, §51.930.

(b) Eligible Institution. An institution may offer a waiver under this section to an eligible student if the institution is:

(1) a general academic teaching institution, as defined by §13.1 of this chapter (relating to Definitions); and

(2) under contract with the student exchange program administered by the National Student Exchange.

(c) Eligible Students. A student is eligible to receive a wavier under this section if the student:

(1) is not a Resident of Texas, as defined in §13.460 of this subchapter (relating to Definitions);

(2) is enrolled as an undergraduate student at an eligible institution as part of the student exchange program administered by the National Student Exchange; and

(3) meets applicable standards outlined in §22.3 of this title (relating to Student Compliance with Selective Service Registration).

(d) Limitation. A student may only receive a waiver under this section for one year.

(e) A student participating in the program from another state shall be exempt from the provisions of Texas Education Code, chapter 51, subchapter F-1, unless that student becomes a degree-seeking undergraduate student at an institution of higher education.

(f) Tuition Rate. A student receiving a waiver under this section shall pay the resident tuition rate.

§13.478. Competitive Scholarships Waiver.

(a) Authority. Authority for this section is provided in the Texas Education Code, §54.213.

(b) Eligible Institutions.

(1) Any institution of higher education, as defined in §13.1 of this chapter (relating to Definitions), may offer a waiver under the provisions of this section.

(2) A waiver received by a student under this section applies only to tuition paid to the institution that awarded the enabling scholarship unless the student is simultaneously enrolled in two or more institutions of higher education under a program offered jointly by the institutions under a partnership agreement, in which case the student may also be offered a waiver at the other institution(s).

(3) The total number of persons at an eligible institution receiving a waiver under this section in a given semester shall not exceed 5 percent of the total number of students enrolled at the institution in the same semester of the prior year.

(c) Eligible Students. A student enrolled at an eligible institution may be offered a waiver under this section if the student:

(1) is not a Resident of Texas, as defined by §13.460 of this subchapter (relating to Definitions);

(2) received an eligible competitive scholarship, as described in subsection (d) of this section; and

(3) meets applicable standards outlined in §22.3 of this title (relating to Student Compliance with Selective Service Registration).

(d) Eligible Competitive Scholarship. An otherwise eligible student may be offered a waiver under this section if the student receives a scholarship:

(1) of at least $1,000 for the 12-month academic year, regardless of how the scholarship funds are disbursed;

(2) awarded by a scholarship committee established and authorized by the institution to grant scholarships using institutional funds that permit the waiver authorized in this section;

(3) awarded according to criteria published and available to the public in advance of any application deadline;

(4) available to both resident and nonresident students.

(e) An otherwise eligible student may be offered a waiver under this section for any semester or term in an academic year in which the student receives an eligible competitive scholarship.

(f) Tuition Rate. A student receiving a waiver under this section shall pay the resident tuition rate.

(g) A student whose eligible competitive scholarship is terminated prior to the end of a semester or term for which it was awarded such that the student no longer meets the criteria in subsection (c) of this section shall pay nonresident tuition for any semester following the termination of the scholarship.

§13.479. Economic Development and Diversification Waiver.

(a) Authority. Authority for this section is provided in the Texas Education Code, §54.222.

(b) Eligible Institutions. An institution of higher education, as defined by §13.1 of this chapter (relating to Definitions) shall offer a waiver to eligible students under the provisions of this section.

(c) Eligible Students. A student is eligible for a waiver under this section if the student:

(1) is not a Resident of Texas, as defined by §13.460 of this subchapter (relating to Definitions);

(2) meets applicable standards outlined in §22.3 of this title (relating to Student Compliance with Selective Service Registration);

(3) has relocated to Texas because of the student's or an eligible family member's employment by a business or organization that became established in this state as part of a state economic development and diversification program authorized by law not earlier than five years prior to the student's enrollment date; and

(4) files a letter of intent with the student's institution declaring the student's intention to establish residency in Texas.

(d) Eligible Family Member. A person is an eligible family member for the purposes of subsection (d)(3) of this section if the person:

(1) is 18 years of age or older;

(2) resides in the student's household; and

(3) is either:

(A) the student's parent or legal guardian; or

(B) the student's spouse.

(e) The Coordinating Board shall publish on its website:

(1) A list of qualifying businesses or organizations, by which employment of the student or an eligible family member of the student may qualify the student for a waiver under this section; and

(2) The date associated with each business listed under paragraph (1) of this subsection by which an otherwise eligible student must be enrolled to receive a waiver under this section.

(f) Tuition Rate. A student receiving a waiver under this section shall pay the resident tuition rate.

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

Filed with the Office of the Secretary of State on October 24, 2025.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: August 29, 2025
For further information, please call: (512) 427-6365

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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) adopts the repeal of Title 19, Part 1, Chapter 15, Subchapter A, §15.1 and §15.10, General Provisions, without changes to the proposed text as published in the July 25, 2025, issue of the *Texas Register* (50 TexReg 4170). The rules will not be republished.

Specifically, this repeal conforms 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 repeal of TRIP-related rules are repealed.

No comments were received regarding the adoption of the repeal.

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

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

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

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Nichole Bunker-Henderson
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For further information, please call: (512) 427-6495

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CHAPTER 21. STUDENT SERVICES

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of 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, without changes to the proposed text as published in the July 25, 2025, issue of the *Texas Register* (50 TexReg 4170). The rules will not be republished.

Specifically, the repeal allows 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 Chap-

ter 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.

No comments were received regarding the adoption of the repeal.

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §21.8

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

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

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

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SUBCHAPTER C. STUDENT INDEBTEDNESS

19 TAC §§21.45 - 21.49

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

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

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

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

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

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SUBCHAPTER L. EXEMPTION PROGRAM FOR CLINICAL PRECEPTORS AND THEIR CHILDREN

19 TAC §§21.309 - 21.316

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

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

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

19 TAC §§21.518 - 21.526

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

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

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SUBCHAPTER U. THE GOOD NEIGHBOR SCHOLARSHIP PROGRAM

19 TAC §§21.634 - 21.642

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

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

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SUBCHAPTER Z. EXEMPTION FOR FIREFIGHTERS ENROLLED IN FIRE SCIENCE COURSES

19 TAC §§21.786 - 21.792

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

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

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SUBCHAPTER AA. RECIPROCAL EDUCATIONAL EXCHANGE PROGRAM

21 TAC §§21.901 - 21.910

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

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

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SUBCHAPTER BB. PROGRAMS FOR ENROLLING STUDENTS FROM MEXICO

19 TAC §§21.931 - 21.938

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

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

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SUBCHAPTER EE. TEXAS NATIONAL STUDENT EXCHANGE PROGRAM

19 TAC §§21.990 - 21.994

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

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

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SUBCHAPTER II. EDUCATIONAL AIDE EXEMPTION PROGRAM

19 TAC §§21.1080 - 21.1089

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

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

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SUBCHAPTER PP. PROVISIONS FOR UNIFORM STANDARDS FOR PUBLICATION OF COST OF ATTENDANCE INFORMATION

19 TAC §§21.2220 - 21.2222

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

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

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SUBCHAPTER SS. WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §§21.2260 - 21.2263

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

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

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

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

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CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of Title 19, Part 1, Chapter 22, Subchapter C, §§22.42 and 22.44 - 22.55, Hinson-Hazlewood College Student Loan Program; Subchapter E, §§22.84, 22.85, 22.92, 22.93, 22.95, and 22.96, Hinson-Hazlewood College Student Loan Program: All Loans Made Before Fall Semester, 1971, Not Subject to the Federally Insured Student Loan Program; Subchapter I, §§22.171 - 22.174, Texas Armed Services Scholarship Program; Subchapter J, §§22.175 - 22.189, Future Occupations & Reskilling Workforce Advancement to Reach Demand (FORWARD) Loan Program; Subchapter Q, §§22.329, 22.330, and 22.337 - 22.342, Texas B-On-Time Loan Program; Subchapter X, §§22.625, 22.626, 22.631, and 22.633 - 22.641, Teach for Texas Conditional Grant Program; and Subchapter Y, §§22.663, 22.664, 22.668, and 22.670 - 22.677, Teach for Texas Alternative Certification Conditional Grant Program, without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5535). The rules will not be republished.

Specifically, the repeal allows the relocation of the rules relating to the Coordinating Board's student loan programs to the newly created Chapter 24, Student Loan Programs.

The Coordinating Board is generally authorized by Texas Education Code, Chapter 52, Subchapter C (Student Loans), and specifically §§56.0092 (B-On-Time), 56.3575 (Teach for Texas), and 61.9774 (Armed Services Scholarship), to adopt rules relating to the provisions of these sections.

No comments were received regarding the adoption of the repeal.

SUBCHAPTER C. HINSON-HAZLEWOOD COLLEGE STUDENT LOAN PROGRAM

19 TAC §§22.42, 22.44 - 22.55

The repeal is adopted under Texas Education Code, Chapter 52, Subchapter C, which provides the Coordinating Board with the authority to adopt rules relating to student loan programs.

The adopted repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter C, §§22.42 and 22.44 - 22.55.

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

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SUBCHAPTER E. HINSON-HAZLEWOOD COLLEGE STUDENT LOAN PROGRAM: ALL LOANS MADE BEFORE FALL SEMESTER, 1971, NOT SUBJECT TO THE FEDERALLY INSURED STUDENT LOAN PROGRAM

19 TAC §§22.84, 22.85, 22.92, 22.93, 22.95, 22.96

The repeal is adopted under Texas Education Code, Chapter 52, Subchapter C, which provides the Coordinating Board with the authority to adopt rules relating to student loan programs.

The adopted repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter E, §§22.84, 22.85, 22.92, 22.93, 22.95, and 22.96.

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

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SUBCHAPTER I. TEXAS ARMED SERVICES SCHOLARSHIP PROGRAM

19 TAC §§22.171 - 22.174

The repeal is adopted under Texas Education Code, Section 61.9774, which provides the Coordinating Board with the author-

ity to adopt rules to administer the Texas Armed Services Scholarship Program.

The adopted repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter I, §§22.171 - 22.174.

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

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SUBCHAPTER J. FUTURE OCCUPATIONS & RESKILLING WORKFORCE ADVANCEMENT TO REACH DEMAND (FORWARD) LOAN PROGRAM

19 TAC §§22.175 - 22.189

The repeal is adopted under Texas Education Code, Chapter 52, Subchapter C, which provides the Coordinating Board with the authority to adopt rules relating to student loan programs.

The adopted repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter J, §§22.175 - 22.189.

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

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SUBCHAPTER Q. TEXAS B-ON-TIME LOAN PROGRAM

19 TAC §§22.329, 22.330, 22.337 - 22.342

The repeal is adopted under Texas Education Code, Section 56.0092, which provides the Coordinating Board with the authority to adopt rules relating to the Texas B-On-Time Loan Program.

The adopted repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter Q, §§22.329, 22.330, and 22.337 - 22.342.

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

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SUBCHAPTER X. TEACH FOR TEXAS CONDITIONAL GRANT PROGRAM

19 TAC §§22.625, 22.626, 22.631, 22.633 - 22.641

The repeal is adopted under Texas Education Code, Section 56.3575, which provides the Coordinating Board with the authority to adopt rules relating to the Teach for Texas program.

The adopted repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter X, §§22.625, 22.626, 22.631, and 22.633 - 22.641.

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

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SUBCHAPTER Y. TEACH FOR TEXAS ALTERNATIVE CERTIFICATION CONDITIONAL GRANT PROGRAM

19 TAC §§22.663, 22.664, 22.668, 22.670 - 22.677

The repeal is adopted under Texas Education Code, Section 56.3575, which provides the Coordinating Board with the authority to adopt rules relating to the Teach for Texas program.

The adopted repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter Y, §§22.663, 22.664, 22.668, and 22.670 - 22.677.

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

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SUBCHAPTER I. TEXAS ARMED SERVICES SCHOLARSHIP PROGRAM

19 TAC §§22.163, 22.165 - 22.170

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 22, Subchapter I, §§22.165, 22.168, and 22.170, Texas Armed Services Scholarship Program, with changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5537). The rules will be republished. Sections 22.163, 22.166, 22.167, and 22.169 are adopted without changes and will not be republished.

This amendment reflects and implements changes to scholarship amounts, appointments, program eligibility, and Program administration made by House Bill (H.B.) 300, 89th Texas Legislature, Regular Session, which became effective June 20, 2025.

The Coordinating Board is authorized by Texas Education Code (TEC), §61.9774, to adopt rules as necessary to administer the Program.

Rule 22.163, Authority and Purpose, is amended to remove the phrase "complete a baccalaureate degree" from the Program's purpose statement. The provisions of H.B. 300 amending TEC, §§61.9772(a) and 61.9773(a), now allow graduate students to qualify to receive a scholarship, thus expanding the Program's purpose beyond baccalaureate students.

Rule 22.165, Scholarship Amount, is amended to reflect updated annual scholarship amounts. Each year, the Coordinating Board will calculate the average cost of attendance at public institutions of higher education at which one or more scholarship recipients were enrolled in the prior year, and the maximum scholarship will be the greater of that figure or $30,000. Current subsection (b) is eliminated to align with statutory changes to TEC, §61.9771(b), and is replaced by a clarification that a student's scholarship may not exceed the student's cost of attendance. Subsection (c) is added to effectuate Texas Education Code, §61.9771(a)(2).

Rule 22.166, Appointment by Elected Officials, is amended to reflect the revised process for appointment included in H.B. 300's amendment of TEC, §61.9772. The amended rule implements the September 30 appointment deadline by all elected officials authorized to appoint students for the scholarship, with any remaining vacancies to be filled by the Lieutenant Governor (for senators) or the Speaker of the House (for representatives) or their designee(s). Current subsection (c) is relocated to §22.167, reflecting that the student's institution is better equipped to verify the student's academic qualifications for the scholarship than elected officials.

Rule 22.167, Eligible Students, is amended to implement the newly expanded eligibility for graduate students and additional pathways to establish eligibility and to allow for verification by the student's institution that an appointed student is academically qualified to receive a scholarship. Subsection (a)(2) provides for three pathways to eligibility: current enrollment in Reserve Officers' Training Corps (ROTC) or similar undergraduate officer commissioning program, prior completion of ROTC or similar as an undergraduate (for graduate students), and acceptance into the Texas State Guard officer commissioning program (added by H.B. 300, see amended TEC, §61.9772(a)(1)(C)). Subsection (b) is added to reflect updating academic criteria for an appointed student to receive an initial scholarship: for first-year undergraduates, a 3.0 or higher high school GPA or meeting the college readiness standard established in Coordinating Board rules; for undergraduates in their second or later years, a 3.0 or higher GPA in either high school or their postsecondary coursework or meeting the college readiness standard established in Coordinating Board rules; and for graduate students, an undergraduate GPA of 3.0 or higher.

Rule 22.168, Promissory Note, is amended to make corresponding changes to the promissory note for completion of the various eligibility pathways established in §22.167(a).

Rule 22.169, Discontinuation of Eligibility, is amended to reflect the simplified eligibility limitations established by H.B. 300: a student may receive a scholarship under the programs for no more than four years, regardless of degree program or credit hours completed. See TEC, §61.9775.

Rule 22.170, Conversion of the Scholarship to a Loan, is amended to align the monitoring period for scholarship recipients who enter the armed forces and those who enter one of the state guards. Subsection (a)(3)(A) is amended to allow for honorable discharge prior to completion of a four-year commitment as a means of fulfilling the recipient's contract with the Coordinating Board, and subsection (b) is added to reflect that a recipient who becomes a commissioned officer in the armed services is considered to have fulfilled a contract to serve, for the purposes of the program, after four years of service or honorable discharge. This change aligns the service monitoring for all recipients and precludes situations in which some recipients enter contracts to serve of indeterminate length and cannot be considered to have fulfilled their contracts for an extended period. Current subsection (b) is amended to substitute a reference to baccalaureate degree to the student's intended degree to conform with expanded eligibility for the program.

Subsection (g) is added to provide for circumstances, such as physical inability or other extraordinary circumstances, in which a student's scholarship would not convert to a loan. The extraordinary circumstances provision reflects statutory changes from H.B. 300, amending Education Code, §61.9773(b), and this language mirrors a similar provision in the new Chapter 24, Subchapter F, which provides for the cancellation of already-converted loans for similar reasons. Subchapter (h) is added to effectuate Texas Education Code, §61.9773(c). Subsection (i) is added to note that scholarships converted to loans are subject to the applicable requirements in the newly created Chapter 24, relating to Student Loan Programs.

Subsequent to the posting of the rules in the *Texas Register*, the following changes are incorporated into the adopted rules.

Section 22.165(a) is amended to specify that the Coordinating Board shall determine and announce the scholarship amount each year before the last day of January.

Section 22.165(a)(2) is amended to add greater specificity in describing the method by which the Coordinating Board will calculate the maximum scholarship amount. The amount will equal the average undergraduate cost of attendance at public institutions of higher education at which one or more scholarship recipients were enrolled in the prior year. This change will narrow the scope of the calculation to institutions that actually enroll students in the program and more closely align with the legislative intent for this provision, which was to allow the annual scholarship maximum to adjust over time in relation to cost of attendance at public universities.

Section 22.165(b) is amended to clarify that a student's scholarship should not exceed the student's cost of attendance, rather than the institution's cost of attendance. This change acknowledges that scholarship recipients may encounter costs (e.g. uniform maintenance for ROTC students) that generally are not reflected in the institutional average cost of attendance yet are relevant to the student's success in the program.

Section 22.165(c) is added to describe the means by which the Coordinating Board would effectuate Texas Education Code, §61.9771(b)(2) in the event that appropriations for the program are insufficient to provide maximum scholarships to all eligible students.

Section 22.168(b)(1) is amended to specify that the student must submit required documentation relating to the student's participation or completion of ROTC activities or acceptance into the Texas State Guard officer commissioning program to the student's institution to satisfy the requirements of Texas Education Code, §61.9773(a)(1).

Section 22.170(a)(2) is amended to correct an erroneous omission from the posted rule. Withdrawal or removal from the officer commissioning program of the Texas State Guard is added as subsection (a)(2)(B) as a means by which a recipient's scholarship may convert to a loan.

Section 22.170(g) is amended to clarify that the determination of whether an exceptional circumstance beyond the recipient's control exists will be made by the Coordinating Board.

Section 22.170(h) is added to correct an erroneous omission. The subsection effectuates the provisions of Texas Education Code, §61.9773(c).

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, §61.9774, which provides the Coordinating Board with the authority to adopt rules as necessary to administer the Texas Armed Services Scholarship Program.

The adopted amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 22.

§22.165. Scholarship Amount.

(a) The Coordinating Board shall determine and announce the amount of a scholarship not later than the final day of January prior to the start of each fiscal year. The amount shall not exceed the greater of:

(1) $30,000; or

(2) an amount equal to the average undergraduate cost of attendance at public institutions of higher education in this state at which one or more scholarship recipients were enrolled in the prior year.

(b) Notwithstanding subsection (a) of this section, a student may not receive a scholarship under this subchapter in an amount that exceeds the student's cost of attendance.

(c) Notwithstanding subsection (a) of this section, if the Coordinating Board determines that insufficient appropriations are available to offer scholarships to all eligible students at the amount described by subsection (a) of this section in a given fiscal year, then the Coordinating Board may instead calculate and publish a maximum scholarship amount that ensures all eligible students receive an equitable portion of available funds.

§22.168. Promissory Note.

(a) The Coordinating Board shall require a recipient to sign a promissory note acknowledging the conditional nature of the scholarship and promising to repay the amount of the scholarship plus applicable interest, late charges, and any collection costs, including attorneys' fees, if the recipient fails to meet certain conditions of the scholarship, set forth in §22.170 of this subchapter (Conversion of the Scholarship to a Loan).

(b) Recipients agree to:

(1) Complete, or submit documentation to the student's institution demonstrating prior completion of:

(A) one year of ROTC training for each year that the student receives a scholarship, or the equivalent of one year of ROTC training if the institution of higher education awards ROTC credit for prior service in any branch of the U.S. Armed Services or the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine;

(B) Complete, or submit documentation to the student's institution demonstrating prior completion of, another undergraduate officer commissioning program; or

(C) Submit documentation to the student's institution that the student has been accepted into the officer commissioning program for the Texas State Guard, as defined by Texas Government Code, §437.001.

(2) Graduate no later than six years after the date the student first enrolls in an institution of higher education after having received a high school diploma or a General Educational Diploma or its equivalent;

(3) After graduation, enter into and provide the Coordinating Board with verification of:

(A) A four-year commitment to be a member of the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine; or

(B) A contract to serve as a commissioned officer in any branch of the armed services of the United States;

(4) Meet the physical examination requirements and all other prescreening requirements of the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine, or the branch of the armed services with which the student enters into a contract.

§22.170. Conversion of the Scholarship to a Loan.

(a) A scholarship will become a loan if the recipient:

(1) Fails to maintain satisfactory academic progress as described in §22.167 of this subchapter (relating to Eligible Students);

(2) Withdraws from the scholarship program, as indicated through:

(A) withdrawal or removal from the institution of higher education or private or independent institution of higher education or that institution's ROTC program or other undergraduate officer commissioning program, without subsequent enrollment in another institution of higher education or private or independent institution of higher education and that subsequent institution's ROTC program or other undergraduate officer commissioning program; or

(B) withdrawal or removal from the officer commissioning program of the Texas State Guard; or

(3) Fails to fulfill one of the following:

(A) a four-year commitment or honorable discharge as a member of the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine; or

(B) a contract to serve as a commissioned officer in any branch of the armed services of the United States.

(b) For the purposes of subsection (a)(3)(B) of this section, a recipient is considered to have fulfilled a contract to serve after four years of service or upon honorable discharge.

(c) A scholarship converts to a loan if documentation of the contract or commitment outlined in subsection (a)(3) of this section is not submitted to the Coordinating Board within twelve months of graduation with the student's intended degree while receiving a scholarship under this subchapter. Subsequent filing of this documentation will revert the loan back to a scholarship.

(d) If a recipient's scholarship converts to a loan, the recipient cannot regain eligibility for the Scholarship in any subsequent academic year.

(e) If a recipient requires a temporary leave of absence from the institution of higher education, private or independent institution of higher education, and/or the ROTC program or another undergraduate officer commissioning program for personal reasons or to provide service for the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine for fewer than twelve months, the Coordinating Board may agree to not convert the scholarship to a loan during that time.

(f) If a recipient is required to provide more than twelve months of service in the Texas Army National Guard, Texas Air National Guard, Texas State Guard, United States Coast Guard, or United States Merchant Marine as a result of a national emergency, the Coordinating Board shall grant that recipient additional time to meet the graduation and service requirements specified in the scholarship agreement.

(g) Notwithstanding subsection (a) of this section, a scholarship does not convert to a loan if the recipient is unable to meet the obligations of the agreement solely as a result of:

(1) a physical inability, subject to appropriate verification to the satisfaction of the Coordinating Board; or

(2) an exceptional circumstance beyond the recipient's control, as determined by the Coordinating Board.

(h) If the Coordinating Board determines that a student who entered into an agreement with the Board under this subchapter was erroneously removed from the scholarship program established under this subchapter, the Coordinating Board shall reinstate the student's scholarship if the student is currently enrolled in a public or private institution of higher education in this state.

(i) Scholarships that convert to loans under this section are subject to the applicable requirements of chapter 24 of this title (relating to Student Loan Servicing).

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

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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 23. EDUCATION LOAN REPAYMENT PROGRAMS

SUBCHAPTER D. MENTAL HEALTH PROFESSIONALS LOAN REPAYMENT ASSISTANCE PROGRAM

19 TAC §§23.94, 23.96, 23.97, 23.100 - 23.103

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 23, Subchapter D, §§23.94, 23.96, 23.97, and 23.100 - 23.102, and new §23.103, Mental Health Professionals Loan Repayment Assistance Program, with changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5540). The rules will be republished.

The amendments and new section amend definitions, eligibility criteria, and program limitations to align with statutory changes made by Senate Bill (SB) 646, 89th Texas Legislature, Regular Session. The Coordinating Board is authorized by Texas Education Code (TEC), §61.608, to adopt rules as necessary to administer the program.

Rule 23.94, Definitions, is amended by adding a new definition for "public school," which includes open-enrollment charter schools and aligns with definitions of that term in other loan repayment assistance programs. The definition of "service period" is amended to eliminate a specific reference to school psychologists, conforming to a legislative change that also made public schools a qualifying practice venue for any eligible profession. Both changes are necessitated by SB 646.

Rule 23.96, Applicant Eligibility, is amended to add four new eligible professions, as included in SB 646, in subsection (a)(3). Public schools are added as a qualifying practice venue in subsection (a)(4)(D), and current subsection (b) is eliminated as unnecessary after the change. A new subsection (b) is added to provide for limited additional eligibility for a fourth and fifth service period, as allowed in TEC, §61.607(b-1)(3), as added by SB 646. The subsection further clarifies that these providers are not considered renewal applicants for the purposes of prioritization in the following section.

Rule 23.97, Applicant Ranking Priorities, is amended to eliminate the de-prioritization of family and marriage therapists, con-

forming to the repeal of its corresponding statutory provision. Applications from providers practicing in public schools are added as subsection (b)(5), and applications from providers using the new, extended eligibility for a fourth and fifth service period are added as subsection (b)(7). These revisions are necessitated by the repeal of TEC, §61.604(e), in Section 6 of SB 646. In response to a comment received, a new subsection (b)(5) is added to the priority ranking to acknowledge applications received from providers providing service through a local mental health authority. Remaining subsections have been renumbered accordingly.

Rule 23.100, Amount of Repayment Assistance, is amended by adding two one-time bonus payments, both created by SB 646 in TEC, §61.607(b-1). Subsection (d) allows for a one-time increase, subject to other limitations, of $5,000 to an award for providers whose employers certify their fluency is a language of need for their profession, as published by the Coordinating Board. Subsection (e) allows for a one-time, $10,000 increase for providers practicing in counties with populations of fewer than 150,000 persons. Subsection (f) provides that the persons qualifying for extended eligibility into the fourth and fifth service periods are eligible for up to $15,000 per service period, subject to other limitations.

Rule 23.101, Limitations, is amended to update maximum total assistance amounts for various professions, conforming with changes made by SB 646. Paragraph (4) is updated to align with TEC, §61.607(b-2), added by SB 646, which clarifies that a provider's total amount of assistance under the program (including one-time bonus payments and the extended eligibility provisions) cannot exceed the applicable maximum total assistance amount for the provider's profession, plus 10 percent.

Rule 23.102, Provisions Specific to Mental Health Professionals Who Established Eligibility for the Program Before September 1, 2023, is amended to update a citation in subsection (c) to conform with other rule amendments.

Rule 23.103, Provisions Specific to Mental Health Professionals Who Established Eligibility for the Program On or After September 1, 2023 and Before September 1, 2025, is created to provide for the implementation of SB 646. Many of the changes made in that legislation- notably, to eligibility and maximum total assistance amounts - apply to persons who establish eligibility after September 1, 2025, necessitating the preservation of applicable rule provisions as they existed for persons who established eligibility for the program before that date until they have exhausted their eligibility.

Subsequent to the posting of the rules in the *Texas Register*, the following changes are incorporated into the adopted rules.

Section 23.94(7) is revised, in response to a comment received, to amend the definition of psychiatrist to allow for post-graduate training through both residencies and fellowships and to indicate appropriate accreditation expectations for the post-graduate medical training in psychiatry.

Section 23.96(a)(2) is revised to disaggregate two unrelated concepts that staff identified as being included in the same subsection. Licensing requirements have been removed from subsection (a)(2) and added in a new subsection (a)(3). Remaining subsections have been renumbered accordingly.

Section 23.96(a)(5)(D) is revised to correct a drafting error affecting the readability of the rule.

Section 23.97(b)(5) has been added to the priority ranking to acknowledge applications received from providers providing service through a local mental health authority. Remaining subsections have been renumbered accordingly.

Section 23.100(f) is revised to correct an errant rule reference discovered by staff.

Section 23.101(3)(F) is revised to correct an errant rule reference discovered by staff. Remaining subsections have been renumbered accordingly.

Section 23.102(a)(2) is revised to disaggregate two unrelated concepts that staff identified as being included in the same subsection. Remaining subsections have been renumbered accordingly.

Section 23.103(a)(2) is revised to disaggregate two unrelated concepts that staff identified as being included in the same subsection. Remaining subsections have been renumbered accordingly.

The following comments were received regarding the adoption of the amendment.

Comment: The Texas Medical Association commented that the definition of psychiatrist in §23.94(7) may unintentionally exclude psychiatrists whose post-graduate medical training was obtained through a fellowship, rather than a residency. The Texas Medical Association also commented that the definition should include appropriate expectations for accreditation of post-graduate medical training in psychiatry.

Response: The Coordinating Board appreciates and agrees with the comments received and has revised the definition in §23.94(7) to capture these concepts.

Comment: The Texas Medical Association commented that the applicant ranking priorities in §23.97 do not mention applicants providing mental health services to individuals receiving community-based mental health services from a local mental health authority.

Response: The Coordinating Board appreciates the comment and acknowledges the omission. §23.97 has been revised to include this population in the priority rankings.

The amendments and new section are adopted under Texas Education Code, Section 61.608, which provides the Coordinating Board with the authority to adopt rules as necessary to administer the program.

The adopted amendments and new section affect Texas Administrative Code, Title 19, Part 1, Chapter 23.

§23.94. Definitions.

In addition to the words and terms defined in §23.1 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) CHIP--The Children's Health Insurance Program, authorized by the Texas Health and Safety Code, Chapter 62.

(2) Community-Based Mental Health Services--The services found under the Texas Health and Safety Code, Chapter 534, Subchapter B.

(3) Full-time Service--Employed or contracted full-time (at least 32 hours per week for providers participating only in the state-funded program, or at least 40 hours per week for providers participating in both the state funded program and the SLRP) by an agency or facility for the primary purpose of providing direct mental health services.

(4) Medicaid--The medical assistance program authorized by the Texas Human Resources Code, Chapter 32.

(5) MHPSAs--Mental Health Professional Shortage Areas (MHPSAs) are designated by the U.S. Department of Health and Human Services (HHS) as having shortages of mental health providers and may be geographic (a county or service area), demographic (low income population), or institutional (comprehensive health center, federally qualified health center, or other public facility). Designations meet the requirements of Sec. 332 of the Public Health Service Act, 90 Stat. 2270-2272 (42 U.S.C. 254e).

(6) Program--Mental Health Professionals Loan Repayment Assistance Program.

(7) Psychiatrist--A licensed physician who is a graduate of a residency training program or fellowship program in psychiatry accredited by the Accreditation Council for Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA).

(8) Public school--A school in a Texas school district or a public charter school authorized to operate under Texas Education Code, chapter 12.

(9) Service Period--A period of:

(A) twelve (12) consecutive months qualifying a mental health professional for loan repayment assistance; or

(B) for a mental health professional employed by a public school, at least nine (9) months of a 12-month academic year qualifying the professional for loan repayment assistance.

(10) SLRP--A grant provided by the Health Resources and Services Administration to assist states in operating their own State Loan Repayment Program (SLRP) for primary care providers working in Health Professional Shortage Areas (HPSA).

(11) State Hospital--Facilities found under the Texas Health and Safety Code, §552.0011.

§23.96. Applicant Eligibility.

(a) To be eligible to receive loan repayment assistance, an applicant must:

(1) submit a completed application to the Coordinating Board by the established deadline, which will be posted on the program web page;

(2) be a U.S. citizen or a Legal Permanent Resident;

(3) at the time of application, hold a full license with no restrictions from the state of Texas for the applicant's practice specialty;

(4) currently be employed as one of the following eligible practice specialties:

(A) a psychiatrist;

(B) a psychologist, as defined by §501.002, Texas Occupations Code;

(C) a licensed professional counselor, as defined by §503.002, Texas Occupations Code;

(D) an advanced practice registered nurse, as defined by §301.152, Texas Occupations Code, who holds a nationally recognized board certification in psychiatric or mental health nursing;

(E) a licensed clinical social worker, as defined by §505.002, Texas Occupations Code;

(F) a licensed specialist in school psychology, as defined by §501.002, Texas Occupations Code;

(G) a licensed chemical dependency counselor, as defined by §504.001, Texas Occupations Code;

(H) a licensed marriage and family therapist, as defined by §502.002, Texas Occupations Code;

(I) a licensed master social worker, as defined by §505.002, Texas Occupations Code;

(J) a licensed professional counselor associate, as indicated by holding a licensed professional counselor associate license issued by the Texas State Board of Examiners of Professional Counselors;

(K) a licensed marriage and family therapist associate, as defined by §502.002, Texas Occupations Code; or

(L) a school counselor certified under Texas Education Code, chapter 21, subchapter B, who has earned at least a master's degree relating to counseling from any public or accredited private institution of higher education; and

(5) have completed one, two, or three consecutive service periods:

(A) in an MHPSA, providing direct patient care to:

(i) Medicaid enrollees;

(ii) CHIP enrollees, if the practice serves children;

(iii) persons in a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or its successor; or

(iv) persons in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice or its successor;

(B) in a state hospital, providing mental health services to patients;

(C) providing mental health services to individuals receiving community-based mental health services from a local mental health authority, as defined in Texas Health and Safety Code, §531.002; or

(D) providing mental health services to students enrolled in a public school.

(b) Notwithstanding the number of consecutive service periods that qualify an applicant for eligibility described in subsection (a)(4) of this section, an otherwise eligible applicant who receives repayment assistance under this subchapter for three consecutive service periods is eligible to receive repayment assistance for a fourth and fifth consecutive service period in an amount described by §23.100(f) of this subchapter (relating to Amount of Repayment Assistance) and subject to the limitations established in §23.101 of this subchapter (relating to Limitations). An applicant who establishes eligibility under this subsection is not considered a renewal applicant for the purposes of §23.97 of this subchapter (relating to Applicant Ranking Priorities).

§23.97. Applicant Ranking Priorities.

(a) Each fiscal year an application deadline will be posted on the program web page.

(b) If there are not sufficient funds to offer loan repayment assistance for all eligible providers, then applications shall be ranked using priority determinations in the following order:

(1) renewal applications;

(2) applications from providers who sign SLRP contracts;

(3) applications from providers whose employers are located in an MPHSA, prioritizing higher MHPSA scores. If a provider works for an agency located in an MHPSA that has satellite clinics and the provider works in more than one of the clinics, the highest MHPSA score where the provider works shall apply. If a provider travels to make home visits, the provider's agency base location and its MHPSA score shall apply. If a provider works for different employers in multiple MHPSAs having different degrees of shortage, the location having the highest MHPSA score shall apply;

(4) applications from providers in state hospitals;

(5) applications from providers in a local mental health authority;

(6) applications from providers in public schools;

(7) applications from providers whose employers are located in counties with a population of less than 50,000 persons. In the case of providers serving at multiple sites, at least 75 percent of their work hours are spent serving in counties with a population of less than 50,000 persons;

(8) applications from providers described by §23.96(b) of this subchapter (relating to Applicant Eligibility); and

(9) applications received on the earliest dates.

(c) If state funds are not sufficient to allow for maximum loan repayment assistance amounts stated in §23.100 of this subchapter (relating to Amount of Repayment Assistance) for all eligible applicants described by subsection (b)(1) of this section, the Coordinating Board shall adjust in an equitable manner the state-funded distribution amounts for a fiscal year, in accordance with Texas Education Code, §61.607(d).

§23.100. Amount of Repayment Assistance.

(a) Repayment assistance for each service period will be determined by applying the following applicable percentage to the lesser of the maximum total amount of assistance allowed for the provider's practice specialty, as established by §23.101 of this subchapter (relating to Limitations), or the total student loan debt owed at the time the provider established eligibility for the program:

(1) for the first service period, 33.33 percent;

(2) for the second service period, 33.33 percent; and

(3) for the third service period, 33.34 percent.

(b) An eligible provider may receive prorated loan repayment assistance based on the percentage of full-time service provided for each service period, for a minimum of twenty (20) hours per week.

(c) Failure to meet the program requirements will result in non-payment for the applicable service period(s) and, except under circumstances determined by the Coordinating Board to constitute good cause, removal from the program.

(d) One-Time Increase for Fluency in Language of Need.

(1) Each biennium, the Coordinating Board shall publish for each profession described by §23.96(a)(3) of this subchapter (relating to Applicant Eligibility) a list of languages other than English for which there is a critical need for fluent providers in Texas.

(2) Subject to the limitations established in §23.101 of this subchapter, a provider whose employer certifies that the provider is fluent in a language listed by the Coordinating Board under paragraph (1) of this subsection shall receive an increase of $5,000 to the amount of repayment assistance described by subsection (a) of this section.

(3) A provider may receive an increased amount of repayment assistance under this subsection only once. The increase will be applied to assistance received for the first service period during which the provider meets the criteria described in paragraph (2) of this subsection.

(4) This subsection applies only to providers who first establish eligibility for the program on or after September 1, 2025.

(e) One-Time Increase for Service in Less Populous Counties.

(1) Subject to the limitations established in §23.101 of this subchapter, a provider who practices in a county with a population of 150,000 or fewer persons shall receive an increase of $10,000 to the amount of repayment assistance described by subsection (a) of this section.

(2) A provider may receive an increased amount of repayment assistance under this subsection only once. The increase will be applied to assistance received for the first service period during which the provider meets the criteria described in paragraph (1) of this subsection.

(3) This subsection applies only to providers who first establish eligibility for the program on or after September 1, 2025.

(f) Subject to the limitations established in §23.101 of this subchapter, a provider who first established eligibility for the program on or after September 1, 2025, and who establishes eligibility under §23.96(b) of this subchapter (relating to Applicant Eligibility) may receive up to $15,000 per service period for a maximum of two consecutive service periods.

§23.101. Limitations.

In addition to the limitations associated with eligible education loans established in §23.2 of this chapter (relating to Eligible Lender and Eligible Education Loan), the following limitations apply to the Mental Health Professionals Loan Repayment Assistance Program.

(1) Not more than 10 percent of the number of loan repayment assistance grants paid under this subchapter each year may be offered to providers providing mental health services to persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or persons confined in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice. Applications from these providers will be selected in the order they were submitted.

(2) Not more than 30 percent of the number of loan repayment assistance grants paid under this subchapter each fiscal year may be offered to providers in any one of the eligible practice specialties, unless excess funds remain available after the 30 percent maximum has been met.

(3) Except as provided by paragraph (4) of this section, the total amount of state appropriated repayment assistance received by a provider under this subchapter may not exceed:

(A) $180,000, for a psychiatrist;

(B) $100,000, for:

(i) a psychologist;

(ii) a licensed clinical social worker, if the social worker has received a doctoral degree related to social work;

(iii) a licensed professional counselor, if the counselor has received a doctoral degree related to counseling; or

(iv) a licensed marriage and family therapist, if the marriage and family therapist had received a doctoral degree related to marriage and family therapy;

(C) $80,000, for an advanced practice registered nurse;

(D) $60,000, for:

(i) a licensed specialist in school psychology;

(ii) a licensed clinical social worker, a licensed marriage and family therapist, or a licensed professional counselor who has not received a doctoral degree related to social work or counseling;

(iii) a licensed master social worker;

(iv) a licensed professional counselor associate;

(v) a licensed marriage and family therapist associate; or

(vi) a certified school counselor described by §23.96(a)(3)(L) of this subchapter (relating to Applicant Eligibility); and

(E) $50,000, for a licensed chemical dependency counselor who became licensed within the same 12-month period as receiving the counselor's most recent degree applicable to the profession's licensing requirements; and

(F) $15,000, for assistance received by a licensed chemical dependency counselor, if the chemical dependency counselor has received at least an associate degree related to chemical dependency counseling or behavioral science and is not described by paragraph (3)(E) of this section.

(4) A provider's loan repayment assistance amount, including any increases or additional payments as described by §23.100(d), (e), or (f) of this subchapter (relating to Amount of Repayment Assistance) may not exceed the lesser of:

(A) the provider's unpaid principal and interest owed on one or more eligible education loans, as described in §23.2 of this chapter (relating to Eligible Lender and Eligible Education Loan); or

(B) the applicable maximum amount for the provider listed in paragraph (3) of this section, plus 10 percent.

§23.102. Provisions Specific to Mental Health Professionals Who Initially Established Eligibility for the Program Before September 1, 2023.

(a) Applicant Eligibility. Notwithstanding §23.96(a) of this subchapter (relating to Applicant Eligibility), to be eligible to receive loan repayment assistance, a provider who first established eligibility for the program before September 1, 2023, must:

(1) submit a completed application to the Coordinating Board by the established deadline, which will be posted on the program web page;

(2) be a U.S. citizen or a Legal Permanent Resident;

(3) at the time of application, hold a full license with no restrictions from the state of Texas for the applicant's practice specialty;

(4) currently be employed as one of the eligible practice specialties listed in §23.96(a)(3)(A) - (H); and

(5) have completed one, two, three, four, or five consecutive service periods practicing in an MHPSA providing direct patient care to Medicaid enrollees and/or CHIP enrollees, if the practice serves children, or to persons committed to a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or its successor or in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice or its successor.

(b) Notwithstanding subsection (a)(4) of this section, a psychiatrist who first established eligibility for the program before September 1, 2023, must have earned certification from the American Board of Psychiatry and Neurology or the American Osteopathic Board of Psychiatry and Neurology to qualify for loan repayment assistance for a fourth or fifth consecutive service period.

(c) Amount of Repayment Assistance. Notwithstanding §23.100(a) of this subchapter (relating to Amount of Repayment Assistance), for providers who first established eligibility for the program before September 1, 2023, repayment assistance for each service period will be determined by applying the following applicable percentage to the lesser of the maximum total amount of assistance allowed for the provider's practice specialty, as established by §23.103 of this subchapter (relating to Provisions Specific to Mental Health Professionals Who Initially Established Eligibility for the Program On or After September 1, 2023 and Before September 1, 2025), or the total student loan debt owed at the time the provider established eligibility for the program:

(1) for the first service period, 10 percent;

(2) for the second service period, 15 percent;

(3) for the third service period, 20 percent;

(4) for the fourth service period, 25 percent; and

(5) for the fifth service period, 30 percent.

§23.103. Provisions Specific to Mental Health Professionals Who Initially Established Eligibility for the Program On or After September 1, 2023 and Before September 1, 2025.

