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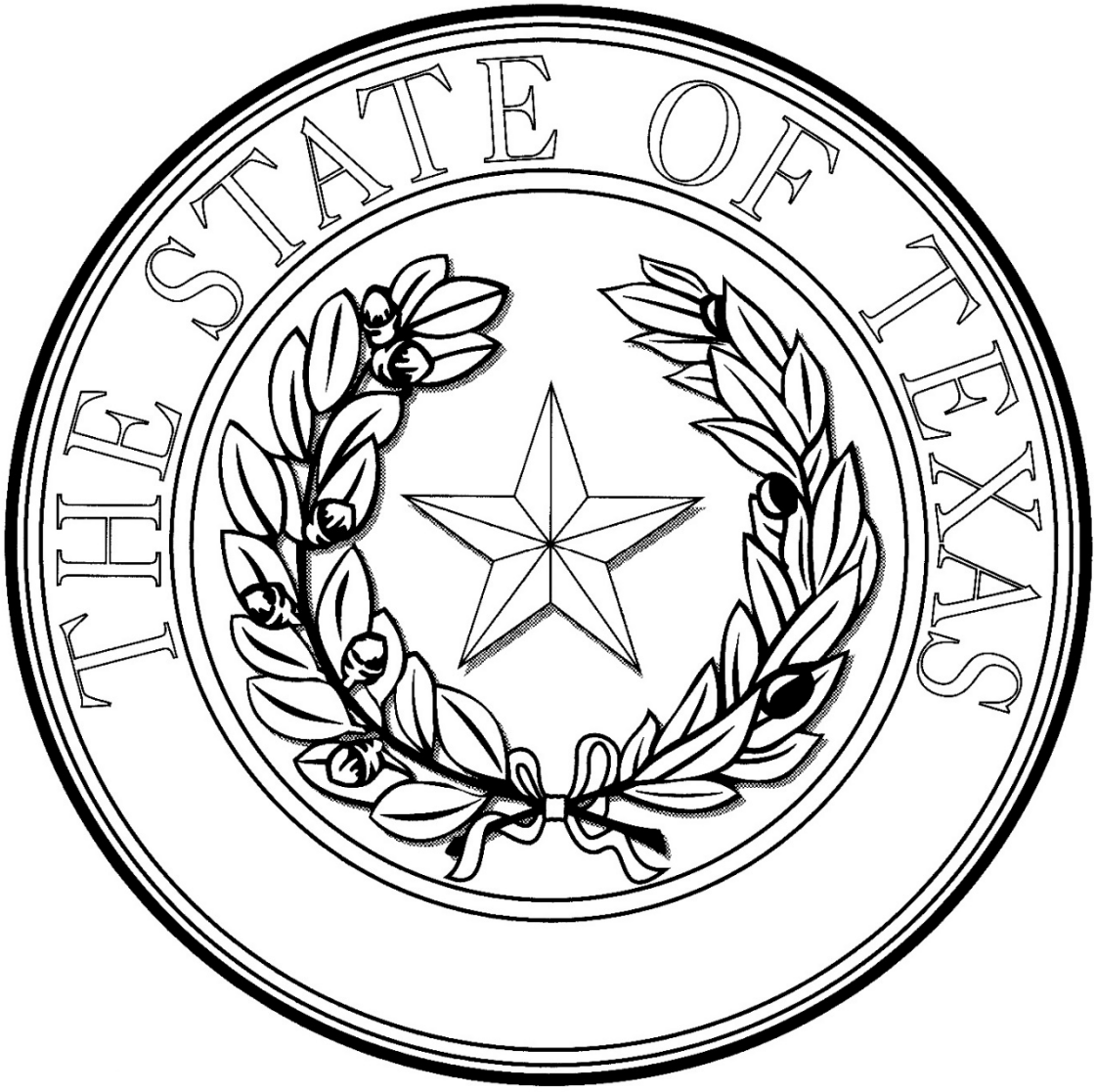

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THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for April 25, 2024

Appointed to the Governing Board of the Texas School for the Deaf for a term to expire January 31, 2029, Lisalee D. Egbert, Ph.D. of Arlington, Texas (replacing Shalia H. "Sha" Cowen, Ed.D. of Dripping Springs, whose term expired).

Appointed to the Governing Board of the Texas School for the Deaf for a term to expire January 31, 2029, Christopher J. "Chris" Moreland, M.D. of Austin, Texas (Dr. Moreland is being reappointed).

Appointed to the Governing Board of the Texas School for the Deaf for a term to expire January 31, 2029, Shawn P. Saladin, Ph.D. of Edinburg, Texas (Dr. Saladin is being reappointed).