(a) Notwithstanding §23.97 of this subchapter (relating to Applicant Eligibility), to be eligible to receive loan repayment assistance, an applicant who first established eligibility for the program on or after September 1, 2023, but before September 1, 2025, must:

(1) submit a completed application to the Coordinating Board by the established deadline, which will be posted on the program web page;

(2) be a U.S. citizen or a Legal Permanent Resident;

(3) at the time of application, hold a full license with no restrictions from the state of Texas for the applicant's practice specialty;

(4) currently be employed as one of the following eligible practice specialties:

(A) a psychiatrist;

(B) a psychologist, as defined by §501.002, Texas Occupations Code;

(C) a licensed professional counselor, as defined by §503.002, Texas Occupations Code;

(D) an advanced practice registered nurse, as defined by §301.152, Texas Occupations Code, who holds a nationally recognized board certification in psychiatric or mental health nursing;

(E) a licensed clinical social worker, as defined by §505.002, Texas Occupations Code;

(F) a licensed specialist in school psychology, as defined by §501.002, Texas Occupations Code;

(G) a licensed chemical dependency counselor, as defined by §504.001, Texas Occupations Code; or

(H) a licensed marriage and family therapist, as defined by §502.002, Texas Occupations Code; and

(5) have completed one, two, or three consecutive service periods:

(A) in an MHPSA, providing direct patient care to:

(i) Medicaid enrollees;

(ii) CHIP enrollees, if the practice serves children;

(iii) persons in a secure correctional facility operated by or under contract with the Texas Juvenile Justice Department or its successor; or

(iv) persons in a secure correctional facility operated by or under contract with any division of the Texas Department of Criminal Justice or its successor;

(B) in a state hospital, providing mental health services to patients; or

(C) providing mental health services to individuals receiving community-based mental health services from a local mental health authority, as defined in Texas Health and Safety Code, §531.002.

(b) Notwithstanding §23.97 of this subchapter or subsection (a)(4) of this section, to be eligible to receive loan repayment assistance as a specialist in school psychology as outlined under subsection (a)(4)(F) of this section, an applicant who first established eligibility for the program on or after September 1, 2023, but before September 1, 2025, must:

(1) have completed one, two, or three consecutive service periods of employment in:

(A) a school district which is located partially or completely in a MHPSA;

(B) an open-enrollment charter school located in a MHPSA; or

(C) a Texas public school that receives federal funding under Title I, Elementary and Secondary Education Act of 1965 (20 U.S.C. §6301 et seq.); and

(2) have provided mental health services to students enrolled in that district or school during that time of employment.

(c) Limitations. Notwithstanding §23.101(3) and (4) of this subchapter (relating to Limitations), and in addition to the limitations associated with eligible education loans established in §23.2 of this chapter (relating to Eligible Lender and Eligible Education Loan), the following limitations apply to providers who first established eligibility for the program on or after September 1, 2023, but before September 1, 2025.

(1) The total amount of state appropriated repayment assistance received by a provider under this subchapter may not exceed:

(A) $160,000, for a psychiatrist;

(B) $80,000, for:

(i) a psychologist;

(ii) a licensed clinical social worker, if the social worker has received a doctoral degree related to social work;

(iii) a licensed professional counselor, if the counselor has received a doctoral degree related to counseling; or

(iv) a licensed marriage and family therapist, if the marriage and family therapist had received a doctoral degree related to marriage and family therapy;

(C) $60,000, for an advanced practice registered nurse;

(D) $40,000, for a licensed specialist in school psychology, a licensed clinical social worker, a licensed marriage and family therapist, or a licensed professional counselor who has not received a doctoral degree related to social work or counseling; and

(E) $10,000, for assistance received by a licensed chemical dependency counselor, if the chemical dependency counselor has received an associate degree related to chemical dependency counseling or behavioral science.

(2) A provider's loan repayment assistance amount may not exceed the unpaid principal and interest owed on one or more eligible education loans, as described in §23.2 of this chapter (relating to Eligible Lender and Eligible Education Loan).

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

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CHAPTER 24. STUDENT LOAN PROGRAMS
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§24.1 - 24.4

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 24, Subchapter A, §§24.1 - 24.4, General Provisions, without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5545). The rules will not be republished.

This new section establishes definitions, delegation of authority, and disbursement provisions for the Coordinating Board's student loan programs, as well as provisions relating to the appropriation of funds from the former B-On-Time Student Loan Account. The Coordinating Board is authorized by Texas Education Code, Chapter 52, Subchapter C, to adopt rules relating to its student loan programs, and by Texas Education Code, §56.0092 to adopt rules relating to the former B-On-Time Student Loan Account. The overwhelming majority of the substantive provisions of the proposed rules consist of mirroring or reconstituted rules from other existing chapters. A small number of provisions are newly proposed for rulemaking, where appropriate to codify existing procedures and provide additional transparency to stakeholders.

Rule 24.1, Definitions, provides definitions for common terms and phrases used throughout Chapter 24. Most definitions mirror those in §22.1, in the General Provisions currently applicable

to all student financial aid programs, or have simply been centralized from the programs' subchapters. Added to these are new definitions for "favorable credit report evaluation," "insufficient resources to finance education" (a statutory term of art in Texas Education Code, §52.32), "manageable debt," and "repayment period," which codify various aspects of the Coordinating Board's current practice. The creation of these definitions does not represent a change in the administration of the Coordinating Board's student loan programs.

Rule 24.2, Delegation of Powers and Duties, codifies the governing board of the agency's delegation to the Commissioner of Higher Education the powers, duties, and functions authorized by Texas Education Code, Chapter 52, Subchapter C, except those relating to the sale of bonds and the letting of contracts for insurance. It is comprised of reconstituted §22.85 and §22.189 and does not represent a change in the administration of the Coordinating Board's student loan programs.

Rule 24.3, Loan Disbursement to Students, establishes the means by which institutions participating in the Coordinating Board's loan programs may disburse loan funds to their students. Subsection (a) cites back to §22.2, relating to Timely Disbursement of Funds, for circumstances other than late disbursements. Subsection (b) establishes that no disbursement should be made until the student and cosigner (if applicable) have executed a promissory note, as required by Texas Education Code, §52.34. Subsection (c) addresses late disbursements of loans, i.e., disbursements made after the student's period of enrollment has concluded. In these cases, the student must have applied for the loan while enrolled, and the loan must be used to pay the student's outstanding balance at the institution for that period of enrollment. Such a loan must be disbursed within 180 days of the end of the student's enrollment period and cannot be disbursed to the student directly. Subsection (d) clarifies that the section does not apply to the Texas Armed Services Scholarship Program, because funds from that program are not disbursed as loans.

Rule 24.4, Appropriation of Funds from Former B-On-Time Student Loan Account, provides the method by which the Coordinating Board calculates the distributions of any excess funds in the former B-On-Time Student Loan Account. It is the reconstituted §22.342 and does not represent a change in the administration of these funds.

No comments were received regarding the adoption of new rule.

The new section is adopted under Texas Education Code, Chapter 52, Subchapter C, which provides the Coordinating Board with the authority to adopt rules relating to the administration of its student loan programs, and Section 56.0092, which provides the Coordinating Board with the authority to adopt rules relating to the distribution of funds from the former B-On-Time Student Loan Account.

The adopted new section affects Texas Administrative Code, Title 19, Part 1, Chapter 24.

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

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SUBCHAPTER B. STUDENT LOAN SERVICING

19 TAC §§24.10 - 24.18

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 24, Subchapter B, §§24.10 - 24.18, Student Loan Servicing, without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5548). The rules will not be republished.

These new sections delineate the means by which the Coordinating Board services state student loans or conditional grants that have converted to loans, including as to repayment terms, interest rate adjustments, forbearances, death or disability determinations, and collections enforcement. It also includes provisions specific to state student loan programs from which no new loans are offered but for which the Coordinating Board still services existing loans.

The Coordinating Board is authorized by Texas Education Code, Chapter 52, Subchapter C, to adopt rules relating to the administration of its student loan programs, as well as Texas Education Code, §56.0092 (Texas B-On-Time Loan Program), §56.3575 (Teach for Texas Conditional Grant Program, and §61.9774 (Texas Armed Services Scholarship Program) to adopt rules related to those programs.

Rule 24.10, Authority and Purpose, sets out the statutory authority for the subchapter, as well as the purpose in establishing servicing terms for state student loan programs and program-specific provisions for "legacy" state loan programs (i.e. those for which no new loans are offered but existing loans are still serviced by the Coordinating Board). The provisions of this section do not represent a change in the administration of state student loan programs.

Rule 24.11, Applicability, establishes the scope of loan programs for which the subchapter applies. Generally, the provisions of the subchapter apply to state student loan programs but not to federal student loans serviced by the Coordinating Board (with noted exceptions). This section also explains how potential differences between existing agreements (which span a variety of different programs across several decades) and the provisions of this subchapter (which are intended to provide a consistent baseline for the Coordinating Board's loan servicing administration across all loan programs and provide additional transparency and clarity to borrowers) will be handled. The provisions of this section do not represent a change in the administration of state student loan programs.

Rule 24.12, Repayment of Loans, provides for repayment provisions common to state student loan programs. The provisions of the rule are reconstituted and consolidated from like provisions in Texas Administrative Code, Chapter 22, Subchapters C, I, J, Q, X, and Y. Subsection (a) provides for the "grace period," the six-month period allowed after borrowers are no longer enrolled

in higher education before they enter repayment on their loan(s). Subsection (b) clarifies that all loans may be prepaid without penalty. It also codifies existing practice that payments made before the repayment period begins do not prematurely activate the repayment period. Subsection (c) provides for late fees assessed to borrowers who do not make their monthly payments timely. Subsection (d) specifies that the Coordinating Board may determine the priority order in which payments are applied to a loan's principal, interest, other fees, etc., and subsection (e) recognizes that the Coordinating Board may choose to offer various repayment plans to eligible borrowers. Subsection (f) provides the specific repayment period that is uniquely applicable to the Teach for Texas legacy programs. The provisions of this section do not represent a change in the administration of state student loan programs.

Rule 24.13, Interest Rate Adjustment for Repayment via Auto-Debit or Automated Clearing House (ACH), codifies the Coordinating Board practice of providing a one-quarter percentage point reduction in a loan's interest rate for borrowers who enrolled in automated payments via auto-debit, Automated Clearing House, or similar technologies. Although the provisions of this section are not currently in rule, they do not represent a change in the administration of state student loan programs.

Rule 24.14, Forbearance, details how a borrower may request, and the Coordinating Board may authorize, a period of forbearance due to economic hardship, subsequent enrollment in post-secondary studies, or active-duty military service. The provisions of this section are reconstituted and consolidated from various locations within Texas Administrative Code, Chapter 22, with nonsubstantive edits to improve rule clarity and transparency and better align the rule text with current practice. The provisions of this section do not represent a change in the administration of state student loan programs.

Rule 24.15, Deceased or Disabled Borrowers or Cosigners, establishes the procedures by which the Coordinating Board verifies a borrower or cosigner's death or total disability, as well as the disposition of the individuals' liability in these cases. Subsections (a), (b), and (c) are reconstituted and consolidated provisions from various locations in Chapter 22. Subsection (d), which establishes that a borrower or cosigner who provides documentation of a 100 percent disability rating from the United States of Veterans Affairs is considered to have a total and permanent disability for the purposes of servicing state student loans, does not currently exist in rule but codifies current practice. The provisions of this section do not represent a change in the administration of state student loan programs.

Rule 24.16, Enforcement of Collection, provides for the process by which the Coordinating Board may seek collection of a loan in default, as well as related provisions relating to collection charges and cosigner responsibilities. The provisions of this section are reconstituted and consolidated from various locations in Chapter 22, with nonsubstantive edits made for rule clarity and alignment. The provisions of this section do not represent a change in the administration of state student loan programs.

Rule 24.17, Health Education Loan Program, relates to program-specific provisions for the Health Education Loan Program, a state loan program for which new loans are no longer offered but existing loans are still serviced by the Coordinating Board. Aspects of this program are tied to program rules for the Health Education Assistance Loan, a federal loan program, rather than other state programs, necessitating the separate rule. It is reconstituted and consolidated from program-specific portions of Chapter 22, Subchapter C, with nonsubstantive edits for clarity. The provisions of this section do not represent a change in the administration of the program.

Rule 24.18, Texas B-On-Time Loan Program, relates to program-specific provisions for the Texas B-On-Time Loan Program, a state loan program for which new loans are no longer offered but existing loans are still serviced by the Coordinating Board. These loans differ substantively from other state loan programs, notably, in including a forgiveness component and having no interest, necessitating the separate rule. The rule is reconstituted from the relevant portions of Chapter 22, Subchapter Q, with nonsubstantive edits for clarity. The provisions of this section do not represent a change in the administration of the program.

No comments were received regarding the adoption of new rule.

The new sections are adopted under Texas Education Code, Chapter 52, Subchapter C, which provides the Coordinating Board with the authority to adopt rules relating to the administration of its student loan programs, §56.0092 (Texas B-On-Time Loan Program), §56.3575 (Teach for Texas Conditional Grant Program), and §61.9774 (Texas Armed Services Scholarship Program) to adopt rules related to those programs.

The adopted new section affects Texas Administrative Code, Title 19, Part 1, Chapter 24.

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

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SUBCHAPTER C. ANNUAL STUDENT LOAN DEBT DISCLOSURE

19 TAC §§24.30 - 24.32

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 24, Subchapter C, §§24.30 - 24.32, Annual Student Loan Debt Disclosure, without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5552). The rules will not be republished.

This new section provides guidance to institutions regarding required annual disclosures to students regarding their student loan debt. The Coordinating Board is authorized by Texas Education Code, §52.335, to adopt rules relating to the administration of the required loan debt disclosure.

Rule 24.30, Authority and Purpose, establishes the statutory authority and purpose of the subchapter. It is the reconstituted

§21.45 and does not represent a change in the administration of the student loan debt disclosure.

Rule 24.31, Required Disclosure, provides for the manner and timing of the annual loan debt disclosure. It is the reconstituted §21.48, with elements of §21.49 added for improved clarity. Reconstituted rule text includes nonsubstantive edits to improve clarity of the rule. Subsection (c) restates Texas Education Code, §52.335(e), to capture all aspects of the disclosure within the rule. This does not represent a change in the administration of the student loan debt disclosure.

Rule 24.32, Disclosure Elements, details the required components of the annual loan debt disclosure. It is the reconstituted portions of §21.49 that were not included in §24.31, with nonsubstantive edits for clarity and does not represent a change in the administration of the student loan debt disclosure.

No comments were received regarding the adoption of new rule.

The new sections are adopted under Texas Education Code, Section 52.335, which provides the Coordinating Board with the authority to adopt rules relating to the annual loan debt disclosure.

The adopted new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 24.

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SUBCHAPTER D. COLLEGE ACCESS LOAN PROGRAM

19 TAC §§24.40 - 24.46

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 24, Subchapter D, §§24.40 - 24.46, College Access Loan Program, without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5553). The rules will not be republished.

These new sections provide for the authority and purpose, definitions, program eligibility, cosigner requirements, loan amounts and interest rate, and program-specific repayment provisions. The Coordinating Board is authorized by Texas Education Code, Chapter 52, Subchapter C, to adopt rules relating to state student loan programs.

Rule 24.40, Authority and Purpose, provides for the statutory authority and notes the goal of the program to provide fixed-interest loans to improve access to higher education for eligible students. The provisions of this section do not represent a change in the administration of the program.

Rule 24.41, Definitions, specifies that "CAL" or "Program," when used in the subchapter, refers to the College Access Loan (CAL) program. The provisions of this section do not represent a change in the administration of the program.

Rule 24.42, Eligible Institutions, specifies the types of institutions which may participate in the program, as well as the responsibilities of those institutions relating to program administration. It is the reconstituted, program-specific provisions of §22.45, with nonsubstantive revisions for clarity. The provisions of this section do not represent a change in the administration of the program.

Rule 24.43, Eligible Students, includes the criteria by which a student may qualify for a College Access Loan. Subsection (a) is the reconstituted program-specific provisions of §22.46, with nonsubstantive edits for clarity. Subsection (b) codifies Coordinating Board practice that a person who previously has had a loan discharged by the Coordinating Board due to a total and permanent disability is not eligible for a College Access Loan. The provisions of this section do not represent a change in the administration of the program.

Rule 24.44, Cosigner Requirements, lists the criteria a person must meet to act as a prospective borrower's cosigner. Subsections (a) and (b) are the reconstituted §22.47, with nonsubstantive edits for clarity. The provisions of this section do not represent a change in the administration of the program.

Rule 24.45, Loan Amount and Interest Rate, details loan terms relating to the amount that can be lent and at what interest rate. It is the reconstituted and consolidated program-specific provisions of §22.49 and §22.51 with nonsubstantive edits for clarity. The provisions of this section do not represent a change in the administration of the program.

Rule 24.46, Repayment of Loans, specifies the repayment period and minimum monthly payment for CAL. These provisions currently are located in §22.53 but are substantively changed to align with current practice. The repayment period for College Access Loans is 10 years, if the borrower's state student loan balance is less than $30,000, or 20 years otherwise. Minimum monthly payments generally are calculated based on an amount required to amortize the loan within the repayment period. In cases with low loan balances, however, the minimum monthly payment is not less than $50. The provisions of this section do not represent a change in the administration of the program.

No comments were received regarding the adoption of the new rules.

The new sections are adopted under Texas Education Code, Chapter 52, Subchapter C, which provides the Coordinating Board with the authority to adopt rules relating to state student loan programs.

The adopted new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 24.

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

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SUBCHAPTER E. FUTURE OCCUPATIONS & RESKILLING WORKFORCE ADVANCEMENT TO REACH DEMAND (FORWARD) LOAN PROGRAM

19 TAC §§24.50 - 24.59

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 24, Subchapter E, §§24.50 - 24.59, Future Occupations & Reskilling Workforce Advancement to Reach Demand (FORWARD) Loan Program, without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5555). The rules will not be republished.

This new section provides for the program authority and purpose, definitions, institutional and student eligibility, hardships, credential limitations, cosigner requirements, and loan origination and repayment provisions. The Coordinating Board is authorized by Texas Education Code, Chapter 52, Subchapter C, to adopt rules relating to state student loan programs.

Rule 24.50, Authority and Purpose, provides for the statutory authority for the program rules and states its goal of providing low-interest student loans to accelerate the ability of Texas employers to fill high-demand jobs with students with high-value credentials. The provisions of this section do not represent a change in the administration of the program.

Rule 24.51, Definitions, provides definitions for "FORWARD or Program" and "High-demand Credential." These definitions are reconstituted from §22.176, while other definitions from that rule were moved into Chapter 24's General Provisions. The provisions of this section do not represent a change in the administration of the program.

Rule 24.52, Eligible Institutions, establishes which institutions may participate in the FORWARD program, as well as the institutional responsibilities for participation. It is the reconstituted §22.178, except that the rule has been substantively amended to extend eligibility to regional education service centers and other entities that offer alternative educator certification programs. These institutions already are eligible to participate in the College Access Loan Program and, given that education is one of the high-demand credentials that qualifies a student for a FORWARD loan, the addition is aligned with the program's goals.

Rule 24.53, Eligible Students, specifies the criteria qualifying a student to be able to receive a FORWARD loan. It is the reconstituted §22.179 with nonsubstantive revisions for clarity and two substantive changes. Subsection (d) provides greater detail into eligibility for students enrolled in combined baccalaureate-master's programs. FORWARD is generally limited to undergraduate students except in this case, and the revised subsection specifies that the FORWARD loan may only be offered in the final two years of the (combined) credential program. The provisions of this section do not represent a change in the administration of the program.

Rule 24.54, Discontinuation of Eligibility, describes the circumstances in which a person's eligibility for the program may expire. It is the reconstituted §22.180. The provisions of this section do not represent a change in the administration of the program.

Rule 24.55, Hardship Provisions, delineates the circumstances in which a student may seek a hardship exemption from certain eligibility criteria. The rule is the reconstituted §22.181, with nonsubstantive edits, except that the list of example circumstances is updated to include the birth or adoption of a child, aligning with similar provisions in other programs. The provisions of this section do not represent a change in the administration of the program.

Rule 24.56, Eligible High-Demand Credentials, specifies the process by which the Coordinating Board, in consultation with the Texas Workforce Commission, Texas Workforce Investment Council, and the Governor's Office of Economic Development and Tourism, determines which high-demand credentials allow students to receive a FORWARD loan. It is the reconstituted §22.177. The provisions of this section do not represent a change in the administration of the program.

Rule 24.57, Cosigner Requirements, lists the criteria a person must meet to act as a prospective borrower's cosigner. It is the reconstituted §22.182, with nonsubstantive edits for clarity. The provisions of this section do not represent a change in the administration of the program.

Rule 24.58, Loan Amount and Interest Rate, details loan terms relating to the amount that can be lent and at what interest rate. It is the reconstituted and consolidated provisions of §22.183 and §22.184, with nonsubstantive edits for clarity. The provisions of this section do not represent a change in the administration of the program.

Rule 24.59, Repayment of Loans, specifies the repayment period and minimum monthly payment for FORWARD. It is the reconstituted §22.186(a), (c), and (d) - subsection (b) of that section is now addressed by §24.12. The provisions of this section do not represent a change in the administration of the program, except that the frequently of the Commissioner's determination of the method for calculating monthly repayment amounts under subsection (c) is changed from annually to each biennium.

No comments were received regarding the adoption of new rule.

The new section is adopted under Texas Education Code, Chapter 52, Subchapter C, which provides the Coordinating Board with the authority to adopt rules relating to state student loan programs.

The adopted new section affects Texas Administrative Code, Title 19, Part 1, Chapter 24.

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SUBCHAPTER F. TEXAS ARMED SERVICES SCHOLARSHIPS CONVERTED TO LOANS

19 TAC §§24.70 - 24.74

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 24, Subchapter F, §24.74, Texas Armed Services Scholarships Converted to Loans, with changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5558). The rule will be republished. Sections 24.70 - 24.73 are adopted without changes and will not be republished.

These new sections provide for the loan terms and repayment provisions for conditional scholarships offered through the Texas Armed Services Scholarship Program (TASSP) that convert to loans. The Coordinating Board is authorized by Texas Education Code, §61.9774, to adopt rules relating to the program.

Rule 24.70, Authority and Purpose, states the statutory authority and specific purpose of the subchapter, namely, to provide for the administration of TASSP scholarships that convert to loans. The provisions of this section do not represent a change in the administration of the program.

Rule 24.71, Definitions, provides definitions to terms used throughout the subchapter. The provisions of this section do not represent a change in the administration of the program.

Rule 24.72, Loan Amounts and Interest Rates, details program-specific loan terms. It is the reconstituted §22.171(a) and (b), with nonsubstantive edits for clarity. The provisions of this section do not represent a change in the administration of the program.

Rule 24.73, Repayment of Loan, specifies the repayment period and minimum monthly payment for TASSP loans. It is the reconstituted §22.171(c) and (e), with nonsubstantive edits for clarity. The provisions of this section do not represent a change in the administration of the program.

Rule 24.74, Exemption and Cancellation, describes program-specific circumstances that may lead to the cancellation of a borrower's TASSP loan. Subsection (a) mirrors language in §22.170 (which relates to the conversion of a scholarship to a loan) by delineating circumstances in which a borrower may be exempt from repayment; paragraph (1) for physical inability, and paragraph (2) allowing for exceptional circumstances. Paragraph (2) is added to align with statutory changes made in House Bill 300, 89th Texas Legislature, Regular Session.

Subsequent to the posting of the rules in the *Texas Register*, the following changes are incorporated into the adopted rule.

Section 24.74(2) is amended to clarify that the determination of whether an exceptional circumstance beyond the recipient's control exists will be made by the Coordinating Board.

No comments were received regarding the adoption of new rules.

The new section is adopted under Texas Education Code, Section 61.9774, which provides the Coordinating Board with the authority to adopt rules relating to the Texas Armed Services Scholarship Program.

The adopted new section affects Texas Administrative Code, Title 19, Part 1, Chapter 24.

§24.74. Exemption and Cancellation.

In addition to the conditions for discharge of a Loan listed in §24.16 of this chapter (relating to Deceased or Disabled Borrowers or Cosigners), a recipient shall be exempt from the requirement to repay the Loan if the person is unable to meet the obligations described by §22.168(b)(2) of this title (relating to Promissory Note) solely as a result of:

(1) physical inability, verified by a physician's certification and/or other appropriate documentation to the satisfaction of the Coordinating Board; or

(2) an exceptional circumstance beyond the recipient's control, as determined by the Coordinating Board.

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SUBCHAPTER G. SERVICING OF FEDERAL STUDENT LOANS

19 TAC §§24.80 - 24.86

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 24, Subchapter G, §§24.80 - 24.86, Servicing of Federal Student Loans, generally addressed in previous provisions Chapter 22, Subchapters C and E, without changes to the proposed text as published in the August 29, 2025, issue of the *Texas Register* (50 TexReg 5559). The rules will not be republished.

These new sections provide program-specific information for all of the federal student loans that are still serviced by the Coordinating Board. The Coordinating Board is authorized by Texas Education Code, §52.54, to adopt rules relating to the servicing of certain federal student loans.

Rule 24.80, Authority and Purpose, lays out the statutory authority and goal of the subchapter, to specifically address the servicing of student loans originated by the federal government. This section does not represent a change in the administration of these programs.

Rule 24.81, Applicability, specifies that the provisions of Chapter 24, Subchapter B (relating to Student Loan Servicing) do not apply to this subchapter unless otherwise stated. This section does not represent a change in the administration of these programs.

Rule 24.82, Common Provisions, provides for common servicing provisions that apply to Federal Stafford Loans (FSL), Federal Supplemental Loans for Students (FSLS), and Health Education Assistance Loans (HEAL) serviced by the Coordinating Board. This includes the reconstituted and consolidated relevant provisions of §22.53 and §22.54, with nonsubstantive edits for clarity. Also added is subsection (d), which clarifies that the provisions of §24.13 (relating to Interest Rate Adjustment for Repayment via Auto-Debit or Automated Clearing House (ACH)) do apply to these loans. The provisions of this section do not represent a change in the administration of these programs.

Rule 24.83, Federal Stafford Loan (FSL) Program, provides program-specific provisions relating to that program, specifically regarding repayment period, minimum repayment amount, and enforcement of collection on defaulted loans. Subsections (a) - (c) are the reconstituted §22.53(a)(1), §22.53(b)(1), and §22.55(b), respectively, with nonsubstantive edits for clarity. The provisions of this section do not represent a change in the administration of the program.

Rule 24.84, Federal Supplemental Loans for Students (FSLS) Program, provides program-specific provisions relating to that program, specifically regarding repayment period, minimum repayment amount, and enforcement of collection on defaulted loans. Subsections (a) - (c) are the reconstituted §22.53(a)(2), §22.53(b)(2), and §22.55(b), respectively, with nonsubstantive edits for clarity. The provisions of this section do not represent a change in the administration of the program.

Rule 24.85, Health Education Assistance Loan (HEAL) Program, provides program-specific provisions relating to that program, specifically regarding repayment period, minimum repayment amount, and enforcement of collection on defaulted loans. Subsections (a) - (c) are the reconstituted §22.53(a)(4), §22.53(b)(4), and §22.55(b), respectively, with nonsubstantive edits for clarity. The provisions of this section do not represent a change in the administration of the program.

Rule 24.86, Hinson-Hazlewood College Student Loans Made Before Fall Semester, 1971, and Not Subject to the Federally Insured Student Loan Program, provides provisions specific to the limited number of applicable loans serviced by the Coordinating Board. The provisions of this section are reconstituted from multiple sections in Chapter 22, Subchapter E (relating to Hinson-Hazlewood College Student Loans Made Before Fall Semester, 1971, and Not Subject to the Federally Insured Student Loan Program), with nonsubstantive revisions for clarity and elimination of redundant or unnecessary provisions. The provisions of this section do not represent a change in the servicing of these loans.

No comments were received regarding the adoption of new rule.

The new sections are adopted under Texas Education Code, Section 52.54, which provides the Coordinating Board with the authority to adopt rules relating to the servicing of certain federal student loans.

The adopted new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 24.

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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) adopts repeal of Title 19, Part 9, Chapter 400, §§400.1 - 400.7, Grant Administration, without changes to the proposed text as published in the July 25, 2025, issue of the *Texas Register* (50 TexReg 4175). The rules will not be republished.

This repeal removes 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.

No comments were received regarding the adoption of the repeal.

The repeal is adopted 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 repeal affects Texas Administrative Code, Title 19, Part 9, Chapter 400, Sections 400.1 - 400.7.

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Texas Innovative Adult Career Education Grant Program Administrator
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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 465. RULES OF PRACTICE

22 TAC §465.2

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Psychologists adopts amendments to §465.2, relating to Supervision. Section 465.2 is amended without changes as published in the August 8, 2025, issue of the *Texas Register* (50 TexReg 5127) and will not be republished.

Reasoned Justification.

The adopted amendments would require supervisors to develop a custody plan for all supervision records in the event of death or disability. The amendments would also require supervisors to develop a written remediation plan to address any deficiencies identified in a supervisee's practice skills. The amendments would require supervisees to provide any remediation plan to current and future supervisors, as well as to notify supervisors of any complaint against the supervisee. Finally, the amendments would remove the requirements that supervisors keep documentation of a supervisee's professional liability insurance coverage.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

Texas Psychological Association.

Summary of comments for the rule.

The agency received three comments in favor of the rule change, noting support for requiring documentation during supervision while also requesting further guidance from the agency in the future.

Top of Form

Agency Response.

The agency appreciates the public input and support. The adopted amendments will ensure those being supervised are given clear feedback and expectations for their performance.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

Filed with the Office of the Secretary of State on October 20, 2025.

TRD-202503761
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: November 9, 2025
Proposal publication date: August 8, 2025
For further information, please call: (512) 305-7706

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22 TAC §465.34

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Psychologists adopts amendments to §465.34, relating to Providing Mental Health Services to Those Served by Others. Section 465.34 is amended without changes as published in the August 8, 2025, issue of the *Texas Register* (50 TexReg 5129) and will not be republished.

Reasoned Justification.

The adopted amendment requires a licensee, with the consent of a client, to attempt to form a collaborative relationship with any other mental health service provider seen by that client, rather than establishing a strict requirement that a licensee consult with the other provider.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

The agency received one comment in favor of harmonizing the requirements for licensed providers to collaborate.

Top of Form

Agency Response.

The agency appreciates the public input and support. The adopted amendment will help ensure licensees communicate with each other to prevent client harm.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7706

PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

SUBCHAPTER B. RULES OF PRACTICE

22 TAC §801.44

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists adopts amendments to §801.44, relating to Relationships with Clients. Section 801.44 is adopted without changes to the proposed text as published in the August 8, 2025, issue of the *Texas Register* (50 TexReg 5134). The rule will not be republished.

Reasoned Justification.

The adopted amendment would require a licensee who provides services to a client who concurrently receives services from another provider to seek consent from the client to contact the other provider and to strive to establish a collaborative relationship with that provider.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

The agency received three comments against the rule proposal. Concerns raised included the potential that clients will not share information about other therapists, that licensees may improperly pressure clients to consent to sharing information, or that licensees will be confused that they are required to collaborate together.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The agency appreciates the public comment, but believes the text of the rule makes clear the minimal obligation expected when a client is served by multiple therapists. Clients are free not to share information with their therapists and not to consent to the therapists speaking with each other. If authorized, however, licensees should at a minimum communicate with each other to ensure no harm comes to the client.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules nec-

essary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
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For further information, please call: (512) 305-7706

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SUBCHAPTER C. APPLICATIONS AND LICENSING

22 TAC §801.142

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists adopts amendments to §801.142, relating to Supervised Clinical Experience Requirements and Conditions. Section 801.142 is adopted without changes to the proposed text as published in the August 8, 2025, issue of the *Texas Register* (50 TexReg 5136). The rule will not be republished.

Reasoned Justification.

The adopted amendments would require an LMFT Associate who becomes the subject of a complaint to notify their supervisor of the complaint. The amendments also clarify an Associate must file a Supervisory Agreement Form with the Council for each supervisor. The amendments would also require an Associate that receives a remediation plan to share a copy of that plan with any other current or future supervisors.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

The agency received one comment against the proposed amendment, stating disagreement that an LMFT associate should be required to share a remediation plan from one supervisor with another.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The agency appreciates the public comment, but believes it is prudent to require LMFT associates that receive a remediation plan from a supervisor to share that plan with any other or future supervisors. This will ensure that any potential deficits in an associates training or skills can be remediated before the associate becomes fully licensed and practicing independently.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
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Proposal publication date: August 8, 2025
For further information, please call: (512) 305-7706

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22 TAC §801.143

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists adopts amendments to §801.143, relating to Supervisor Requirements. Section 801.143 is adopted without changes to the proposed text as published in the August 8, 2025, issue of the *Texas Register* (50 TexReg 5138). The rule will not be republished.

Reasoned Justification.

The adopted amendment would clarify that a supervisor may share a copy of a remediation plan with any other supervisor of an LMFT Associate. The amendment would also clarify the actions a licensee must take upon the loss of supervisor status, either through a disciplinary revocation or a lapse in active licensure.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

The agency received one comment against the proposed amendment, stating disagreement that an LMFT associate should be required to share a remediation plan from one supervisor with another.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

The agency appreciates the public comment, but believes it is prudent to require LMFT associates that receive a remediation plan from a supervisor to share that plan with any other or future supervisors. This will ensure that any potential deficits in an associates training or skills can be remediated before the associate becomes fully licensed and practicing independently.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
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For further information, please call: (512) 305-7706

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PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

CHAPTER 882. APPLICATIONS AND LICENSING

SUBCHAPTER A. LICENSE APPLICATIONS

22 TAC §882.1

The Texas Behavioral Health Executive Council adopts amendments to §882.1, relating to Application Process. Section 882.1 is adopted without changes to the proposed text as published in the August 8, 2025, issue of the *Texas Register* (50 TexReg 5140) and will not be republished.

Reasoned Justification.

The adopted amendment will standardize the expiration of incomplete license applications at 180 days from the date of receipt.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

The agency received one comment against the proposed amendment, which stated opposition to lessening supervision requirements for licensure that were not the subject of the amendment.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

The agency received two comments in favor of the amendment, stating that the proposed amendment would harmonize application deadlines across the agency and provide a realistic timeframe for completing an application.

Agency Response.

The agency appreciates the public comments. The agency believe standardizing application expiration timeframes at 180 days will provide sufficient time for applicants to supply necessary information while not burdening agency staff with old application files that are abandoned by applicants.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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TRD-202503763

Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
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For further information, please call: (512) 305-7706

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22 TAC §882.2

The Texas Behavioral Health Executive Council adopts amendments to §882.2, relating to General Application File Requirements. Section 882.2 is adopted with changes to the proposed text as published in the August 8, 2025, issue of the *Texas Register* (50 TexReg 5142). The rule will be republished.

Reasoned Justification.

The adopted amendment will specify that calculation of time periods for licensed experience shall begin when the relevant license is issued.

List of interested groups or associations against the rule.

Texas Counseling Association.

Summary of comments against the rule.

The agency received three comments against the proposed amendments. Generally, the comments raised concerns about potential ambiguity created in the rule language surrounding proportions of licensure requirements not being defined by the individual boards. The comments raised concerns that the propose language allowing proportionate experience hours could conflict with existing board requirements or at least confuse applicants.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

The agency received ten comments in favor of the rule amendments. Commenters believed creating an avenue for proportionate supervision hours to be based on full- or part-time work would make these professions more accessible for those who cannot work full time. The commenters also noted the potential cost savings to those who would currently pay for more supervision hours than were required to meet licensing requirements.

Agency Response.

The agency appreciates the public comments. The agency determined that the amendment establishing the licensure date as the relevant date for counting time periods in licensure requirement should be adopted as it provides a clear and transparent standard. The agency has decided not to adopt the provision related proportionate hours, in light of concerns over existing board rules and confusion for applicants, and will instead seek to clarify each individual board rule regarding these requirements.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§882.2. General Application File Requirements.

(a) To be complete, an application file must contain all information needed to determine an applicant's eligibility to sit for the required examinations, or the information and examination results needed to determine an applicant's eligibility for licensure. At a minimum, all applications for licensure must contain:

(1) An application in the form prescribed by the Council based on member board rules and corresponding fee(s);

(2) An official transcript from a properly accredited institution indicating the date the degree required for licensure was awarded or conferred. Transcripts must be received by the Council directly from the awarding institution, a transcript or credential delivery service, or a credentials bank that utilizes primary source verification;

(3) A fingerprint based criminal history record check through the Texas Department of Public Safety and the Federal Bureau of Investigation;

(4) A self-query report from the National Practitioner Data Bank (NPDB) reflecting any disciplinary history or legal actions taken against the applicant. A self-query report must be submitted to the agency as a PDF that ensures the self-query is exactly as it was issued by the NPDB (i.e., a digitally certified self-query response) or in the sealed envelope in which it was received from the NPDB;

(5) Verification of the citizenship and immigration status information of non-citizen, naturalized, or derived U.S. citizen applicants through the DHS-USCIS Systematic Alien Verification for Entitlements Program (SAVE). Applicants must submit the documentation and information required by the SAVE program to the Council;

(6) Examination results for any required examinations taken prior to applying for licensure;

(7) Documentation of any required supervised experience, supervision plans, and agreements with supervisors; and

(8) Any other information or supportive documentation deemed relevant by the Council and specified in its application materials.

(b) The Council will accept examination results and other documentation required or requested as part of the application process from a credentials bank that utilizes primary source verification.

(c) The Council may rely upon the following when verifying information from another jurisdiction: official written verification received directly from the other jurisdiction; a government website reflecting the information (e.g., active licensure and good standing); or verbal or email verification directly from the other jurisdiction.

(d) For purposes of calculating time periods related to experience requirements completed while holding a license, the Council shall consider the time period to begin at the issuance of the relevant license.

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

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Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
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For further information, please call: (512) 305-7706

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SUBCHAPTER B. LICENSE

22 TAC §882.21

The Texas Behavioral Health Executive Council adopts amendments to §882.21, relating to License Statuses. Section 882.21 is adopted without changes to the proposed text as published in the August 8, 2025, issue of the *Texas Register* (50 TexReg 5143) and will not be republished.

Reasoned Justification.

The adopted amendment will allow licensees with a delinquent license to transfer that license into inactive status.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

The agency received three comments against the proposed amendments. Generally the comments wished for more clarity in the use of terms like "delinquent" or "inactive." One comment disagreed with existing rule language related to failure to pay child support that was not the subject of the amendments.

List of interested groups or associations for the rule.

Texas Counseling Association.

Summary of comments for the rule.

The agency received one comment in favor of the rule change that noted it produces a "clear, logical, and fair framework that benefits both licensees and the public."

Agency Response.

The agency appreciates the public comments. The agency believes creating a clear mechanism for licensees to place their licenses on inactive status, particularly when they have gone into delinquent status, will provide an efficient method of placing the license in a dormant status when the licensee is no longer practicing and does not wish to maintain an active status. The terms "delinquent" and "inactive" are sufficiently defined in the rule language.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules nec-

essary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
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For further information, please call: (512) 305-7706

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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), adopts 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.

Section 13.81 is adopted without changes to the proposed text as published in the July 25, 2025, issue of the *Texas Register* (50 TexReg 4204) with the addition of the Correction of Error notice published in the August 8, 2025, issue of the *Texas Register* (50 TexReg 5256). Sections 13.82 - 13.87 are adopted without changes to the proposed text as published in the July 25, 2025, issue of the *Texas Register* (50 TexReg 4204). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the amendments 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.

COMMENTS

The 31-day comment period ended August 25, 2025.

During this period, DSHS received seven comments regarding the proposed rules from three commenters. DSHS received comments from the Texas Hospital Association, Texas Organization of Rural & Community Hospitals, and Texas Organization for Nursing Leadership. A summary of comments relating to the rules and DSHS' responses follows.

Comment: The commenters pointed out that there was an error in §13.81.

Response: DSHS agrees and notes that a Correction of Error notice was published in the August 8, 2025, issue of the *Texas Register* (50 TexReg 5256).

Comment: The commenters disagreed with the definition of the Workplace Violence Grant Program in §13.82, Definitions. The commenters asserted that the rules unnecessarily limit the pool of potential grant applicants by defining the grant program as "supporting health care facilities to protect nurses from violence." They proposed redefining it as "a grant program supporting innovative approaches for health care facilities to protect nurses from violence." Their proposed definition aims to broaden the pool of eligible applicants beyond health care facilities.

Response: DSHS disagrees and declines to revise the rule in response to this comment. DSHS believes that the statutory language supports the agency's interpretation that the funding of grants is to hospitals, freestanding emergency medical care facilities, nursing facilities, and home health agencies. The legislative intent of the enabling bill also supports the agency's interpretation. Further, the Author's Statement of Intent notes that "H.B. 280 seeks to alleviate the trauma of workplace violence by *providing grants to hospitals and other health facilities* to implement innovative approaches unique to each facility and region to reduce the severity and frequency of these occurrences."

Comment: The commenters encouraged the agency to evaluate avenues for streamlining the grant application procedures and reporting processes that may be cumbersome and time-consuming.

Response: DSHS declines to make any changes to §13.83, Grant Applications Procedures, as the current rule is general and allows for procedures to be determined by each Request for Application. DSHS will continue working with Purchasing and Contracting Services to make future solicitations as streamlined as possible.

Comment: The commenters noted concerns regarding delays in the awarding of funding and selection for funding stages, and believe that greater flexibility in project implementation could help mitigate challenges related to such delays.

Response: DSHS declines to make any changes to §13.83, Grant Applications Procedures, as the current rule is general and allows for procedures to be determined by each Request for Application. DSHS will continue working with Purchasing and Contracting Services to make future solicitations as streamlined and timely as possible.

Comment: The commenters recommended updating §13.85, Award Criteria and Selection for Funding. They point out that statutory reference to the Nursing Advisory Committee defined by Health and Safety Code §104.155, which was abolished effective September 1, 2025, needs to be updated.

Response: DSHS declines to make this revision on this rule project. The statutory reference will be updated through a separate rule project to allow for public input on the amended language.

Comment: The commenters requested conforming changes to language in §13.85, Award Criteria and Selection for Funding, to align with their proposed revision to how the grant program is defined.

Response: DSHS disagrees with the original proposal to redefine the grant program and declines to make conforming changes to this rule.

Comment: The commenters proposed repealing §13.85(d)(3) as reporting is already required in §13.87.

Response: DSHS disagrees and declines to make this revision. These two rules relate to separate processes. §13.85, Award Criteria and Selection for Funding, relates to the application process itself and what is included in the application while §13.87, Reporting, relates to the reporting requirements during the grant period.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §524.0151 and Texas Health and Safety Code §1001.075, which authorize the executive commissioner of HHSC to adopt rules and policies for the operation and provision of health and human 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 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.

§13.81. Purpose.

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 to reduce verbal and physical violence against nurses in hospitals, freestanding emergency medical care facilities, nursing facilities, and home health agencies.

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

Filed with the Office of the Secretary of State on October 21, 2025.

TRD-202503777
Karen Ray
Chief Counsel
Department of State Health Services
Effective date: November 10, 2025
Proposal publication date: July 25, 2025
For further information, please call: (512) 517-6902

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CHAPTER 229. FOOD AND DRUG

SUBCHAPTER T. LICENSURE OF TANNING FACILITIES

25 TAC §§229.341 - 229.357

The executive commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts the repeal of 25 Texas Administrative Code (TAC) Chapter 229, Subchapter T, concerning Licensure of Tanning Facilities, which consists of §§229.341 - 229.357. The repeals are adopted without changes to the proposed text as published in the June 6, 2025, issue of the *Texas Register* (50 TexReg 3364). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The repeals are necessary to comply with Health and Safety Code Chapter 145 as amended by Senate Bill 202 (S.B. 202), 84th Legislature, Regular Session, 2015. S.B. 202 is related to the transfer of certain occupational regulatory programs and the deregulation of certain activities and occupations. S.B. 202 amended certain provisions in Health and Safety Code Chapter 145, relating to the licensing and regulation of tanning facilities, including the removal of the requirement to license. Subchapter T is being repealed because the requirement for DSHS to license tanning facilities no longer exists.