Appointments for April 29, 2024

Appointed to the Texas Facilities Commission for a term to expire January 31, 2027, Robert H. Clay of Houston, Texas (replacing William R. Allensworth of Austin, whose term expired).

Greg Abbott, Governor

TRD-202401925

♦ ♦ ♦

Proclamation 41-4105

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on February 27, 2024, certifying that the wildfires that began on February 23, 2024, posed an imminent threat of widespread or severe damage, injury, or loss of life or property in several counties; and

WHEREAS, the Texas Division of Emergency Management has confirmed that the same wildfire conditions continue to exist in these counties in Texas;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend and renew the aforementioned proclamation and declare a disaster in Archer, Armstrong, Bailey, Baylor, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fannin, Floyd, Foard, Garza, Gray, Gregg, Hale, Hall, Hansford, Hardeman, Harrison, Hartley, Haskell, Hemphill, Hockley, Hutchinson, Kent, King, Knox, Lamb, Lipscomb, Lubbock, Lynn, Moore, Motley, Nacogdoches, Newton, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Stonewall, Swisher, Terry, Throckmorton, Upshur, Wheeler, Wichita, Wilbarger, Yoakum, and Young Counties.

Pursuant to Section 418.017 of the Texas Government Code, I authorize the use of all available resources of state government and of political subdivisions that are reasonably necessary to cope with this disaster.

Pursuant to Section 418.016 of the Texas Government Code, any regulatory statute prescribing the procedures for conduct of state business or any order or rule of a state agency that would in any way prevent, hinder, or delay necessary action in coping with this disaster shall be suspended upon written approval of the Office of the Governor. However, to the extent that the enforcement of any state statute or administrative rule regarding contracting or procurement would impede any state agency's emergency response that is necessary to protect life or property threatened by this declared disaster, I hereby authorize the suspension of such statutes and rules for the duration of this declared disaster.

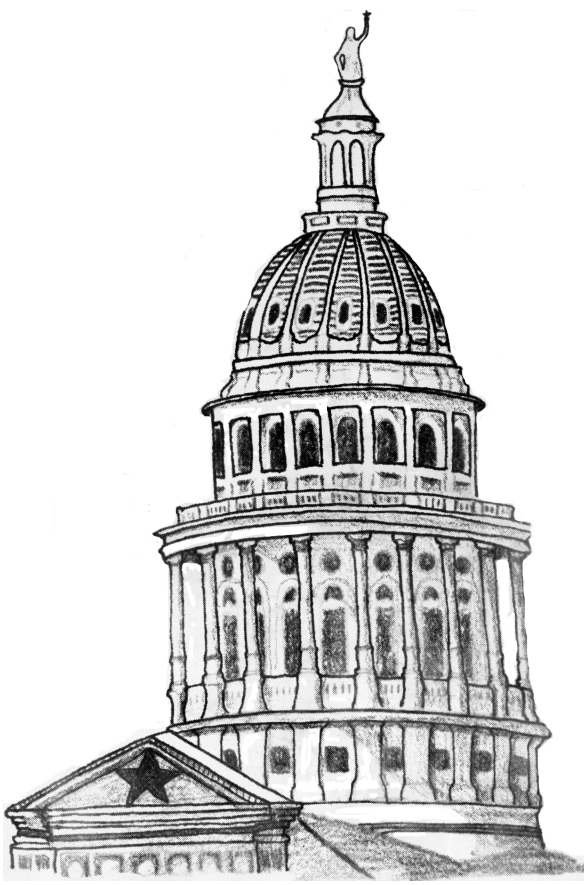
In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 27th day of April, 2024.

Greg Abbott, Governor

TRD-202401901

♦ ♦ ♦



THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, and Open Records Decisions.

An index to the full text of these documents is available on the Attorney General's website at https://www.texas.attorneygeneral.gov/attorney-general-opinions. For information about pending requests for opinions, telephone (512) 463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: https://www.texasattorneygeneral.gov/attorney-general-opinions.)