COMMENTS

The 31-day comment period ended July 7, 2025.

During this period, DSHS received comments regarding the proposed rule repeals from one commenter from UT Southwestern Medical Center. A summary of the comment relating to the Licensure of Tanning Facilities and DSHS's responses follows.

Comment: One commenter requested that HHSC reconsider "the removal of state-level monitoring, or, at the very least, enlist local public health institutions to implement some degree of oversight and regulation at indoor tanning facilities." The commenter warns that deregulation could increase public health risks, particularly skin cancers.

Response: DSHS no longer has the authority to license tanning facilities; no changes were made to the repeals.

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §524.0151 and Texas Health and Safety Code §1001.075, which authorize the executive commissioner of HHSC to adopt rules and policies for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001; and Health and Safety Code §431.241.

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

Filed with the Office of the Secretary of State on October 21, 2025.

TRD-202503793

Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: November 10, 2025
Proposal publication date: June 6, 2025
For further information, please call: (512) 834-6755

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CHAPTER 401. MENTAL HEALTH SYSTEM ADMINISTRATION
SUBCHAPTER G. LOCAL MENTAL HEALTH AUTHORITY NOTIFICATION AND APPEAL

25 TAC §401.464

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts the repeal of Chapter 401, consisting of §401.464, concerning Notification and Appeals Process. The repeal of §401.464 is adopted without changes to the proposed text as published in the May 16, 2025, issue of the *Texas Register* (50 TexReg 2890) and will not be republished.

BACKGROUND AND JUSTIFICATION

The repeal is necessary to delete an obsolete rule in Title 25, Texas Administrative Code (TAC), Chapter 401, Subchapter G, adopted in 1994. HHSC addresses the topic of this rule in similar rules located in 26 TAC, Chapter 301, Subchapter D.

COMMENTS

The 31-day comment period ended on June 16, 2025.

During this period, HHSC did not receive any comments regarding the proposed repeal.

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Health and Safety Code §534.052, which requires the executive commissioner to adopt rules necessary and appropriate to ensure the adequate provision of community-based mental health services through a local mental health authority; and Texas Health and Safety Code §534.0675, which requires the executive commissioner to establish by rule a uniform procedure that each local mental health authority shall use relating to the right to appeal denial, reduction or termination of services.

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

Filed with the Office of the Secretary of State on October 21, 2025.

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Karen Ray
Chief Counsel
Department of State Health Services
Effective date: November 10, 2025
Proposal publication date: May 16, 2025
For further information, please call: (737) 704-9063

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CHAPTER 404. PROTECTION OF CLIENTS AND STAFF--MENTAL HEALTH SERVICES
SUBCHAPTER E. RIGHTS OF PERSONS RECEIVING MENTAL HEALTH SERVICES

25 TAC §404.168, §404.169

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts the repeal of Chapter 404, consisting of §404.168, concerning References; and §404.169, concerning Distribution. The repeals of §404.168 and §404.169 are adopted without changes to the proposed text as published in the May 16, 2025, issue of the *Texas Register* (50 TexReg 2891) and will not be republished.

BACKGROUND AND JUSTIFICATION

The repeals are necessary to delete obsolete rules in Title 25, Texas Administrative Code, Chapter 404, Subchapter E, adopted in 1996. The rules are no longer necessary.

COMMENTS

The 31-day comment period ended on June 16, 2025.

During this period, HHSC did not receive any comments regarding the proposed repeals.

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system.

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

Filed with the Office of the Secretary of State on October 21, 2025.

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Karen Ray
Chief Counsel
Department of State Health Services
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For further information, please call: (737) 704-9063

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CHAPTER 405. PATIENT CARE--MENTAL HEALTH SERVICES
SUBCHAPTER E. ELECTROCONVULSIVE THERAPY (ECT)

25 TAC §405.116

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts the repeal of Chapter 405, consisting of §405.116, concerning Distribution. The repeal of §405.116 is adopted without changes to the proposed text as published in the May 16, 2025, issue of the *Texas Register* (50 TexReg 2892) and will not be republished.

BACKGROUND AND JUSTIFICATION

The repeal is necessary to delete an obsolete rule in Title 25, Texas Administrative Code, Chapter 405, Subchapter E, adopted in 1993. Senate Bill 800, 87th Legislature, Regular Session, 2021, repealed the requirement to submit an annual report.

COMMENTS

The 31-day comment period ended on June 16, 2025.

During this period, HHSC did not receive any comments regarding the proposed repeal.

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system.

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

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Karen Ray
Chief Counsel
Department of State Health Services
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For further information, please call: (737) 704-9063

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CHAPTER 411. STATE MENTAL HEALTH AUTHORITY RESPONSIBILITIES

SUBCHAPTER B. INTERAGENCY AGREEMENTS

25 TAC §§411.61, 411.62, 411.64

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts the repeal of Chapter 411, consisting of §411.61, concerning Memorandum of Understanding Concerning Capacity Assessment for Self-Care and Financial Management; §411.62, concerning Memorandum of Understanding concerning Continuity of Care System for Offenders with Mental Impairments; and §411.64, concerning Memorandum of Understanding (MOU) on Relocation Pilot Program. The repeals of §§411.61, 411.62, and 411.64 are adopted without changes to the proposed text as published in the May 16, 2025, issue of the *Texas Register* (50 TexReg 2893) and will not be republished.

BACKGROUND AND JUSTIFICATION

The repeal is necessary to delete obsolete rules in Title 25, Texas Administrative Code (TAC), Chapter 411, Subchapter B, adopted in 1999 and 2003. Texas Health and Safety Code §533.044 and 40 TAC, §71.104, have been repealed. Additionally, Texas Health and Safety Code §614.013 no longer requires an MOU to be formally adopted by rule.

COMMENTS

The 31-day comment period ended on June 16, 2025.

During this period, HHSC did not receive any comments regarding the proposed repeals.

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system.

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

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Karen Ray
Chief Counsel
Department of State Health Services
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For further information, please call: (737) 704-9063

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CHAPTER 412. LOCAL MENTAL HEALTH AUTHORITY RESPONSIBILITIES

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts the repeal of Chapter 412, consisting of §412.63 concerning References; §412.64, concerning Distribution; §412.114, concerning References; and §412.115, concerning Distribution. The repeals of §§412.63, 412.64, 412.114, and 412.115 are adopted without changes to the proposed text as published in the May 16, 2025, issue of the *Texas Register* (50 TexReg 2894) and will not be republished.

BACKGROUND AND JUSTIFICATION

The repeals are necessary to delete obsolete rules in Title 25, Texas Administrative Code, Chapter 412, Local Mental Health Authority Responsibilities, Subchapter B and Subchapter C. The rules are outdated and no longer necessary.

COMMENTS

The 31-day comment period ended on June 16, 2025.

During this period, HHSC did not receive any comments regarding the proposed repeals.

SUBCHAPTER B. CONTRACTS MANAGEMENT FOR LOCAL AUTHORITIES

25 TAC §412.63, §412.64

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system.

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

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Karen Ray
Chief Counsel
Department of State Health Services
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For further information, please call: (737) 704-9063

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SUBCHAPTER C. CHARGES FOR COMMUNITY SERVICES

25 TAC §412.114, §412.115

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system.

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

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Karen Ray
Chief Counsel
Department of State Health Services
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For further information, please call: (737) 704-9063

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CHAPTER 414. RIGHTS AND PROTECTIONS OF PERSONS RECEIVING MENTAL HEALTH SERVICES

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts the repeal of Chapter 414, consisting of §414.414, concerning References; §414.415, concerning Distribution; §414.508, concerning References; §414.509, concerning Distribution; §414.551, concerning Purpose; §414.552, concerning Application; §414.553, concerning Definitions; §414.554, concerning Responsibilities of Local Authorities, Community Centers, and Contractors; §414.555, concerning Information To Be Provided to Victim or Alleged Victim and Others; §414.556, concerning Investigations Conducted by the Texas Department of Protective and Regulatory Services (TDPRS); §414.557, concerning Disciplinary and Other Action; §414.558, concerning Data Reporting Responsibilities; §414.559, concerning Confidentiality of Investigative Process and Report; §414.560, concerning Competency of Employees and Agents; §414.561, concerning TDMHMR Oversight Responsibilities; §414.562, concerning Exhibits; §414.563, concerning References; and §414.564 concerning Distribution. The repeals of §§14.414, 414.415, 414.508, 414.509, 414.551, 414.552, 414.553, 414.554, 414.555, 14.556, 414.557, 414.558, 414.559, 414.560, 414.561, 414.562, 414.563, and 414.564 are adopted without changes to the proposed text as published in the May 16, 2025, issue of the *Texas Register* (50 TexReg 2895) and will not be republished.

BACKGROUND AND JUSTIFICATION

The repeals are necessary to delete obsolete rules in Title 25, Texas Administrative Code (TAC), Chapter 414, Subchapter I and Subchapter K, adopted in 2004. The rules are outdated and no longer necessary.

Additionally, the repeals delete obsolete rules in 25 TAC Chapter 414, Subchapter L, adopted in 2001. HHSC addresses the topic of these rules in similar rules located in 26 TAC, Chapter 301, Subchapter M.

COMMENTS

The 31-day comment period ended on June 16, 2025.

During this period, HHSC did not receive any comments regarding the proposed repeals.

SUBCHAPTER I. CONSENT TO TREATMENT WITH PSYCHOACTIVE MEDICATION--MENTAL HEALTH SERVICES

25 TAC §414.414, §414.415

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; and Texas Health and Safety Code §534.052, which requires the executive commissioner to adopt rules necessary and appropriate to ensure the adequate provision of community-based mental health services through a local mental health authority.

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

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Karen Ray
Chief Counsel
Department of State Health Services
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For further information, please call: (737) 704-9063

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SUBCHAPTER K. CRIMINAL HISTORY AND REGISTRY CLEARANCES

25 TAC §414.508, §414.509

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of

services by the health and human services system; and Texas Health and Safety Code §534.052, which requires the executive commissioner to adopt rules necessary and appropriate to ensure the adequate provision of community-based mental health services through a local mental health authority.

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

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Karen Ray
Chief Counsel
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For further information, please call: (737) 704-9063

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SUBCHAPTER L. ABUSE, NEGLECT, AND EXPLOITATION IN LOCAL AUTHORITIES AND COMMUNITY CENTERS

25 TAC §§414.551 - 414.564

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; and Texas Health and Safety Code §534.052, which requires the executive commissioner to adopt rules necessary and appropriate to ensure the adequate provision of community-based mental health services through a local mental health authority.

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

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Karen Ray
Chief Counsel
Department of State Health Services
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For further information, please call: (737) 704-9063

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CHAPTER 415. PROVIDER CLINICAL RESPONSIBILITIES--MENTAL HEALTH SERVICES

SUBCHAPTER A. PRESCRIBING OF PSYCHOACTIVE MEDICATION

25 TAC §§415.4, 415.9, 415.13, 415.14

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts the repeal of §415.4, concerning Philosophy; §415.9, concerning Consent and Patient Education; §415.13, concerning References; and §415.14, concerning Distribution. The repeals of §§415.4, 415.9, 415.13, and 415.14 are adopted without changes to the proposed text as published in the May 16, 2025, issue of the *Texas Register* (50 TexReg 2897) and will not be republished.

BACKGROUND AND JUSTIFICATION

The repeals are necessary to delete obsolete rules in Title 25, Texas Administrative Code, Chapter 415, Subchapter A, adopted in 2004. The rules are duplicative or are no longer necessary.

COMMENTS

The 31-day comment period ended on June 16, 2025.

During this period, HHSC did not receive any comments regarding the proposed repeals.

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; and Texas Health and Safety Code §534.052, which requires the executive commissioner to adopt rules necessary and appropriate to ensure the adequate provision of community-based mental health services through a local mental health authority.

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

Filed with the Office of the Secretary of State on October 21, 2025.

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Karen Ray
Chief Counsel
Department of State Health Services
Effective date: November 10, 2025
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For further information, please call: (737) 704-9063

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 101. GENERAL AIR QUALITY RULES

SUBCHAPTER K. FAILURE TO ATTAIN FEE FOR THE 2008 EIGHT-HOUR OZONE STANDARD

30 TAC §§101.700 - 101.718

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §§101.700 - 101.718

New §§101.704, 101.709, 101.711, 101.714, and 101.716 are adopted without changes to the proposed text. New §§101.700, 101.701, 101.702, 101.703, 101.705, 101.706, 101.707, 101.708, 101.710, 101.712, 101.713, 101.715, 101.717, and 101.718 are adopted with changes to the proposed text as published in the May 16, 2025, issue of the *Texas Register* (50 TexReg 2925) and, therefore, will be republished.

The adopted new sections will be submitted to the U.S. Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

Federal Clean Air Act (FCAA), §182(d)(3) and (e) and §185 (Section 185, generally) require the SIP to include a rule that implements a penalty fee (Section 185 fee, Failure to Attain Fee, fee) for major stationary sources (major sources) of volatile organic compounds (VOC) located in an ozone nonattainment area classified as severe or extreme if that area fails to attain the ozone National Ambient Air Quality Standard (NAAQS or standard) by the applicable attainment date. FCAA, §182(f) states that requirements "for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in §7602 of this title and subsections (c), (d), and (e) of this section) of oxides of nitrogen (NO_x)." This FCAA requirement extends the Section 185 fee assessment to major stationary sources of NO_x emissions. The SIP must also include procedures for the assessment and collection of the penalty fee. If the state does not impose and collect the fee, then FCAA, §185(d) requires that EPA impose and collect the fee with interest, and the revenue is not returned to the state.

For the 2008 eight-hour ozone standard of 0.075 parts per million, on October 7, 2022, EPA published a final notice that reclassified the Dallas-Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) 2008 eight-hour ozone nonattainment areas from serious to severe effective November 7, 2022 (87 *Federal Register* (FR) 60926). The DFW severe nonattainment area consists of 10 counties: Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise. The HGB severe nonattainment area consists of eight counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller. The DFW and HGB severe nonattainment areas are required to attain the 2008 eight-hour ozone standard by July 20, 2027. If a severe or extreme ozone nonattainment area does not attain by the attainment date, the area will be subject to the penalty fee requirements upon EPA issuing a finding of failure to attain for the area. For fee assessment purposes, the 2027 calendar year from January 1, 2027, through December 31, 2027, is anticipated to be the baseline year for these severe nonattainment areas since it is the year that contains the attainment date. The penalty fee is required to be paid until EPA redesignates the area as attainment for the 2008 eight-hour ozone standard or EPA takes action that results in termination of the fee.

As stated in FCAA, §182(d)(3) and (e) and §185, the required penalty is $5,000 per ton, as adjusted for inflation by the consumer price index (CPI), of VOC and/or NO_x emissions emitted in excess of 80% of a major stationary source's baseline amount. A baseline amount will be determined for each pollutant, VOC and/or NO_x, for which the source meets the major source applicability requirements. A source that is major for VOC emissions will be subject to the fee on VOC emissions; a source that is major for NO_x emissions will be subject to the fee on NO_x emissions; and a source that is major for both VOC and NO_x emissions will be subject to the fee on both VOC and NO_x emissions.

The major stationary source's fixed baseline amount is calculated as the lower of the baseline emissions or total annual authorized emissions during the baseline year; the baseline amount must be adjusted downward to account for unauthorized emissions and/or emissions limitations in effect as of December 31 of the baseline year or timeframe used to determine the baseline amount. The major stationary source's baseline emissions are defined as the annual routine emissions reported to the TCEQ point source emissions inventory (emissions inventory) according to 30 TAC §101.10, excluding emissions not authorized by permit or rule, such as emissions from emissions events and scheduled or unscheduled maintenance, startup, and shutdown (MSS) activities. The major stationary source's authorized emissions include emissions allowed under any EPA or TCEQ-enforceable measure or document, such as rules, regulations, permits, orders of the commission, and/or court orders.

The rule allows for a baseline amount determination with flexibilities such as aggregating pollutants (VOC and NO_x emissions) and aggregating sites under common ownership and control into a single baseline. The rule also allows for baseline amount determinations when a period other than the baseline year may be required, such as new major stationary sources that began operating after the baseline year or major stationary sources with emissions that are irregular, cyclic, or vary significantly from year to year. Under specific circumstances, major stationary sources may request adjustments to the fixed baseline amount. The estimated Section 185 fee, based on a conventional fee program, without baseline amount flexibilities and fee offsets for both the HGB and DFW severe ozone nonattainment areas is over $200 million per year.

TCEQ adopts an equivalent fee program (Failure to Attain Fee for the 2008 Eight-Hour Ozone Standard, Failure to Attain Fee program, Section 185 fee program) under FCAA, §172(e) with flexibility aspects not directly described in FCAA, §185, including but not limited to other mechanisms to offset the fee on major stationary sources and baseline aggregation. Although EPA has not issued specific guidance to assist states with developing Section 185 fee programs under the 2008 eight-hour ozone standard, in its 2010 guidance (available at: *https://www.epa.gov/sites/default/files/2015-09/documents/1hour_ozone_nonattainment_guidance.pdf*), multiple approvals of similar equivalent alternative programs in California and New York, and in a final rule published in the February 14, 2020, *Federal Register* (85 *FR* 8411) for the Section 185 Fee Program in the HGB nonattainment area under the one-hour ozone standard (HGB Failure to Attain Fee), EPA approved the use of programs that are not less stringent (equivalent) alternative programs to fulfill the FCAA, §185 fee requirement. Although the 2010 guidance was vacated by the D.C. Circuit Court of Appeals on procedural grounds, *NRDC v. EPA*, 643 F.3d 311, EPA continued to utilize the principles outlined in the guidance as support for its approvals of equivalent alternative programs, as "not less stringent than" the requirements specified in FCAA, §185, based on its interpretation of the requirements of FCAA, §172(e), as upheld by *NRDC v. EPA*, 779 F.3d 1119 (9th Circuit 2015) and *Medical Advocates for Healthy Air v. EPA*, 607 Fed. Appx 759 (9th Cir. 2015). Notably, the court in *NRDC v. EPA*, 643 F.3d 311 (D.C. Cir. July 2011) did not prohibit equivalent alternative programs, instead stating that "neither the statute nor our case law obviously precludes

that alternative." In the absence of formal EPA guidance for Section 185 fee programs under the 2008 eight-hour ozone standard, this rulemaking relies on the 2010 guidance and the court decisions holding that FCAA, §172(e) applies also when EPA strengthens a NAAQS to develop Texas' fee program. In the HGB Failure to Attain Fee final approval, EPA approved fee programs funded to reduce VOC and NO_x emissions that are "qualified programs", surplus to the one-hour ozone SIP, and designed to result in direct reductions or facilitate future reductions of VOC or NO_x emissions, which is consistent with the principles of the anti-backsliding principle of the FCAA §172(e). EPA's 2010 guidance requires an equivalent alternative program to achieve the same emissions reductions, raise the same amount of revenue and establish a process by which penalty funds would be used to pay for emission reductions that would further improve ozone air quality, or a combination of emissions reductions or revenue collection.

EPA states in its 2010 guidance that it may allow equivalent alternative programs for which "the proceeds are spent to pay for emissions reductions of ozone-forming pollutants (NO_x and/or VOC) in the same geographic area subject to the §185 program." EPA further states, "Under this concept, states could develop programs that shift the fee burden from the specific set of major stationary sources that are otherwise required to pay fees according to §185, to other non-major sources of emissions, including owners/operators of mobile sources." From these statements and EPA's final approval of the HGB Failure to Attain Fee, located in 30 Texas Administrative Code (TAC) 101 Subchapter B, EPA supports equivalent alternative options to a fee-based program provided the option is "no-less stringent" than a strict fee-based program and generally meets the stated criteria for the (now revoked) one-hour ozone standard. EPA approved other equivalent alternative programs pursuant to the 2010 guidance for the one-hour ozone standard including San Joaquin Valley (77 FR 50021), *South Coast Air Quality Management District*, (77 FR 74372), and the New York portion of the New York-Northern New Jersey-Long Island nonattainment area (84 FR 12511). EPA's approvals of these Section 185 fee programs under the one-hour ozone standard included equivalent fee revenue by assessing a fee on mobile sources. The revenue was used to offset the fee due from major stationary sources in the nonattainment areas. EPA's prior approvals were based on its interpretation that FCAA, §172(e) allows equivalent alternative fee programs for revoked ozone standards. As noted above, FCAA, §172(e) provides that if EPA relaxes a NAAQS, EPA must provide for controls that are "not less stringent than the controls". While FCAA, §172(e) clearly applies to future standards that are less stringent, EPA argued, and the D.C. Circuit upheld, that FCAA, §172(e) also applies to standards that are more stringent, requiring that specific obligations (anti-backsliding obligations) continue to apply for revoked NAAQS and current NAAQS (*South Coast Air Quality Management District v. EPA*, 472 F.3d. 882, 900 (2006)). Interpreting the FCAA to allow for equivalent alternative fee programs for current NAAQS promotes consistency, particularly given that FCAA, §185 fee programs are a required anti-backsliding measure for both revoked and current NAAQS. Since nothing in FCAA, §185 requires emission reductions, only the payment of fees, allowing the offset of fees by funds that are spent to obtain emission reductions is equivalent or better than the payment of fees. Additionally, nothing in FCAA, §172(e) prohibits equivalent alternative fee programs for active ozone standards, and courts have upheld the applicability of FCAA, §172(e) for both relaxed and strengthened NAAQS. Therefore, the commission adopts an equivalent alternative fee program in this rule.

The TCEQ's HGB Failure to Attain Fee Rule adopted in 2013 and approved by EPA in 2020, allowed revenue collected from the HGB one-hour ozone standard nonattainment area for qualified programs that directly reduced VOC or NO_x emissions to offset the FCAA, §185 fee. No actual revenue or funding was transferred to the Section 185 fee program; funds were calculated, recorded, and assessed to ensure a sufficient amount was collected to offset the required Section 185 fee amount. The same approach is used for this rulemaking.

Although EPA has not issued guidance to assist states with developing Section 185 fee programs under the 2008 eight-hour ozone standard, EPA originally described certain basic principles concerning the applicability of the FCAA, §182(d)(3) and (e) and §185 fee for severe or extreme ozone nonattainment areas under the one-hour ozone standard. In a final rule published November 16, 2005, in the *Federal Register* (70 FR 69440) regarding the Maryland portion of the Washington, D.C. severe one-hour ozone nonattainment area, EPA noted in response to a comment that, "Section 185 of the Act simply requires that the SIP contain a provision that major stationary sources within a severe or extreme nonattainment area pay a fee to the state as a penalty for failure of that area to attain the ozone NAAQS by the area's attainment date. This penalty fee is based on the tons of volatile organic compound or nitrogen oxide emitted above a source-specific trigger level during the 'attainment year.' It first comes due for emissions during the calendar year beginning after the attainment date and must be paid annually until the area is redesignated to attainment of the ozone NAAQS. Thus, if a severe area, with an attainment date of November 15, 2005, fails to attain by that date, the first penalty assessment will be assessed in calendar year 2006 for emissions that exceed 80% of the source's 2005 baseline emissions" (70 FR 69440, 69441). The same rationale is used to establish the anticipated baseline year of 2027 for the DFW and HGB severe nonattainment areas under the 2008 eight-hour ozone standard.

EPA further states that a "penalty fee that is based on emissions could have some incidental effect on emissions if sources decrease their emissions to reduce the amount of the per ton monetary penalty. However, the penalty fee does not ensure that any actual emissions reduction will ever occur since every source can pay a penalty rather than achieve actual emissions reductions. The provision's plain language evinces an intent to penalize emissions in excess of a threshold by way of a fee; it does not have as a stated purpose the goal of emissions reductions" (70 FR 69440, 69441 - 69442). Major stationary sources may elect to reduce their emissions to reduce the fee owed, or they may elect to pay the fee without reducing their emissions.

EPA also previously issued guidance *(Guidance on Establishing Baselines under Section 185 of the Clean Air Act (CAA) for Severe and Extreme Ozone Nonattainment Areas that Fail to Attain the 1-hour Ozone NAAQS by their Attainment)* on March 21, 2008 (available at: *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20080321_harnett_emissions_basline_185.pdf*), regarding establishing emission baseline amounts. The March 21, 2008, guidance memo discussed alternative methods for calculating the baseline amount, as permitted by FCAA, §185. EPA noted that in some cases, baseline amounts may not be representative of normal operating conditions because a source's emissions may be irregular, cyclic, or otherwise vary significantly from year to year. This concept will be applicable regardless of the fee program implemented or the ozone standard requiring the fee program.

EPA indicated in its guidance that relying on its regulations for Prevention of Significant Deterioration (PSD) of Air Quality, which are found in 40 Code of Federal Regulations (CFR) §52.21(b)(48), would be an acceptable alternative method for calculating the baseline amount. Under the PSD rules, sources may use emissions data from any period of 24 consecutive months within the previous ten years (a two-in-ten look back period) to calculate an average annual actual emissions rate. EPA determined the two-in-ten look back period to be reasonable because it allows sources to consider an average emissions rate for a full business cycle.

The PSD rules modify this concept for electrical utility steam generating units to 24 consecutive months within the previous five years (a two-in-five look back period) due to a shorter business cycle for those units. The commission agrees that use of the two-in-ten and two-in-five look-back periods is reasonable for sources for which emissions are irregular, cyclical, or otherwise vary significantly from year to year, and the commission adopts this option in the same manner as provided for in the Texas New Source Review Program. Since the PSD guidance is specific to sources for which emissions are irregular, cyclical, or otherwise vary significantly from year to year, the averaging option is not available for sources with steady-state operations.

A variability analysis on sites reporting to the TCEQ point source emissions inventory was performed to determine if VOC and NO_x emissions were variable over the twelve-year period between 2011 (the base year for the 2008 ozone standard) through 2022 (the most recent complete point source emissions inventory at the time this analysis was performed) for the DFW and HGB severe nonattainment areas. Data for the DFW and HGB variability analysis were analyzed separately for VOC and NO_x emissions. Sites that reported 2011 through 2022 mean emissions greater than 20 tons per year in the TCEQ emissions inventory were included in this analysis.

A site's emissions were determined to be variable if the following formula was true, where x = VOC or NO_x emissions and σ = one standard deviation of the data set:

Figure: 30 TAC Chapter 101 - Preamble

Variability of reported NO_x and VOC emissions ranged from 3% to 128% in the HGB area and from 0.1% to 265% in the DFW area over the twelve years examined. Fifty-nine percent or 162 of the 274 NO_x and/or VOC emissions sources in the HGB area were variable as defined by the above formula. Forty-eight percent or 115 of the 238 NO_x and/or VOC emissions sources in the DFW area were variable as defined by the above formula.

The variability analysis shows that a high level of source-level emissions variability occurred between 2011 and 2022 in the DFW and HGB severe nonattainment areas; therefore, it is appropriate to use a 24-month period during the previous ten years (or five years if the source is an electric utility steam generating unit) to establish a baseline for the FCAA, §185 fee program.

Based on the analysis above, the commission adopts EPA's baseline guidance and EPA's long-standing PSD regulations for sources with emissions that are irregular, cyclic, or otherwise vary significantly to offer an option for these source types to establish a baseline amount. Since FCAA, §185 states that the baseline amounts may be adjusted for these types of sources if the EPA Administrator issues guidance, the commission adopts these provisions based on these EPA guidance documents.

Like the HGB Failure to Attain Fee Rule, the commission adopts a fee program that credits the Texas Emissions Reduction Plan (TERP) funds collected from fees and surcharges related to the sale and use of vehicles and heavy-duty equipment (TERP revenue) from each area after the 2008 eight-hour ozone attainment (baseline) year as discussed below to offset the Area §185 Obligation. The Area §185 Obligation is the total amount of the Failure to Attain Fee due for an entire 2008 eight-hour ozone nonattainment area based on summing the Failure to Attain Fee due from each major stationary source or Section 185 Account for a fee assessment year.

The objectives of TERP are specifically described in statute and are consistent with EPA's objective for an equivalent FCAA, §185 fee program. TERP program objectives, listed in Texas Health and Safety Code (THSC), §386.052, address "achieving maximum reduction in oxides of nitrogen to demonstrate compliance with the state implementation plans" and "advancing new technologies that reduce oxides of nitrogen from facilities and other stationary sources." TERP, as described in THSC, §386.053, is restricted to having "safeguards that ensure that funded projects generate emissions reductions not otherwise required by state or federal law."

TCEQ implements TERP to reduce NO_x emissions, a precursor to ozone pollution. TERP grant programs provide financial incentives to individuals, state and local governments, corporations, and other legal entities to upgrade or replace their older, higher emitting vehicles and equipment with newer, cleaner vehicles and equipment. TERP programs also encourage the use of alternative fuels for transportation in Texas, and the implementation of new technologies that reduce emissions from stationary sources and oil and gas operations.

In the DFW severe nonattainment area, mobile source NO_x emissions are the single-largest category of the 2023 emissions inventory at 65%. In the HGB severe nonattainment area, mobile source NO_x emissions are the single-largest category of the 2023 emissions inventory at 55%. Since the federal government regulates mobile sources under FCAA, Title II, states cannot develop mobile source emissions standards and have limited authority to directly regulate emissions from mobile sources. TERP is a state-specific program used primarily to obtain voluntary mobile source emissions reductions since the state has limited regulatory authority.

The emissions reduction grant programs that TERP funds decrease ozone precursor emissions more directly than a penalty fee assessed on major stationary sources. FCAA, §185 provides major stationary sources with a choice to either reduce ozone precursor emissions to below 80% of their baseline amount or pay a fee. An economic incentive to reduce emissions is not the same as a requirement to reduce emissions, therefore the FCAA, §185 may or may not result in emissions reductions. However, the imposition of a conventional fee would likely result in an economic burden to the state and potentially the country, due to the large economic impact of the DFW and HGB nonattainment areas. As the fifth largest Metropolitan Statistical Area (MSA) in the county, Houston in particular accounts for significant portions of the country's and Texas' economy and as of 2021, accounted for 44% of the country's base petrochemical capacity with many of the top employers in the energy, petrochemical, or refinery related fields. Therefore, the commission adopts an equivalent fee program as proposed and adopts rules to credit the TERP revenue because TERP meets one of the three types of alternative programs that satisfy

the requirements addressed in EPA's 2010 guidance memo and adopts other flexibilities as discussed elsewhere in this preamble. The grant programs funded through TERP are the same (or similar to) programs that EPA previously approved as meeting the requirements for FCAA, §185 fee program equivalency under the HGB Failure to Attain Fee Rule. Fees and surcharges related to the sale and use of vehicles and heavy-duty equipment in Texas fund the TERP programs. The revenue collected for the TERP program will be used to offset each 2008 eight-hour ozone nonattainment area's Area §185 Obligation when any TERP grant funds are also expended within the same area; this revenue is referred to as "TERP revenue collected and expended" throughout this subchapter. TCEQ will identify and track TERP revenue from the DFW severe nonattainment area and the HGB severe nonattainment area in two separate Fee Equivalency Accounts to demonstrate equivalency of the area-specific TERP revenue to the penalty fee owed by major stationary sources located in that area.

The commission will be required to annually determine the expected Area §185 Obligation and compare this estimation with the expected TERP revenue. TERP revenue collected and expended after the attainment year (baseline year) and statutorily available for TERP programs will be credited towards meeting the Area §185 Obligation. For the DFW and HGB 2008 eight-hour ozone nonattainment areas, 2027 is the attainment year (baseline year) contained in the July 20, 2027, attainment date. Barring any extension to the attainment date, any TERP revenue from the nonattainment area starting with 2028 that is statutorily available for TERP programs could be credited to meet the Area §185 Obligation for DFW and HGB 2008 eight-hour ozone nonattainment areas. In addition to providing grants, TERP revenue will provide equivalency credits for the purposes of offsetting the Failure to Attain Fee. These equivalency credits will be credited to the Failure to Attain Fee program to document the amount of revenue available in a Fee Equivalency Account. This documentation does not involve money exchanged or being transferred from TERP to the Fee Equivalency Account. Revenue from future grant programs as discussed in §101.703 would also provide equivalency credits for the purpose of offsetting the Failure to Attain Fee.

Since the amount of available TERP revenue is recorded in the TCEQ's Section 185 fee database as a credit to offset the Area §185 Obligation, this Failure to Attain Fee program does not impact or change how the TERP program operates. Any TERP revenue available in the TERP Trust will continue to be used to provide grants

To determine the estimated total FCAA, §185 fee due from all major stationary sources, a baseline amount will be established for each major stationary source (or group of sources under a Section 185 Account, if aggregated as discussed later in this preamble) within the DFW 2008 eight-hour ozone nonattainment area or located within the HGB 2008 eight-hour ozone nonattainment area. The two nonattainment areas are assessed separately, resulting in two Area §185 Obligations, one for DFW and one for HGB. Each major stationary source's or Section 185 Account's reported baseline amount(s) and actual emissions as reported in the point source emissions inventory will be used to calculate a Failure to Attain Fee. The resulting amount due from each major stationary source or Section 185 Account for aggregated sources will be summed by location to determine the overall DFW and HGB 2008 eight-hour ozone nonattainment area's Area §185 Obligations.

If TERP revenue is insufficient to fully offset the Area §185 Obligation (as an equivalency credit in the Fee Equivalency Account) for the DFW 2008 eight-hour ozone nonattainment area or HGB 2008 eight-hour ozone nonattainment area, then the remaining difference will be assessed as a Failure to Attain Fee on a major stationary source or Section 185 Account for the area on a prorated basis. The fee assessed and amount collected from each major stationary source or Section 185 Account will be discounted based on the amount of revenue credited to the Fee Equivalency Account. In this manner, these rules "backstop" the TERP revenue that is credited as an offset with fees directly assessed on major stationary sources as necessary to meet each year's Area §185 Obligation. The Area §185 Obligation will be fully met either through the demonstration from the Fee Equivalency Account or, if necessary, supplemented with directly assessed fees on major stationary sources or Section 185 Accounts. Since the same amount of Failure to Attain Fees will be assessed then this method of fee equivalency is no "less stringent" than a direct fee program required by FCAA, §185.

To determine a major stationary source's baseline amount and the Failure to Attain Fee that will apply to each major stationary source, major stationary sources are provided a choice to individually determine baselines for VOC and NO_x emissions, aggregate VOC and NO_x emissions into one baseline if the source is major for both pollutants, or aggregate those emissions across multiple major stationary sources under common control. In Attachment C of EPA's 2010 guidance memo, EPA states it would ". . . allow for aggregation of sources. We anticipate that we would be able to approve a FCAA, §185 fee program SIP that relies on a definition of 'major stationary source' that is consistent with the FCAA as interpreted in our existing regulations and policies." EPA's 2010 memo further states that EPA would allow aggregation of VOC with NO_x emissions, ". . . provided that the aggregation is not used to avoid a 'major source' applicability finding, and aggregation is consistent with the attainment demonstration . . . we believe states have a discretion to allow a major source to aggregate VOC and NO_x emissions." The rulemaking will require a major stationary source to first determine its major source applicability for both VOC and NO_x emissions. In this approach, a major stationary source cannot use aggregation to avoid applicability of the FCAA, §185 fee rule. If the major stationary source chooses to aggregate baselines by pollutant or site or both, it will be required to provide to TCEQ the individual, unaggregated pollutant and site baselines for each pollutant(s) that determines major source status. This will ensure that staff can accurately enter aggregated baseline amounts into the TCEQ's Section 185 fee database.

In making determinations of whether common control exists, the commission will consider EPA guidance regarding common control. For example, in a final rule on the *Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Emissions Offset Interpretive Ruling* (45 FR 59878, September 11, 1980), EPA stated it would determine control guided by the general definition of control used by the Securities and Exchange Commission (SEC). In SEC considerations of control, control "means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person whether through the ownership of voting shares, contract, or otherwise" (17 CFR §210.1 and §210.2(g)). EPA generally continues to assess common control based on the general principles outlined above and has periodically issued additional guidance for specific topics such as how to assess contiguous or adjacent properties, industrial grouping, etc. The commission will

also use other criteria to determine common control consistent with participation in local area banking programs, such as the Mass Emissions Cap and Trade or the Highly-Reactive Volatile Organic Compound Cap and Trade programs. A group of major stationary sources choosing to aggregate under common control as a single customer will be identified with a single common customer identifier used by the commission, the customer number (CN). A group of major stationary sources under common control will be assigned a single Section 185 Account number by TCEQ.

Since VOC and NO_x emissions reductions are both effective at lowering ozone concentrations in both the DFW and HGB 2008 eight-hour ozone nonattainment areas, major sources should be allowed to aggregate both NO_x and VOC emissions into one baseline amount. The commission adopted a strategy of targeting those pollutants in a way that allows ozone nonattainment areas to attain the standard as expeditiously as practicable in previously adopted applicable attainment demonstration SIPs. States are required by the FCAA to assess and develop strategies for nonattainment areas, as part of the SIP revision process, to achieve attainment and maintenance of the standard, and this approach is a result of the knowledge gained from research and detailed photochemical modeling of each nonattainment area. The flexibility option to allow aggregation of VOC and NO_x as well as major stationary source aggregation for both pollutants continues to support the strategies outlined in the attainment demonstration SIPs. This aggregation method compliments the multi-pollutant control strategies incorporated into the SIP for the DFW and HGB ozone nonattainment areas.

As addressed previously, FCAA, §185 requires the SIP to include a requirement for the imposition of a penalty fee on major stationary sources of emissions of VOC in a severe or extreme ozone area that failed to attain the standard by its applicable due date. FCAA, §182(f) states that requirements "for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in §7602 of this title and subsections (c), (d), and (e) of this section) of oxides of nitrogen." Thus, the requirement to assess a fee on major stationary sources of NO_x emissions is also required. This language in FCAA, §182(f) does not explicitly state that requirements for NO_x sources are to be held separate from those for VOC but are "also required" for sources of NO_x emissions. Both VOC and NO_x control strategies have a common goal: to reduce ozone-forming emissions. However, the effectiveness of VOC and NO_x emissions reductions often varies between, or even within, nonattainment areas due to the complex nature of ozone formation. Ozone is formed through a series of chemical reactions between precursors (VOC and NO_x), in proportions determined by their molecular properties and based upon multiple factors including meteorology, background ozone, presence of precursors and emissions. As a result of these complexities, VOC and NO_x emissions are considered equal for the purposes of fee assessment. Even though the Section 185 fee program cannot require emissions reductions, if a major source chooses to reduce emissions to lower its Section 185 fee burden, any reduction in ozone precursors may contribute towards the common goal of ozone reduction.

The stated objective of FCAA, §182(f) and §185 is to assess a fee for VOC and NO_x emissions on major stationary sources emitting above a certain baseline amount of emissions. The Section 185 per ton fee rate required for the pollutants remains the same regardless of whether the pollutant is VOC or NO_x. A major stationary source may combine these emissions for baseline amount determinations and fee assessments providing that specified criteria are met to ensure consistency.

Additionally, the commission notes that EPA guidance allows for NO_x substitution in its reasonable further progress (RFP) SIP revisions as further support for allowing VOC and NO_x emissions to be aggregated for both baseline amount determinations and fee assessments. In its December 1993, NO_x Substitution Guidance (available at: *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2_old/19931201_oaqps_nox_substitution_guidance.pdf*), EPA states the "condition for demonstrating equivalency is that the State-proposed emission control strategies must be consistent with emission reductions required to demonstrate attainment of the ozone NAAQS for the designated year of attainment."

To ensure equitable treatment among all major stationary sources, maintain consistency within the fee program, and facilitate transparency for the public, the rules require that baseline amounts and aggregation methods, once established, will remain fixed as long as the rule remains applicable except as consistent with the adopted sections that allow adjustments under specific circumstances. Additionally, the rules will require that calculation of the Failure to Attain Fee remains consistent with the baseline amount determination approach. Once a particular method for a baseline amount calculation is chosen, the Failure to Attain Fee calculation must remain consistent with that method. Therefore, if a major stationary source elected to aggregate pollutants under one of the options of this adopted rulemaking as the most appropriate choice for determining a baseline amount, all subsequent assessments, and payments of the Failure to Attain Fee must remain consistent with that selection.

Compliance schedules for determining baseline amounts for each applicable baseline amount scenario are included in the adopted rule. Since the Failure to Attain Fee cannot be implemented until EPA finalizes a failure to attain notice that determines that a severe or extreme nonattainment area under the 2008 eight-hour ozone standard did not attain by the applicable due date, the due dates for major stationary sources operating during the baseline year are structured to account for issuance of this notice. New major stationary sources that begin operating during or after the baseline year will have a fixed amount of time to self-report the baseline amounts to TCEQ. The compliance schedules will ensure timely assessment of the fee.

Invoice and fee payments are required in accordance with current state statute and regulations. Once the program is implemented, fee payments will be due each year until the Failure to Attain fee is terminated.

Any Section 185 fee revenue collected by TCEQ will be deposited into the Clean Air Account according to THSC §382.0622. Since spending potential Section 185 fee revenue depends on Texas' collection of the Section 185 fee as well as future Legislative actions, this rulemaking does not include options for how any potential collected Section 185 fee revenue would be spent.

The rules ensure stability of the Clean Air Account and any potential future programs that could be developed using the Failure to Attain Fee revenue by preventing adjustments to previously invoiced baseline amounts for instances in which baselines are adjusted according to §§101.708 - 101.711. No matter the baseline

amount adjustment scenario used, the adjusted baseline amount would apply starting with the next fee assessment year.

Section by Section Discussion

§101.700, Definitions

This adopted new section contains definitions necessary for applying the rules. The terms defined include actual emissions, Area §185 Obligation, attainment date, baseline amount, baseline emissions, baseline year, electric utility steam generating unit, emissions unit, equivalency credits, extension year, Failure to Attain Fee, fee assessment year, fee collection year, major stationary source, and Section 185 Account.

The term *actual emissions* uses the definition currently used in 30 TAC §101.10; this ensures that the VOC and/or NO_x emissions assessed for the *Failure to Attain Fee* include all emissions emitted from the major stationary source for the calendar year being assessed, whether authorized or unauthorized emissions.

The *Area §185 Obligation* is defined as the total annual amount of *Failure to Attain Fees* due from all applicable major stationary sources or Section 185 Accounts in a severe or extreme ozone nonattainment area that failed to attain the 2008 eight-hour ozone National Ambient Air Quality Standard by its applicable attainment date. The *Area §185 Obligation* is determined for an entire 2008 eight-hour ozone nonattainment area by summing the *Failure to Attain Fee* due from each major stationary source or Section 185 Account for a fee assessment year. For the 2008 eight-hour ozone standard, the 10-county DFW and eight-county HGB nonattainment areas will have separate *Area §185 Obligations*. EPA's 2010 guidance states that an equivalent program could be acceptable under FCAA, §172(e) if an alternative fee or program is equivalent to the fee that would be assessed on an area failing to meet the ozone standard. The *Area §185 Obligation* is the basis for making an equivalency demonstration for the commission's adopted program. The *equivalency credits* are defined as revenue collected, as long as any revenue is also expended in a calendar year, from TERP or future grant programs to offset the *Area §185 Obligation*. A rule language update was made at adoption to align the definition of equivalency credits with proposed rule language in §101.703(a) and (c) to indicate that it is revenue collected, as long as any revenue is also expended within a nonattainment area. If there are insufficient funds to offset the entire *Area §185 Obligation,* then *Failure to Attain Fee* will be prorated and the prorated fee amount assessed directly on major stationary sources or Section 185 Accounts to meet the entire *Area §185 Obligation.*

Attainment date is defined as the EPA-specified date an area is required to attain the 2008 eight-hour ozone standard under the FCAA.

The attainment year is the entire calendar year that contains the *attainment date.* For purposes of this rulemaking, the *baseline year* is defined as January 1 through December 31 of the attainment year. At the time of the rulemaking, there were two areas classified as severe nonattainment under the 2008 eight-hour ozone standard, the 10-county DFW nonattainment area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) and the eight-county HGB nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties). The severe classification attainment date for these areas is July 20, 2027; therefore, the 2027 calendar year from January 1, 2027, through December 31, 2027, will determine both the attainment year and *baseline year* of 2027, unless EPA approved an attainment date extension under FCAA, §181(a)(5).

Consistent with FCAA, §185, *baseline amount* is the lower of baseline emissions (actual emissions as described in §101.705) or total annual authorized or pending authorization emissions at a major stationary source as of December 31 of the baseline year if the major stationary source operated the entire baseline year. For major stationary sources that began operating during or after the baseline year, the first full year (12 consecutive months) operating as a major source will be used to determine the baseline emissions. If the major stationary source's emissions are irregular, cyclical, or otherwise vary significantly from year to year, the *baseline emissions* are averaged from any single consecutive 24-month period within a historical period, as outlined in the definition of *baseline emissions*.

For purposes of this rulemaking, the term *baseline emissions* represents the "actual emissions" referenced in FCAA, §185(b)(2) and excludes unauthorized emissions. The baseline emissions are reported in the annual point source emissions inventory according to the Emissions Inventory Requirements of 30 TAC §101.10. The baseline emissions include reported annual emissions that are authorized by permit or rule from routine operations, which includes authorized MSS activities during the baseline year or another time period as allowed by this rule but excludes unauthorized emissions. Emissions from emissions events and MSS activities not authorized by permit or rule must be excluded from the baseline emissions calculations because they are not authorized or representative of routine operations. The exclusion of unauthorized emissions from the baseline emissions calculation is consistent with the PSD definition of baseline actual emissions in §116.12 and 40 CFR §52.21(b)(48) that does not include unauthorized emissions in a baseline amount determination.

This definition of *baseline emissions* differs from the definition of *actual emissions* in 30 TAC §101.10, which includes all emissions emitted, whether authorized or unauthorized, reported in the emissions inventory. The definition of *baseline emissions* represents only the emissions from authorized routine operations reported in the emissions inventory.

If the major stationary source's emissions reported in the emissions inventory are irregular, cyclical, or otherwise vary significantly from year to year, the *baseline emissions* are averaged from any single consecutive 24-month period within a historical period. The historical period allowed depends on the type of emissions units, following PSD guidance. *Electrical utility steam generating units* are included in this rule because they may use a five-year historic look-back period. The definition of *electric utility steam generating units* is consistent with the definition used in §116.12. Other *emissions units*, as defined in §101.1, may use a ten-year historic look-back period.

Extension year is defined as a year that meets the requirements of FCAA, §181(a)(5). It is unknown whether the 10-county DFW or the eight-county HGB severe nonattainment areas under the 2008 eight-hour ozone standard may qualify for an extension, and an extension year may be applicable to future areas designated as severe or extreme nonattainment under the 2008 eight-hour ozone standard.

The *Failure to Attain Fee* is defined as the fee assessed and due from each major stationary source or Section 185 Account based on actual emissions, whether authorized or unauthorized, of VOC, NO_x, or both exceeding 80% of the *baseline amount*.

The *fee assessment year* is defined as the calendar year the actual emissions were emitted and reported to the emissions inventory and used to calculate the assessed fee amount. The actual emissions include all authorized and unauthorized emissions, such as routine, MSS, and emissions events (EE) reported in the emissions inventory, as discussed in §101.713. For the 10-county DFW and eight-county HGB severe classification nonattainment areas under 2008 eight-hour ozone standard, the fee could be assessed as early as calendar year 2028 should the areas not attain by July 20, 2027. The *fee collection year* is defined as the calendar year the fee is invoiced by TCEQ.

The definition for *major stationary source* is consistent with the definition in §116.12 for determining a major source of VOC or NO_x emissions. Because major stationary sources under common control may opt to aggregate pollutants and/or sites for purposes of *baseline amount* determination and *Failure to Attain Fee* payment, a *Section 185 Account* represents either a major stationary source (if not choosing to aggregate) or a group of two or more major stationary sources (if aggregating). A single identifying Section 185 Account number will be assigned by TCEQ to track the option chosen for *baseline amounts* and *Failure to Attain Fee* assessments in the TCEQ Section 185 database. Because major stationary sources can be aggregated on a pollutant basis, a major stationary source may be in one *Section 185 Account* for VOC aggregation and in a second *Section 185 Account* for NO_x aggregation. A single major stationary source could belong to two separate Section 185 Accounts, or a Section 185 Account may only have one major stationary source. All major stationary sources of VOC and/or NO_x emissions located in a severe or extreme 2008 eight-hour ozone nonattainment area that did not attain by the attainment date are subject to this rule. Even if a major stationary source did not comply and, as a result, did not receive a Section 185 Account from TCEQ, that source will still be subject to this adopted rule and will still owe a Section 185 fee.

Regarding Supplemental Environmental Projects (SEPs), the *SEP Offset Amount* is defined as the portion of an enforcement case's assessed administrative penalty approved for use in the performance of, or contribution to a SEP, instead of being paid to the commission as a penalty. As discussed in §101.717, eligible major stationary sources may use the excess amounts to the *SEP Offset Amount* to partially or completely fulfill their Failure to Attain Fee. Additionally, the entire amount spent on a SEP may also be used to partially or completely fulfill the Failure to Attain Fee if the total amount paid to the SEP is at least 110% or more of the *SEP Offset Amount*.

§101.701, Applicability

This new section adopts the applicability requirements for the FCAA, §185 fee (Failure to Attain Fee). FCAA, §185 requires areas designated nonattainment and classified as severe or extreme for ozone to include a requirement for fees on VOC emissions in excess of 80% of a baseline amount for major stationary sources located in an area failing to attain the standard by the attainment date applicable to that area. A rule language update to §101.701(a) was made at adoption to clarify that the severe or extreme nonattainment area is first designated nonattainment and then classified as severe or extreme. FCAA, §182(f) further requires that all SIP requirements applying to VOC emissions sources also apply for NO_x emissions sources. §101.701 identifies the provisions that apply to any 2008 eight-hour ozone nonattainment area classified as severe or extreme that fails to demonstrate attainment of the 2008 eight-hour ozone standard by its attainment date.

The rule is applicable to all major stationary sources in a 2008 eight-hour ozone nonattainment area each year that the penalty fee is applicable as required by FCAA, §185. At the time of the rulemaking, there were two areas classified as severe nonattainment under the 2008 eight-hour ozone standard, the 10-county DFW (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) and the eight-county HGB (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties). In the future, should EPA designate other areas of Texas as severe or extreme nonattainment under the 2008 eight-hour ozone standard, then this rulemaking will be applicable to those severe or extreme nonattainment areas.

The executive director will implement this rule upon EPA determining that the area failed to attain the severe or extreme 2008 eight-hour ozone standard. This determination will be the effective date of EPA's finding of failure to attain notice for severe or extreme areas under the 2008 eight-hour ozone standard published in the *Federal Register*. There are no obligations for major stationary sources until the rule is implemented. As part of its outreach efforts, TCEQ will endeavor to electronically distribute courtesy notifications to regulated entities that sign up for the TCEQ Section 185 email and text distribution lists once the Section 185 fee has been implemented. Electronic notification, as allowed under 30 TAC §19.30, will include posting on the *Stakeholder Group: Federal Clean Air Act Section 185 Fee* webpage (available at: *https://www.tceq.texas.gov/airquality/point-source-ei/185-fee*), subscribers of the *Penalty Fee for Major Stationary Sources Under the Federal Clean Air Act Section 185* email and text list (available at: *https://public.govdelivery.com/accounts/TXTCEQ/subscriber/new*), and/or other allowed electronic means of communication.

The *Failure to Attain Fee* will start being assessed for the calendar year following the missed attainment date. The rule defines the attainment year as the entire calendar year that contains the attainment date. For purposes of this rulemaking, the term baseline year is defined as January 1 through December 31 of the attainment year. For the 10-county DFW and eight-county HGB severe nonattainment areas under the 2008 eight-hour ozone standard, which have a July 20, 2027, attainment date, the attainment year and baseline year are anticipated to be 2027. The fee will start being assessed for calendar year 2028 (first fee assessment year), unless EPA approved an attainment date extension under FCAA, §181(a)(5).

§101.702, Exemption

This new section adopts that no Failure to Attain fee payment is due for a year determined by EPA to be an extension year under FCAA, §181(a)(5) for the 2008 eight-hour ozone standard. EPA may grant an extension year for a nonattainment area if all SIP obligations have been met and if one or fewer measured ozone exceedances occurred at any valid monitoring site in the nonattainment area in a year. It is unknown whether the 10-county DFW area or the eight-county HGB severe nonattainment area under the 2008 eight-hour ozone standard may qualify for an extension. Additionally, an extension year may be applicable if EPA designates future areas as severe or extreme nonattainment under the 2008 eight-hour ozone standard and grants those areas an extension year. For any area granted an extension, the fee will be applicable if the severe or extreme nonattainment area did not attain by the extension attainment date specified by EPA.

A rule language update was made at adoption to §101.702 by adding missing "major stationary" in front of "source" to clarify that the source must be a major stationary source.

§101.703, Fee Equivalency Account

This new section adopts that the executive director establishes a Fee Equivalency Account. This account will be a listing of revenues from designated programs that reduce VOC or NO_x emissions in 2008 eight-hour ozone nonattainment areas. Only the revenue collected within each 2008 eight-hour ozone nonattainment area will be credited and available to offset the Area §185 Obligation in the Fee Equivalency Account. Revenue collected in the 10-county DFW 2008 eight-hour ozone nonattainment area will be credited only within that nonattainment area. Revenue collected in the eight-county HGB 2008 eight-hour ozone nonattainment area will be credited only within that nonattainment area. Specifically, revenue collected for the TERP program will be used to offset each 2008 eight-hour ozone nonattainment area's Area §185 Obligation for the area when any TERP grant funds are also expended within each area; this revenue is referred to as "TERP revenue collected and expended" throughout this subchapter. This will result in potential benefits directly to the nonattainment area from revenue collected as TERP's stated goals and statutory restrictions provide funding for programs or activities that are designed to result in reductions in VOC, NO_x, and other pollutant emissions into the atmosphere.

No transfer of revenue would occur between TERP and the Fee Equivalency Account. The Fee Equivalency Account is a documentation mechanism to verify the amount of revenue collected in the 2008 eight-hour ozone nonattainment area available to offset the fee on major stationary sources located in that area.

If other emissions reduction grant programs become available those will be considered for inclusion in the Fee Equivalency Account for use in offsetting the Failure to Attain Fee. A rule language update was made at adoption to simplify the rule language by using the defined term "equivalency credit" instead of repeating the definition of equivalency credit.

§101.704, Fee Equivalency Accounting

This new section adopts that the Area §185 Obligation will be the total FCAA, §185 fee determined annually for each 2008 eight-hour ozone nonattainment area. The FCAA, §185 fee (Failure to Attain Fee) is calculated for each major stationary source or Section 185 Account by TCEQ staff using the approved baseline amounts and emissions inventory data for the fee assessment year. These resultant individual Failure to Attain Fees will be summed to determine the overall Area §185 Obligation within the same 2008 eight-hour ozone nonattainment area.

Revenue, calculated on a dollar basis, associated with the Fee Equivalency Account will be credited starting with the first fee assessment year and continuing annually. The funding associated with the Fee Equivalency Account for a given fee assessment year will be compared with the Area §185 Obligation for a given fee assessment year.

If the Fee Equivalency Account does not have enough funds to fully meet the Area §185 Obligation, a backstop provision will be invoked under which major stationary sources or Section 185 Accounts will be assessed a prorated Failure to Attain Fee to generate sufficient funds to meet the Area §185 Obligation. The prorated Failure to Attain Fee will be calculated based on the amount in the Fee Equivalency Account and the overall Area §185 Obligation. The Failure to Attain Fee amount that the major stationary source or Section 185 Account will be required to pay reduces the prorated Failure to Attain Fee amount based on the calculations in this rulemaking. This process will be documented and made publicly available each year.

For example, a hypothetical Area §185 Obligation for HGB for the 2028 fee assessment year is calculated by TCEQ staff as $154 million. The HGB area Fee Equivalency Account for calendar year 2028 has $45 million available from TERP revenue. The HGB area balance owed for the 2028 fee assessment year is $109 million ($154 million less $45 million) and that amount must be paid by major stationary sources located in HGB that are subject to the Failure to Attain Fee. For the 2028 fee assessment year, the Fee Equivalency Account covers 29.22% ($45 million divided by $154 million, with the quotient multiplied by 100) of the Area §185 Obligation for HGB and each major stationary source's or Section 185 Account's fee would be reduced by 29.22%. Applying this example further, TCEQ staff calculates that the Failure to Attain Fee for one hypothetical Section 185 Account located in HGB is $50,000 for the 2028 fee assessment year. The prorated Failure to Attain Fee for that hypothetical Section 185 Account would be calculated by reducing the $50,000 fee by 29.22%, resulting in that hypothetical Section 185 Account owing $35,389.61 as its prorated Failure to Attain Fee. This process would be repeated so that each major stationary source or Section 185 Account located in the nonattainment area receives a fee rate reduced by 29.22%.

The timing of the demonstration to determine whether the equivalency credits in the Fee Equivalency Account can offset all or a portion of the Area §185 Obligation will likely occur in December and then annually afterward, except for the first year the program is implemented. The date that TCEQ performs this evaluation for the first year of program implementation depends on the dates of future federal or state actions that are not currently scheduled (e.g., effective date in the *Federal Register* of EPA's finding of failure to attain).

§101.705, Baseline Amount

This new section adopts the requirements for determining a baseline amount. FCAA, §185 requires a fee on emissions exceeding 80% of a baseline amount determined for the attainment year (referenced as baseline year in this rulemaking) until the Section 185 fee (referred to as Failure to Attain Fee in this rulemaking) no longer applies to the area. Unless the major stationary source or Section 185 Account qualifies for an adjustment to the baseline amount, as outlined in the various adjustment sections of this adopted rulemaking, the method for a fixed, one-time calculation of the baseline amount is provided in this section.

A baseline amount will be required for each ozone precursor pollutant, VOC and/or NO_x, for which the source is major. If a stationary source is major for both VOC and NO_x emissions, a baseline amount will be required separately for VOC and NO_x emissions. If the major stationary source is major for only VOC or NO_x emissions, the baseline amount will be required for just that pollutant, VOC or NO_x.

The baseline amount is defined as the lower of either: the *baseline emissions* defined as the total annual routine emissions reported in the emissions inventory, including reported MSS emissions that are authorized by permit or rule, as described in 30 TAC §101.10 for the baseline year or timeframe otherwise specified in this adopted rule; or the total annual emissions allowed

by the applicable authorizations or pending authorizations in effect for the major stationary source during the baseline year or timeframe otherwise specified in this adopted rule. MSS emissions reported in the emissions inventory that are authorized by permit or rule are considered routine and must be included in baseline emissions. The major stationary source's authorized or pending authorization emissions include emissions allowed under any TCEQ-enforceable measure or document, such as rules, regulations, permits, orders of the commission, and/or court orders.

Emissions from pending authorizations with administratively complete applications as of December 31 of the baseline year or timeframe otherwise specified may be included in the total annual emissions allowed under authorizations. Some owners or operators of major stationary sources may submit administratively complete applications for authorizing previously unauthorized emissions prior to December 31 of the baseline year or other approved baseline timeframe. To not penalize sources in the process of obtaining an authorization, the commission allows the emission limits established by permits that were administratively complete to adjust the baseline amount by adding these amounts to the total annual authorized emissions. This approach aligns with the FCAA intent of comparing authorized emissions with reported actual emissions to determine a baseline amount.

A timeframe chosen other than the baseline year to determine a baseline amount depends on whether the major stationary source began operating during or after the baseline year or if the major stationary source's emissions qualify to be averaged over a 24-month consecutive period. Other applicable baseline timeframes for baseline amounts are outlined in this rulemaking.

Unauthorized emissions, such as from EE and MSS activities not authorized by permit or rule, are not included in the baseline amount. Exclusion of unauthorized emissions from a baseline amount is consistent with these emissions not being representative of normal, routine operations and with the PSD definition of baseline actual emissions in §116.12 and 40 CFR §52.21(b)(48). For example, an oil and gas major stationary source for both VOC and NO_x emissions experienced VOC emissions from tank flashing that exceeded an authorized permit limit. Tank flashing is a routine operation so the unauthorized VOC emissions resulting from the tank flashing that exceeded the permit limit are required to be reported in the emissions inventory as annual routine emissions. The unauthorized but routine VOC emissions from the tank flashing would be excluded from the baseline emissions calculations used to determine baseline amount.

If the major stationary source has reported emissions in the emissions inventory that are irregular, cyclical, or otherwise vary significantly from year to year, an alternate method to determine baseline emissions will be allowed. Whether a source qualifies as irregular, cyclical, or otherwise varying significantly is determined on a case-by-case basis. For these major stationary sources, any single consecutive 24-month period within a specified historical period could be averaged for the baseline emissions. Major stationary sources that qualify to establish an alternate baseline amount in this manner will calculate the baseline emissions using historical annual routine emissions, as recorded in the emissions inventory, which includes authorized emissions from MSS activities. A rule language update was made at adoption to remove the outdated term "equivalent alternative baseline emissions" and correct to "baseline emissions" in §101.705(c)(1).

The FCAA, §185 does not address how to define a historical period; however, EPA issued a March 21, 2008, guidance memo, referenced elsewhere in this preamble, stating that an acceptable alternate method would be to determine a baseline amount using a period similar to estimating "baseline actual emissions" found in EPA's PSD rules, 40 CFR §52.21(b)(48). In its March 21, 2008, guidance, EPA used these provisions to craft its guidance on a ten-year look-back period for calculating baseline actual emissions. The PSD rules require adequate data for the selected 24-month period. The data must adequately describe the operation and emission levels for each emissions unit. The guidance continues by stating: "Once calculated, the average annual emission rate must be adjusted downward to reflect 1) any noncompliant emissions (40 CFR §52.21(b)(48)(i)(b) and (ii)(b)); and 2) for each non-utility emissions unit, the most current legally enforceable emissions limitations that restrict the source's ability to emit a particular pollutant or to operate at levels that existed during the 24-month period that was selected (40 CFR §52.21(b)(48)(ii)(c))." The result of this restriction is that the plant capacity may be used during the historical 24-month period selected, but emissions that do not comply with legally enforceable limits would have to be excluded. Legally enforceable emissions limits would include any state or federal requirements, including Best Achievable Control Technology or Lowest Achievable Emissions Rate.

According to PSD guidance, the timeframe for the historical look-back period for emissions units other than electric steam generating units is any single consecutive 24-month period within the ten-year period immediately preceding the date a complete permit application was submitted. For electric steam generating units the timeframe for the historical look-back period is any single consecutive 24-month period within the five-year period immediately preceding the date a complete permit application was submitted. The historical look-back period for the baseline amount determination will start the calendar year immediately preceding the baseline year. All emissions units at a major stationary source or Section 185 Account will be required to use the same 24-month period when calculating baseline amounts for aggregated pollutants or sites under common control or ownership. The commission interprets the FCAA, §185 language requiring the use of the lower of baseline emissions (actual emissions from the emissions inventory as defined in §101.701) or emissions allowed under authorizations (e.g., permitted emissions) to include emissions from this alternate method.

At the time of this rulemaking, the baseline year is anticipated to be 2027 for the 10-county DFW and eight-county HGB 2008 eight-hour ozone standard severe nonattainment areas. The window used for the possible historical look-back period will be five years (2022 - 2026) for electric generating units (EGUs) or 10 years (2017 - 2026) for non-EGUs immediately preceding January 1, 2027. The average emissions during the single consecutive 24-month period will be the basis for determining the baseline emissions, in tons.

If there are rules or regulations that take effect by December 31 of the baseline year used for baseline amount determination that specify emission limitations or standards, then the baseline emissions and total annual authorized emissions must be adjusted downward to exclude the amount of emissions that would have exceeded those emission limitations with a legally enforceable emissions limitation requirement (e.g. from a permit, rule, regulation, commission order, or court order) during the baseline year.

For sources that qualify for a consecutive 24-month baseline timeframe, the same downward adjustment is required for rules or regulations in effect during the selected 24-month baseline timeframe, in addition to rules or regulations that take effect by December 31 of the baseline year. The major stationary source will not be allowed to take credit for emissions reductions that would have resulted from state or federal rules or regulations implemented during the baseline year and/or 24-month consecutive period used to calculate the baseline amount. A rule language update for §101.705(c)(3) and (d) was made at adoption to clarify that the emissions limitation is "legally enforceable" as already stated in this paragraph and for §101.705(c)(3) to align with the "in effect by December 31 of the baseline year" phrasing in §101.705(d).

For example, a major stationary source of VOC emissions started operating prior to the 2027 baseline year, and the baseline amount was established from the baseline emissions during the 2027 baseline year. On March 1, 2027, a hypothetical federal rule takes effect that limits emissions from coatings emissions units located at the major source. The baseline emissions for the coatings emissions units impacted by the 2027 federal rule's emissions limits would be adjusted downward from January 1, 2027, through February 28, 2027, to account for the new limit. In another example, a major source of VOC emissions establishes a baseline amount using the 24-month consecutive period from July 12, 2022, through July 12, 2024. During calendar year 2027, a hypothetical federal rule takes effect that limits emissions from coatings emissions units located at the major source during the 24-month consecutive period chosen for the baseline amount. The baseline emissions for coatings emissions units impacted by the 2027 federal rules' emissions limits would be adjusted downward during the July 12, 2022, through July 12, 2024, period chosen for the baseline amount.

Fugitive emissions will be required to be included for the purposes of the baseline emissions calculations and fee assessments. This is similar to the Title V Emissions Fees described in 30 TAC §101.27, which requires all fugitive emissions to be included in fee calculations after applicability of the fee has been established. Per 40 CFR §70.2, fugitive emissions of VOC or NO_x belonging to one of the categories listed in paragraph 2 of the definition of major sources may be excluded from counting toward major source applicability. Once the source meets the major stationary source applicability requirements of 30 TAC §116.12, fugitive emissions are required to be reported in the emissions inventory, and the fugitive emissions must be used for both baseline emissions calculations and fee assessments.

As allowed under the Emissions Inventory Requirements described in 30 TAC §101.10, a regulated entity that meets the applicability requirements to submit an emissions inventory, which includes major stationary sources, may submit a certifying letter instead of reporting updated emissions in the emissions inventory. The certifying letter option is allowed for any regulated entity (identified by the nine-digit regulated entity reference number (RN) and a seven-character alphanumeric TCEQ account number) that experienced an insignificant change in operating conditions compared to the most recently submitted emissions inventory. An insignificant change in emissions is defined as including start-ups, permanent shut-downs of individual units, or process changes that result in at least a 5.0% or 5 tpy, whichever is greater, increase or reduction in total annual emissions of VOC, NO_x, carbon monoxide, sulfur dioxide, lead, particulate matter (PM) less than or equal to 10 microns in diameter, or PM less than or equal to 2.5 microns in diameter. If a regulated entity submits a certifying insignificant change notification letter instead of updating the emissions, then the emissions reported in the most recently submitted emissions inventory are copied over to the current emissions inventory reporting year. For example, if a regulated entity submits an insignificant change notification letter for the 2027 emissions inventory reporting year and TCEQ staff verified that the requirements of the insignificant change notification letter were met, then the 2026 emissions are copied over to also represent the 2027 emissions. Major sources are cautioned to consider the impacts of choosing to submit an insignificant change letter instead of updating emissions in the emissions inventory because of the implications for baseline amount determinations and fee assessments.

Emissions inventory data are collected annually by the commission and, after quality assurance review, are loaded into the state's air emissions inventory database, the State of Texas Air Reporting System (STARS). Since Texas' emissions inventory program submits data to EPA's National Emissions Inventory (NEI), the quality assurance of emissions inventory data is subject to a federally mandated Quality Management Plan (QMP) that annually documents and describes the emissions inventory organization arrangements, processes, procedures, and requirements. As part of the QMP, the emissions inventory program annually submits a Quality Assurance Project Plan (QAPP) documenting the emissions inventory quality assurance process for EPA's review and approval. The QAPP includes information on how TCEQ staff perform annual detailed technical reviews of point source emissions inventories, correct issues, and document the outcome of the review. Actual emissions reported in the emissions inventory that are subject to the detailed quality assurance process include: all emissions resulting from routine operations, including emissions from authorized MSS activities; all unscheduled MSS activities (reportable and non-reportable); and all emissions events (reportable and non-reportable). Owners or operators of major stationary sources are provided an opportunity to review and, if necessary, revise emissions submitted for the current reporting year and for the reporting year immediately prior. Revisions to historical inventory data outside of this timeframe are done on a case-by-case basis usually as a result of a TCEQ-directed emissions inventory improvement initiative or TCEQ's compliance and enforcement processes. The commission uses emissions inventory data for air quality planning, as detailed in SIP revisions. Although emissions determination methods improve over time, emissions inventory data represent emissions for a reporting year as accurately as possible. Since the commission relies upon emissions inventory data in SIP revisions for air quality planning purposes, revising historical emissions inventory emissions rates solely for purposes of adjusting the baseline amounts and related calculations is not supported. Similar to emissions inventories, air permits are reviewed to ensure accuracy of emissions.

A baseline amount would account for all emissions units located at the major stationary source as of December 31 of the baseline year. Any ownership transfer of emissions units that occurred by December 31 of the baseline year will also need to be included in the baseline amount calculation. If a 24-month consecutive period is chosen for a major source that operated the entire baseline year, then all emissions units located at the major stationary source as of December 31 of the baseline year must be included, regardless of whether they were located at the major stationary source during the period chosen. An owner or operator of a major stationary source or Section 185 Account may not ex-

clude new emissions units added by the baseline year from the 24-month consecutive historical period.

For example, a qualified major stationary source chooses March 19, 2022, through March 19, 2024, as the 24-month consecutive period for the baseline emissions. An emissions unit was purchased, and ownership transferred to the source on September 1, 2026; therefore, those emissions must be averaged and added to the 24-month period chosen. The major stationary source that sold the emissions units may not include the sold emissions units in their baseline amount to avoid double-counting of the same emissions units in different baseline amounts.

The rule requires that the baseline amount calculation and supporting documentation be submitted to TCEQ in a format specified by the executive director. Documentation will include either a list of all emission units by their corresponding path-level emissions reported in the point source emissions inventory or all applicable air permits by Emissions Point Identification Number (EPN) (depending on which one is required for the baseline amount determination). If a major source uses path-level emissions to determine baseline amounts, VOC and/or NO_x emissions must be reported by a combination of Facility Identification Number (FIN) and corresponding EPN that match the most recent point source emissions inventory. If a major stationary source uses permitted allowable emissions to determine baseline amounts, VOC and/or NO_x emissions must be reported at the EPN level. Sample calculations will be required for each path-level (emissions inventory) or EPN level (air permits) used for baseline amount determination.

A major stationary source may choose to establish a baseline amount from baseline emissions for sources with emissions that are irregular, cyclic, or otherwise vary significantly from year to year. Sufficient supporting documentation would be required to verify that the major stationary source's emissions qualify as irregular, cyclical, or otherwise vary significantly from year to year. Additionally, details on why and how the 24-month consecutive period chosen accurately represents the major source's emissions will be required.

There is no list of sites that meet the definition of a major stationary source as defined in 30 TAC §116.12. TCEQ would use established programs to assist with notifying major sources of NO_x and/or VOC emissions subject to the fee to provide baseline amounts by the due dates in this rulemaking. Although TCEQ will attempt to notify all applicable major stationary sources by using the Title V permitting and air emissions inventory programs as surrogate data for major sources, compliance with this rulemaking is required even if TCEQ does not specifically notify the major stationary source. Compliance with the Section 185 fee program is a requirement of FCAA, §185, and a major stationary source that does not provide a baseline amount by the specified due date will be subject to the executive director establishing the baseline amounts as described in this rulemaking so that TCEQ can assess the required fee.

For major stationary sources operating prior to January 1 of the baseline year or that operated the entire baseline year, the regulated entity will complete the baseline amount form and supporting documentation. A specific due date for initial baseline amount cannot be provided since the implementation of the Failure to Atain Fee depends on the timing of two future actions: the severe nonattainment areas failing to attain by July 20, 2027, based on 2024, 2025, and 2026 ambient air monitoring data (or by the date established by any extension year granted by EPA); and the effective date in the *Federal Register* of EPA's finding of failure to attain. Regulated entities will submit baseline forms either on the emissions inventory due date specified under the Emissions Inventory Requirements in 30 TAC §101.10 for the fee assessment year or 120 days from the effective date of EPA's failure to attain notice. Providing no less than 120 days for regulated entities to prepare baseline amounts allows flexibility for the executive director to initially implement the final Failure to Attain Fee rule and initiate related business processes. For the 10-county DFW and eight-county HGB severe 2008 eight-hour ozone nonattainment areas at the time of this rulemaking, the baseline amount based on a 2027 baseline year may be due March 31, 2028 (barring any future updates to the Air Emissions Inventory Reporting Rule), or 120 days from the effective date of EPA's failure to attain notice.

As part of its outreach efforts, TCEQ will endeavor to electronically distribute courtesy notifications to regulated entities that sign up for TCEQ email and text distribution lists related to the Section 185 fee. Electronic notification, as allowed under 30 TAC §19.30, will include posting on the *Stakeholder Group: Federal Clean Air Act Section 185 Fee* webpage (available at: *https://wwwtceq.texas.gov/airquality/point-source-ei/185-fee*), subscribers to *Penalty Fee for Major Stationary Sources Under the Federal Clean Air Act Section 185* will receive email and/or text notifications (sign-up available at: *https://public.govdelivery.com/accounts/TXTCEQ/subscriber/new*), and/or other allowed electronic means of communication.

Once finalized, the baseline amount will be fixed and will not be changed except as consistent with the adjustments in §§101.708- 101.711.

§101.706, Baseline Amount for New Major Stationary Sources

The requirements of §101.705 are also applicable to new major stationary sources and these additional provisions outlined in §101.706 provide baseline amount determination, baseline timeframe, and compliance schedules specific to new major stationary sources. States are required to assess the Section 185 fee on all major sources of VOC and/or NO_x emissions located in a severe or extreme ozone nonattainment area that fails to attain by its attainment date. This will include major stationary sources that began operating as a major source or transitioned to a major source status during or after the baseline year. Since FCAA, §185 does not provide baseline amount determinations for these scenarios, this new section determines a baseline amount for these new major stationary sources.

These new major stationary sources will use their first full year (12 consecutive months) operating as a major stationary source to determine the baseline amount or aggregated baseline amount. The baseline amount must be the lower of the baseline emissions during the first full year of operation as a major source or the total annual authorized emissions during the first full year of operation as a major source.

EPA, in its December 14, 2012, notice of final approval of the South Coast Air Quality Management District (SCAQMD) SIP revision (77 FR 74372), allowed a major stationary source subject to FCAA, §185 rules after the attainment date in the SCAQMD to use actual emissions or authorizations (or holdings in its banking program) from its initial calendar year of operation to set a baseline amount. EPA, in its February 14, 2020, notice of final approval of the HGB Failure to Attain Fee (85 FR 8411), allowed major stationary sources to determine the baseline amounts on the lower of actual or allowable data available in their first year of operation as a major stationary source.

If rules or regulations take effect during the first full year operating as a major source, then the baseline emissions and total annual authorized emissions must be adjusted downward to reflect those emissions limitations in effect during that timeframe. For example, a major stationary source of VOC emissions started operating January 10, 2027, and the baseline amount was established from the baseline emissions during the first full year of operation, from January 10, 2027, to January 10, 2028. On March 1, 2027, a hypothetical federal rule takes effect that limit emissions from coatings emissions units located at the major source. The baseline emissions for the coatings emissions units impacted by the 2027 federal rule's emissions limits would be adjusted downward for the entire baseline period (January 10, 2027, through January 10, 2028) to account for the new limit. The major source would not be allowed to take credit for emissions reductions that would have resulted from state or federal rules or regulations implemented or in effect during the calendar year used to calculate baseline emissions.

A baseline amount at a new major stationary source will account for all emissions units located at the major stationary source as of the last calendar day of the first full year operating as a major source. For example, a major stationary source of VOC emissions begins operating on February 4, 2028, and the baseline amounts are determined using the February 4, 2028, through February 4, 2029, timeframe. In this example, the major stationary source would include all emissions units, including any ownership transferred emissions units as of February 4, 2029, in the baseline amount.

For major stationary sources that begin operating between January 1 and December 31 of the baseline year or after December 31 of the baseline year, regulated entities will have 90 days from the last calendar day of the first full year operating as a major source to submit the baseline amount form. Since initial Section 185 fee program implementation has already occurred, a 90-day timeframe is an appropriate length of time for form submission and is consistent with emissions inventory reporting timeframes. For example, a major source of VOC emissions begins operating on February 4, 2028, and the baseline amounts are determined using February 4, 2028, through February 4, 2029. In this example, the regulated entity would have 90 days from February 4, 2029, to submit the baseline amounts and supporting documentation.

§101.707, Aggregated Baseline Amount

This adopted new section provides for the aggregation of either VOC or NO_x emissions (or both) at multiple major stationary sources to align fee obligations with attainment demonstration emissions reduction approaches. A rule language update was made at adoption to remove the outdated term "aggregated equivalent alternative baseline amount" and correct to "aggregated baseline amount" in §101.707(e)(1). Owners or operators of major stationary sources under common control may choose to aggregate baseline amounts of VOC emissions from multiple major stationary sources, to aggregate NO_x emissions from multiple major stationary sources, or both. Owners or operators may also choose to aggregate VOC with NO_x emissions at a single major stationary source or VOC with NO_x emissions across multiple major stationary sources under common control, provided that the stationary sources are major for both pollutants. Once an owner or operator chooses aggregation, then the baseline amount will remain aggregated, and the fees will be assessed in the same manner as the aggregation until the Failure to Attain Fee no longer applies to the area.

Baseline amounts will first be calculated separately for each individual major stationary source for VOC or NO_x emissions, or for both, using the method described in §101.705 or §101.706. The separate initial baseline amounts for each pollutant at an individual major stationary source must also be submitted in a format specified by the executive director with supporting documentation. Providing the separate initial calculations of baseline amounts is intended to provide transparency and consistency and to assist with quality assurance of baseline amount determinations with any subsequent aggregation. After establishing separate baseline amounts, then the baseline amount could be aggregated by multiple pollutants, multiple stationary sources under common control, or both.

Owners or operators of major stationary sources may aggregate VOC and NO_x baseline amounts at a major stationary source. Sources under common ownership and/or control may also opt to aggregate baseline amounts across multiple major stationary sources. Only major stationary sources under common control may be included in the aggregate group. The aggregation methodology must remain consistent throughout the baseline amount calculation and fee assessment of the Failure to Attain Fee. A group of major stationary sources opting to aggregate baseline amounts must also aggregate emissions for Failure to Attain Fee assessment. The baseline year, same 24-month consecutive period, or other timeframe used to establish baseline amounts will be required as a basis for the baseline amount calculation for all aggregated major stationary sources for each fee calculation.

Like the baseline amount compliance schedule, major stationary sources that choose to aggregate will submit the required forms and supporting documentation either on the emissions inventory due date of the fee assessment year, as specified under Emissions Inventory Requirements in 30 TAC §101.10, or 120 days from the effective date of EPA's failure to attain notice, whichever is later. Providing no less than 120 days for regulated entities to prepare aggregated baseline amounts allows flexibility for the executive director to implement the final Failure to Attain Fee rule and initiate related business processes. For aggregation, a list of all sites under common control by RN aggregated under a baseline amount must be provided in addition to the supporting documentation provided for individual baseline amounts described under Baseline Amounts. If sites under common control chose to aggregate, then those sites must share the same Customer Reference Number (CN) in TCEQ's Central Registry database. Sites under common control are determined by TCEQ. Sites not under common control according to TCEQ may not attempt to be combined in Central Registry with the intention of circumventing the Failure to Attain Fee, as addressed under circumvention requirements of 30 TAC §101.3.

§101.708, Adjustment of Baseline Amount for Major Sources with Less than 24 Months of Operation

Major stationary sources with less than 24 months of consecutive operation as of December 31 of the baseline year or that began operation after the baseline year would not have sufficient data to initially determine if emissions are irregular, cyclical, or otherwise vary significantly from year to year to establish baseline emissions. This adjustment option provides a major source with less than 24 months of consecutive operation an opportunity to adjust the established baseline amount after establishing the emissions and operation history. If the emissions qualify as irregular, cyclical, or otherwise varying significantly from year to year, after completing 24 months of consecutive operations, the

major stationary source may request that the baseline amount be adjusted using the average rate during the first 24 months of consecutive operation for the baseline emissions. If the total annual authorizations used to calculate the initial baseline amount were still lower than the adjusted baseline emissions, then an adjustment may not be requested. If emissions varied significantly during the 24 months of consecutive operation, the emissions may be considered as irregular, cyclical, or otherwise varying significantly. A major stationary source will be allowed to request an adjustment to its established baseline amount within 90 calendar days of completing 24 months of consecutive operation. EPA published approval for a similar approach for new major stationary sources for the HGB Failure to Attain Fee in February 2020. A rule language update was made at adoption to clarify and improve readability by splitting §101.708(a) into §101.708(a)(1) and (2).

All adjusted baseline amounts will be reviewed by the executive director's staff to ensure consistency with emissions information submitted to the TCEQ Air Permits Division and/or the Air Quality Division. Once finalized, the adjusted baseline amounts will apply starting with the next fee assessment year. Credits or refunds for previous fee assessment years will not be processed based on the final adjustments. This ensures accounting stability for the Failure to Attain Fee.

§101.709, Adjustment of Baseline Amount for New Construction

This adopted new section would allow an existing major stationary source to adjust its baseline amount to account for new construction authorized in a nonattainment permit issued under Chapter 116, Subchapter B, Division 5. These emissions units are required to provide emissions offsets prior to construction and comply with emissions limits that achieve the lowest achievable emissions rate. The newly constructed emissions units would not have been included in the previously established baseline amount. A major stationary source may request an adjustment to its established baseline amount within 90 calendar days of completed construction of the new emissions units.

All adjusted baseline amounts will be reviewed by the executive director's staff to ensure consistency with emissions information submitted to the TCEQ Air Permits Division and/or the Air Quality Division. Once finalized, the adjusted baseline amounts will apply starting with the next fee assessment year. Credits or refunds for previous fee assessment years will not be processed based on the final adjustments. This ensures accounting stability for the Failure to Attain Fee.

§101.710, Adjustment of Baseline Amount for Ownership Transfers

This adopted new section outlines when an established baseline amount may be adjusted because of ownership transfers. Emissions units may not always be under the same common ownership or control. Owners or operators of major stationary sources, as part of normal business, may transfer ownership of some or all emissions units at a major stationary source or Section 185 Account to another major stationary source or Section 185 Account. The commission recognizes that a change in ownership or control of emissions units could change the Failure to Attain Fee owed for both major stationary sources or Section 185 Accounts. The change in control of emissions units does not change the historical operation, reported emissions of the emissions units, or previously invoiced amounts before the ownership transfer occurred. The ownership transfer must first be approved by and/or reported to the TCEQ Air Permits Division before adjustments of the baseline amounts may be requested.

A change in control or ownership, such as with an emissions unit transfer, does not affect the already established time period or baseline amounts on the remaining emissions units not impacted by the ownership transfer at either major stationary source or Section 185 Account. The already established baseline amounts are transferred from one major stationary source or Section 185 Account to the other major stationary source or Section 185 Account.

In a manner similar to transferring other obligations such as emissions authorizations, the affected major stationary sources or Section 185 Accounts may transfer the baseline amounts and Failure to Attain Fee associated with each emissions unit having a change in control. There is no change for the calculated baseline amounts for the transferred emissions units or remaining emissions units.

Major stationary sources that transfer ownership of an emissions unit from one major source or Section 185 Account to a minor source(s) will not have their baseline amounts adjusted to prevent circumvention of the Failure to Attain Fee, as addressed under 30 TAC §101.3. As a result of a comment received, the commission updated the term "equipment" to "emissions unit" in the context of ownership transfers in this Section by Section and in rule language for §101.710.

To qualify for an ownership transfer baseline amount adjustment, the ownership transfer must occur between major stationary sources or Section 185 Accounts of the same pollutant, or aggregated pollutants, located within the same nonattainment area. For example, if an ownership transfer occurred between a major source located in the 10-county DFW nonattainment area under the 2008 eight-hour ozone standard and the eight-hour HGB nonattainment area under the 2008 eight-hour ozone standard, then the baseline amounts could not be adjusted.

All adjusted baseline amounts will be reviewed by the executive director's staff to ensure consistency with emissions information submitted to the TCEQ Air Permits Division and/or the Air Quality Division. Once finalized, the adjusted baseline amounts will apply starting with the next fee assessment year. Credits or refunds for previous fee assessment years will not be processed based on the final adjustments. This ensures accounting stability for the Failure to Attain Fee.

Once finalized, the recipient major stationary source or Section 185 Account that received the ownership-transferred emissions units adds the unaltered baseline amounts from those units to their existing major stationary source or Section 185 Account baseline amount. There is no baseline amount adjustment for the remaining emissions units that were not ownership transferred at the originating or recipient major source. The originating major stationary source or Section 185 Account that transferred the emissions units subtracts the transferred emissions units' baseline amounts from their major stationary source or Section 185 Account baseline amount. While baseline amounts may increase or decrease at a major stationary source or Section 185 Account resulting from ownership transfers, the overall number of emissions units subject to fee assessment within the nonattainment area does not change.

To transfer the baseline and the Failure to Attain Fee, the new owner or operator of each major stationary source or Section 185 Account affected by the change in common control will be required to submit a request to the executive director within 90

days of the ownership change for the executive director's approval.

§101.711, Adjustment of Baseline Amount for Final Emissions Inventory Data

This adopted new section addresses the situation when baseline emissions may need to be adjusted upon the availability of final quality assured and TCEQ-approved emissions inventory data as allowed under the Emissions Inventory Guidelines. The Failure to Attain Fee will be implemented upon the effective date of EPA's finding of failure to attain notice published in the *Federal Register* for a severe or extreme ozone nonattainment area under the 2008 eight-hour ozone standard that fails to attain by the attainment date. It is unknown when EPA will issue the finding of failure to attain; therefore, the specific dates to establish an initial baseline amount are unknown. Because of implementation timing, final quality assured and TCEQ-approved emissions inventory data could occur after the baseline amount is established. If a major stationary source used emissions inventory data to establish the baseline amount, then TCEQ may request adjustments based on the final quality assured emissions inventory data.