Requests for Opinions

RQ-0536-KP

Requestor:

The Honorable Rene P. Montalvo

Starr County Attorney

401 North Britton Avenue, #405

Rio Grande City, Texas 78582

Re: Whether the mayor of a Type C municipality who resigns holds over in office under article XVI, section 17 of the Texas Constitution (RQ-0536-KP)

Briefs requested by May 28, 2024

RQ-0537-KP

Requestor:

The Honorable Matthew A. Mills

Hood County Attorney

1200 West Pearl Street

Granbury, Texas 76048

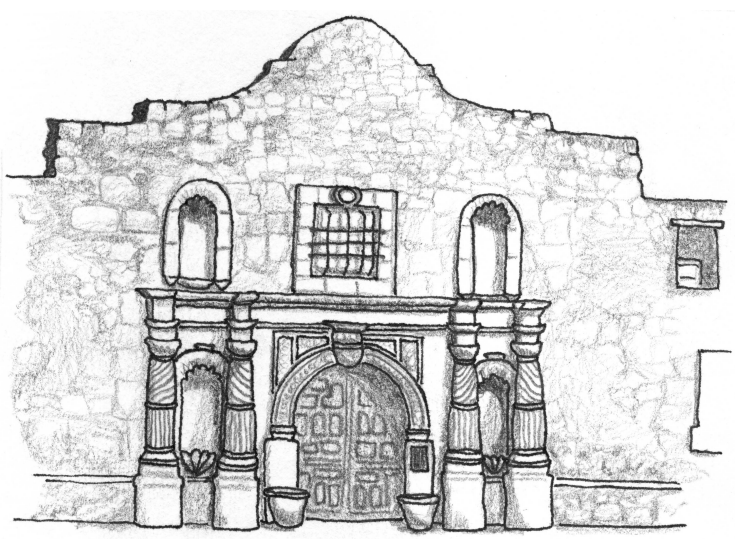
Re: Whether the Texas Open Meetings Act, Government Code section 551.071, authorizes discussion about hiring a law firm, and whether boilerplate language contained on a meeting notice or agenda is sufficient notice of an executive session (RQ-0537-KP)

Briefs requested by May 29, 2024

For further information, please access the website at www.texasattorneygeneral.gov or call the Opinion Committee at (512) 463-2110.

TRD-202401918
Justin Gordon
General Counsel
Office of the Attorney General
Filed: April 30, 2024

♦ ♦ ♦



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

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

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

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

SUBCHAPTER H. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §24.233, §24.245

The Public Utility Commission of Texas (commission) proposes amendments to 16 Texas Administrative Code (TAC) §24.233, relating to Contents of Certificate of Convenience and Necessity (CCN) Applications and §24.245, relating to Revocation of a CCN or Amendment of a CCN by Decertification, Expedited Release, or Streamlined Expedited Release. Revised §24.233 and §24.245 implement Sections 274-277 of House Bill (HB) 4559 enacted by the 88th Texas Legislature (R.S.). The proposed rules amend §24.233 to change the county population threshold ranges for CCN applications within municipal boundaries, extraterritorial jurisdiction of certain municipalities, and extensions beyond extraterritorial jurisdiction. The proposed rules also amend §24.245 to revise the county population threshold ranges for proceedings related to revocation or amendment of a CCN. Additionally, the proposed rule makes minor and conforming changes to §24.245 for clarity and specifies response time periods for filings by a prospective retail public utility or former CCN holders after the commission has issued an order granting CCN revocation, decertification, expedited release, or streamlined expedited release.

Growth Impact Statement

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

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

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

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

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

(5) the proposed rules will not create a new regulation, because they are replacing similar regulations;

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

(7) the same number of individuals will be subject to the proposed rules' applicability as were subject to the applicability of the rules that are being proposed to replace; and

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

Fiscal Impact on Small and Micro-Businesses and Rural Communities

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

Takings Impact Analysis

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

Fiscal Impact on State and Local Government

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

Public Benefits

Ms. Eaves has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections is ensuring that the substantive rules governing the water CCN applications continue to be in alignment with statutes as enacted and are not limited in application by population brackets that were revised following the federal census. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. Ms. Eaves has determined that the economic costs to persons required to comply with the proposed rules will vary on an individual basis.

Local Employment Impact Statement

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

Costs to Regulated Persons

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

Public Hearing

The commission staff will conduct a public hearing on this rulemaking if requested in accordance with Texas Government Code §2001.029. The request for a public hearing must be received by May 30, 2024. If a request for public hearing is received, commission staff will file in this project a notice of hearing.

Public Comments

Interested persons may file comments electronically through the interchange on the commission's website. Comments must be filed by May 30, 2024, by 3:00 P.M. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rules. The commission will consider the costs and benefits in deciding whether to modify the proposed rules on adoption. All comments should refer to Project Number 56223.

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

Statutory Authority

The rules are proposed under the following provisions of Texas Water Code (TWC): TWC §13.041, which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §13.245, which establishes commission's authority related to CCN for a service area within municipal boundaries or extraterritorial jurisdiction of certain municipalities; §13.2451, which establishes commission's authority related to extension of municipal CCN service area beyond its extraterritorial jurisdiction; §13.254, related to decertification initiated by utility commission or utility, and expedited release initiated by landowner; and §13.2541, related to streamlined expedited release initiated by landowner.