Additionally, major stationary sources may initiate emissions inventory revisions that require baseline amount adjustments. Due to limited staff resources, approval of regulated entity-initiated requests would be based on the revisions guidance in the Emissions Inventory Guidelines published annually and posted on the Point Source Emissions Inventory webpage (available at: *https://www.tceq.texas.gov/airquality/point-source-ei/psei.html*). Emissions inventory data are used extensively for air quality planning purposes, such as SIP revisions and rule development, submitting to required federal programs, such as the NEI, and assessment of other applicable fees such as the Title V fees. For these reasons, emissions inventory revisions are allowed for specific circumstances. Emissions inventory revisions submitted solely for the purpose of adjusting a baseline amount will not be accepted.

Regulated entities, including major sources, are provided an opportunity to review and if necessary, revise emissions data submitted for the current emissions inventory reporting year and for one year immediately prior. Major stationary sources will have 90 days or by March 31 of the calendar year immediately following the emissions inventory reporting year, whichever comes first, to submit adjusted baseline amount requests due to final, quality-assured emissions data. Revisions to historical emissions inventory data outside of this timeframe are evaluated on a case-by-case basis, usually as the result of a TCEQ-directed emissions inventory improvement project or TCEQ's compliance and enforcement process.

All adjusted baseline amounts will be reviewed by the executive director's staff to ensure consistency with final emissions information submitted to the TCEQ Air Permits Division and/or the Air Quality Division. Once finalized, the adjusted baseline amounts will apply starting with the next fee assessment year. Credits or refunds for previous fee assessment years will not be processed based on the final adjustments. This ensures accounting stability for the Failure to Attain Fee.

§101.712, Failure to Establish a Baseline Amount

This adopted new section outlines the procedures for the executive director to establish a baseline amount. Timely and accurate baseline amounts are required from each applicable major stationary source to implement the FCAA-required Section 185 fee program. If a major stationary source does not submit an approvable baseline amount by the due date specified by the executive director, then the executive director will determine baseline amount(s) for that major stationary source. In accordance with the requirements of FCAA, §185, the lower of actual emissions (reported in the emissions inventory as described in §101.705) or allowable emissions (permits or authorizations) from the attainment year (referenced as baseline year in this rulemaking), will be used, if both were available, to determine separate baseline amounts for each pollutant that determined major source applicability. Since the executive director would not have sufficient information, aggregation by pollutant or sites under common control and any adjustments allowed under this adopted rulemaking will not be used.

If available, emissions inventory data reported under 30 TAC §101.10 will be used for determining the baseline emissions. However, if only permit allowable data are available, a baseline amount will be established as 12.5 tons for VOC and/or 12.5 tons for NO_x (depending on the pollutant(s) that determined major source applicability) until the major stationary source submitted an approvable baseline amount. Allowable (permits or authorizations) emissions are typically higher than the actual emissions reported in the emissions inventory. FCAA, §185 requires the lower of actual or allowable emissions, so the executive director will establish the baseline emissions from the unavailable emissions inventory as 12.5 tons, which represents one-half of the major stationary source threshold of 25 tons. If the executive director used the allowable emissions from the permit to establish the baseline amount, then the non-compliant major stationary source would gain the advantage of a higher baseline amount by not reporting their actual emissions.

If the executive director establishes the baseline amounts, then those baseline amounts will be applicable until the major stationary source submits a verifiable and complete emissions inventory according to the Emissions Inventory Requirements of §101.10 and baseline amount. The proposed rule language was missing the proposal preamble provision that the executive director established baseline amount is applicable until the major stationary source submits a verifiable and complete emissions inventory. To correctly reflect this proposal preamble provision in rule language, updates were made at adoption by adding §101.712(6)(A). After the major stationary source submits a baseline amount and the executive director reviews the baseline amount to ensure consistency with emissions information submitted to the TCEQ Air Permits Division and/or the Air Quality Division, the final baseline amount will apply starting with the next fee assessment year. Adjustments to previous fee invoices based on baseline amounts established by the executive director would not be allowed.

§101.713, Failure to Attain Fee Assessment

The adopted new section outlines the method used to assess the Failure to Attain Fee (total fee) for VOC or NO_x emissions, or both. If the stationary source is major for just one pollutant, the total fee will be assessed for just the one pollutant, VOC or NO_x. If the stationary source is major for both VOC and NO_x emissions, the total fee will be based on an assessment of both pollutants.

This adopted new section also provides for the total fee assessment for owners or operators of major stationary sources or Section 185 Accounts. Fee assessments must follow the same method chosen for the baseline amount determination. The total fee from VOC and/or NO_x emissions from a major stationary source that is major for one pollutant and does not

have multiple sites under common control, does not choose to aggregate baseline amounts, or does not comply with the provisions of §101.707 will remain separate and due from each major stationary source or Section 185 Account. The total fee for owners or operators of major stationary sources that choose to aggregate VOC and/or NO_x emissions will also be due according to the provisions of this section. The aggregation of VOC with NO_x emissions may occur at one major stationary source or across multiple major stationary sources under common control. Because both pollutants were used to aggregate a baseline amount, the total fee will be due on actual emissions of both VOC and NO_x emissions. Consistency between the baseline amount determination and the total fee assessment would be maintained with this approach. An owner or operator of multiple sources under common control who chooses to aggregate a single pollutant from multiple major stationary sources in a baseline amount must aggregate actual emissions of that single pollutant in the total fee payment. If an owner or operator opted to aggregate VOC with NO_x emissions at a major stationary source, both VOC and NO_x emissions must be aggregated for the total fee payment. Similarly, owners or operators who choose to aggregate VOC and NO_x emissions in a baseline amount and to aggregate those pollutants across more than one major stationary source must aggregate actual VOC and NO_x emissions from all aggregated major stationary sources to determine the total fee. For example, if five major stationary sources of both VOC and NO_x emissions elect to aggregate into one Section 185 fee account to determine the NO_x baseline amount, then the total NO_x portion of the fee payment would be based on all actual reported NO_x emissions from those five major stationary sources. Since the five major stationary sources did not elect to aggregate VOC emissions into one baseline amount, then the total fee payment for VOC emissions would be assessed separately for the five different Section 185 fee accounts using actual reported VOC emissions for these major stationary sources. Similarly, if owners or operators choose to aggregate multiple major stationary sources into one baseline amount for VOC and NO_x emissions, then the total fee payment will be due from the aggregated major stationary sources for both pollutants together. A rule language update was made at adoption to align with this preamble Section by Section by adding the missing phrase "must be conducted" and missing word "and" to §101.713(b).

The total fee will be applicable to and calculated for each pollutant (VOC or NO_x) for which the major source meets the applicability requirements of this rulemaking from the actual emissions reported in the emissions inventory for each fee assessment year. The fee amount assessed, calculated, and invoiced will be based on the actual emissions from the fee assessment year's emissions inventory that exceeded 80% of the baseline amount, rounded up to the nearest whole number. If the actual emissions reported in the emissions inventory are less than 80% of the baseline amount, then the fee will be assessed at $0.00 dollars and no fee payment will be due from that major stationary source or Section 185 Account for that fee assessment year for that pollutant. For future fee assessment years, the fee will be due if the actual emissions reported in the emissions inventory exceeded 80% of the baseline amount.

Rounding up to the nearest whole number is standard practice for fee assessment since assessing fees on fractional amounts creates fee amounts with several decimal places that can cause errors in the fee invoice data systems, which accept only two decimal places. An example of rounding up to the nearest whole number would be the fee assessment amount calculated as 10.0319 tons, rounding up to the nearest whole number, the fee would be assessed and invoiced on 11 tons.

The total fee for a pollutant aggregated under multiple major stationary sources for a baseline amount will be calculated based on the aggregated actual emissions from all the affected major stationary sources minus 80% of the aggregated baseline amounts for all major stationary sources, rounded up to the nearest whole number.

While baseline amounts exclude unauthorized emissions, fee assessments will be based on actual emissions, as defined in 30 TAC §101.10, which includes emissions from annual routine operations, MSS operations, and other events not otherwise authorized (emissions from emissions events or MSS activities). The inclusion of unauthorized emissions in fee assessment is appropriate because the emissions contribute to the formation of ozone in the nonattainment area during the fee assessment year. Inclusion of unauthorized emissions in fee assessment is also required in TCEQ's emissions fee rule in 30 TAC §101.27, which requires all MSS and emissions event emissions to be included in fee calculations.

FCAA, §185 requires the annual fee to be adjusted by the consumer price index (CPI) and cross references the methodology in FCAA, §502(b)(3)(B)(3)(v). The method described in FCAA, §502 requires the fee to be adjusted annually per the CPI for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year. FCAA, §185 requires these fees to be assessed on a calendar-year basis, and the inflation factor based on the CPI is applied in September for the fiscal year (based on the previous September through August data). Therefore, the calendar year Failure to Attain Fee is determined as a weighted monthly average (two thirds of the fee associated with January through August and one third of the fee associated with September through December). For example, a 2028 calendar-year fee would span the 2027 fiscal year and the 2028 fiscal year. Thus, a calendar-year 2028 fee requires two thirds of the annual CPI ending in August 2027 and one third of the annual CPI ending in August 2028. This methodology is used to calculate the fee from EPA's guidance memo (Page 10, available at: *https://www.epa.gov/sites/default/files/2015-09/documents/1hour_ozone_nonattainment_guidance.pdf*). The fee calculation uses the 40 CFR Part 70 Presumptive Minimum fee basis from EPA's guidance memo. The Part 70 fee rate is published annually by EPA on the Title V webpage (available at: *https://www.epa.gov/title-v-operating-permits/permit-fees*). The Part 70 fee is the rate used to calculate emissions-based fees for Part 70 permit programs. Rather than calculating the rate directly from the CPI, this method uses the Part 70 fee rate published by EPA. The Part 70 fee already has the required CPI adjustment incorporated into it.

The timing of the fee assessment depends on the effective date of EPA's finding of failure to attain. For the 10-county DFW and eight-county HGB 2008 eight-hour ozone nonattainment areas, 2028 is the first year after the attainment date of July 20, 2027. Since the 2027 emissions inventories would be due in 2028, TCEQ staff would have until the end of 2028 to complete the quality assurance reviews of the 2027 annual emissions inventories that would be used to determine the baseline amount. Major sources would require time to establish the baseline amounts based on final emissions reported in the 2027 emissions inventory. TCEQ staff would require time to quality assure the baseline

amounts submitted by each major source. To establish and quality assure the baseline amounts, the fee collection year would generally be adopted as two calendar years following the fee assessment year. A potential scenario could include regulated entities submitting the 2027 emissions inventories by the March 31, 2028, due date, and TCEQ staff completing the quality assurance reviews of the 2027 emissions inventories by the end of calendar year 2028. If the area(s) fail to attain the 2008 eight-hour ozone standard, and EPA finalizes a failure to attain notice in October 2027, then, following EPA's effective date of the failure to attain notice, TCEQ could provide a courtesy electronic notification to regulated entities that major sources must submit their baseline amount to TCEQ by March 31, 2028. TCEQ staff would quality assure the 2027 baseline amounts during calendar year 2028. The 2028 emissions inventories are due by April 2, 2029 (since March 31, 2029, falls on a Saturday), and TCEQ staff would complete the quality assurance process for the 2028 emissions inventories by the end of calendar year 2029. TCEQ would implement the calendar-year 2028 Section 185 fee rate once EPA publishes it, typically by the end of October each year. Assuming EPA publishes the 2028 Section 185 fee rate in October 2028, TCEQ would then assess the calendar-year 2028 fees in late 2029 and prepare and send invoices in early calendar-year 2030. As a result, calendar year 2030 becomes the first fee collection year for the first fee assessment year of 2028, based on the actual emissions reported in the 2028 emissions inventory.

A major stationary source subject to the requirements of this adopted rulemaking will also be required to submit an annual emissions inventory according to §101.10. The annual fee assessment requires the submission of the emissions inventory by the due date to invoice the source on actual emissions of VOC, NO_x, or both for that fee assessment year. Regulated entities subject to the Section 185 fee that do not submit an emissions inventory by the due date will be subject to enforcement.

§101.714, Failure to Attain Fee Payment

The fee is due for each pollutant for which the source is major beginning with the calendar year following the baseline year until the nonattainment area is no longer subject to the fee as provided by §101.718. If the major stationary source chose to aggregate by pollutant, then the fee is due based on that aggregation. This adopted new section also stipulates that payment of the Failure to Attain Fee must be made by check, certified check, electronic funds transfer, or money order made payable to TCEQ. Payment must be sent to the TCEQ address provided on the billing statement by the date specified on the invoice. Generally, sites will have a minimum of 30 days to pay the invoice.

This rule would impose interest and penalties in accordance with 30 TAC Chapter 12 to owners or operators of major stationary sources subject to the applicability provisions of this subchapter who fail to make full payment of the Failure to Attain Fees by the due date.

§101.715, Eligibility for Other Failure to Attain Fee Fulfillment Options

This adopted new section allows major stationary sources or Section 185 Accounts required to pay a Failure to Attain Fee to partially or completely fulfill the fee owed by relinquishing emissions credits or by participating in the SEP program instead of issuing full payment. These other fulfillment options could be considered individual fee offsets for major stationary sources or Section 185 Accounts. If relinquishing emissions credits or participating in the SEP program does not completely fulfill the entire fee owed by a major stationary source or Section 185 Account, the remaining portion of the Failure to Attain Fee remains due according to §101.713 and §101.714 of this rulemaking.

A rule language clarification was made at adoption to §101.715(c) by adding "dollar-for-dollar" to the list of required information on the form that a major stationary source or Section 185 Account must submit to the agency to request one of the other fulfillment options. This update was necessary to align with the SEP program practice of tracking funds and not the tons of emissions reductions generated by a SEP. If a SEP is requested to be a fulfillment option for all or a portion of the Failure to Attain Fee, then the dollar-for-dollar amount must be provided on the request form.

As explained previously in this preamble, the implementation of the Section 185 fee program depends on several future factors, including the effective date of EPA's finding of failure to attain action. According to §101.714, the invoice due date will be provided by the executive director after the program is implemented. The commission must be timely informed if other options will be requested to fulfill the Failure to Attain Fee. Rule language updates were made at adoption to §101.715(d) to change the due date for a major stationary source or Section 185 Account to provide notification of intent to use alternative Failure to Attain Fee fulfillment option(s) as described in §101.716 and §101.717. Specifically, the due date for these notifications was changed from the emissions inventory due date (typically March 31) of the first fee assessment year to 90 days after the executive director requests this information to be submitted. Changing the due date for a major stationary source or Section 185 Account to submit other fee fulfillment notifications allows more time and flexibility to complete required actions to participate in a SEP or generate an emissions reduction credit.

A rule language update was made at adoption to §101.715(d)(1) and (2) to specify that other Failure to Attain Fee fulfillment options must be completed during or after the baseline year to be considered for partial or complete fulfillment of the Failure to Attain Fee. Using January 1 of the baseline year as the starting point for other fulfillment options is appropriate because the baseline year is the starting point that fee assessments will be based upon, making it a logical starting point for other fulfillment options. Any emission reductions during or after the baseline year would assist in achieving attainment, even if they do not actually result in attainment. It also allows sufficient time to complete the necessary actions required by the other fulfillment options. Providing a specific date was not possible, as the implementation date of the fee program is not known, as discussed elsewhere in this preamble. Also discussed elsewhere in this preamble, while the plain language of FCAA, §185 does not require emissions reductions, emissions reductions that are achieved as a result of the Section 185 Fee program would further improve air quality, consistent with EPA's 2010 guidance.

If other fulfillment options under §101.716 (relating to emissions credits) are not approved and funded, exercised, or completed during or after the baseline year, these other fulfillment options will not be eligible to be applied to the Failure to Attain Fee. If the other fulfillment option under §101.717 (relating to SEPs) is not approved and completed during or after the baseline year, then this other fulfillment option will not be eligible to be applied to the Failure to Attain Fee. A rule language update was made at adoption to §101.715(d)(2) to align with the SEP program and clarify that to be eligible to partially or completely fulfill the Failure

to Attain Fee, the SEP must be "completed" instead of "funded." For the purposes of this rulemaking, a SEP that has been "approved and completed" means it has gone through the required SEP processes, been approved by the Commission, and the enforcement respondent has completed all its required actions under the SEP. All requests to use a SEP as an option to fulfill the Failure to Attain Fee will be subject to the executive director's approval.

§101.716, Relinquishing Credits to Fulfill a Failure to Attain Fee

This adopted new section allows major stationary sources or Section 185 Accounts to request to fulfill all or a portion of their Failure to Attain Fee (total fee) by relinquishing an equivalent portion of emission reduction credits, discrete emission reduction credits, current or banked Highly-Reactive Volatile Organic Compound (HRVOC) Emissions Cap and Trade (HECT) program allowances, or current or banked Mass Emissions Cap and Trade (MECT) program allowances.

Emission credits submitted for total fee reduction purposes, on a ton-for-ton basis, will only be allowed for use as a fulfillment option for the pollutant (VOC or NO_x) specified on the credit. VOC credits or HECT allowances must only be used as a fulfillment option for VOC tons in excess of the baseline; NO_x credits must only be used as a fulfillment option for NO_x tons. The use of allowances will be similarly restricted such that MECT allowances will only be used as an equivalent for NO_x tons. HECT allowances will only be allowed for use as an equivalent for VOC tons in excess of the baseline amount for major stationary sources or Section 185 Accounts located in the 2008 eight-hour ozone nonattainment area. Significant digit rounding of the emissions reduction must be limited to one-tenth of a ton. Removing these emissions, represented as allowances, on a ton-per-ton basis furthers the goals of reducing ozone-causing emissions in the atmosphere and meets the objective of improving air quality by reducing emissions more directly than imposing a fee.

§101.717, Using a Supplemental Environmental Project to Fulfill a Failure to Attain Fee

This adopted new section allows major stationary sources or Section 185 Accounts to request to fulfill all or part of their Failure to Attain Fee by participating in the SEP program within the 2008 eight-hour ozone nonattainment area where the major stationary source or Section 185 Account is located. A major stationary source subject to enforcement that also chooses to participate in the SEP program may choose to partially or completely fulfill their Failure to Attain Fee according to the provisions of this new section. A rule language update was made at adoption to clarify this concept by updating "contributing to a SEP" to "participating in the SEP program" in §101.717(a). A rule language update was made at adoption to align with the SEP program's process of tracking funds and not the tons of emissions reduced by a SEP. The references to VOC and NO_x emissions were removed from §101.717(a), and §101.717(a)(1) and (2) were removed from the rule language as they were unnecessary.

SEPs are environmentally beneficial projects that a respondent agrees to undertake in settlement of an enforcement action. Since SEPs are projects designed to prevent or reduce pollution by meeting or exceeding regulatory requirements, performing or contributing to a SEP that directly reduces VOC and/or NO_x emissions in the nonattainment area will provide cost-effective opportunities for emissions reductions. These opportunities, as opposed to the imposition of a fee, will more directly benefit air quality in the affected area. Only SEPs that achieve VOC and/or NO_x emissions reductions implemented within the same 2008 eight-hour ozone nonattainment area are allowed to partially or completely fulfill the Failure to Attain Fee.

The SEP must be enforceable through an Agreed Order or other enforceable document to ensure compliance with the SEP program's objectives.

After further consideration of the SEP program and to correct conflicting and outdated language and clarify intent as well as in response to comments received, §101.717(d) and (e) were added at adoption to specify how SEP program participation may be used to partially or completely fulfill the Failure to Attain Fee. The SEP Offset Amount is the portion of an enforcement case's assessed administrative penalty approved for use in the performance of, or contribution to, a SEP, instead of being paid to the commission as a penalty. For the purposes of this remaining section by section discussion references to "performance of, or contribution to, a SEP" has been shortened to "contribution to a SEP."

Section 101.717(d) was added at adoption to clarify the proposal's intent that any amount paid in excess to the SEP Offset Amount may be used to partially or completely fulfill the Failure to Attain Fee. For example, a major stationary source located in the HGB nonattainment area must pay a Failure to Attain Fee, is also a respondent in an enforcement case, and chooses to participate in the SEP program. For purposes of the enforcement case, the total required cost of participation in the SEP that reduces VOC emissions in the HGB nonattainment area is $100,000. If the major stationary source respondent contributes $105,000 to that SEP, then the $5,000 in excess of the required $100,000 could be used to fulfill their Failure to Attain Fee. If the assessed Failure to Attain Fee is $200,000, then the Failure to Attain Fee is reduced to $195,000.

After further consideration of the SEP program and in response to comments received, §101.717(e) was added at adoption to allow the total amount paid to the SEP (both the SEP Offset Amount and the excess to the SEP Offset Amount) to partially or completely fulfill the Failure to Attain Fee if the total payment to the SEP is greater than or equal to 110% of the SEP Offset Amount. Allowing the crediting of the SEP Offset Amount in this circumstance should incentivize larger compliance projects (or larger amounts paid to third-party pre-approved SEPs) with ozone precursor emissions reductions that directly benefit the nonattainment area. A major stationary source respondent is required to pay at least 110% or more of the SEP Offset Amount to use the total payment to the SEP to partially or completely fulfill the Failure to Attain Fee. In the example above, the major stationary source respondent could not credit the $100,000 contributed to the SEP toward their Failure to Attain Fee since the total amount paid to the SEP was below 110%. For that same major stationary source respondent to credit the entire SEP Offset Amount of $100,000, they would be required to contribute at least $110,000 toward the SEP. In this refined example, the major stationary source respondent may credit a total of $110,000 (SEP Offset Amount of $100,000 and the excess amount of $10,000) toward their Failure to Attain Fee. If the assessed Failure to Attain Fee was $200,000, then the Failure to Attain Fee is reduced to $90,000.

A rule language update was made at adoption to the re-lettered §101.717(f) to remove unnecessary repeated language and instead refer to the appropriate subsections (c) and (d), while specifying that amounts must be credited on a dollar-for-dollar basis.

The rule would also allow a major stationary source or Section 185 Account to use surplus credits from the use of SEPs from year to year. The credits would not be discounted or depreciated over time. The credits cannot be used more than once to partially or completely fulfill the Failure to Attain Fee. Once the approved credits from the use of SEPs have been applied toward a Failure to Attain Fee in a given assessment year, they may not be used in subsequent fee assessment years.

Re-lettered §101.717(g) was changed at adoption to remove the conflict with newly added subsection (d) since crediting of the SEP Offset Amount is allowed if the criteria of subsection (d) are met. Section 101.717(g)(1) and (2) were added at adoption to specify that no amount of an enforcement administrative penalty paid to the commission and no amount of an expedited settlement deferral for early acceptance of an enforcement action settlement may be used to partially or completely fulfill the Failure to Attain Fee. This ensures that only amounts paid to SEPs are creditable to offset the Section 185 fee.

The use of a SEP to partially or completely fulfill the Failure to Attain fee is subject to the approval by the executive director.

§101.718, Cessation of Program

This adopted new section outlines the circumstances that will end the Failure to Attain Fee for an applicable nonattainment area. FCAA, §185 requires the penalty fee to be collected until redesignation of the nonattainment area to attainment by EPA. After EPA redesignates an area to attainment and publishes the final approval of the attainment redesignation in the *Federal Register*, the Failure to Attain Fee is no longer applicable to that ozone nonattainment area as of the effective date specified in the *Federal Register*. In addition to this, any final action or final rulemaking by EPA to end the Failure to Attain Fee requirement, or a finding of attainment by EPA could also end the fee program. A rule language update in §101.718(a)(2) was made at adoption by adding "requirement" to clarify if EPA ended the Failure to Attain Fee requirement TCEQ's fee program could also end. Rule language was added at adoption to clarify that FCAA, §179(B) provides relief from Section 185 fees for ozone nonattainment areas that are impacted by international emissions. New §101.718(a)(4) was added to align with §101.718(b) and FCAA, §179(B), which states that an area is not subject to the provisions of FCAA, §185 if the nonattainment area would have attained the ozone standard but for emissions emanating from outside the United States.

Additionally, to provide for timely cessation of the Failure to Attain Fee program, the Failure to Attain Fee will be assessed, but the fee collection will be placed in abeyance by the executive director if three years of quality-assured data resulting in a design value that did not exceed the 2008 eight-hour ozone standard are submitted to EPA. In determining the design value, days that exceeded the 2008 eight-hour ozone standard because of exceptional events from within or outside the United States (exceptional event days submitted to EPA) may be excluded.

Final Regulatory Impact Analysis

The commission reviewed the adopted rulemaking considering the regulatory impact analysis requirements of Texas Government Code, §2001.0225 and determined that the adopted 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 adopted 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 Texas Government Code, §2001.0225(a). Texas Government Code, § 2001.0225 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 the adopted rules is to comply with the requirements of 42 U.S.C. §7511a and §7511d (FCAA, §182 and §185) for the DFW and HGB 2008 ozone nonattainment areas, as discussed further elsewhere in this preamble. Penalty fee programs are a required component of SIPs for ozone nonattainment areas that are classified as severe or extreme. Fees are required to be collected for all major stationary sources in severe or extreme ozone nonattainment areas that do not attain the ozone standard by their attainment dates. If the fee is not imposed and collected by the state, then 42 U.S.C. §7511d(d) (FCAA, §185(d)) requires that the EPA shall impose and collect the fee (and may collect interest). The applicability of the fee may have a benefit in reducing emissions of ozone precursors in ozone nonattainment areas by incentivizing sources to reduce emissions further, but the adopted rules will not require emission reduction.

States are required to adopt State Implementation Plans (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 the proposed rule, the adopted rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is necessary to comply with federal law 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) (FCAA, §110(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)).

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. 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 impli-

cations 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 adopts and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule adopted by the commission to meet a federal requirement was a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis contemplated by SB 633. Requiring a full regulatory impact analysis 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 regulatory impact analysis for rules that are extraordinary in nature. While the adopted 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 adopted rules do not impose burdens greater than required to comply with federal law, as discussed elsewhere in this preamble. For these reasons, the adopted 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 regulatory impact analysis 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 applying the standard of "substantial compliance" specified in Texas Government Code, §2001.035. The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard.

As presented in this analysis and elsewhere in this preamble, the evidence supports the conclusion that the commission has substantially complied with the requirements of Texas Government Code, §2001.0225. The adopted rules implement the requirements of the FCAA as discussed in this analysis and elsewhere in this preamble. The adopted rules were determined to be necessary to comply with federal law and will not exceed any standard set by state or federal law. These adopted rules are not an express requirement of state law. The adopted rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the adopted 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 adopted rules were not developed solely under the general powers of the agency but are authorized by specific sections of Texas Health and Safety Code (THSC), 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 THSC, §§382.011, 382.012, and 382.017. Therefore, this adopted rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period, but no comments were received.

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 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. The commission completed a takings impact analysis for the adopted rulemaking action under the Texas Government Code, §2007.043.

The primary purpose of this adopted rulemaking action, as discussed elsewhere in this preamble, is to meet federal requirements for the inclusion of penalty fee programs for major stationary sources in State Implementation Plans (SIPs) as mandated by 42 United States Code (USC), §§7410, 7511a, and 7511d (Federal Clean Air Act (FCAA), §§110, 182 and 185). Penalty fee programs are a required component of SIPs for ozone nonattainment areas that are classified as severe or extreme. Fees are required to be collected for all major stationary sources in severe or extreme ozone nonattainment areas that do not attain the ozone standard by their attainment dates. If the fee is not imposed and collected by the state, then 42 U.S.C. §7511d(d) (FCAA, §185(d)) requires that the EPA shall impose and collect the fee (and may collect interest). The applicability of the fee may have a benefit in reducing emissions of ozone precursors in ozone nonattainment areas by incentivizing sources to reduce emissions further, but the adopted rules will not require emission reduction.

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) (FCAA, §110(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(c) (FCAA, §110(c)).

The adopted rules will not create any additional burden on private real property beyond what is required under federal law, as the adopted 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 adopted 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 adoption 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 commission concludes that the adopted rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

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 amendments are consistent with CMP goals and policies because the rulemaking is a fee rule, which is a procedural mechanism for paying for commission programs; will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period, but no comments were received.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 101, Subchapter K will not require revisions to existing Federal Operating Permits under 30 TAC §122, Federal Operating Permits Program.

Public Comment

The commission held a virtual public hearing on June 12, 2025 at 2:00 p.m. The comment period closed on June 18, 2025. The commission received comments from the following: Air Alliance Houston; Ash Grove Cement Company, a CRH Company (Ash Grove); CEMEX; Earthjustice on behalf of Air Alliance Houston and Downwinders at Risk (Earthjustice Group One); Earthjustice on behalf of Air Alliance Houston, Downwinders at Risk, and Lone Star Chapter of Sierra Club (Earthjustice Group Two); a group including Earthworks, Environment Texas, Environmental Defense Fund, Liveable Arlington, and Public Citizen (Environmental Groups); Fenceline Watch; GREEN Environmental Consulting, Inc. (Green Consulting); Harris County Attorney Christian D. Menefee (Harris County Attorney's Office); Holcim (US) Inc. (Holcim); Lone Star Legal Aid on behalf of Better Brazoria-Clean Air & Clean Water (Better Brazoria); North Central Texas Council of Governments (NCTCOG); Public Citizen; Smith Jolin on behalf of Gerdau Ameristeel, US Inc. (Gerdau), and Texas Lime Company (Texas Lime); Summitt Next Gen LLC (Summitt); a group including Texas Chemical Council, Texas Oil and Gas Association, and Texas Pipeline Association (Industry Groups); the Honorable Brian Harrison, District 10, Texas House of Representatives (Hon. Brian Harrison); and 47 individuals.

Ten commenters expressed support for the proposed rule, and 67 commenters expressed opposition for the proposed rule. Generally, the majority of commenters who opposed the proposed rule requested that TCEQ implement a fee program that directly follows the language of FCAA, §185 without flexible alternatives. Commenters requested rule language changes related to baseline amounts, baseline amounts for new major sources, adjustment of baseline amounts for new construction at existing major sources, and the type of TERP funding available to offset the fee on major stationary sources.

Response to Comments

Health Effects and Environmental Impacts

Comment

Better Brazoria, Earthjustice Group Two, Public Citizen, and two individuals commented that the rule proposal does not protect public health. Earthjustice Group Two, Environmental Groups, and Air Alliance Houston provided HGB health-related statistics from the American Lung Association's 2025 "State of the Air" report. Earthjustice Group Two, Environmental Groups, and five individuals commented on the adverse health impacts from pollution, including industrial pollution, on residents of severe ozone nonattainment areas, listing respiratory impacts on children and other vulnerable populations, cancer, chronic obstructive pulmonary disease, heart disease, and other life-altering medical conditions. Better Brazoria listed various and numerous health impacts on environmental justice areas located in Brazoria County (in the HGB nonattainment area) and included a list of Brazoria County stationary point sources with their recently reported VOC and NO_x emissions and air toxics emissions of some sites with their contribution to increased cancer rates. In addition to adverse health impacts, four individuals commented on how living in severe ozone nonattainment areas impact their daily lives, including poor air quality alerts that limit outdoor activities for adults and children, and that Dallas Fort-Worth (DFW) communities have suffered enough under industries. Fenceline Watch stated that the fee program fails to address harm done to human health and the environment because it does not directly impact the industry violators. Public Citizen asserted Texans are suffering from real-world air quality and public health problems while the TCEQ proposes imaginary solutions on paper.

Response

The purpose of this rulemaking is to develop a Failure to Attain Fee program (referred to as fee program or Section 185 fee program in this response to comment section) as required by FCAA, §182(d)(3) and (e) and §185 for 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS or standard) nonattainment areas in Texas with a severe or extreme classification (currently, the HGB and DFW nonattainment areas) in the event that EPA issues a finding of failure to attain the 2008 ozone standard by the attainment date. Comments regarding health and environmental impacts of ozone precursor emissions are outside the scope of this rulemaking.

No changes were made in response to these comments.

Comment

An individual commented that low-income and minority populations in DFW communities are disproportionately impacted from the air pollution the area continues to experience. Fenceline Watch and an individual stated that the fee program does not properly protect those most impacted communities from industry. Better Brazoria commented that an alternative program leaves Brazoria County, an already vulnerable area, subject to dangerous ongoing pollution. Earthjustice Group Two commented that

a conventional fee program could improve air quality quickly by transferring the social burdens of ozone pollution onto the major ozone creators.

Response

No federal or state statute, regulation, or guidance provides a process for evaluating or considering the socioeconomic or racial status of communities within an ozone nonattainment area. In its proposed approval of a TCEQ submittal for El Paso County, which did not include an environmental justice evaluation, EPA stated that the FCAA "and applicable implementing regulations neither prohibit nor require such an evaluation" (88 *Federal Register* (FR) 14103). Further, TCEQ's jurisdiction is limited by statute; for example, it may not consider location, land use, or zoning when permitting facilities. TCEQ continues to be committed to protecting Texas' environment and the health of its citizens regardless of location.

TCEQ provided the public with equal access in accordance with Title VI. This rulemaking was developed in compliance with the policies and guidance delineated in TCEQ's Language Access Plan (LAP) (available at: *https://www.tceq.texas.gov/downloads/agency/decisions/participation/language-access-plan-gi-608.pdf*) and TCEQ's Public Participation Plan (PPP) (available at: *https://www.tceq.texas.gov/downloads/agency/decisions/participation/public-participation-plan-gi-607.pdf*). The LAP helps ensure individuals with limited English proficiency may meaningfully access TCEQ programs, activities, and services in a timely and effective manner; and the PPP identifies the methods by which TCEQ interacts with the public, provides guidance and best practices for ensuring meaningful public participation in TCEQ activities, and highlights opportunities for enhancing public involvement in TCEQ activities and programs.

TCEQ translates the Plain Language Summaries, GovDelivery notices, and newspaper publications into Spanish for all projects. Additionally, a Spanish interpreter was available at the virtual public hearing to verbally provide hearing instructions, and the notices included a statement that Spanish translation of hearing instructions would be available at the hearing.

No changes were made in response to these comments.

Comment

Fenceline Watch commented that various recent extreme weather events around Texas that are caused by industrial pollution, the sinking of the Houston area, and the phase out of the Federal Emergency Management Agency all add more disaster response responsibility to local and state governments. An individual commented industry should not be able to dodge responsibility for carbon dioxide pollution and provided a link to a greenhouse gas study.

Response

The Section 185 fee program is applicable to major stationary sources of ozone precursor emissions (volatile organic compounds (VOC) and oxides of nitrogen (NO_x)), not carbon dioxide, which is a greenhouse gas. Comments regarding disaster response, climate change, greenhouse gases, and the administration of federal agencies are outside the scope of this rulemaking.

No changes were made in response to these comments.

General Comments

Comment

Air Alliance Houston, Environmental Groups, Public Citizen and two individuals commented that TCEQ is not fulfilling its mission and adhering to its responsibility by proposing an alternative fee that prioritizes industry and private interests over protection of human health and the environment to ensure clean air. Ten individuals also commented that DFW residents deserve clean air. Five individuals requested that TCEQ follow its mission to protect the environment and air quality. Three individuals commented that TCEQ should be better at enforcing laws and fees and holding polluters accountable. An individual commented that TCEQ is just a prop that does not do anything substantial.

Response

The commission takes its commitment to protect the environment and public health seriously. The commission prepares and implements air quality plans and administers and enforces rules in accordance with both state and federal law.

The purpose of this rulemaking is to develop a Section 185 fee program as required by FCAA, §182(d)(3) and (e) and §185 for 2008 eight-hour ozone standard nonattainment areas with a severe or extreme classification. If adopted, TCEQ will have the authority to enforce these rule provisions if EPA determines the severe ozone nonattainment areas fail to attain the 2008 eight-hour ozone standard by their attainment dates.

The commission followed all relevant federal and state statutes, regulations, and guidance in the development of this rule and evaluated all appropriate information and measures necessary to establish this rulemaking. The commission interprets the FCAA, §172(e) to allow states to adopt equivalent fee programs to fulfill the requirements of FCAA §182(d)(3) and (e) and §185.

No changes were made in response to these comments.

Comment

Fenceline Watch stated that this rule did not adequately address any of the community concerns from the informal comment period.

Response

TCEQ solicited informal comment during the August 2024 stakeholder meetings on all aspects of the rulemaking and received comments from seven organizations or industry representatives. TCEQ reviewed these informal comments in detail, posted these comments on its public webpage, and referred to these comments during its rule development. The received comments encompassed all aspects of the rulemaking and expressed opposing views on various aspects of the Section 185 fee program, such as whether TCEQ should incorporate flexibilities within its fee program, including fee offsets and baseline aggregation by pollutant and/or site. Ultimately, the rulemaking could not simultaneously include and prohibit program flexibilities, and the commission chose to develop the rule as adopted for reasons discussed throughout this preamble.

No changes were made in response to this comment.

Comment

Public Citizen noted that for the duration of the public hearing conducted on June 12, 2025, TCEQ displayed the incorrect date in Spanish for the end of the public comment period and should do more to comply with Title VI requirements on providing accurate and timely access on public comment opportunities.

Response

The commission met all Title VI requirements for this rulemaking and disagrees that the incorrect date was displayed for the duration of the public hearing. The public hearing officially started at 2:00 p.m. and concluded at approximately 2:30 p.m. on June 12, 2025. After the conclusion of the public hearing portion, a second opportunity for informal questions began, and the slide indicating June 31, 2025, as the end of the public comment period in Spanish (the same slide provided the correct date in English) appeared on screen for less than 3 minutes before TCEQ staff noted the error. Once noted, the Spanish date was immediately corrected and the corrected slide displayed until the hearing concluded. This informational slide was never posted on TCEQ's webpage, either before or after the public hearing. The instructions for the public hearing were verbally translated into Spanish and the correct Spanish date was verbally stated at the start and conclusion of the public hearing. There were two GovDelivery notifications regarding the public hearing and public comment period sent on May 6, 2025, and May 22, 2025, that both included Spanish translation with the correct end date of the public comment period in Spanish.

The Section 185 Stakeholder webpage (available at: *https://www.tceq.texas.gov/airquality/point-source-ei/185-fee*) contains a link that automatically translates the page, including the proposed rule's comment deadline, into Spanish. Additionally, this webpage includes a link to a Spanish-language rulemaking summary that contains the correct end date for the public comment period. A public involvement plan accompanies the rule package and is also posted on this webpage.

This rulemaking was developed in compliance with the policies and guidance delineated in TCEQ's LAP (available at: *https://www.tceq.texas.gov/downloads/agency/decisions/participation/language-access-plan-gi-608.pdf*) and TCEQ's PPP (available at: *https://www.tceq.texas.gov/downloads/agency/decisions/participation/public-participation-plan-gi-607.pdf*). The LAP helps ensure individuals with limited English proficiency may meaningfully access TCEQ programs, activities, and services in a timely and effective manner; and the PPP identifies the methods by which TCEQ interacts with the public, provides guidance and best practices for ensuring meaningful public participation in TCEQ activities, and highlights opportunities for enhancing public involvement in TCEQ activities and programs.

In accordance with the PPP, U.S. Census data was used to conduct a preliminary analysis of the population in the DFW and HGB nonattainment areas, which was then used to plan public engagement efforts for this rulemaking. Specifically, TCEQ translated the Plain Language Summaries, all GovDelivery notices, public hearing notices, and State Implementation Plan (SIP) Hot Topics notices into Spanish for all projects. Newspaper publications were also in Spanish.

Additionally, stakeholder meetings held in August 2024 included simultaneous Spanish interpretation provided the opportunity for informal comment in addition to virtual public hearing on June 12, 2025.

No changes were made in response to these comments.

Comment

Better Brazoria commented that the rule failed to comply with the FCAA public participation requirements (and citing specifically the federal rules for Prevention of Significant Deterioration permitting) since primarily virtual options were offered and affected areas of Brazoria County (located in the HGB nonattainment area) may have been unable to access information or participate in the rulemaking due to low rates of internet access.

Response

The commission disagrees that public participation requirements were not met for this rulemaking and notes that commenters citations to federal rules concerning Prevention of Significant Deterioration permitting are inapplicable. Federal requirements for public participation for SIPs are found in 40 CFR §51.102, which requires notice, an opportunity to submit written comments, and allow the public to request a hearing amongst other requirements, which were met or exceeded in this rulemaking. The commission encourages public participation in the rule development process and makes every effort to hold hearings in locations and at times that are accessible and convenient to the public. In addition to providing the opportunity to comment at a virtual public hearing, TCEQ also provides the public with the option to submit written comments by mail, fax, or electronically through TCEQ's Public Comment system. Instructions for the submittal of written comments were provided in the proposed rulemaking documents and public notices.

The commission strives to give all citizens of Texas appropriate prior notification and opportunity to comment on proposed rules. This rule was filed with the TCEQ Chief Clerk's Office and made available to the public on the TCEQ website on April 22, 2025. Listserv subscribers received an e-mail notification on May 6, 2025, notifying the public that the commission had approved publication of, and hearing on, the proposal. These notices also directed the public to the TCEQ's website, where all rulemaking documents and the hearing notice were posted. A hearing notice for this rulemaking was published in English in the *Houston Chronicle* on May 6, 2025, and in Spanish in *La Voz* on May 14, 2025. A hearing notice for rulemaking was published in English in the *Dallas Morning News* and in Spanish in *Al Dia* on May 7, 2025. The hearing noticed was published in English in the *Texas Register* on May 16, 2023 (50 *Texas Register* (TR) 2925). This detailed public hearing participation information was also published on the commission's publicly available events calendar webpage at least 30 days prior to the hearing date.

The public comment period was open from May 6, 2025 through June 18, 2025, providing an additional 14 days beyond the required 30-day comment period. During this time, the public had the opportunity to provide both written and oral comment regarding this rulemaking to TCEQ. A virtual public hearing was offered on June 12, 2025, and a Spanish interpreter attended to ensure public hearing access for attendees with limited English proficiency.

No changes were made in response to these comments.

Comment

Better Brazoria stated that for the fee program to be approvable, the mobile source fee design must be specifically explained in a public-facing rulemaking process.

Response

The commission disagrees that the mobile source aspects of the Section 185 fee program relating to TERP were not explained in its public rulemaking process. The Section 185 fee program uses grants provided by TERP, administered through the TERP Trust, as a credit mechanism to offset an area's entire Section 185 fee obligation. Since the Section 185 fee program does not change how the TERP program operates, an explanation of TERP operation is outside the scope of this rulemaking.

A public explanation on how TERP revenue relates to this specific rulemaking is detailed in this preamble. TERP revenue that is collected and expended in a nonattainment area is documented in a Fee Equivalency Account for each nonattainment area. The Fee Equivalency Account documents the availability of TERP revenue used to offset the Section 185 fee for each fee assessment year. There is no exchange of money between the TERP and the Fee Equivalency Account. Annually, TCEQ staff determines a nonattainment area's total fee obligation by summing the Section 185 fee due from each major stationary source (Area §185 Obligation) for a fee assessment year and if the TERP revenue in the Fee Equivalency Account exceeds an Area §185 Obligation, then major stationary sources are assessed but do not pay a fee. If the TERP revenue in the Fee Equivalency Account is less than the Area §185 Obligation, then major stationary sources are assessed and pay a prorated fee to ensure the full Area §185 Obligation is annually met.

No rule changes were made in response to these comments, but additional information was added to the preamble for clarification.

Comment

Better Brazoria requested continued public participation for rule development.

Response

The commission agrees that public participation is required for TCEQ rulemaking and provides multiple avenues for stakeholders to become involved in its decision-making process. An overview of TCEQ rules and rulemaking process is provided on the Rules and Rulemaking webpage (available at: *https://www.tceq.texas.gov/rules/rules_rulemaking.html*). A general overview of participating in TCEQ's decision-making processes is available on the Public Participation in TCEQ Decision-Making webpage (available at: *https://www.tceq.texas.gov/agency/decisions/participation*). However, this rulemaking is concluded with the commission's adoption, so no further public participation will be available for this rulemaking project.

No changes were made in response to this comment.

Comment

Two individuals commented that industries are not complying with environmental regulations. One individual commented that industries refuse to reduce emissions unless subject to enforcement or bankruptcy and stressed that industry should comply with the FCAA and pay penalties or shut down.

Response

The commenters provided no information to support their generalized allegation about the "non-compliant" industries. The commission notes that the FCAA, §185 does not single out individual major stationary sources or types of industry and it does not address the compliance status of major stationary sources.

No changes were made in response to these comments.

Comment

Earthjustice Group Two commented on the stagnant nature of the ozone design values in the Houston-Galveston-Brazoria (HGB) 2008 eight-hour ozone NAAQS nonattainment area and the recent increase in ozone design values in the DFW 2008 eight-hour ozone NAAQS area that led both areas to the severe nonattainment classification. An individual commented that DFW has not attained the ozone NAAQS.

Response

The commission acknowledges that the DFW and HGB areas have been reclassified to severe nonattainment for the 2008 eight-hour ozone standard, which is the reason for this Section 185 fee rulemaking as detailed in this preamble.

As shown on TCEQ's Air Quality Success webpage, (available at: *https://www.tceq.texas.gov/airquality/airsuccess/airsuccess-metro*), both the one-hour and eight-hour ozone design values have decreased in the DFW and HGB areas over the past 23 years despite rapid economic growth. From 2000 through 2023, the HGB population increased by 59%, while the eight-hour ozone design value decreased by 26%. Similarly, from 2000 through 2023, the DFW population increased by 56%, while the eight-hour ozone design value decreased by 21%. The DFW and HGB areas have monitored attainment of the 1997 eight-hour ozone standard of 84 ppb since 2014. Existing control strategies implemented to address the 1979 one-hour, 1997 eight-hour, and 2008 eight-hour ozone standards are expected to continue to reduce emissions of ozone precursors in these areas and positively impact progress toward attainment of the ozone standard.

Since 1991, air quality in the DFW and HGB areas has improved dramatically due to state, local, and federal air pollution control measures, such as federal emissions standards for mobile source engines, TCEQ Chapter 117 rules pertaining to control of NO_x emissions, and TCEQ Chapter 115 rules pertaining to control of VOCs. TCEQ remains committed to working with area stakeholders to attain the 2008 eight-hour ozone standard as expeditiously as practicable and in accordance with EPA rules and guidance under the FCAA.

No changes were made in response to these comments.

Comment

The Harris County Attorney's Office commented that the HGB area is designated a severe nonattainment area under the 2008 eight-hour ozone NAAQS and faces potential reclassification which would trigger Section 185 fee requirements.

Response

The HGB area is currently classified as a severe nonattainment area under the 2008 eight-hour ozone standard and therefore the state is required to develop and adopt a Section 185 fee program per EPA's final notice reclassifying the HGB area to severe nonattainment for the 2008 eight-hour ozone standard, effective November 7, 2022 (87 *FR* 60926). If the HGB nonattainment area fails to attain the 2008 eight-hour ozone standard by July 20, 2027, and EPA issues notice that HGB failed to attain by the attainment date, the FCAA, §185 requires TCEQ to implement its Section 185 fee program. However, the HGB nonattainment area would not automatically be reclassified as an extreme nonattainment area in the event of failure to attain the 2008 eight-hour ozone standard by its severe nonattainment deadline, since the FCAA, §181(b)(2)(A) expressly prevents reclassification by operation of law for such areas.

No changes were made in response to this comment.

Comment

Earthjustice Group Two stated that the previous Section 185 fee program for HGB under the one-hour ozone standard failed to

bring Houston into attainment which directly led to this required rulemaking for the 2008 eight-hour ozone NAAQS.

Response

The commission disagrees with this comment. EPA determined that the HGB nonattainment area attained the one-hour ozone standard in a final rule published in the February 14, 2020, *Federal Register* (85 *FR* 8411). The one-hour ozone standard has no bearing on the HGB nonattainment area's reclassification to severe under the 2008 eight-hour ozone standard, which is the reason this Section 185 fee program is required for the HGB nonattainment area.

No changes were made in response to this comment.

Comment

NCTCOG offered their assistance in the event the proposed rule does not proceed to credit grant revenue from TERP offsets and begins assessing fees on major sources.

Response

The commission appreciates the offer to assist.

No changes were made in response to this comment.

Comment

An individual commented that industry is polluting the air and water, and that Texas is listed as the number one polluted state. Better Brazoria stated that major stationary sources are the largest contributors to NAAQS violations.

Response

The commission disagrees that major stationary sources are the largest contributors to ozone NAAQS violations. Mobile sources account for 65% of 2023 NO_x emissions in the DFW 2008 ozone standard nonattainment area and 55% of 2023 NO_x emissions in the HGB 2008 ozone standard nonattainment area.

The commission also disagrees that Texas is the most polluted state. In terms of ozone pollution, while Texas does have multiple ozone nonattainment areas, California also has multiple ozone nonattainment areas, some of which are classified as "extreme" with higher ozone concentrations. According to EPA's Greenbook for the 2008 eight-hour ozone NAAQS (available at: *https://www.epa.gov/green-book/green-book-8-hour-ozone-2008-area-information*), California has the most polluted counties for ozone.

No changes were made in response to these comments.

Comment

An individual commented that engine manufacturers need to meet better standards. An individual noted Texans bear the financial brunt of natural gas operators that lack weatherization after past winter storms and those operators should have accepted responsibility for their lack of action.

Response

TCEQ does not have the authority to regulate engine standards or plant weatherization for winter storms. Additionally, these comments are outside the scope of this rulemaking.

No changes were made in response to these comments.

Comment

Eight individuals commented that Arlington residents and about a million Tarrant County residents have their homes, employment, and schools near fracking locations that have VOC and NO_x pollution. An individual commented that they hold mineral rights in Arlington and if they had the ability, they would trade their royalties to prevent industrial fracking on their land.

Response

Comments on fracking, including concerns about pollution from fracking, are outside the scope of this rulemaking.

No changes were made in response to these comments.

Applicability and Definitions

Comment

Fenceline Watch commented that the FCAA is clear that all major sources are subject to the fee program.

Response

The commission agrees with this comment. As discussed in this preamble, all major stationary sources of ozone precursor emissions located in an area designated as nonattainment and classified severe or extreme under the 2008 eight-hour ozone standard nonattainment that failed to attain by its attainment date are subject to the Section 185 fee program upon the effective date of EPA's failure to attain notice in the *Federal Register*.

No changes were made in response to these comments.

Comment

Fenceline Watch commented that the fee should be implemented expeditiously.

Response

The fee program will become applicable upon the effective date of EPA's failure to attain notice in the *Federal Register* as discussed in this preamble.

No changes were made in response to these comments.

Comment

Better Brazoria commented that major stationary sources should not be exempt from fees even if they are required to implement Best Available Control Technology (BACT) or Lowest Achievable Emission Rate (LAER).

Response

The commission agrees with this comment and notes that these sources are not exempt from the fee program.

No changes were made in response to this comment.

Comment

One individual requested a list of businesses applicable to the rule and the amount of fees those businesses will be required to pay.

Response

A definitive list of major stationary sources to which this fee program would apply cannot be determined until program implementation and may change with each year of program implementation.

A fee estimate for each major source cannot be provided since it is predicated on several unknown factors such as how industry will choose to exercise the baseline amount flexibilities, the future fee rate adjusted for inflation annually by EPA, and the

amount of TERP or future grant program's revenue available to offset the fee on major stationary sources.

No changes were made in response to these comments.

Comment

Green Consulting requested that an Inapplicability Notification Letter submitted to TCEQ's point source emissions inventory certifying that the site-level emissions of NO_x and VOC are below 10 tons per year (tpy) be included with annual routine emissions reported to the TCEQ point source emissions inventory. Green Consulting noted that this would allow sites to use their actual certified emissions as the baseline instead of having to rely on the total emissions authorized by permits or APD-CERT.

Response

The commission disagrees with this comment. As provided by FCAA, §185, the penalty fee applies to major stationary sources of ozone precursor emissions. Major stationary sources cannot submit the Inapplicability Notification Letter to the point source emissions inventory because §101.10 requires all major stationary sources (as defined in §116.12) to submit either a full point source emissions inventory update, or for qualifying sites, an Insignificant Change Notification Letter.

No changes were made in response to this comment.

Comment

Better Brazoria commented that the attainment date should be defined as the EPA-approved date by which the area must meet the NAAQS so that proper fees are assessed for the appropriate periods of time.

Response

The commission agrees with this comment and defines the attainment date as the EPA-specified date an area is required to attain the 2008 eight-hour ozone standard under the FCAA. The baseline year is January 1 through December 31 of the calendar year that contains the attainment date unless otherwise specified in the rulemaking (e.g. for new major sources after the baseline year).

The severe classification attainment date for the DFW and HGB nonattainment areas under the 2008 eight-hour ozone standard is July 20, 2027; therefore, the 2027 calendar year from January 1, 2027, through December 31, 2027, determines both the attainment year and baseline year of 2027, unless EPA approves an attainment date extension under FCAA, §181(a)(5).

No changes were made in response to this comment.

Comment

Better Brazoria commented that Texas should not be afforded additional extension years under FCAA, §181(a)(5) and if an extension year is provided by EPA, it must meet the qualifications of and be approved under FCAA, §181(a)(5).

Response

The commission disagrees that Texas should not be afforded an extension of the attainment date under FCAA, §181(a)(5) if the DFW and/or HGB nonattainment areas qualify. Whether the DFW and/or HGB nonattainment areas qualify for an extension to the 2008 eight-hour ozone standard severe classification attainment date under FCAA, §181(a)(5) and future hypothetical EPA actions for extension date requests cannot be predicted.

The commission agrees that an extension of the attainment date is only applicable to this rulemaking if EPA approves such requests. As discussed in this preamble, no fee payment is due for a year determined by EPA to be an extension year under FCAA, §181(a)(5) for the 2008 eight-hour ozone standard. For any area granted an extension, the fee will be applicable if the severe or extreme nonattainment area does not attain by the extension attainment date specified by EPA based on the effective date of EPA's finding of failure to attain notice in the *Federal Register*.

No changes were made in response to these comments.

Comment

Better Brazoria requested the broadest definition of actual and allowable emissions to determine baseline amounts and baseline amount exceedances for annual fee assessment, including combinations of permitted emissions, regulated emissions, fugitive emissions, unregulated emissions, and/or maintenance, startup, and shutdown (MSS) emissions. Better Brazoria stated that for a source that only operated a portion of either the baseline year or another time period as allowed by this rule, the actual and permitted emissions should be extrapolated using the most recently available representative data for the relevant period.

Response

The commission includes the broadest definition of actual and allowable emissions in this adopted rulemaking and clarifies that there are necessary differences between actual and allowable emissions used for baseline amount determination and the annual fee assessment as described below.

As discussed in this preamble, for baseline amount determination, FCAA, §185(b)(2) requires that the "lower of the amount of actual VOC emissions ("actuals") or VOC emissions allowed under the permit applicable to the source". For this rulemaking baseline emissions represents the "actual emissions" referenced in FCAA, §185(b)(2) and excludes unauthorized emissions. Baseline emissions are reported in the annual point source emissions inventory and include reported annual emissions that are authorized by permit or rule from routine operations. This includes authorized MSS activities during the baseline year or another time period as allowed by this rule. For baseline emissions, unauthorized emissions are excluded. This includes emissions events and MSS activities not authorized by permit or rule because they are not authorized or representative of routine operations.

As discussed in this preamble, for a baseline amount determination, the major stationary source's authorized emissions or emissions pending authorization include emissions allowed under any TCEQ-enforceable measure or document, such as rules, regulations, permits, orders of the commission, and/or court orders. Fugitive emissions are required to be included for the purposes of the baseline emissions calculations and fee assessments. As provided by 40 CFR §70.2, fugitive emissions of VOC or NO_x for major stationary sources belonging to one of the categories listed in paragraph 2 of the definition of major sources may be excluded from counting toward major source applicability. However, once the source meets the major stationary source applicability requirements of §116.12, fugitive emissions are required to be reported in the emissions inventory, and the fugitive emissions must be used for both baseline emissions calculations and fee assessments for Section 185 fee purposes.

As discussed in this preamble, annual fee assessments are based on actual emissions, as defined in §101.10, which

includes emissions from annual routine operations, MSS operations, and emissions from emissions events or MSS activities.

The commission disagrees that actual or permitted emissions should be extrapolated for partial years. Emissions extrapolation for a partial year is not as accurate or representative as using the reported baseline emissions or permitted emissions during a consecutive 12-month timeframe, regardless of whether the 12 months constitutes a calendar year.

As discussed in this preamble, partial calendar years may be applicable for baseline amount determination of sources that qualify as irregular, cyclic, or otherwise varying significantly from year-to-year to select a 24-month consecutive period to average the baseline emissions from a specified historic look-back period. Also, new major stationary sources may use their first year (12 consecutive months) operating as a major stationary source to determine the baseline amount. The baseline amount must be the lower of the baseline emissions during the first year of operation as a major source or the total annual authorized emissions during the first year of operation as a major source, which is consistent with FCAA, §185 requirements.

No changes were made in response to these comments.

Comment

Better Brazoria requested that TCEQ provide explicit definitions for facility, emissions units, and equipment because of differences between the terms for federal, Texas Clean Air Act (TCAA), and TCEQ guidance to ensure major stationary sources do not benefit from interchanging terms to obscure emissions data.

Response

The commission disagrees that further definitions are necessary and notes that definitions needed for this rulemaking were appropriately included. Emissions units are consistent with the definition in §101.1. The definition of facility is consistent with what EPA has approved in the SIP. Additionally, the term facility is not necessary to be specifically defined in this rulemaking because the definition of a major stationary source is consistent with the §116.12 and that definition appropriately reflects the term facility. The term equipment is appropriately used in the preamble in the context of mobile sources in the TERP program.

However, the commission agrees that emissions unit is the appropriate term when used to describe specific equipment at a major stationary source. Therefore, in the adopted version of this rule, the term "equipment" was updated to "emissions units" in §101.710(a)(1) and (2) rule language; similar updates were made to the preamble Section by Section Discussion for §101.710.

Intention of FCAA, §185

Comment

Air Alliance Houston and Public Citizen commented that the NAAQS were established by Congress to protect human health and improve air quality, and the proposed fee program fails to accomplish both objectives. Better Brazoria commented that the TCAA mandates TCEQ to attain and maintain NAAQS in ways that are consistent with the FCAA. Since the TCEQ Section 185 fee program offsets the direct fees on major sources using TERP revenue, this conflicts with the TCAA's requirement (consistent with the FCAA) to attain and maintain NAAQS to protect human health. An individual commented that this rule delays progress toward meeting the 2008 eight-hour ozone NAAQS. Air Alliance Houston, Public Citizen, Earthjustice Group One and Earthjustice Group Two, and NCTCOG asserted the goal of FCAA, §185 is to bring severe and extreme nonattainment areas into attainment which this fee program fails to accomplish. Better Brazoria echoed Public Citizen's statements and added that the FCAA, §185 is also designed to penalize major offenders that do not reduce emissions in areas with repeated failures to comply with the NAAQS. Two individuals commented that the rule doesn't meet the spirit or intent of the FCAA to hold polluters accountable. Public Citizen and Environmental Groups noted that an alternative fee program provides no real-world benefits to the nonattainment areas. Better Brazoria, Earthjustice Group One, Earthjustice Group Two, Environmental Groups, Harris County Attorney's Office, Public Citizen, and twenty individuals commented that the fee program will not improve air quality in DFW or HGB because the use of TERP to offset the fees on major stationary sources shields major stationary sources from penalties, does not reduce emissions, removes the economic incentive to reduce emissions, and removes the incentive to invest in meaningful operational changes, including installing advanced control strategies. Better Brazoria, Earthjustice Group One, and Earthjustice Group Two commented that the use of TERP to offset fees undermines and violates the FCAA goals since emissions are not directly reduced from major sources. Air Alliance Houston stated that TERP funds will be converted as credit to pay the fees ("fines") for industry that contributes significantly to ozone formation, especially around fenceline communities. An individual commented that the rule does not reduce pollution but increases VOC emissions. Harris County Attorney's Office expressed concern that the fee program will prolong the region's nonattainment status by removing the pressure to drive improvement. Ash Grove and Holcim stated that reductions in NO_x emissions from point sources would have little impact on achieving attainment and argued that the mandated fee imposed on a single category source does not guarantee that ozone precursor emissions will automatically decrease.

Response

The commission agrees that the overall intent of both the FCAA and TCAA is to attain and maintain the NAAQS. However, the commission disagrees that FCAA, §185 requires a fee program that achieves emissions reductions or operational improvements sufficient to bring a nonattainment area into attainment.

While the FCAA, §185 may incentivize major stationary sources to reduce emissions, an incentive is not the same as a requirement. FCAA, §185 does not require emissions reductions by major stationary sources and the commission agrees with the comment that the Section 185 fee program cannot guarantee that emissions reductions will occur. A major stationary source subject to this rule could choose to pay the assessed fee for each fee assessment year, resulting in no emissions reductions in the nonattainment area, or the source may choose to reduce emissions based on economic considerations and the site's ability to further control emissions. Since this rule does not require ozone precursor emissions reductions, the attainment of the 2008 eight-hour ozone standard cannot be guaranteed due to this rule alone. If this rule is adopted and EPA approves this rule, it will become part of the Texas SIP, which includes multiple economic incentive programs and control strategies designed to bring areas into attainment. FCAA, §185 contains no language regarding the use of penalty fees by States.

The commission also disagrees that the Section 185 fee program does not hold major stationary sources accountable since these

sources are assessed a penalty fee. The Section 185 fee program assesses a fee on each major stationary source in a nonattainment area, and the total of those fees constitutes the nonattainment area's total fee obligation (Area §185 Obligation). If TERP revenue or revenue from a future grant program does not cover the entire Area §185 Obligation, major stationary sources will owe a prorated fee.

The Section 185 fee program would not increase VOC emissions as it does not and cannot alter requirements for emissions authorizations under the TCAA.

No rule changes were made in response to these comments, but additional information was added to the preamble for clarification regarding the requirements of FCAA, §185 and the intent of this rulemaking.

Comment

Environmental Groups commented that the penalty fee may not result in emissions reductions from point sources, as those emitters may choose to pay the fee instead of investing in emissions reduction measures.

Response

The commission agrees with this comment. The purpose of this rulemaking is to establish a program for the 2008 eight-hour ozone standard to implement FCAA, §185, which does not require emissions reductions.

No changes were made in response to this comment.

Comment

The Harris County Attorney's Office asserted that the FCAA has a graduated regulatory design, in which more stringent compliance mechanisms are levied the longer an area remains in nonattainment and that allowing TERP to offset major sources' penalty fees is inconsistent with this regulatory design.

Response

The commission agrees that the FCAA increases regulatory requirements over time for the ozone NAAQS, as an area that fails to attain the ozone NAAQS is reclassified into more stringent classifications. However, as discussed in this preamble, the commission disagrees that allowing the use of TERP to offset penalty fees as provided in this rulemaking is inconsistent with the FCAA.

No rule changes were made in response to these comments, but additional information was added to the preamble for clarification regarding the requirements of FCAA, §185 and the intent of this rulemaking.

Comment

Public Citizen and Harris County Attorney's Office commented that since TERP on its own has not brought the areas into attainment, then it cannot be proposed as an alternative to a penalty fee charged directly on major sources.

Response

As discussed elsewhere in this Response to Comments, the commission disagrees that Section 185 fee programs are intended to bring areas into attainment and further disagrees that TERP was required to bring the areas into attainment to be an alternative to a penalty fee.

No changes were made in response to these comments.

Comment

Earthjustice Group Two, Harris County Attorney's Office, Public Citizen, and fourteen individuals commented that Section 185 fee program revenue could create new funding for air quality improvement programs and projects. Four individuals commented that the state can reinvest Section 185 fee revenue into administration of the FCAA, with one individual indicating that the fee revenue could exceed $200 million. Another individual asked TCEQ to adopt a Section 185 fee program that reinvests funds into air quality improvement projects. Better Brazoria, commented that these reinvested funds should focus on projects that would improve air monitoring, expand or create public health initiatives, and create pollution mitigation projects in environmental justice areas. Fenceline Watch commented that the funds could be used for preventive health programs and to create programs to make Texas more resilient to disaster by improving infrastructure. Another individual commented that if there are groups of people with severe health problems in polluted areas (air, water, etc.), then Section 185 fees ("fines") can help protect the public or help adversely impacted individuals with their healthcare costs. Better Brazoria and Public Citizen also commented that revenue lost from EPA's potential disapproval of TCEQ's Section 185 fee program could have gone toward the benefit of communities impacted by poor air quality. Environmental Groups stated that since Texas is not attaining the ozone standard, more money is needed for clean air programs, which can be obtained through collecting penalty fees from point sources. Environmental Groups commented that a fee collected from major stationary point sources which could generate more than $200 million annually, could be used to fund additional TERP grants, which would further reduce emissions from mobile sources. An individual commented that the fees ("fines") from industry can help protect the public. Fenceline Watch stated that a Section 185 fee program must provide material resources to the community forced to endure health, environmental, and safety concerns imposed by industry. Harris County Attorney's Office also noted that new supplemental programs are needed to build on existing air quality improvement efforts. Ash Grove, Cemex, and Holcim supported using the annually collected Section 185 fees for mobile source emissions reductions in DFW and HGB nonattainment areas. Ash Grove stated Section 185 fees will go to the Texas Clean Air Fund that TCEQ administers to safeguard air resources in Texas, and the collected Section 185 fees under the draft rule will be used to improve air quality in the state.

Response

The scope of this rulemaking is the establishment, assessment, collection, and termination of the Section 185 fee for the 2008 eight-hour ozone standard. The authority to allocate funds from any Section 185 fee program revenue to TCEQ falls under the authority of the Texas Legislature. Additionally, FCAA, §185 does not identify any purpose for penalty fee revenue. Therefore, the creation of new air quality programs funded by Section 185 fee revenue or how such revenue could be spent is outside the scope of this rulemaking.

The Legislature establishes the funding structure for TERP, and comments regarding the additional funding for TERP is outside the scope of this rulemaking.

No rule changes were made in response to these comments, but additional information was added to the preamble for clarification regarding the requirements of FCAA, §185 and the intent of this rulemaking.

Comment

Better Brazoria commented that to ensure long term compliance and emissions reductions, the Section 185 fee program should include ongoing evaluations of the fee program's effectiveness, including periodic assessments of emission reductions and health improvements and increasing fees for repeated non-compliance.

Response

The purpose of this rulemaking is to develop a Section 185 fee program as required under FCAA, §185. FCAA, §185 does not require an evaluation such as specified by the commenter. As discussed elsewhere in this Response to Comments, while the FCAA, §185 may incentivize major stationary sources to reduce emissions, an incentive is not the same as a requirement and emissions reductions are not guaranteed because of this fee program. Health improvements are not required by FCAA, §185 and are outside the scope of this rulemaking. As specified under FCAA, §185(b)(1) and (3), EPA sets the annual sets the fee by adjusting for inflation. An increase in fees for repeated non-compliance is not provided for in FCAA, §185.

No rule changes were made in response to these comments, but additional information was added to the preamble for clarification regarding the requirements of FCAA, §185 and the intent of this rulemaking.

Offsetting Failure to Attain Fee Area Obligation

Comment

Twenty individuals expressed opposition to the alternative fee provisions of the rule. Air Alliance Houston, Better Brazoria, Earthjustice Group One, Earthjustice Group Two, Environmental Groups, Harris County Attorney General's Office, Public Citizen, and an individual stated that instead of an alternative fee program, the agency must implement a fee program that follows the plain language and specific directives of the FCAA as Congress intended to directly assess and collect an annual fee on major stationary sources on a per-ton basis of each ozone precursor pollutant without any alternative options. Better Brazoria commented that TCEQ cannot place fees on mobile sources to satisfy Section 185 fee program requirements. Earthjustice Group Two further stated FCAA, §185 does not provide alternative methods to calculate, impose, or collect fees, or the ability to replace fees on individual sources with on-paper credits from another funding source. Better Brazoria and two individuals commented that targeting mobile sources deviates from FCAA, 185 as Congress intended a direct fee on major stationary sources. Two individuals commented that TCEQ must adopt a fee program that directly assesses fees to hold polluters accountable, improve air quality, and protect public health.

Response

The commission disagrees that the Section 185 fee program does not follow FCAA requirements. FCAA, §172(e) provides that if EPA relaxes a standard, EPA should promulgate requirements that are not less stringent than the controls applicable before the relaxation. EPA has interpreted FCAA, §172(e) to also apply when a NAAQS is strengthened, which has been upheld by federal courts as discussed in this preamble, in the Background and Summary of Factual Basis for the Adopted Rules. Since EPA strengthened the 2008 eight-hour ozone standard of 75 parts per billion (ppb) with the promulgation of the 2015 eight-hour ozone standard to 70 ppb, then FCAA, §172(e) can be applied to the 2008 eight-hour ozone standard. TCEQ interprets FCAA, §172(e) to allow an equivalent or better Section 185 fee program to implement FCAA, §185 requirements when a NAAQS is strengthened.

EPA has not provided states with Section 185 fee program development guidance under the 2008 eight-hour ozone standard. Therefore, to develop this Section 185 fee program, TCEQ relied on EPA's 2010 guidance memo that was vacated on procedural grounds for Section 185 fee programs under the one-hour ozone standard and EPA's approval of Section 185 fee program for HGB nonattainment area under the one-hour ozone standard. Relying on EPA's 2010 guidance memo continues to be appropriate for the 2008 eight-hour hour ozone standard since EPA proposed approval of an equivalent alternative fee program under the one-hour ozone standard for Antelope Valley and Mojave Desert on April 22, 2024 (89 *FR* 29277) which relied on the principles identified in EPA's 2010 guidance memo. As part of the Section 185 fee program, the fee on major stationary sources is offset based on TERP revenue or future grant program's revenue collected and expended in the nonattainment area. Using TERP to offset the fee on major stationary sources is equivalent or better than a conventional fee program since TERP programs are targeted to obtain NO_x emissions reductions primarily from mobile sources, which are the largest source of NO_x emissions in the DFW and HGB nonattainment areas.

The commission disagrees that the Section 185 fee program will not collect any direct fees on major stationary sources. As proposed, TCEQ would assess the full Section 185 fee due from each major stationary source and then sum all assessed fees to determine the entire fee obligation for the nonattainment area (Area §185 Obligation). If there is not enough TERP revenue or revenue from a future grant program to cover the entire Area §185 Obligation for a nonattainment area, then major stationary sources will be assessed a prorated fee to ensure the entire Area §185 Obligation for a fee assessment year is collected in full.

No rule changes were made in response to these comments, but additional information was added to the preamble for clarification regarding the requirements of FCAA, §185 and the intent of this rulemaking.

Comment

Better Brazoria and Environmental Groups commented that alternative fee programs, including the use of mobile sources to offset a direct fee on major stationary sources cannot be used for an active ozone NAAQS. Better Brazoria and Environmental Groups further stated that an alternative program under revoked standards may be appropriate since they concentrate on anti-backsliding and because of a reduced regulatory priority have been replaced with more stringent and updated standards. Better Brazoria noted that the EPA's previous support for alternative options to a fee-based program were limited to the revoked one-hour ozone standard and none of the approvals cited by the TCEQ apply to an active standard. Better Brazoria commented that FCAA, §172(e) does not create a loophole to avoid penalties assessed against major stationary sources of ozone precursors in active ozone standard severe nonattainment areas.

Response

The commission disagrees that an equivalent alternative fee program may not apply to active ozone NAAQS. As discussed elsewhere in this Response to Comments, TCEQ interprets FCAA, §172(e) to allow an equivalent program when a NAAQS is strengthened.

No rule changes were made in response to these comments, but additional information was added to the preamble for clarification regarding the requirements of FCAA, §185 and the intent of this rulemaking.

Comment

Better Brazoria commented that FCAA, §172(e) cannot be relied upon for the alternative fee program because it does not identify how a regulating body would provide alternative options, waivers, or equivalency to statutory requirements. Better Brazoria commented that FCAA, §172(e) focuses on preservation of otherwise required controls and according to the D.C. Circuit Court of Appeals that the penalty provision of FCAA, §185(a) are "controls" that FCAA, §172(e) "requires to be retained."

Response

The commission acknowledges that the D. C. Circuit Court held that FCAA, §185 penalty fee programs were an anti-backsliding "control" required to continue to apply for revoked NAAQS; however, the plain language of FCAA, §185 does not require fee programs to result in emissions reductions. As discussed elsewhere in this Response to Comments, EPA has approved equivalent alternative fee programs under the one-hour ozone standard citing FCAA, §172(e). There is no statutory language that would exclude equivalent alternative programs for currently active and effective strengthened ozone standards and allowing such programs for currently active strengthened ozone standards promotes consistency.

No rule changes were made in response to these comments, but additional information was added to the preamble for clarification regarding the requirements of FCAA, §185 and the intent of this rulemaking.

Comment

Better Brazoria commented that TCEQ's fee program may indirectly interfere with emissions reductions required under the FCAA, §172(c)(2) rate of (*sic*) further progress (RFP) mandate since the fee program may disincentivize major sources from reducing emissions and this may impede RFP requirements, create more RFP requirements, and prolong nonattainment. Better Brazoria stated that if TCEQ prioritizes its alternative fee program over strengthening mobile source controls in RFP SIP revisions, it may limit the effectiveness and scope of the RFP reductions. Diverting focus to a future fee program may delay or weaken more proactive mobile source controls which would impede RFP compliance and violate the FCAA. Better Brazoria also stated that an alternative fee program must reduce emissions in such a way that indicates compliance and progress toward attainment ("RFP"). Better Brazoria stated that if the alternative fee program relies on measures already credited in the RFP SIP revision contingency plans, it may reduce the effectiveness of those measures. Better Brazoria explained that EPA prohibits emissions reductions from being used more than once and each SIP requirement (e.g. RFP, attainment, contingency, and penalty programs) relies on distinct and enforceable reductions that cannot be reused for other FCAA obligations such as the Section 185 alternative fee program.

Response

The commission disagrees that FCAA, §185 requires a fee program that achieves emissions reductions in the same manner as FCAA-required RFP SIP revisions. The purpose of this rulemaking is to develop a penalty fee program as required under FCAA, §185 which is separate from the FCAA, §182(b) RFP SIP requirements. Since these are separate, distinct, and unrelated requirements, the commission disagrees that this Section 185 fee program is required to be implemented in a manner that would assist in compliance with the RFP requirement; nor does it impede the commission's ability to meet RFP in any way.

The commenter incorrectly indicates emissions reductions from TERP programs are used more than once in Texas SIP revisions. Mobile source control measures that have been used to demonstrate RFP are the federally required engine and fuel standards measures, which are not related to TERP or this fee program. If the Section 185 fee program is adopted and implemented due to failure to attain, TCEQ will take appropriate action regarding the use of TERP emissions reductions in other SIP-related activities.

The commission also disagrees that using TERP revenue to offset the fee on major stationary sources weakens mobile source control measures in the RFP SIP or will inhibit RFP compliance. States have limited authority to regulate mobile source emissions under Title II of the FCAA and cannot develop engine standards. The TERP program is an innovative state-specific measure used to obtain voluntary mobile source emission reductions since the state has limited authority.

No rule changes were made in response to these comments, but additional information was added to the preamble for clarification regarding the requirements of FCAA, §185 and the intent of this rulemaking.

Comment

Fenceline Watch commented that TCEQ's position on its equivalent Section 185 fee program is contradictory: an equivalent fee is necessary to not excessively penalize industrial emissions, yet the program would assess major stationary sources a prorated fee if the TERP credit could not cover the area's entire fee obligation. Fenceline Watch contended that TCEQ cannot state that a conventional fee is not the proper tool and then still include a direct fee option in the rule.

Response

The commenter misunderstands the commission's position regarding the adoption of an equivalent fee program. The commission disagrees that an equivalent Section 185 fee program is contradictory or prohibits fee assessment. As discussed elsewhere in this Response to Comments, the commission's position is that an equivalent fee program is allowed by the FCAA, §172(e). The Section 185 fee program uses TERP grant revenue that funds primarily mobile source emissions reductions since mobile sources are the largest contributors to NO_x emissions in the DFW and HGB nonattainment areas.

Additionally, a conventional fee program would cause significant economic cost burden by impacting the nonattainment areas and the rest of the country. Such costs would likely be passed on to consumers in the form of higher prices and would likely have ripple effects throughout the country due to the concentration of energy, petrochemical, and refining companies in the HGB 2008 ozone NAAQS nonattainment area. According to the Greater Houston Partnership, in 2021 the Houston Metropolitan Statistical Area (MSA) accounts for 44% of the nation's base petrochemical capacity with many of the top employers in the energy, petrochemical, or refinery related fields (available at: *https://d9.houston.org/sites/default/files/2021-05/16H%20W001%20Chemical%20Industry%20Overview%20.pdf* and *https://hcoed.harriscountytx.gov/docs/largest_100_employers.pdf*). The Greater

Houston Community Foundation stated that as of 2023, the Houston MSA's gross domestic product (GDP) was the seventh highest in the country and 26% of the GDP for Texas (available at: *https://www.understandinghouston.org/blog/houstons-economic-paradox/*). In the U.S. Census Bureau Metropolitan and Micropolitan Statistical Areas Population Totals: 2020-2024, the Houston MSA is the fifth largest in the county as of 2024 (available at: *https://www.census.gov/data/tables/time-series/demo/popest/2020s-total-metro-and-micro-statistical-areas.html*).

The same amount of fees will be assessed, regardless of whether TERP revenue collected and expended in a nonattainment area can cover the total fee obligation (Area §185 Obligation) for a nonattainment area. To ensure that the fee program is equivalent for fee assessments, it is appropriate to assess a prorated fee on major stationary sources in case TERP revenue is not sufficient to cover the Area §185 Obligation. This prorated fee ensures the entire Area §185 Obligation is collected each year the fee is applicable.

No rule changes were made in response to these comments, but additional information was added to the preamble for clarification regarding the requirements of FCAA, §185 and the intent of this rulemaking.

Comment

Better Brazoria commented that previous non-attainment fee programs have considered placing fees on mobile sources in mistaken attempts to pursue Section 185's objectives.

Response

The commission disagrees that a fee is being placed on mobile sources for Section 185 fee program purposes. TERP revenue that is already collected (as long as any revenue is expended) in a nonattainment area is used to offset the fee on major stationary sources. There is no exchange of money between TERP and the Fee Equivalency Account for a nonattainment area. The Section 185 fee program does not change how the TERP program operates.

No rule changes were made in response to these comments, but additional information was added to the preamble for clarification regarding the requirements of FCAA, §185 and the intent of this rulemaking.

Comment

Better Brazoria commented TCEQ cannot use mobile source fees to satisfy the requirements of a Section 185 fee because the TERP program only reduces NO_x emissions and cannot serve as a surrogate to reduce major source's VOC emissions as required by FCAA, §185. Since FCAA, §182(f) extends the requirement to NO_x emissions, then a Section 185 Fee Program must equally penalize both ozone precursor emissions. Better Brazoria supported this comment by stating that stationary sources dominate emissions in the HGB nonattainment area and account for 84% of the VOC emissions. Better Brazoria noted that EPA predicts that stationary sources will continue to contribute more VOC emissions as mobile source emissions decline.

Response

The commission disagrees that the TERP program revenue cannot be used as part of the Section 185 fee program since it does not primarily reduce VOC emissions. While not the primary focus of TERP grants, VOC emissions reductions can occur when upgrading or replacing equipment using TERP grants. As discussed elsewhere in this Response to Comment, FCAA, §185 may incentivize, but does not require emissions reductions. This rulemaking meets the requirements of FCAA, §185 and FCAA, §182(f) by assessing a fee on major stationary sources of both VOC and NO_x emissions. Since mobile sources are the largest category of NO_x emissions in the HGB nonattainment area then the use of TERP to offset the fee on major stationary sources has an additional benefit of reducing NO_x emissions from the most significant source of NO_x emissions in the area.

The commission also disagrees with the commenter's characterization of the amount of stationary source VOC emissions. The commenter combines the 68% contribution from area stationary sources VOC emissions with the 16% point source stationary source contribution to arrive at an 84% total VOC emissions contribution for "stationary sources" in the HGB nonattainment area for the 2020 reporting year, which incorrectly implies major stationary sources are responsible for the 84% contribution. The 2020 emissions inventory pie charts are provided on the Texas Emissions Sources: Graphics webpage (available at: *https://www.tceq.texas.gov/airquality/areasource/emissions-sources-charts*). At 16%, point sources, which include the major stationary sources referenced by the commenter, are not the most significant source of VOC emissions in the HGB nonattainment area. Instead, area stationary sources are the largest contributor to VOC emissions in the HGB nonattainment area at 68%. Area stationary sources are minor sources and not subject to this fee program. The point stationary source category contains major stationary sources and is the only relevant statistic when discussing major stationary source's contribution to VOC in the HGB nonattainment area.

The referenced EPA emissions predictions for point and area sources and are not relevant for this rulemaking.

No rule changes were made in response to these comments, but additional information was added to the preamble for clarification regarding the requirements of FCAA, §185 and the intent of this rulemaking.

Comment

Fenceline Watch commented that the state legislature currently mandates TCEQ to transfer 35% of TERP funds to the Texas Department of Transportation (TxDOT) for congestion and mitigation (CMAQ) in air quality improvement projects located in nonattainment areas. Fenceline Watch noted that this transfer occurs without regard as to whether mobile sources are the primary contribution to ozone precursors in the nonattainment areas.

Response

The commission acknowledges that currently, Texas Health and Safety Code §386.252, requires that 35% of TERP funds be transferred to TxDOT for CMAQ purposes and that this transfer occurs without consideration of mobile sources' contribution to ozone precursor emissions in nonattainment areas.

If this fee program is required to be implemented, then TCEQ will do so in accordance with TERP's funding structure and revenue disbursement.

No changes were made in response to this comment.

Comment

Fenceline Watch commented that the TERP credit used for the fee program creates a "self-dealing" problem since TERP provides grants to industries like trucking, farming, and construction to replace old machinery and upgrade to cleaner technology.

Fenceline Watch stated this process gives industry bad actors that exceed their regulatory limits a credit into a fund to reinvest back into their non-compliant facilities and infrastructure.

Response

The commission disagrees that the Section 185 fee program poses a conflict of interest or is "self-dealing." Trucking, farming, and construction industries are not major stationary sources and are not subject to this fee program; similarly, mobile source equipment at stationary sources are not subject to Section 185 fees. Additionally, TERP funds upgrades to mobile source equipment that meets or exceeds federal emissions requirements, so funding of non-compliant infrastructure does not occur.

The commission also disagrees that the penalty fee program allows any major stationary source to exceed regulatory limits, as the penalty fee program does not, and cannot, alter requirements for emission authorizations under the TCAA.

The commenter provided no information to support its generalized allegation about the "non-compliant" facilities and infrastructure of major stationary sources, and the commission disagrees that the penalty fee program implies that this is true. FCAA, §185 requires a penalty fee for emissions that exceed 80% of a major stationary source's baseline amount, regardless of whether those emissions were authorized or not. The commenter incorrectly assumes that such emissions are not authorized.

No changes were made in response to these comments.

Comment

Earthjustice Group One and Earthjustice Group Two stated that the fee program appears to follow the FCAA by assessing the fee but will not result in the collection of a fee from any major stationary sources. Similarly, Fenceline Watch stated that not one major stationary source of VOC emissions will pay a penalty fee to the state under this fee program.

Response

The commission disagrees that the Section 185 fee program will not lead to the collection of fees. The Section 185 fee program assesses a fee on each major stationary source in a nonattainment area, and the sum of those fees constitutes the nonattainment area's total fee obligation (Area §185 Obligation). If TERP revenue or revenue from a future grant program does not cover the entire Area §185 Obligation, major stationary sources owe a prorated fee to ensure the entire Area 185 Obligation is collected for each fee assessment year.

No changes were made in response to these comments.

Comment

Better Brazoria commented that EPA emphasized that the program must result in "enforceable" emissions reductions to comply with the FCAA and that TCEQ's fee program is not an equivalent alternative because it does not require any new enforceable measures. Better Brazoria also commented that the 2010 EPA guidance contemplates that mobile sources should only be assessed fees where major sources have "well controlled" emissions. They stated that an area classified in severe nonattainment, which indicates perpetual NAAQS compliance problems, does not have "well controlled" emissions.

Response

The commission disagrees that FCAA, §185 requires a fee program that achieves enforceable emissions reductions. Additionally, EPA's 2010 Guidance memo is clear that Section 185 fee program equivalency is demonstrated through quantification of fee assessments and/or emissions reductions, not through demonstrating the enforceability of any emissions reductions.

The commission also disagrees that the major stationary sources in the DFW and HGB nonattainment areas are not well controlled. Major stationary sources of ozone precursor emissions located in a severe ozone nonattainment area are subject to the highest level of regulation including 1:1.3 emissions offsets and LAER control technology required for major modifications at, or new construction of, major stationary sources. EPA's 2010 guidance memo stated "EPA recognizes that section 185 is not strategic in imposing emissions fees on all major stationary sources, including already well-controlled sources that have few, if any, options for avoiding fees by achieving additional reductions. States can be more strategic by crafting alternative programs that exempt or reduce the fee obligation on well-controlled sources ...."

The commission further does not agree that a severe classification implies the area's major sources are not well-controlled. As stated above, these sources are subject to more stringent permitting offset requirements and the requirement to install LAER. Furthermore, as discussed in this preamble, mobile sources make up a larger proportion of NO_x emissions in the DFW and HGB nonattainment areas. Additionally, area stationary sources are the largest portion of VOC emissions in the DFW and HGB nonattainment areas. Thus, it does not follow that a severe classification is a result of major stationary sources not being well-controlled.

No rule changes were made in response to these comments, but additional information was added to the preamble for clarification regarding the requirements of FCAA, §185 and the intent of this rulemaking.