Cross Reference to Statutes: TWC §13.041, 13.245, 13.2451, 13.254, 13.2541.

§24.233. Contents of Certificate of Convenience and Necessity Applications.

(a) Application. To obtain or amend a certificate of convenience and necessity (CCN), a person, public water or sewer utility, water supply or sewer service corporation, affected county as defined in §24.3(4) of this title (relating to Definitions of Terms), county, district, or municipality shall file an application for a new CCN or a CCN amendment. Applications must contain the following materials, unless otherwise specified in the application form:

(1) (No change.)

(2) mapping documents as prescribed in §24.257 [~~§24.259~~] of this title (relating to Mapping Requirements for Certificate of Convenience and Necessity Applications);

(3) - (16) (No change.)

(b) (No change.)

(c) Application within the municipal boundaries or extraterritorial jurisdiction of certain municipalities.

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

(7) Paragraphs (4) - (6) of this subsection do not apply to Cameron, Hidalgo, or Willacy Counties, or to a county:

(A) with a population of more than 30,000 and less than 36,000 [~~35,000~~] that borders the Red River;

(B) (No change.)

(C) with a population of 170,000 [~~130,000~~] or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or

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

(8) - (9) (No change.)

(d) Extension beyond extraterritorial jurisdiction.

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

(3) Paragraph (2) of this subsection does not apply to an extension of extraterritorial jurisdiction in Cameron, Hidalgo, or Willacy Counties, or in a county:

(A) with a population of more than 30,000 and less than 36,000 [~~35,000~~] that borders the Red River;

(B) (No change.)

(C) with a population of 170,000 [~~130,000~~] or more that is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or

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

(4) (No change.)

(e) (No change.)

§24.245. Revocation of a Certificate of Convenience and Necessity or Amendment of a Certificate of Convenience and Necessity by Decertification, Expedited Release, or Streamlined Expedited Release.

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

(d) Revocation or amendment by decertification.

(1) At any time after notice and opportunity for hearing, the commission may revoke any CCN or amend any CCN by decertifying a portion of the service area if the commission finds that any of the circumstances identified in this paragraph exist.

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

(D) The current CCN holder failed to apply for a cease-and-desist order under TWC §13.252 and §24.255 of this title (relating to Content of Request for Cease and Desist Order by the Commission [~~content of request for cease and desist order by the commission under TWC §13.252~~]) within 180 days of the date that the current CCN holder became aware that another retail public utility was providing service within the current CCN holder's certificated service area, unless the current CCN holder proves that good cause exists for its failure to timely apply for a cease-and-desist order.

(E) (No change.)

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

(e) (No change.)

(f) Expedited release.

(1) - (11) (No change.)

(12) If the current CCN holder has never made service available through planning, design, construction of facilities, or

contractual obligations to provide service to the tract of land, the commission is not required to find that the alternate retail public utility can provide better service than the current CCN holder, but only that the alternate retail public utility can provide the requested service. This paragraph does not apply to Cameron, Willacy, and Hidalgo Counties or to a county that meets any of the following criteria:

(A) the county has a population of more than 30,000 and less than 36,000 [~~35,000~~] and borders the Red River;

(B) (No change.)

(C) the county has a population of 170,000 [~~130,000~~] or more and is adjacent to a county with a population of 1.5 million or more that is within 200 miles of an international border; or

(D) (No change.)

(13) - (14) (No change.)

(g) Determination of compensation to former CCN holder after revocation, decertification amendment or expedited release. The determination of the monetary amount of compensation to be paid to the former CCN holder, if any, will be determined at the time another retail public utility seeks to provide service in the removed area and before service is actually provided. This subsection does not apply to revocations or decertification amendments under subsection [~~paragraph~~] (d)(2) of this section or to streamlined expedited release under subsection (h) of this section.

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

(3) If the former CCN holder and prospective retail public utility have agreed on the amount of compensation to be paid to the former CCN holder, they must make a joint filing with the commission within 60 days of the filing of the notice of intent to provide service. The filing must state [~~stating~~] the amount of the compensation to be paid and provide sufficient details about how the compensation was calculated.