Comment

Earthjustice Group One commented that TERP must be equivalent to FCAA, §185 to be lawfully used in an equivalent alternative fee program. Earthjustice Group One contended that since FCAA, §185 requires a direct penalty and incentive program and TERP is indirect by offering grants money to replace older equipment, TCEQ's Section 185 fee program is not equivalent to a conventional fee program and TERP cannot be used to offset the fee on major stationary sources. Harris County Attorney General's Office stated that the Section 185 fee is a direct regulatory penalty imposed on major stationary sources as a source-specific economic consequence for emissions. Since the TERP program is an indirect incentive program for voluntary emission reduction projects, not a direct penalty for non-compliance or economic incentive for source-specific emission modifications, then TERP should not serve as a legal substitute for the Section 185 penalty fee. Better Brazoria stated that even if an equivalent alternative fee program was allowed, TCEQ's fee program does not follow EPA's 2010 guidance requirement for an alternative program to be equivalent, since the TCEQ Section 185 fee program must result in the same amount of emissions reductions and/or fee revenue collected from a conventional Section 185 fee program. More specifically, Better Brazoria stated that TERP revenue cannot be used to offset the fee on major stationary sources because the emissions reductions from TERP were not quantified and demonstrated to provide equivalent or better emissions reductions when compared to a conventional fee program. Since emissions reductions are required by FCAA, §185, TCEQ has not demonstrated its program is equivalent without

directly assessing a fee on major sources. Earthjustice Group Two stated that TCEQ's fee program is not an equivalent alternative program.

Response

The commission disagrees that the fee program is not an equivalent to the FCAA, §185 requirements. The commission developed its Section 185 fee program to meet the requirements of the FCAA, §185 and EPA guidance. EPA's 2010 guidance memo provides options for equivalent Section 185 fee programs and stated that it is appropriate for states to focus on achieving similar fee revenue. Therefore, this rulemaking focuses on achieving the same amount of fee assessments to fulfill the equivalency requirement. Additionally, the commission disagrees that emissions reductions are required under a conventional or equivalent Section 185 fee program; emissions reductions are not guaranteed under FCAA, §185.

The adopted Section 185 fee program is designed to be an equivalent fee program using the fee assessment option. As described in this preamble, TERP revenue that is collected and expended in a nonattainment area is documented in a Fee Equivalency Account for each nonattainment area. The Fee Equivalency Account documents the amount of TERP revenue available to offset the fee for each fee assessment year. There is no exchange of money between the TERP and the Fee Equivalency Account. Annually, TCEQ staff determines a nonattainment area's total fee obligation (Area §185 Obligation) and if the TERP revenue in the Fee Equivalency Account exceeds the Area §185 Obligation, then major stationary sources are assessed but do not pay a fee. If the TERP revenue in the Fee Equivalency Account is less than the Area §185 Obligation, then major stationary sources are assessed and pay a prorated fee to ensure the entire Area §185 Obligation is annually met. The TCEQ's process of calculating the annual Area §185 Obligation, applying the credit from applicable TERP revenue, and determining whether assessing a prorated fee on major stationary sources is necessary to meet the annual Area §185 Obligation guarantees assessment of equivalent revenue each fee assessment year.

Since the commission is adopting a Section 185 fee program that is equivalent based on fee assessments, TERP emissions reductions are not quantified. However, the commission disagrees that TERP represents an indirect emissions reduction. The TERP grants result in actual emissions reductions of ozone precursor emissions. These reductions are quantified and reported to the Legislature biennially in reports available on the TERP webpage (*https://www.tceq.texas.gov/airquality/terp/leg.html*).

No rule changes were made in response to these comments, but additional information was added to the preamble for clarification regarding the requirements of FCAA, §185 and the intent of this rulemaking.

Comment

Better Brazoria, Earthjustice Group Two, Environmental Groups, and Public Citizen commented that since the proposed fee program violates the FCAA, an EPA disapproval means the state is at risk for losing delegation of the program to EPA and the millions of dollars in revenue it could create. Environmental Groups stated that the fee program's risk of EPA disapproval would prolong meaningful action in these severe nonattainment areas. Earthjustice Group Two stated that the FCAA is unambiguous and plain and does not contain language that provides EPA with authority to approve alternative fee programs, and that EPA Region 6 confirmed its lack of authority to approve nonconforming plans in public meetings. Similarly, Better Brazoria stated that EPA indicated that an alternative program with flexibilities would potentially not be allowed for the 2008 eight-hour ozone standard. Earthjustice Group Two also stated that EPA did not provide guidance for fee program development under the 2008 eight-hour ozone standard, so TCEQ inaccurately relied on inapplicable guidance for the revoked one-hour ozone standard. Earthjustice Group Two further commented that TCEQ's inappropriate reliance on the inapplicable EPA 2010 guidance document and EPA approvals of other similar programs for the revoked one-hour ozone standard do not provide TCEQ with the authority to propose or EPA the authority to approve an alternative fee program for the 2008 eight-hour ozone standard. Earthjustice Group Two stated that EPA's requested remand of its approval of TCEQ's similar HGB Section 185 fee program for the revoked one-hour ozone standard as further evidence on lack of authority. Earthjustice Group Two asserted that EPA recognized that the baseline amount flexibilities in the HGB one-hour fee program may not be lawful in its requested remand. Environmental Groups commented that EPA indicated that components of the HGB one-hour fee program may not be approvable for the 2008 eight-hour ozone NAAQS, such as the use of TERP.

Response

The commission acknowledges that if the state does not submit a fee program to EPA or if EPA does not approve a state's fee program, FCAA, §185(d) requires EPA implementation of the Section 185 fee program with federal collection of the revenue, with interest, and that the revenue is not returned to the state. However, the commission does not agree that the Section 185 fee program violates FCAA, §185. As discussed elsewhere in this Response to Comments, TCEQ interprets FCAA, §172(e), to allow equivalent Section 185 fee programs when a NAAQS is strengthened. The commission disagrees that reliance on the EPA's 2010 guidance memo and approval of one-hour ozone standard Section 185 fee programs is inappropriate because EPA did not provide states with Section 185 fee program development guidance for the 2008 eight-hour ozone standard. Based on the FCAA, §172(e) interpretation in EPA's 2010 guidance memo, this Section 185 fee program is similar to the equivalent alternative fee programs developed for the one-hour ozone standard and therefore the commission is relying on the same guidance and approvals. Additionally, EPA recently proposed approval of an equivalent alternative fee program under the one-hour ozone standard for Antelope Valley and Mojave Desert (89 *FR* 29277) which relied on the principles identified in EPA's 2010 guidance memo.

The commission also disagrees that TCEQ does not have the authority to propose (or adopt) or that EPA does not have the authority to approve the fee program. The commission has the authority to adopt rules as well as authority to adopt and implement required air quality control plans for the proper control of the state's air. Furthermore, the commission does not agree with the assertion that EPA's voluntary remand of the Section 185 fee program under the one-hour ozone standard approval is evidence that the FCAA does not allow states to adopt an alternative fee program. Instead, EPA's recent proposed approval for Antelope Valley and Mojave Desert (discussed elsewhere in this Response to Comments) supports TCEQ's adoption of an alternative fee program.

Regarding EPA's potential action on this rulemaking, informal statements during stakeholder meetings are not official responses or actions on behalf of EPA decision-makers. The commission expects that EPA's determination regarding the approvability of an equivalent alternative program for the 2008 eight-hour ozone standard will be determined through federal Administrative Procedure Act rulemaking.

Lastly, the commission disagrees that the risk of an EPA disapproval would prolong meaningful action in these nonattainment areas, since the Section 185 fee program would be implemented upon an EPA determination of failure to attain, which, if necessary, would likely occur while EPA action on this rule was pending. Additionally, as discussed elsewhere in this Response to Comments and in this preamble, FCAA, §185 does not require emission reductions.

No rule changes were made in response to these comments, but additional information was added to the preamble for clarification regarding the requirements of FCAA, §185 and the intent of this rulemaking.

Comment

Fenceline Watch commented that for TCEQ to submit an alternative fee program, EPA regulatory oversight is needed because of the various court battles that occurred for alternative fee programs under the one-hour ozone standard.

Response

The commission notes that EPA has regulatory oversight for all FCAA programs, including this Section 185 fee program. EPA is also required to review and take action on all revisions to the SIP.

No changes were made in response to this comment.

Comment

Twelve individuals commented that TCEQ's proposal shows favoritism towards industry and funds should come from companies and not the public. Three individuals similarly noted that industry should not escape consequences for polluting. An individual commented that if there are not any fees ("fines"), the industry pollution will become worse. Two individuals commented that industry makes money from activities that produce pollution so they should pay Section 185 fees instead of the public. Two individuals added that these large polluters have ample money to pay their fees. Better Brazoria and an individual commented that the use of the mobile sources fees which shifts the financial burden from major polluters to taxpayers. An individual stated they expect industry to accept responsibility and not add to individual Texan's economic burdens. Better Brazoria and two individuals stated that by transferring fees between mobile sources and major stationary sources the burden is improperly placed on the broader population. Three individuals added that this transfer of fees allows industry to get away with causing damage and rewards corporate negligence and urged TCEQ to make industry pay their fees. An individual stated that this rule is a transfer of wealth from taxpayers to corporations and allows private corporations to pollute without paying fees ("fines") they already ignore. Environmental Groups further stated that funds deposited into the General Revenue-Dedicated TERP Account No. 5071 are not derived from any fees from point-source polluters, noting that it is fundamentally unfair that fees collected from mobile sources would "forgive" fees on industrial pollution. Air Alliance Houston and one individual questioned how paying or offsetting the fee ("fines") to subsidize industry using citizen's taxes involves the prevention and reduction of pollution. Seven individuals opposed having Texas drivers and taxpayers pay annual vehicle registration fees that would offset fees that industry is responsible for and want the fees collected from industry. Public Citizen and Environmental Groups noted that using publicly funded TERP money to offset or prorate penalties of private industry is a paper game. Harris County Attorney's Office stated that the use of TERP funds shifts the ongoing costs of nonattainment from private entities to public funding. Eleven individuals commented that the intention of the TERP program is to decrease vehicle emissions and not subsidize industrial emissions. An individual opposed TERP funds paying for federal penalties. Nine individuals commented that industry not paying the fee means that the financial burden shifts to taxpayers and this amounts to taxpayers providing subsidies for major polluters. Better Brazoria commented that the cost-shifting imposes fees on one group, drivers, to finance exemptions for another group' polluters. Two individuals stated that TCEQ protects private interest over public interests. The individual further stated that the proposed rule protects industry polluters. Two individuals stated that it does not reflect the interests of the public or the environment. One individual stated TCEQ's proposed rule weakened federal regulations in favor of industries. Ten individuals commented that TCEQ's proposal excuses polluters from FCAA requirements. Air Alliance Houston and two individuals questioned why large industry were not being held responsible for their contribution to ozone pollution.

Response

The commission disagrees that using TERP revenue expended and collected in a nonattainment area to offset the fee on major stationary sources constitutes a tax or fee on the public, improperly shifts the TERP fee from private companies to citizens or creates any public economic burden. The Section 185 fee program does not change how TERP operates. The same amount of TERP revenue is available to fund projects in the nonattainment area.

There is no exchange of money or conversion of money between TERP and the Fee Equivalency Account for a nonattainment area. The amount of TERP revenue for a severe or extreme ozone nonattainment area for a given year is recorded as a credit in a TCEQ database. This credit is used to offset the fee assessed on major stationary sources as allowed by the Section 185 fee program.

TERP revenue is funded from fees and surcharges on obtaining a certificate of vehicle title for all vehicles, the purchase or lease of heavy-duty vehicles and equipment, and registration and inspection of commercial vehicles. The primary purpose of TERP is to obtain emissions reductions from mobile sources, which constitutes the largest portion of NO_x emissions in the DFW and HGB nonattainment areas, and the reduction of emissions does not change because of the Section 185 fee program. As discussed elsewhere in this Response to Comments, the economic burden of a conventional fee could be significant to both the nonattainment area and the country.

The commission has no information regarding the ability of major stationary sources to pay the Section 185 fee.

The commission disagrees that the fee program does not collect fees from major stationary sources and therefore subsidizes industry's fees. Annually, TCEQ will assess the full Section 185 fee due for each major stationary source and sum all of the major stationary sources' fee to determine the entire fee for the nonat-

tainment area (Area §185 Obligation). If there is not enough TERP revenue or revenue from a future grant program to cover the entire Area §185 Obligation for a nonattainment area, then major stationary sources will pay a prorated fee to ensure the entire required fee assessment amount for a given fee assessment year is collected in full.

Using TERP to offset the fee on major stationary sources is equivalent or better than a conventional fee program since emissions reductions by major stationary sources are incentivized but are not required by FCAA, §185. TERP results primarily in NO_x emissions reductions from mobile sources, which are the largest source of NO_x emissions in the DFW and HGB nonattainment areas, but could also result in VOC emissions, depending on the emission reduction project.

The commission does not agree that if major stationary sources do not pay the fee that pollution will worsen. Ozone concentrations are affected by numerous factors that drive ozone formation: meteorology, background ozone, presence of precursors, and emissions.

No rule changes were made in response to these comments, but additional information was added to the preamble for clarification regarding the requirements of FCAA, §185 and the intent of this rulemaking.

Comment

Earthjustice Group One stated that the fee program cannot lawfully use public funds to avoid imposing fees on private industry since it constitutes a gift from the State to industry which is unconstitutional under the Texas State Constitution's gift clause. The Texas Constitution's gift clause does not allow the State to cover a private liability and by statute the Texas Emissions Reduction Plan's funding comes from Texas residents' titling and purchasing fees on motor vehicles. Earthjustice Group Two stated that TCEQ would aggregate the TERP funds and use them to pay for the Section 185 penalties and then use the Section 185 penalties to fund TERP grants. Harris County Attorney's Office asserted that by using publicly funded TERP resources to offset Section 185 fee obligations, TCEQ's proposed program was effectively converting public environmental funds into subsidies for private regulatory penalties, which may be an unconstitutional use of public funds. One individual commented that using TERP funds for federal penalties may not be legal, as those taxpayer funds are not intended to be used to pay for federal penalties. Air Alliance Houston stated that it was unprecedented for a regulatory body to pay fines or credit on behalf of a regulated entity.

Response

The commission disagrees that the Section 185 fee program's offset mechanism constitutes a gift to industry or that TCEQ uses the fees paid by Texas residents to pay for the Section 185 fee because actual funds are not transferred from TERP to the Section 185 fee program. The Section 185 fee program does not change how TERP program operates. There is no exchange of money or conversion of money between TERP and the Section 185 Fee Equivalency Account for a nonattainment area. The amount of TERP revenue for a severe or extreme ozone nonattainment area for a given year is recorded as a credit in a TCEQ database. Specifically, this accounting mechanism is called the Section 185 Fee Equivalency Account and is a documentation mechanism to verify the amount of TERP revenue collected in the 2008 eight-hour ozone nonattainment area available to offset the total Section 185 fee obligation from all major stationary sources located in that area. A gift clause violation requires an expenditure or transfer of public funds to a private entity. As stated above, TERP funds are not expended, transferred, or appropriated to a private entity to cover the penalty fee obligation. Additionally, even if there were an expenditure, as discussed in this preamble, the commission has determined that the offsetting of the penalty fee provides public benefits and achieves a legitimate public purpose (environmental benefits from further incentivizing emission reductions as well as limiting potential economic burden). Therefore, the fee program is not in violation of the Texas Constitution's gift clause.

The commission disagrees that Section 185 fee revenue is used to pay for TERP grants and projects. There are no proposed changes to how TERP operates because of the Section 185 fee program. The same amount of TERP revenue will be available for TERP grants used to reduce NO_x emissions in the nonattainment area. TERP related fees paid by the public are deposited toward the intended use to fund the TERP program. The TERP revenue collected and expended in a nonattainment area funds TERP projects in the nonattainment area.

No rule changes were made in response to these comments, but additional information was added to the preamble for clarification regarding the requirements of FCAA, §185 and the intent of this rulemaking.

Comment

An individual suggested a tax on natural gas as another funding source to pay this fee. Another individual commented that if it is for the public good that taxpayers pay for the pollution as well as pay for their health, then have it be fair and tax all industry products and not just gasoline.

Response

The commission appreciates the additional fee revenue options to offset the fee; however, the commission does not have the authority to propose new taxes.

No changes were made in response to these comments.

Comment

The Hon. Brian Harrison supported the DFW and HGB 2008 eight-hour ozone nonattainment area's Section 185 fee obligation to be partially satisfied by crediting TERP revenue spent on point source projects. Similarly, Ash Grove, Cemex, and Holcim supported the use of TERP funds to satisfy the Section 185 fee since mobile sources are the single largest combined contributor of NO_x emissions in Texas. The Hon. Brian Harrison requested any effort to meet the federal requirements without unnecessary regulations, taxes, or fees on his already overtaxed constituents.

Response

The commission appreciates the support. To clarify, the TERP program provides grants intended to reduce primarily NO_x (an ozone precursor) emissions primarily from mobile sources, for example replacing older equipment with newer cleaner equipment.

No changes were made in response to these comments.

Comment

Ash Grove and Holcim supported the use of TERP and recommended additional offsets through TERP-funded mobile source reductions and offsets that target area sources. Ash Grove and Holcim argued that this approach directly benefits regional air

quality by addressing a larger share of the emissions inventory compared to point sources alone, and referenced a presentation given on June 10, 2025, by NCTCOG. Ash Grove and Holcim highlighted the 2006-2026 projections for NO_x emissions from area sources compared to those of point sources within the DFW area from the presentation and stated that area sources and population growth are the main drivers of emissions increases and non-attainment in the DFW area. Ash Grove also stated that mobile sources are projected to be a significant contributor to 2026 emissions in the DFW nonattainment area.

Response

The commission appreciates the support. The commission clarifies that currently there are no additional grant programs for mobile sources or grant programs that target area stationary sources, but as discussed in this preamble, future TCEQ-administered grant programs that reduce one or more ozone precursor emissions in the applicable nonattainment area could be evaluated for fee offsets. As discussed elsewhere in this Response to Comments, there are no changes to how TERP operates because of this rulemaking. Comments regarding area sources and population growth's future impact on the DFW area's emissions are outside the scope of this rulemaking.

No rule changes were made in response to these comments, but additional information was added to the preamble for clarification regarding the requirements of FCAA, §185 and the intent of this rulemaking.

Comment

Ash Grove provided the following understandings that the DFW and HGB nonattainment areas Section 185 fee obligation could be partially satisfied from TERP or future TERP grants, and that credits applied toward each area's fee obligation would only be equal to TERP grants for reducing emissions in the non-attainment areas. Ash Grove also commented that the fee program would not result in an increase to TERP fees already levied.

Response

The commission clarifies that TERP revenue collected and expended in a nonattainment area is used to offset or credit the fee on major stationary sources, not the specific TERP grants. The TERP revenue may fully or partially offset the total area's fee obligation (Area §185 Obligation) for a fee assessment year. If TERP revenue as documented in the Fee Equivalency Account could not offset the entire Area §185 Obligation, then major stationary sources would be assessed a prorated fee for that fee assessment year.

The commission notes that nothing in this rulemaking directly regulates TERP fees or surcharges. Several different state agencies are responsible for assessing the fees and surcharges that fund TERP, and speculation on whether these fees will increase is outside of the control of TCEQ and outside of the scope of this rulemaking.

No rule changes were made in response to these comments, but additional information was added to the preamble for clarification regarding the requirements of FCAA, §185 and the intent of this rulemaking.

Comment

Industry Groups supported the crediting of TERP funds to satisfy Section 185 fees in order to facilitate mobile source emissions reductions due to TCEQ's limited ability to regulate mobile source emissions which are the largest source of NO_x in Texas. Gerdau and Texas Lime also favored the use of TERP revenue noting that a significant portion of TERP funding comes from surcharges on heavy-duty diesel equipment purchased by industries subject to Section 185.

Response

The commission appreciates the support and agrees that mobile sources are the primary driver of NO_x emissions in the DFW and HGB nonattainment areas. Although emissions reductions are not required by, and are therefore not the intent of FCAA, §185, based TCEQ's interpretation of FCAA, §172(e), the use of TERP provides an equivalent or better program. TERP is designed to reduce NO_x emissions from a source category in the nonattainment areas for which the commission has limited authority to otherwise regulate under Title II of the FCAA.

TERP's funding mechanisms have no bearing on this Section 185 fee program because TERP's operations do not change because of this Section 185 fee program. There is no exchange of money between TERP and the Fee Equivalency Account for a nonattainment area.

No rule changes were made in response to these comments, but additional information was added to the preamble for clarification regarding the requirements of FCAA, §185 and the intent of this rulemaking.

Comment

While NCTCOG supported the use of TERP to offset the 185 Fee obligation, they disapproved of the offsets coming from the TERP Trust which is currently being fully expended to fund emissions-reducing projects in the region. Instead, they suggested that additional money should be withdrawn from the TERP Fund Balance, so that existing and future projects will continue to be funded in addition to the 185 fee offsets and therefore achieve air quality improvements.

Response

This rulemaking did not propose any changes to TERP and any changes to TERP are beyond the scope of this rulemaking. TERP is funded from revenue deposited to the TERP Trust established under THSC Section 386.250 as an account outside the state treasury. Use of the revenue deposited to the TERP Trust is authorized by the Texas Legislature and must be utilized as prescribed.

No changes were made in response to this comment.

Comment

Gerdau and Texas Lime requested that TCEQ work with the Texas Legislature to increase TERP revenues to ensure a full offset of the Section 185 fee obligation in the DFW area due to the significant contribution of ozone precursor emissions from mobile sources. NCTCOG also requested that TCEQ work with the Texas Legislature to award additional TERP funds to the DFW area, specifying the amount should be no less than the area's Section 185 fee obligation.

Response

The commission remains neutral on legislative matters as state government agencies may not legally engage in lobbying activities.

No changes were made in response to these comments.

Comment

Industry Groups commented that they understand FCAA, §172(e) anti-backsliding requirements to allow equivalent alternative programs for the Section 185 fee program under revoked ozone standards and that there is no authority excluding equivalent alternative programs for strengthened ozone standards. Industry Groups noted that EPA has interpreted FCAA, 172(e) to apply when an ozone standard is strengthened and cited several legal cases.

Response

The commission appreciates the support and agrees that FCAA, §172(e) allows equivalent Section 185 fee programs when an ozone standard has been strengthened.

No changes were made in response to this comment.

Baseline Amount

Comment

Fenceline Watch commented that TCEQ is incorrect that FCAA, §185 does not address baseline emissions for major stationary sources permitted after the attainment date and listed three options for setting the emission baseline: using the lower of: the actual emissions, allowable emissions under the permit, or allowable emissions under the SIP. Fenceline Watch stated that TCEQ must set an initial baseline as the major source permit allowable for minor sources that existed on the attainment date but later became major sources.

Response

The commission disagrees that the baseline amount must be the permit allowable for minor sources that transitioned to major source status after the attainment year (referenced as baseline year in this rulemaking). As discussed in this preamble, new major stationary sources that started operating during or after the baseline year, which includes minor sources that transitioned to major source status, choose between the lower of their baseline emissions (actual emissions in the emissions inventory) or permit allowable emissions during the first 12 consecutive months operating as a major stationary source. The choice of the lower of actual emissions and allowable emissions follows FCAA, §185(b)(2). The requirement of the first 12 consecutive months as the baseline timeframe is necessary since these new major stationary sources did not operate during the baseline year or only operated for a portion of the baseline year.

No changes were made in response to these comments.

Comment

Better Brazoria commented that new major sources after the attainment date that were permitted but not operational and delay operations until after the attainment year must not be exempt from the fee. For new major sources that were recently permitted, Better Brazoria suggested baseline amount approaches that depend on when the source became major. Better Brazoria's proposed categories would all be subject to allowable emissions from permits, plans, applicable rules, and/or implementation plans, and for actual emissions, an extrapolation of emissions over the first year operating as a major source was suggested. Better Brazoria commented that for an existing minor source that transitioned to a major source after the attainment year, the baseline emissions could be calculated as the lower of either: (1) emissions allowable by permits, or rules, for the source, extrapolated over a year from the first operational period as a major source; or (2) actual emissions for the source extrapolated over a year from the first operation period as a major source.

Response

The commission agrees that new major stationary sources permitted as a major source but were not operational until after the attainment year (referenced as baseline year in this rulemaking) are not exempt from the fee.

While this rulemaking did not categorize new major stationary sources in the same manner as suggested by the commenter or include an emissions extrapolation option, §101.706 includes baseline amount determination for new major stationary sources during or after the baseline year, which includes minor sources that transitioned to major source status during or after the baseline year. These major stationary sources use the first full year (12 consecutive months) operating as a major source and choose the lower of the actual emissions or the permitted emissions during that timeframe to set the baseline amount. The use of actual emissions during the first 12 months after the start of operation is more accurate than either relying on permits, plans, rules, implementation plans, or an extrapolation of a few months of emissions data to 12 months.

No changes were made in response to these comments.

Comment

Better Brazoria commented that a major stationary source must have a Title V permit per §§182(d), 182(e), 182(f) and 185 and pending or untimely Title V permits renewals should not be exempt from the fee. The fee for these pending or late Title V permits should be based on previous years' actual emissions or extrapolated for recent operational periods, if necessary.

Response

The commission agrees that major stationary sources with a pending Title V permit or late Title V renewal are subject to this rulemaking. This rulemaking uses the definition of a major stationary source as defined §116.12. A Title V permit is one indicator of a major stationary source; however, regardless of whether a major stationary source has a Title V permit, a pending Title V permit, or did not renew its Title V permit in a timely manner, it is still subject to this rule.

The commissions disagrees that a different baseline amount determination is needed for the provided Title V permit scenarios. Any major stationary source with a late or untimely Title V permit will follow the provisions of this rulemaking to set the appropriate baseline amount.

No changes were made in response to these comments.

Comment

Green Consulting approved of sources that become major (either by increased emissions or by classification change) to use their actual emissions or total authorized emissions as the baseline.

Response

The commission appreciates the support. The commission notes that new major stationary sources may choose the lower of their baseline emissions during the first year (12 consecutive months) of operation as a major or the total annual authorized emissions during the first year (12 consecutive months) of operation as major source.

No changes were made in response to this comment.

Comment

Summitt requested a rule language update to allow for different timelines to establish baseline emissions for new major sources constructed after the attainment date due. For new sources, during startup and shakedown periods, emissions units are not typically operating at full load; therefore, using the first 12 consecutive months of operation to set the baseline amount would lead to artificially low baseline emissions. Summitt mentioned that permit conditions historically allowed for up to 180 days before requiring testing so that a unit can reach full operating levels. To be more comparable with existing sources, Summitt recommended three alternative timelines to determine baseline emissions for new major sources including (i) any consecutive 12 month period within the first 24 months of operations, (ii) a 12 month period beginning after the unit has achieved 90% of designed operating levels averaged over 30 days, or (iii) the 12 month period after one year of operating as a new major source. Summitt contended that since the adjustment of baseline emissions for new major sources with less than 24 months operation is limited to the first consecutive 24 months of operations, it does not address their concerns about including unrepresentative emissions from startup or shakedown periods in the baseline emissions.

Response

The commission disagrees that the current rule language does not allow flexibility to exclude initial startup and shakedown periods from the baseline amount. §101.705 allows a new major stationary source that started operating during or after the baseline year to use the first 12 consecutive months operating as a major source as the timeframe to determine the baseline amount. Federal regulations such as 40 Code of Federal Regulations §72.2 typically define "start of operation" for EGUs as the date when the unit begins supplying power for sale or use (i.e., to the grid or for industrial site use). This rule language provides flexibility that these initial startup and shakedown periods are not included in the first 12 consecutive months of operation as a major stationary source since the source typically has not begun its regular operations until the completion of this initial startup and shakedown period.

Additionally, these sources could request adjustment of baseline emissions once 24 months of consecutive operation has occurred. The start of the 24 months of consecutive operation as a major source could begin after the completion of the initial startup and shakedown periods providing this is consistent with federal and/or state regulations.

No changes were made in response to these comments.

Comment

Summitt requested an exemption for new major stationary sources that have installed the LAER controls which limit the ability to generate more emissions reductions and that have offset their emissions from the retirement of emissions reduction credit which means that contributions of greater than 20% net emissions reductions have already been made in the nonattainment area. They suggested that including these sources in the Section 185 fee program establishes long-term costs for not meeting unattainable goals for sources that have already contributed to attainment. Summitt also recommended excluding individual emissions units that have been fully offset by emissions reductions credits from the calculations of baseline emissions and actual emissions.

Response

The commission recognizes that these sources are well controlled and that all major stationary sources in nonattainment areas are subject to LAER and emission offset requirements for major modifications and/or new construction. However, the FCAA, §185 does not allow for the exclusion of any major stationary source from the Section 185 fee program or individual emissions units located at a major stationary source from baseline amount determinations.

No changes were made in response to these comments.

Comment

Ash Grove provided specific details and estimated future contributions of NO_x emissions from its plant based on the photochemical modeling performed in DFW Severe Area Attainment Demonstration State Implementation Plan Revision for the 2008 Eight-Hour Ozone Standard. Ash Grove stated that this Section 185 rule does not allow it to use the baseline NO_x emissions level from the conservative maximum emissions assumption in the photochemical modeling which included emissions prior to their 2014 modernization.

Response

The commission disagrees that an additional baseline emissions option is needed to account for the photochemical modeling timeframe used in the DFW Severe Area Attainment Demonstration State Implementation Plan Revision for the 2008 Eight-Hour Ozone Standard. The requirements of photochemical modeling for attainment demonstration SIP revisions are outside the scope of this rulemaking. Additionally, the FCAA, as well as EPA guidance, does not allow major stationary sources to establish baseline emissions in this manner for the purposes of the Section 185 fee program.

No changes were made in response to these comments.

Comment

Industry Groups, Gerdau, and Texas Lime supported the use of EPA's PSD guidelines to calculate baseline emissions for major sources that are irregular, cyclic, or otherwise vary significantly from year to year using an average calculated over more than one calendar year.

Response

The commission appreciates the support and notes that for sources with emissions that are irregular, cyclic, or otherwise vary significantly from year to year, PSD guidelines allow for a source to choose a representative 24-consecutive month period within a specific historic look-back period to calculate average emissions for baseline determination. For EGUs, the specific historic look-back period is limited to a representative 24-month period within the last 5 years prior to the baseline year and for non-EGUs the historic look-back period is the last 10 years prior to the baseline year

No changes were made in response to these comments.

Comment

Ash Grove, Cemex, and Holcim commented that the fee program allows the use of baseline emissions established using data from a 10-year period for all existing major sources of NO_x and VOCs. They argued that cement producers who invested in emission reductions prior to this baseline window are penalized for taking early action to lower their emissions and this rule creates an inequitable system for facilities that made these early air quality improvement investments compared to those that delayed im-

provements. As a result of this limited baseline window, the cement facilities would owe significant additional fees as compared to using a baseline window that extends further than 10 years to account for plant improvements that reduced emissions. They urged TCEQ to allow facilities to credit reductions achieved prior to the 10-year baseline window or allow additionally flexibility to determine baseline emission levels. Ash Grove also requested a baseline amount determination option as the highest annualized average emission since 2008, the promulgation year for the 2008 eight-hour ozone standard.

Response

The commission clarifies that not every existing major stationary source is allowed to use a historic 10-year look-back period to establish the baseline amount. This option is only available to sources with emissions that qualify as irregular, cyclic, or otherwise significantly varying. If a major stationary source meets those criteria, then a 24-month consecutive period within a specific historic look-back period may be chosen to average the baseline emissions. The historic look-back period for non-EGUs is the last 10 years prior to the baseline year. For the DFW and HGB nonattainment areas the PSD allowed look-back period for a non-EGU stationary source would be 2017-2026 provided the attainment date does not change.

The commission disagrees that additional years for look-back periods are allowed either under PSD guidance. The commenters provided no regulatory or legal basis to allow additional timeframes to account for higher emissions in the baseline amount. If the sites qualify as sources with irregular, cyclic, or otherwise significantly varying emissions, then a 10-year historic look-back period would be allowed. There are no other statutory provisions or guidance that allow for either additional look-back years or the highest average annualized emissions rate to account for the higher emissions that occurred before the installation of control equipment or plant modernization. Doing so would artificially inflate the baseline amount so that future fee assessment years are more likely to be 20% or more below the baseline amount which would violate circumvention requirements in requirements of §101.3.

No changes were made in response to these comments.

Comment

Better Brazoria commented that a major stationary source with emissions demonstrated as irregular, highly variable, or cyclical is allowed to choose a different timeframe from the attainment year to set the baseline amount. Since the purpose of this flexibility is to allow representative emissions in the baseline amount, documentation on process variability must be provided for approval, qualifying major stationary sources must not be allowed to cherry-pick the timeframe for their benefit, and this option must not be extended to all major stationary sources.

Response

The commission agrees with these comments. As discussed in this preamble, if the major stationary source has emissions that qualify as irregular, cyclical, or otherwise vary significantly from year to year, an alternate method following PSD guidance may be used to determine baseline emissions. The same baseline determination option is also provided for in the Texas New Source Review Program.

The PSD guidance requires sources to provide documentation on the variability of their operations for the selected 24-month period to qualify for this alternate baseline amount so that representative data is selected. TCEQ will evaluate this documentation to ensure the source qualifies for the alternate baseline amount. Additionally, for the selected 24-month period the emissions must be adjusted downward to account for all legally enforceable emissions limitations, so a qualifying source is not allowed to choose a look back period with the highest emissions. EPA's PSD regulations also prevent artificial inflation. If the baseline emissions from the selected 24-month timeframe are higher than the sources' allowable emissions during the baseline year, then the allowable emissions must set the baseline amount.

Since the PSD guidance is specific to sources with emissions that are irregular, cyclical, or otherwise vary significantly from year to year, the averaging option is not available for sources with steady-state operations.

No changes were made in response to this comment.

Baseline Amount Aggregation

Comment

Public Citizen, Environmental Groups, and an individual opposed baseline amount aggregation by ozone precursor emissions ("by pollutant") since it would allow industry to exceed the threshold of one pollutant but avoid fees by balancing against the lower levels of the other pollutant. Better Brazoria stated the reliance on the HGB fee program under the one-hour ozone standard for baseline amount aggregation is not justified since EPA indicated concerns with allowing flexibilities for the 2008 eight-hour ozone NAAQS. Earthjustice Group Two requested an update to the proposed fee program to include separate baseline amount calculations NO_x and VOC to comply with FCAA, §185. Earthjustice Group Two and Better Brazoria opposed the aggregation of NO_x and VOC to determine the baseline amount stating that FCAA, §185 states that the fee applies to each major stationary source of VOCs and FCAA, §182(f) separately extends the coverage of major stationary sources of VOC to major sources of NO_x. Better Brazoria asserted that FCAA, §182(f) did not intend for VOC controls to be replaced by NO_x-equivalent controls and the NO_x requirement is in addition to, not in lieu of, required VOC controls. Earthjustice Group Two asserts that the silence on intermingling language speaks to the intent for the pollutants to have separate baseline amounts and they cited examples of when the FCAA expressly allowed NO_x to be substituted for VOC. Better Brazoria stated that NO_x and VOC may not equally contribute to ozone formation as another reason to not allow pollutant aggregation. Environmental Groups further stated that aggregation could weaken enforcement and undermine ozone reduction goals and urged TCEQ to maintain separate baselines in accordance with EPA precedent. Earthjustice Group Two stated that TCEQ's reasoning for aggregating pollutant baseline amounts is that both pollutants contribute to ozone formation, which is inconsistent with TCEQ's statements that the intent of FCAA, §185 is not emissions reductions.

Response

The commission disagrees that baseline amount aggregation of VOC and NO_x is not allowed or that it is inconsistent with the commission's interpretation that FCAA, §185 does not require emissions reductions. Attachment C of EPA's 2010 guidance memo acknowledged that pollutant aggregation could be approvable. The plain language of FCAA, §182(f), does not require that SIP rules apply *separately* to VOC and NO_x but instead requires that the rule apply to VOC and *also* NO_x. Thus, there is no require-

ment to calculate the baseline amounts separately. This rule requires major stationary sources of NO_x to also be subject to the Section 185 fee program, and this requirement meets the provision of FCAA, §182(f). The commission's interpretation that FCAA, §185 does not require emissions reductions is not relevant to baseline aggregation for the purposes of Section 185 fee assessment.

The commission disagrees that pollutant aggregation should also not be allowed because of the potential ozone formation differences between VOC and NO_x. As discussed in this preamble, VOC and NO_x emissions reductions have the potential to lower ozone concentrations in both the DFW and HGB 2008 eight-hour ozone nonattainment areas. Based on this information, major stationary sources can aggregate both VOC and NO_x emissions into one baseline amount.

Comments about implementing flexible Section 185 fee programs are addressed elsewhere in this Response to Comments.

No changes were made in response to these comments.

Comment

Better Brazoria also stated that allowing pollutant aggregation may disincentivize sources from applying for a major source application.

Response

The commission disagrees with this comment since a major stationary source is required to first determine its major source applicability for both VOC and NO_x emissions under §116.12, which is not impacted by this rulemaking. A major stationary source cannot use pollutant aggregation to avoid applicability of this rule or major source status.

No changes were made in response to this comment.

Comment

Industry Groups supported the aggregation of VOC and NO_x for baseline determination and suggested it is consistent with FCAA, §182(f).

Response

The commission appreciates the support and concurs that FCAA §182(f) allows for the aggregation of ozone precursor emissions for baseline determination.

No changes were made in response to this comment.

Comment

Earthjustice Group Two requested an update to the proposed fee program to include separate baseline amount calculations for each major stationary source to comply with FCAA, §185. Earthjustice Group Two opposed the aggregation of sites under common control to determine the baseline amount stating that FCAA, §185 states that the fee applies to each major stationary source of VOCs and the fees are calculated per ton of VOC emitted by the source. Earthjustice Group Two contends that the terms "each" and "the" source intend source-specific baseline amounts. By allowing aggregation of sites under common control, one source's emissions increase could be offset by another source's emissions decrease from planned renovations or permanent shut-down. Earthjustice Group Two contends that since according to TCEQ, the goal of FCAA, §185 is not emissions reductions, then there is no reason to allow site aggregation. Earthjustice Group Two stated that TCEQ used EPA's 2010 guidance memo and an inapplicable securities and exchange commissions (SEC) rule as support for the definition of sites under common control. EPA's 2010 guidance memo contradicted a 2018 guidance memo for NSR permitting purposes from EPA. The 2018 guidance memo states that separately permitted facilities' emissions streams would not be aggregated for NSR purposes to determine whether a source is major or minor. Better Brazoria opposed aggregation of emissions across sources in different locations, but under common control, since it conflicts with the FCAA requirement for penalties to incentivize emissions reductions by assessing a penalty on each major source that fails to achieve emissions reductions. Better Brazoria asserted that aggregation of sites under common control disincentivizes a major source from decreasing its emissions because it could reduce emissions at another source included in the aggregated group to eliminate the fee owed and may adversely impact overburdened communities. Better Brazoria provide the example that if there was an emissions decrease at the source(s) located outside the overburdened community, then this could result in an emissions increase at source(s) located in the overburdened community with no fee assessed.

Response

The commission disagrees that sites under common control are not allowed to aggregate to determine a baseline amount. EPA's NSR guidance establishes when a source is major or minor for permitting purposes, the Section 185 fee program applies to sources that are already determined to be major stationary sources. Site aggregation for these Section 185 fee major stationary sources is appropriate for determining baseline amounts, as reflected in Attachment C of EPA's 2010 guidance memo and previously approved by EPA in the Section 185 fee program for the HGB nonattainment area under the one-hour ozone standard.

The commission disagrees that it incorrectly relied on the SEC rule for definition of control. As discussed in this preamble, EPA stated that it would utilize the definition of control used by the SEC and EPA generally continues to assess common control in relation to this definition.

The commission also disagrees that aggregating sites under common control does not follow the intent of FCAA, §185. While the FCAA, §185 may incentivize major stationary sources to reduce emissions in the form of an imposed penalty fee, an incentive is not the same as a requirement and emissions reductions are not required by FCAA, §185.

No rule changes were made in response to these comments, but additional information was added to the preamble for clarification regarding the requirements of FCAA, §185 and the intent of this rulemaking.

Comment

Industry Groups approved of aggregation of sites under common control for baseline determination.

Response

The commission appreciates the support. No changes were made in response to this comment.

Comment

Better Brazoria, Fenceline Watch, and an individual commented that flexibilities like baseline amount aggregation are not allowed since it violates the plain language of FCAA, §185. Better Brazoria opposes baseline amount aggregation since aggregation is not representative of the required actual emissions and stated

that the rule must assess penalties based on the "actual emissions" of a major source for limited prescribed periods of time. Better Brazoria asserted that if a source selects the highest emissions to total from major sources (either increased or decreased emissions) without providing a cumulative measure and without considering distribution or centrality, it creates an artificial sum of the source's emissions. Better Brazoria also noted that EPA disapproved of portions of Section 185 Fee Programs that average baseline emissions over 2-5 years.

Response

The commission disagrees that fee assessments following the same aggregation option chosen for the baseline amount determination is not representative of actual emissions. This rulemaking follows the same principles of baseline amount aggregation by pollutant and/or sites under common control as approved by EPA in a final rule published in the February 14, 2020, *Federal Register* (85 FR 8411) for the Section 185 Fee Program in the HGB nonattainment area under the one-hour ozone standard.

To be considered a site under common control, the major stationary sources requesting to aggregate must share a Customer Reference Number in TCEQ's Central Registry Database. Sites under common control are determined by TCEQ. Sites not under common control according to TCEQ may not attempt to be combined in Central Registry with the intention of circumventing the fee, as addressed under circumvention requirements of §101.3.

If a major stationary source chooses to aggregate by pollutant and/or sites under common control, then the fee is required to be assessed in the same manner. A group of major stationary sources opting to aggregate baseline amounts must also aggregate emissions for the annual fee assessment. Sources are not allowed to artificially inflate baseline amounts for fee assessment purposes, since the baseline year, same 24-month consecutive period, or other timeframe used to establish baseline amounts are required as a basis for the baseline amount calculation for all aggregated major stationary sources for each fee calculation.

The commenter included a reference to an EPA disapproval of another Section 185 fee program that averaged baseline emissions over 2-5 years. The commission did not include this averaging timeframe as an option in this rulemaking.

The commission disagrees that baseline aggregation is not allowed under FCAA, 185. FCAA, §185 allows the administrator to provide guidance for determining baseline amounts and Attachment C of EPA's 2010 guidance memo acknowledged that aggregation could be approvable.

No changes were made in response to these comments.

Comment

Texas cannot engage in source or emission aggregation which allow industry to circumvent fee payment.

Response

The commission disagrees that baseline aggregation by pollutant and/or sites under common control allows the major stationary source to circumvent fee payment. Baseline amounts are first required to be calculated separately for each individual major stationary source for VOC or NO_x emissions, or for both. The separate initial baseline amounts for each pollutant at an individual major stationary source must also be submitted in a format specified by the executive director with supporting documentation. Providing the separate initial calculations of baseline amounts is intended to provide transparency and consistency and to assist with quality assurance of baseline amount determinations with any subsequent aggregation. After establishing separate baseline amounts, then the baseline amount could be aggregated by multiple pollutants, multiple stationary sources under common control, or both. If an aggregation route is chosen, then that same aggregation method is required for the annual fee assessment.

Additionally, prevention of fee payment circumvention is addressed in the preamble and rule language. Sites not under common control according to TCEQ may not attempt to be combined in Central Registry with the intention of circumventing the fee, as addressed under circumvention requirements of §101.3. Major stationary sources that transfer ownership of emissions unit(s) from one major source to a minor source(s) cannot have their baseline amounts adjusted to prevent circumvention of the fee, as addressed under circumvention requirements of §101.3. §101.713(g) relating to Enforcement states that a major stationary source that fails to submit an emissions inventory to circumvent assessment of the fee is subject to enforcement account under Texas Water Code (TWC), Chapter 7.

No changes were made in response to these comments.

Adjustment of Baseline Amount

Comment

Green Consulting approved baseline amount adjustments for newly regulated sites to adjust their baseline emissions after 24 months of consecutive operations.

Response

The commission appreciates Green Consulting's support. The commission clarifies that after completing 24 months of consecutive operations, the major stationary source may request that the baseline amount be adjusted using the average actual emissions during the first 24 months of consecutive operation for the baseline emissions. If the total annual authorizations determined the initial baseline amount were still lower than the adjusted baseline emissions, then an adjustment may not be requested. If during the 24 months of consecutive operation the emissions were irregular, cyclical, or otherwise vary significantly then a baseline amount adjustment may be requested.

No changes were made in response to this comment.

Comment

Green Consulting and Industry Groups requested a rule language update to §101.709 to include emissions authorized outside of Nonattainment New Source Review (NNSR) permits after the baseline year to adjust the baseline amount because permits can be issued outside of Chapter 116, Subchapter B, Division 5.

Response

The commissions disagrees that permits issued under authorizations outside of Chapter 116, Subchapter B, Division 5 for NNSR permits should be allowed to request a baseline amount adjustment. As discussed in this preamble, adjusting a major stationary source's established baseline amount for new construction that occurred after the baseline year is a flexibility. The commission intended that this baseline amount adjustment flexibility only be extended to construction of equipment that went through NNSR since that process requires a netting analysis to determine whether a source is required to use the LAER and emissions offsets. As a result, adjustment of the baseline amount for new construction at an existing major source could not be re-

quested for other authorization types including but not limited to Permit by Rule and Standard Operating Permits.

No changes were made in response to these comments.

Comment

Better Brazoria commented that selling or transfer of "equipment" between companies should not be allowed when there is credible evidence that an owner is transferring equipment to circumvent the fee. Better Brazoria requested inclusion of objective factors to evaluate whether equipment sold of transferred near or around the attainment date may have been used to avoid the fee.

Response

The commission agrees that ownership transfers of emissions units must ensure no circumvention of the fee. This rulemaking requires that all emissions units located at the major stationary source as of December 31 of the baseline year be included in the baseline amount determination. If a 24-month consecutive period is chosen for a major stationary source that operated the entire baseline year, then all emissions units located at the major stationary source as of December 31 of the baseline year must be included, regardless of whether they were located at the major stationary source during the period chosen. An owner or operator of a major stationary source may not exclude new emissions units added by the baseline year from the 24-month consecutive historical period.

As discussed in this preamble, there are additional safeguarding requirements to ensure ownership-transferred emissions units do not circumvent the fee. A change in control of emissions units does not change the historical operation, reported emissions from the emissions units, or previously invoiced amounts before the ownership transfer occurred. The ownership transfer must first be approved by and/or reported to the TCEQ Air Permits Division and be appropriately reflected in all related permits before adjustments of the baseline amounts can be requested. The originating major stationary source may transfer (subtract) the baseline amounts and fee associated for each emissions unit having a change in control to the recipient major stationary source who will add the baseline amount for the transferred emissions unit to their baseline amount. There is no change for the calculated baseline amounts for the transferred emissions units or remaining emissions units that were not involved in the ownership transfer. Major stationary sources that transfer ownership of emissions units from one major source to a minor source(s) will not have their baseline amounts adjusted to prevent circumvention of the fee, as addressed under §101.3. To qualify for an ownership transfer baseline amount adjustment, the ownership transfer must occur between major stationary sources of the same pollutant, or aggregated pollutants, located within the same nonattainment area. All adjusted baseline amounts are reviewed by the executive director's staff to ensure consistency with emissions information submitted to the TCEQ Air Permits Division and/or the Air Quality Division. Once finalized, the adjusted baseline amounts apply starting with the next fee assessment year. Credits or refunds for previous fee assessment years are not processed based on the final adjustments to ensures accounting stability for the Section 185 fee program.

No changes were made in response to this comment.

Fee Assessment and Payment

Comment

Green Consulting requested clarification that "recorded in the annual emissions inventory" includes TCEQ's non-applicability letter with the total sitewide NO_x and volatile VOC certified in the letter.

Response

It appears that the commenter refers to the definition of actual emissions in Figure 30 TAC §101.713(f) regarding emissions that must be included for annual fee assessment. The commission disagrees that a clarification is needed since it never intended that Inapplicability Notification Letters with certified emissions totals be used for Section 185 fee program purposes. Since all major stationary sources located in a 2008 eight-hour ozone standard nonattainment area classified as severe or extreme meet the VOC and NO_x emissions reporting thresholds for the TCEQ's point source emissions inventory, these sources may not submit an Inapplicability Notification Letter to TCEQ.

No changes were made to this rule in response to these comments.

Comment

Earthjustice Group Two asserted that assessing and collecting a prorated fee on industry, if TERP funds are insufficient to cover the entire nonattainment area's fee obligation, creates ambiguity on the amount and timing of the fee collection. They mentioned that TERP collections vary by consumer behavior from year to year which means the fee paid by industry will also depend on consumer behavior. Earthjustice Group Two claimed that a conventional fee program allows industry to anticipate its fee and either set aside funds or reduce emissions by 20% after the baseline year to avoid the fee.

Response

The commission disagrees that allowing for prorated fees when TERP funds are insufficient creates ambiguity regarding the amount and timing of fee collection. Static (the same amount every year) annual fee assessment and collection is not possible, given that emissions may vary every year and the fee rate must be adjusted annually for inflation. Regardless of the Section 185 fee program, EPA does not release the annually adjusted fee rate for inflation until the fall of the fee assessment year (e.g., the 2024 fee rate was released in October 2024). TCEQ and major stationary sources cannot assess the fee until this final fee rate is released by EPA.

With the exception of the first fee collection year, which is dependent on the effective date of EPA's finding of failure to attain notice in the *Federal Register*, TCEQ anticipates annually performing the Fee Equivalency Demonstration in December and if required, would invoice major stationary sources on a prorated fee. Major stationary sources would be invoiced on the prorated fee amount and provided with enough time to pay according to the provisions of §101.714 on Fee Payment.

No changes were made to this rule in response to these comments.

Comment

Better Brazoria commented that to ensure the fees are effective, the regulations should set the fees high enough to compel business to invest in cleaner technologies rather than simply absorb costs as a business expense.

Response

As specified under FCAA, §185(b)(1) and (3), EPA, and not TCEQ, is tasked with setting the fee rate and adjusting it annually for inflation. EPA typically releases the updated fee rate every fall. As discussed in this preamble, the fee calculation appropriately uses EPA's annually provided fee rate.

The commission notes that major stationary sources of ozone precursor emissions have a choice to annually pay the fee or reduce emissions to below 80% of their baseline amount. The business decisions of sources impacted by the fee, such as installing control equipment or curtailing production to reduce emissions, or paying the fee instead of reducing emissions, depend on multiple factors and cannot be predicted.

No changes were made in response to this comment.

Comment

An individual commented that TCEQ should adopt a Section 185 fee program that provides transparency and accountability with fees. Better Brazoria requested a regulatory framework to provide transparency in funding allocation.

Response

The commission disagrees that this rulemaking has not established a Section 185 fee that provides transparency and accountability. Public participation in the rule development process provided transparency and accountability, and the regulatory framework establishing the Section 185 fee program (including baseline emission setting and fee assessment) is clear. In addition to providing the opportunity to comment at a virtual public hearing, TCEQ also provided the public with the option to submit written comments by mail, fax, or electronically through TCEQ's Public Comment system. Instructions for the submittal of written comments were provided in the proposed rulemaking documents and public notices.

No changes were made in response to these comments.

Comment

Ash Grove stated that if point sources reduce their future emissions to less than 80% of the baseline amount then costs increase at each site.

Response

The commission acknowledges the potential business impacts of the Section 185 fee program and the choices facing major stationary sources, such as potential cost increases to either reduce emissions or pay the fee. As discussed in this preamble, the provisions of FCAA, §185 require a penalty fee on major stationary sources of ozone precursor emissions located in a severe or extreme nonattainment area that fail to attain an ozone standard by the attainment date. TCEQ is required to implement these penalty provisions if a severe ozone nonattainment area, such as the HGB or DFW nonattainment areas, after EPA determines that the areas failed to attain the 2008 eight-hour ozone standard by the attainment date.

However, TCEQ has adopted a Section 185 fee program that will allow the partial or full offset of fees owed by utilizing TERP revenue. As discussed in the Fiscal Note of the proposal preamble, "During the first five years, the proposed rule should not impact positively or negatively the state's economy, particularly if TERP revenue is sufficient to offset the Section 185 fee obligation."

No changes were made in response to this comment.

Other Failure to Attain Fee Fulfillment Options

Comment

Environmental Groups commented that supplemental environmental projects (SEPs) are not an appropriate mechanism to offset the Section 185 fee. They stated that SEPs are designed to reduce and remediate pollution, with preference given to communities impacted by the pollution resulting from violations, as part of agreed resolutions for such violations. They explained that per the Legislature, only local governments are entitled to use SEPs to remedy noncompliance. Absent resolution of violations and enforcement actions in the context of the Section 185 fee, they assert that TCEQ does not have the statutory authority to allow major sources to fulfill Section 185 liability via contributions to SEPs. Lastly, they commented that the commission should consider creating a structure within TERP or other agency programs where major stationary sources could contribute actual funds to satisfy Section 185 fee liability.

Response

The commission disagrees that contributions to SEPs are not appropriate to offset the fee as SEPs provide environmental benefits to communities, as prescribed by TWC, §7.067, and such benefits are an important element of the commission's determination that allowing offsets of any required Section 185 fee amount is appropriate. The commission also disagrees that it lacks authority to allow Section 185 fees to be offset using SEPs as the commission has broad authority granted by the legislature in the Texas Clean Air Act, Texas Health and Safety Code, Chapter 382 and the Texas Water Code, Chapter 5 to adopt and implement a plan to rules to safeguard air quality and control the state's air. As discussed elsewhere in this preamble, the commission has determined that allowing the offset of Section 185 fees is appropriate.

This adopted rule provides an option for major stationary sources owing Section 185 fees to offset those fees if the major source is an enforcement respondent that chooses to participate in the SEP program, meets the criteria specified in the rule, and obtains approval for the Section 185 fee offset. Utilizing the SEP program is voluntary, and participation in SEPs to offset Section 185 fees must conform to criteria, performance, and oversight as required by the SEP program as well as this adopted rule. Further, the commission notes that local governments are not the only entities that are entitled to use SEPs.

The commission appreciates the support for adding funding mechanisms that could be used to achieve environmental benefits but has identified no additional programs that could be used to offset Section 185 fee liability. The commission also agrees that incentivizing additional environmentally beneficial projects is desirable and, in response to this comment and after further consideration of the SEP program, has adopted a rule change that would allow money contributed to SEPs to offset administrative penalties in an enforcement action to also be used to offset the Section 185 fee if the respondent spends at least 110% or more of the SEP Offset Amount. Allowing the crediting of the SEP Offset Amount in this circumstance should incentivize larger compliance projects (or larger amounts paid to third-party pre-approved SEPs) with ozone precursor emissions reductions that directly benefit the nonattainment area. Additionally, the commission has further clarified that no enforcement administrative penalty paid to the commission, or any amount deferred (not paid) as incentive for early resolution of the enforcement action may be used to partially or completely fulfill the Failure to Attain Fee to ensure that only amounts paid to SEPs are creditable to offset the Section 185 fee.

Cessation of Fee Program

Comment

Better Brazoria commented that the fee program should only end according to the FCAA requirement of program termination upon EPA's redesignation of HGB to attainment. For the HGB fee program under the one-hour ozone standard, additional options were provided to end that fee program, but EPA only explicitly approved the portion of these rules that is consistent with the FCAA. EPA took no action on the other provisions included in the SIP submittal that did not correspond to the FCAA. Fenceline Watch commented that the FCAA is clear that all major sources are subject to the fee program for the entire period of nonattainment.

Response

The commission disagrees that additional provisions beyond an EPA redesignation to attainment are not appropriate for the 2008 eight-hour ozone standard. EPA did approve an additional provision to end the Section 185 fee program relating to EPA otherwise terminating the Section 185 fee requirement in its approval of the Sacramento's Section 185 fee program under the one-hour ozone standard and have proposed approval of this additional provision for Sacramento's Section 185 fee program under the 1997, 2008, and 2015 eight-hour ozone standards (88 FR 86870).

No rule changes were in response to these comments, but additional information was added to the preamble for clarification regarding the requirements of FCAA, §185 and the intent of this rulemaking.

Statutory Authority

The new sections are adopted under Texas Water Code (TWC), §5.102, concerning General Powers, that provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, concerning Rules, that authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §5.105, concerning General Policy, that authorizes the commission by rule to establish and approve all general policy of the commission; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act.

The new sections are also adopted under TWC, §5.701, concerning Fees, that authorizes the commission to charge and collect fees prescribed by law; TWC, §5.702, concerning Payment of Fees Required When Due, that requires fees to be paid to the commission on the date the fee is due; TWC, §5.703, concerning Fee Adjustments, that specifies that the commission shall not consider adjusting the amount of a fee due if certain conditions are met; TWC, §5.705, concerning Notice of Violation, that authorizes the commission to issue a notice of violation to a person required to pay a fee for knowingly violating reporting requirements or calculating the fee in an amount less than the amount actually due; and TWC, §5.706, concerning Penalties and Interest on Delinquent Fees, that authorizes the commission to collect penalties for delinquent fees due to the commission. The new sections are also adopted under THSC, §382.002, concerning Policy and Purpose, that 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, that authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning the State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; and THSC, §382.0622, concerning Clean Air Act Fees, specifying that any fees collected as required by Federal Clean Air Act (FCAA), §185 are clean air act fees under the THSC. The new sections are also adopted to comply with FCAA, 42 United States Code (USC), §7511a(d)(3), (e), and (f) (FCAA, §182(d)(3), (e), and (f)) regarding Plan Submissions and Requirements for ozone nonattainment plan revisions; and 42 USC, §7511d (FCAA, §185) regarding Enforcement for Severe and Extreme ozone nonattainment areas for failure to attain.

The adopted new sections implement the requirements of THSC, §§382.002, 382.011, 382.012, 382.017 and 382.0622; TWC, §§5.102, 5.103, 5.105, 5.701 - 5.703 and 5.705- 5.706; as well as FCAA, 42 USC, §7511a(d)(3), (e), and (f) and §7511d (FCAA, §182(d)(3), (e), and (f), and §185).

§101.700. Definitions.

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

(1) Actual emissions--As defined in §101.10 of this title (relating to Emissions Inventory Requirements).

(2) Area §185 Obligation--The total annual amount of Failure to Attain Fees due from all applicable major stationary sources or Section 185 Accounts in a severe or extreme ozone nonattainment area that failed to attain the 2008 eight-hour ozone National Ambient Air Quality Standard by its applicable attainment date.

(3) Attainment date--The U.S. Environmental Protection Agency-specified date that a severe or extreme nonattainment area must attain the 2008 eight-hour ozone National Ambient Air Quality Standard.

(4) Baseline amount--Tons of volatile organic compounds and/or nitrogen oxides emissions calculated separately at a major stationary source, using data submitted to and reviewed by the executive director. The baseline amount is the lower of baseline emissions (actual emissions) or total annual authorizations or pending authorizations emissions at a major stationary source during the baseline year or timeframe as otherwise specified under this subchapter.

(5) Baseline emissions--Emissions reported in tons in the annual emissions inventory submitted to and recorded by the agency each calendar year per the requirements of §101.10 of this title. The emissions must include all annual routine emissions associated with authorized normal operations, which includes reported emissions from authorized maintenance, startup, and shutdown activities and excludes all unauthorized emissions. The timeframe options are as follows:

(A) reported emissions from the baseline year; or

(B) reported emissions as an average of any single consecutive 24-month period as allowed under §101.705(b)(2) of this title (relating to Baseline Amount) for major stationary sources with emissions that are irregular, cyclic, or otherwise vary significantly from year to year.

(6) Baseline year--The baseline year is January 1 through December 31 of the calendar year that contains the attainment date unless otherwise specified in this subchapter.

(7) Electric utility steam generating unit--As defined in §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions).

(8) Emissions unit--As defined in §101.1 of this title (relating to Definitions).

(9) Equivalency credits--An amount equivalent to the revenue collected, as long as any revenue is also expended within a nonattainment area, in accordance with §101.703 of this title (relating to Fee Equivalency Account) for accumulation in the Fee Equivalency Account.

(10) Extension year--A year as defined in FCAA §181(a)(5).

(11) Failure to Attain Fee--The fee assessed and due from each major stationary source or Section 185 Account based on actual emissions whether authorized or unauthorized of volatile organic compounds, nitrogen oxides, or both pollutants that exceed 80% of the baseline amount.

(12) Fee assessment year--Calendar year used to calculate and assess the Failure to Attain Fee under the provisions of this subchapter.

(13) Fee collection year--Calendar year in which the Failure to Attain Fee is invoiced.

(14) Major stationary source--As defined under §116.12 of this title (relating to Nonattainment and Prevention of Significant Deterioration Review Definitions).

(15) Section 185 Account--The TCEQ-assigned account number for one major stationary source or a group of two or more major stationary sources under common control located within the same severe or extreme 2008 eight-hour ozone National Ambient Air Quality Standard nonattainment area.

(16) Supplemental Environmental Project (SEP) Offset Amount--The portion of an enforcement case's assessed administrative penalty approved for use in the performance of, or contribution to, a SEP, instead of being paid to the commission as a penalty.

§101.701. Applicability.

(a) The provisions of this subchapter will become applicable in an area designated nonattainment and classified as severe or extreme under the 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS or standard) when the U.S. Environmental Protection Agency (EPA) determines that the area has failed to attain the standard by its applicable severe or extreme attainment date. The determination will be the effective date of EPA's finding of failure to attain notice published in the *Federal Register*.

(b) Except as otherwise provided in §101.702 of this title (relating to Exemption), the provisions of this subchapter apply to all regulated entities that meet the definition of major stationary sources of volatile organic compounds or nitrogen oxides located in a nonattainment area classified as severe or extreme for the 2008 eight-hour ozone standard.

§101.702. Exemption.

No major stationary source subject to the Failure to Attain Fee under this subchapter is required to remit the fee during any calendar year for which the U.S. Environmental Protection Agency has finalized an extension of the attainment date for the nonattainment area applicable to the major stationary source under the 2008 eight-hour ozone National Ambient Air Quality Standard.

§101.703. Fee Equivalency Account.

(a) Fee Equivalency Account. The executive director will establish and maintain a Fee Equivalency Account to document the equivalency credits. No actual money will be deposited into the Fee Equivalency Account. The Fee Equivalency Account will reflect equivalency credits based upon revenue collected and made available for programs of the Texas Emissions Reduction Plan (TERP) under authority of the Texas Health and Safety Code, Chapter 386.

(b) Revenue eligibility. The revenue eligible for credits to the Fee Equivalency Account must be from the severe or extreme 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS or standard) nonattainment area and cannot be transferred between nonattainment areas.

(c) Revenue credited. The revenue credited to the Fee Equivalency Account will be credited for the years TERP funding is expended in a severe or extreme 2008 eight-hour ozone standard nonattainment area beginning with the first fee assessment year until the Failure to Attain Fee no longer applies to the nonattainment area as described under §101.718 of this title (relating to Cessation of Program).

(d) Other revenue sources. The executive director may credit revenue from other emissions reductions grant programs as funds become available. The executive director will apply revenue from such grant programs to the Fee Equivalency Account according to the requirements of this section and §101.704 of this title (relating to Fee Equivalency Accounting).

§101.705. Baseline Amount.

(a) Baseline amount. For the purposes of this subchapter, the baseline amount must be calculated as the lower of the following:

(1) total amount of baseline emissions; or

(2) total annual emissions allowed under authorizations, including authorized emissions from maintenance, shutdown, and startup activities, applicable to the source in the baseline year. Emissions from pending authorizations with administratively complete applications as of December 31 of the baseline year may be included in the total annual emissions allowed under authorizations.

(b) Baseline emissions. For the purposes of this subchapter, the baseline emissions must be calculated from:

(1) the baseline year; or

(2) a historical period, if the major stationary source's or Section 185 Account's emissions are irregular, cyclical, or otherwise vary significantly from year to year. Any single 24-month consecutive period within a historical period preceding January 1 of the baseline year may be used to calculate an average baseline emissions amount in tons per year for the major stationary source as the historical period. If used, the historical period must be:

(A) ten years for non-electric utility steam generating units; or

(B) five years for electrical utility steam generating units.

(c) Historical period. If a major stationary source or Section 185 Account uses a historical period as defined in subsection (b)(2) of this section, the baseline amount will:

(1) use adequate data for calculating the baseline emissions;

(2) be adjusted downward to exclude any unauthorized emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period; and

(3) be adjusted downward to exclude any emissions during the consecutive 24-month period that would have exceeded an emissions limitation that was legally enforceable in effect by December 31 of the baseline year.

(d) Adjustments. The baseline amounts must be adjusted downward to exclude any emissions that exceeded an emissions limit that was legally enforceable in effect by December 31 of the baseline year.

(e) Emissions units. Baseline amounts must include all emissions units located at the major stationary source as of December 31 of the baseline year. When control or ownership of emission units changes during the baseline year, the emissions from those emission units will be attributed to the major stationary source with control or ownership of the emissions unit on December 31 of the baseline year.

(f) Calculations. A baseline amount, reported in units of tons per year, must be calculated separately for each pollutant, volatile organic compounds and/or nitrogen oxides, for which the source meets the major source applicability requirements of §101.701 of this title (relating to Applicability).

(g) Compliance schedule. The owner or operator of each major stationary source meeting the requirements of §101.701 of this title must submit to the executive director a report establishing its baseline amount on a form published by the executive director. The baseline amounts forms must be submitted by the emissions inventory due date as specified under §101.10 of this title (relating to Emissions Inventory Requirements) for the fee assessment year, or 120 days after the effective date of a finding of failure to attain, whichever is later.

(h) Review. Where the baseline amount does not align with information recorded in either the emissions inventory database or the air permitting data systems, the executive director may direct that the baseline amount be based on the lower of reported emissions under §101.10 of this title or total annual authorized emissions. After review, the baseline amount will be fixed and not be changed except as allowed under this subchapter.

§101.706. Baseline Amount for New Major Stationary Sources.

(a) Baseline amounts. A baseline amount must be established for major stationary sources or Section 185 Accounts that begin operating during or after the baseline year. The baseline amount must use the first full year of operation as a major source and be the lower of:

(1) total amount of baseline emissions; or

(2) total annual emissions allowed under applicable authorizations, including emissions from maintenance, startup, and shutdown activities. Emissions from pending authorizations with administratively complete applications as of the last day of the full first calendar year of operation may be included in the total annual emissions allowed under authorizations.

(b) Adjustments. The baseline amount must be adjusted downward to exclude any emissions that exceeded an emissions limit for rules or regulations in effect by the last day of the one-year period used to determine the baseline amount.

(c) Emissions units. Baseline amounts must include all emissions units located at the major stationary source as of the last day of the one-year period used to determine the baseline amount. When control or ownership of emission units changes during the calendar year, the emissions from those emission units will be attributed to the major stationary source with control or ownership of the emission unit on the last day of the one-year period used to determine the baseline amount.

(d) Calculations. A baseline amount, reported in units of tons per year, must be calculated separately for each pollutant, volatile organic compounds and/or nitrogen oxides for which the source meets the major source applicability requirements of §101.701 of this title (relating to Applicability).

(e) Compliance schedule. Within 90 calendar days of completing the first full year operating as a major stationary source, the major stationary source or Section 185 Account must submit to the executive director a report establishing the baseline amount on a form published by the executive director.

(f) Review. Where the baseline amount does not align with information recorded in either the emissions inventory database or the air permitting data systems, the executive director may direct that the baseline amount be based on the lower of reported emissions under §101.10 of this title (relating to Emissions Inventory Requirements) or total annual authorized emissions. After review, the baseline amount will be fixed and not change except as allowed under this subchapter.

§101.707. Aggregated Baseline Amount.

(a) Aggregation. After determining separate baseline amounts for each pollutant at each major stationary source or Section 185 Account according to the requirements of §101.705 of this title (relating to Baseline Amount) or §101.706 of this title (relating to Baseline Amount for New Major Stationary Sources), an owner or operator of a major stationary source or Section 185 Account may choose to combine baseline amounts as follows:

(1) volatile organic compounds (VOC) emissions into a single aggregated pollutant baseline amount for multiple major stationary sources under common control;

(2) nitrogen oxides (NO_x) emissions into a single aggregated pollutant baseline amount for multiple major stationary sources under common control;

(3) emissions for both VOC and NO_x into a single aggregated pollutant baseline amount for a single major stationary source; and/or

(4) emissions for both VOC and NO_x into a single aggregated pollutant baseline amount for multiple major stationary sources under common control.

(b) Pollutant emissions aggregation. Pollutant emissions in an aggregated amount must have:

(1) the same time period for calculating the baseline amount; and

(2) the same basis of baseline emissions or total annual authorized emissions to calculate the baseline amount.

(c) Section 185 Account reporting. An owner and/or operator opting to combine VOC with NO_x emissions and/or combine major stationary sources into one baseline amount must identify all major stationary sources being aggregated under this section.

(d) Fee calculation requirement. The Failure to Attain Fee must be assessed and calculated in the same manner that an owner or operator elects to aggregate under this section.

(e) Compliance schedule. The owner or operator of each major stationary source or Section 185 Account must submit to the executive director a report establishing its aggregated baseline amount on a form published by the executive director.

(1) For major stationary sources or Section 185 Accounts that operated the entire baseline year, the aggregated baseline amount forms must be submitted by the emissions inventory due date as specified under §101.10 of this title (relating to Emissions Inventory Requirements) for the fee assessment year, or 120 days after the finding of failure to attain effective date in the *Federal Register*, whichever is later.

(2) For major stationary sources or Section 185 Account that began operating during or after the baseline year, the aggregated baseline amount forms must be submitted within 90 calendar days of completing the first full year operating as a major stationary source.

(f) Review. Where the baseline amount does not align with information recorded in either the emissions inventory database or the air permit data systems, the executive director may direct that the baseline amount be based on the lower of reported emissions under §101.10 of this title or total annual authorized emissions. After review, the baseline amount will be fixed and not be changed except as allowed under this subchapter.

§101.708. Adjustment of Baseline Amount for Major Stationary Sources with Less Than 24 Months of Operation.

(a) Baseline amount. The owner or operator of a major stationary source or Section 185 Account may request adjustment of the baseline amount established under this subchapter:

(1) if the major stationary source or emissions units at the major stationary source experienced less than 24 months of consecutive operation by December 31 of the baseline year, and

(2) if the emissions were irregular, cyclical, or otherwise vary significantly from year to year, then the baseline amount may be adjusted as the lower of the following:

(A) total average amount of baseline emissions for the consecutive 24-month period; or

(B) total annual emissions allowed under authorizations applicable to the major stationary source during the first year operating as a major stationary source. Emissions from pending authorizations with administratively complete applications as of the last day of the one-year period used to determine the baseline amount may be included in the total annual emissions allowed under authorizations.

(b) Compliance schedule. Within 90 calendar days of completing 24 consecutive months of operation, the owner or operator of the major stationary source or Section 185 Account must submit to the executive director a request to adjust the baseline amount on a form published by the executive director.

(c) Review. Where the baseline amount does not align with information recorded in either the emissions inventory database or the air permitting data systems, the executive director may direct that the baseline amount be based on the lower of reported emissions under §101.10 of this title (relating to Emissions Inventory Requirements) or total annual authorized emissions. After review, the baseline amount will be fixed and not change except as allowed under this subchapter.

(d) Fee assessment. After review, the adjusted baseline amount will be applied starting with the fee assessment year after the review and will continue until the Failure to Attain Fee no longer applies to the area as specified under §101.718 of this title (relating to Cessation of Program). No refunds or credits will be applied to fees previously paid.

§101.710. Adjustment of Baseline Amount for Ownership Transfers.

(a) Baseline amount. The owner or operator of a major stationary source or Section 185 Account may request adjustment of their baseline amount established under this subchapter if ownership and operation of emissions units are no longer under common ownership or control. Adjustments to the baseline amount are limited as follows:

(1) The baseline amount, as calculated and reported for all emissions units no longer under common ownership or control, will be transferred from the original reporting major stationary source or Section 185 Account to the new major stationary source or Section 185 Account without modification to the reported amount; and

(2) The baseline amount for remaining emissions units at the originating and recipient major stationary source or Section 185 Account will not be adjusted based on a change of ownership or control of emissions units to or from a major stationary source or Section 185 Account.

(b) Adjustment qualification. To qualify for this baseline amount adjustment, the ownership transfer of the emissions units must take place between major stationary sources of the same pollutant or aggregated pollutants, volatile organic compounds and/or nitrogen oxides located within the same nonattainment area.

(c) Compliance schedule. Within 90 calendar days of the effective date of a change of ownership or control of emissions units, the owner or operator of each major stationary source or Section 185 Account affected by the change in ownership or control of emissions units must submit to the executive director a request to adjust the baseline amount on a form published by the executive director.

(d) Review. Where the baseline amount does not align with information recorded in either the emissions inventory database or air permitting data systems, the executive director may direct that the baseline amount be based on the lower of reported emissions under §101.10 of this title (relating to Emissions Inventory Requirements) or total annual authorized emissions. After review, the baseline amount will be fixed and will not change except as allowed under this subchapter.

(e) Fee assessment. After review, the adjusted baseline amount will be applied starting with the fee assessment year after the review and will continue until the Failure to Attain Fee no longer applies to the area as specified under §101.718 of this title (relating to Cessation of Program). No refunds or credits will be applied to fees previously paid.

§101.712. Failure to Establish a Baseline Amount.

The executive director will determine baseline amounts for any major stationary source subject to §101.701 of this title (relating to Applicability) that fails to submit a baseline amount by the due date specified by the commission as follows:

(1) If information is available to determine a baseline amount for each pollutant for which the source meets major source applicability requirements, the executive director will determine the baseline amount to be the lower of:

(A) baseline emissions reported under §101.10 of this title (relating to Emissions Inventory Requirements); or

(B) total annual emissions allowed under authorizations, including authorized emissions from maintenance, startup, and shutdown activities.

(2) If no emissions inventory information required to determine baseline amount information is available, the executive director will establish the baseline amount as:

(A) 12.5 tons of volatile organic compounds (VOC) emissions for major stationary sources of VOC emissions;

(B) 12.5 tons of nitrogen oxides (NO_x) emissions for major stationary sources of NO_x emissions; or

(C) 12.5 tons of VOC emissions and 12.5 tons of NO_x emissions for major stationary sources of VOC and NO_x emissions.

(3) The executive director will not aggregate baseline amounts under §101.707 of this title (relating to Aggregated Baseline Amount) or adjust baseline amounts as provided in this subchapter to determine a baseline amount under this section.

(4) A major stationary source will pay the Failure to Attain Fee according to §101.714 of this title (relating to Failure to Attain Fee Payment).

(5) If the major stationary source submits a complete and verifiable emissions inventory according to §101.10 of this title, the major stationary source may then submit a baseline amount to the executive director on a form published by the executive director.

(6) After the executive director finalizes the baseline amount based on demonstrated compliance with the criteria in this subchapter, the baseline amount will be applied starting with the fee assessment year after finalization and will continue until:

(A) a baseline amount is established by the major stationary source or Section 185 Account in accordance with paragraph (5) of this section and reviewed by the executive director to ensure alignment with the emissions inventory database or air permit systems; or

(B) the Failure to Attain Fee no longer applies to the area as specified under §101.718 of this title (relating to Cessation of Program). No refunds or credits will be applied to fees previously paid.

§101.713. Failure to Attain Fee Assessment.

(a) Pollutant applicability. The executive director will annually assess the Failure to Attain Fee for each pollutant, volatile organic compounds (VOC), nitrogen oxides (NO_x), or both, for which the major stationary source or Section 185 Account meets the requirements of §101.701 of this title (relating to Applicability) at any time during a calendar year.

(b) Aggregation. The fee will be assessed and calculated using the same Failure to Attain Fee determination method used under this subchapter. Actual VOC or NO_x emissions may be kept separate or aggregated together. A single pollutant may be aggregated across multiple major stationary sources, or VOC and NO_x emissions may both be aggregated together across multiple major stationary sources. Aggregation must be conducted as described under §101.707 of this title (relating to Aggregated Baseline Amount) and is limited to emissions from:

(1) major stationary sources that aggregated VOC baseline amounts;

(2) major stationary sources that aggregated NO_x baseline amounts; or

(3) major stationary sources that aggregated VOC with NO_x baseline amounts.

(c) Assessment. The owner or operator of each major stationary source to which this rule applies must annually pay the Failure to Attain Fee to the commission calculated in accordance with either subsection (d) or (e) and subsection (f) of this section. The Failure to Attain Fee will be assessed on actual emissions of VOC and/or NO_x as recorded in the emissions inventory under §101.10 of this title (relating to Emissions Inventory Requirements), that exceed 80% of the pollutant baseline amount, rounded up to the nearest whole number.

(d) Fee assessment for separate pollutants. The Failure to Attain Fee from major stationary sources that did not aggregate baseline amounts under §101.707 of this title will remain separate and due from each major stationary source or Section 185 Account for each pollutant for which the source meets the major source applicability requirements. The fee will be calculated separately by the formula in subsection (f) of this section.

(e) Fee assessment for aggregated pollutants. The Failure to Attain Fee will be calculated in accordance with subsection (f) of this section and the method used for an aggregated baseline amount determination as described under §101.707(a) of this title.

(1) If VOC emissions are aggregated, VOC emissions from all major stationary sources in the Section 185 Account must be used for aggregated actual emissions and the aggregated baseline emissions.

(2) If NO_x emissions are aggregated, NO_x emissions from all major stationary sources in the Section 185 Account must be used for the aggregated actual and aggregated baseline emissions.

(3) If VOC emissions are aggregated with NO_x emissions at one major stationary source, VOC and NO_x emissions must be used for the aggregated actual and aggregated baseline emissions. If VOC emissions are aggregated with NO_x emissions across multiple major stationary sources, VOC and NO_x emissions from each major stationary source in the Section 185 Account must be used for the aggregated actual and aggregated baseline emissions.

(f) Fee calculations. The fee will be calculated for VOC, NO_x, or both pollutants' emissions, as follows.
Figure: 30 TAC §101.713(f)

(g) Enforcement. Failure to submit an emissions inventory according to the provisions of §101.10 of this title (relating to Emissions Inventory Requirements) to circumvent assessment of the Failure to Attain Fee is also subject to enforcement account under Texas Water Code (TWC), Chapter 7.

§101.715. Eligibility for Other Failure to Attain Fee Fulfillment Options.

(a) Alternative fulfillment options. Notwithstanding any requirement in this subchapter, the owner or operator of a major stationary source or Section 185 Account required to pay a Failure to Attain Fee may submit a request to the executive director to partially or completely fulfill the Failure to Attain Fee in compliance with §101.716 (relating to Relinquishing Credits to Fulfill a Failure to Attain Fee and §101.717 of this title (relating to Using a Supplemental Environmental Project to Fulfill a Failure to Attain Fee).

(b) Unfulfilled portions. If a Failure to Attain Fee cannot be completely fulfilled using alternate fulfillment options, then the unfulfilled portion of the Failure to Attain Fee is required to be calculated, assessed, and paid according to the provisions of this subchapter.

(c) Reporting. The owner or operator of a major stationary source or Section 185 Account must inform the executive director if they choose an alternative fulfillment option for all or a portion of the Failure to Attain Fee as described in §101.716 and §101.717 of this title. The request must be submitted on a form specified by the executive director and include a list of the emissions in tons of volatile organic compounds and/or nitrogen oxides or the dollar-for-dollar amount requested from alternative fulfillment options, payment, or combination to cover the entire Failure to Attain Fee.

(d) Compliance schedule. No later than 90 days after the executive director requests submission of the form specified in subsection (c) of this section and continuing annually, the owner or operator of a major stationary source or Section 185 Account must submit the form specified in subsection (c) and ensure the following conditions are met:

(1) all emissions credits under §101.716 of this title must be approved, exercised, or completed during or after the baseline year; and

(2) all Supplemental Environmental Projects under §101.717 of this title must be approved and completed during or after the baseline year.

(e) If the executive director does not receive the form specified in subsection (c) of this section by the due date specified in subsection (d) of this section, the Failure to Attain Fee payment will be due in full as described under §101.714 of this title (relating to Failure to Attain Fee Payment).

§101.717. Using a Supplemental Environmental Project to Fulfill a Failure to Attain Fee.

(a) The owner or operator of a major stationary source or Section 185 Account subject to this subchapter may submit a request to partially or completely fulfill the Failure to Attain Fee by participating in the Supplemental Environmental Projects (SEPs) program.

(b) The SEP must directly reduce the amount of VOC and/or NO_x emissions in the 2008 eight-hour ozone National Ambient Air Quality Standard nonattainment area.

(c) The SEP must be enforceable through an Agreed Order or other enforceable document.

(d) Any amounts paid in excess of the SEP Offset Amount may be used to partially or completely fulfill the Failure to Attain Fee.

(e) If the total amount paid to the SEP is greater than or equal to 110% of the SEP Offset Amount, then both the SEP Offset Amount and the amount paid in excess of the SEP Offset Amount may be used to partially or completely fulfill the Failure to Attain Fee.

(f) Amounts as specified in subsection (d) or subsection (e) of this section must be credited on a dollar-for-dollar basis and will not be discounted due to the passage of time. Those credits may be accumulated from year to year, and if a surplus exists in any given year, the credits may be used to partially or completely fulfill the Failure to Attain Fee as needed.

(g) The following cannot be used to partially or completely fulfill the Failure to Attain Fee:

(1) any amount of the enforcement administrative penalty paid to the commission; or

(2) any amount deferred to expedite settlement of an enforcement administrative penalty.

(h) The use of a SEP to fulfill the Failure to Attain Fee is subject to approval by the executive director.

§101.718. Cessation of Program.

(a) The Failure to Attain Fee will continue to apply until one of the following actions is final:

(1) the effective date of redesignation of the area classified as severe or extreme under the 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS or standard) to attainment by the U.S. Environmental Protection Agency (EPA);

(2) any final action or final rulemaking by EPA to end the Failure to Attain Fee requirement;

(3) finding of attainment by EPA; or (4) a demonstration indicating that the area would have attained by the attainment date but for emissions emanating from outside the United States.

(b) Notwithstanding subsection (a) of this section, the Failure to Attain Fee will be calculated but not invoiced, and the fee collection may be placed in abeyance by the executive director if three consecutive years of quality-assured data resulting in a design value that did not exceed the 2008 eight-hour ozone National Ambient Air Quality Standard (NAAQS), or a demonstration indicating that the area would have attained by the attainment date but for emissions emanating from outside the United States, are submitted to EPA. The design value may exclude days submitted to EPA by the executive director that exceeded the standard because of exceptional events. Fee collection will remain in abeyance until EPA takes final action on its review of the certified monitoring data and any demonstration(s).

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

Filed with the Office of the Secretary of State on October 24, 2025.

TRD-202503839
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: November 13, 2025
Proposal publication date: May 16, 2025
For further information, please call: (512) 239-6087

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.5

The Texas Parks and Wildlife Commission in a duly noticed meeting on August 21, 2025, adopted an amendment to 31 TAC §53.5, concerning Recreational Hunting Licenses, Stamps, and Tags, without change to the proposed text as published in the July 18, 2025, issue of the *Texas Register* (50 TexReg 4080). The rule will not be republished.

The amendment comports the agency's rules regarding license types to reflect the enactment of Senate Bill 1247 by the most recent regular session of the Texas Legislature. Senate Bill 1247 amended Parks and Wildlife Code, Chapter 42, to eliminate three types of nonresident hunting licenses (the nonresident special hunting license, the nonresident spring turkey hunting license, and the nonresident banded bird hunting license), retitle the general nonresident hunting license as the nonresident general hunting license, and add alligators to the species that may be lawfully taken under that license.

The amendment also eliminates subsection (a)(3)(B) to comport the section with other rules that establish provisions for digital license products offered by the department and makes a nonsubstantive grammatical change in subsection (a)(9).

The department received one comment opposing adoption of the rule as proposed. The comment concerned an unrelated license product and thus was not germane to the rulemaking. No changes were made as a result of the comment.

The department received nine comments supporting adoption of the rule as proposed.

The amendment is adopted under the provisions of Senate Bill 1247, enacted by the 89th Texas Legislature (RS), which eliminated the nonresident special hunting license, the nonresident spring turkey hunting license, and the nonresident banded bird hunting license.

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

Filed with the Office of the Secretary of State on October 24, 2025.

TRD-202503824
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: November 13, 2025
Proposal publication date: July 18, 2025
For further information, please call: (512) 389-4775

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 707. CHILD PROTECTIVE INVESTIGATIONS

SUBCHAPTER A. INVESTIGATIONS

DIVISION 2. ALTERNATIVE RESPONSE

40 TAC §§707.549, 707.551, 707.553, 707.555, 707.557, 707.559, 707.561, 707.563, 707.565, 707.567

The Department of Family and Protective Services (DFPS) adopts the repeal of the rules in Title 40, Texas Administrative Code (TAC), Chapter 707, Subchapter A, Division 2 relating to alternative response. The repeals are adopted without changes to the proposal in the September 19, 2025 issue of the *Texas Register* (49 TexReg 3185). The rules will not be republished.

BACKGROUND AND JUSTIFICATION

In 2005, Senate Bill 6 of the 79th regular legislative session, authorized the department to create a "flexible response system" to handle reports of abuse and neglect where a child's safety could be assured so that children would remain in their home with services. The department referred to this system as "Alternative Response." The rules that were promulgated for Alternative Response assisted in the its implementation. However, after ten years of implementation, DFPS no longer needs these rules and they now pose barriers to the creation of further flexibility in the system. For those reasons, the department seeks to repeal these rules.

COMMENTS

The 30-day comment period ended October 19, 2025. During this period, DFPS did not receive any comments regarding the repealed rules.

STATUTORY AUTHORITY

The repeal is authorized by Texas Family Code section 261.3015.

The modification is adopted under Human Resources Code (HRC) §40.027, which provides that the Department of Family and Protective Services commissioner shall oversee the development of rules relating to the matters within the department's jurisdiction and notwithstanding any other law, shall adopt rules for the operation and provision of services by the department.

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

Filed with the Office of the Secretary of State on October 21, 2025.

TRD-202503796
Sanjuanita Maltos
Rules Coordinator
Department of Family and Protective Services
Effective date: November 10, 2025
Proposal publication date: September 19, 2025
For further information, please call: (512) 945-5978

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