(4) If the former CCN holder and prospective retail public utility have not agreed on the compensation to be paid to the former CCN holder, the monetary amount of compensation must be determined by a qualified individual or firm serving as an independent appraiser as follows:

(A) If the former CCN holder and prospective retail public utility have agreed on an independent appraiser, they must make a joint filing with the commission identifying the individual or firm who will be the independent appraiser and must file its appraisal with the commission within 60 days of the filing of the notice of intent [~~within ten days of the filing of the notice of intent under paragraph (1) of this subsection~~]. The costs of the independent appraiser must be borne by the prospective retail public utility.

(B) If the former CCN holder and prospective retail public utility cannot agree on an independent appraiser within ten days of the filing of the notice of intent, the former CCN holder and prospective retail public utility must each engage its own appraiser at its own expense. Each appraiser must file its appraisal with the commission within 60 [~~calendar~~] days of the filing of the notice of intent. After receiving the appraisals, the commission will appoint a third appraiser who must make a determination of compensation within 30 days. The determination by the commission-appointed appraiser may not be less than the lower appraisal or more than the higher appraisal of the appraisers engaged by the former CCN holder and prospective retail public utility. The former CCN holder and prospective retail public utility must each pay half the cost of the commission-appointed appraisal directly to the commission-appointed appraiser.

(C) The appraisers must determine the amount of compensation in accordance with subsection (j) of this section.

(5) The determination of compensation by the agreed-upon appraiser under paragraph (4)(A) of this subsection or the commission-appointed appraiser under paragraph (4)(B) of this subsection is binding on the commission, the landowner, the former CCN holder, and the prospective retail public utility.

(6) If the former CCN holder fails to make a filing with the commission about the amount of agreed compensation, or to engage an appraiser, or to file an appraisal within the timeframes required by this subsection, the amount of compensation to be paid will be deemed to be zero. If the prospective retail public utility fails to make a filing with the commission about the amount of agreed compensation, or to engage an appraiser, or to file an appraisal within the timeframes required by this subsection, the presiding officer may recommend denial [~~dismissal~~] of the notice of intent to provide service to the removed area.

(7) (No change.)

(h) Streamlined expedited release.

(1) (No change.)

(2) A qualifying county under paragraph (1)(C) of this subsection:

(A) has a population of at least 1.2 [~~one~~] million;

(B) is adjacent to a county with a population of at least 1.2 [~~one~~] million, and does not have a population of more than 50,500 [~~45,000~~] and less than 52,000 [~~47,500~~]; or

(C) has a population of more than 200,000 and less than 233,500 [~~220,000~~] and does not contain a public or private university that had a total enrollment in the most recent fall semester of 40,000 or more.

(3) - (8) (No change.)

(9) The commission may require an award of compensation by the landowner to the former CCN holder as specified in subsection (i) of this section.

(i) Determination of compensation to former CCN holder after streamlined expedited release. The amount of compensation, if any, will be determined after the commission has granted a petition for streamlined expedited release filed under subsection (h) of this section. The amount of compensation, if any, will be decided in the same proceeding as the petition for streamlined expedited release.

(1) If the former CCN holder and landowner have agreed on the amount of compensation to be paid to the former CCN holder, they must make a joint filing with the commission within 70 days after the commission has granted streamlined expedited release. The filing must state the amount of the compensation to be paid and provide sufficient details about how the compensation was calculated [~~stating the amount of the compensation to be paid~~].

(2) If the former CCN holder and landowner have not agreed on the compensation to be paid to the former CCN holder, the monetary amount of compensation must be determined by a qualified individual or firm serving as an independent appraiser under the following procedure.

(A) If the former CCN holder and landowner have agreed on an independent appraiser, the former CCN holder and landowner must make a joint filing with the commission identifying the individual or firm who will be the independent appraiser [~~within ten days~~] after the commission grants streamlined expedited release under subsection (h) of this section. The costs of the independent

appraiser must be borne by the landowner. The appraiser must file its appraisal with the commission within 70 days after the commission grants streamlined expedited release.

(B) - (C) (No change.)

(3) The determination of compensation by the agreed-upon appraiser under paragraph (2)(A) of this subsection or the commission-appointed appraiser under paragraph (2)(B) of this subsection is binding on the commission, former CCN holder, and landowner.

(4) - (6) (No change.)

(j) (No change.)

(k) Mapping information.

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

(3) All maps must be filed in accordance with §22.71 and §22.72 of this title (relating to Filing of Pleadings, Documents and Other Materials and Formal Requisites of Pleadings and Documents to be Filed with the Commission, respectively).

(l) (No change.)

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

Filed with the Office of the Secretary of State on April 25, 2024.

TRD-202401754
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: June 9, 2024
For further information, please call: (512) 936-7322

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.8

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter A, §1.8, adopting the Comptroller's rules involving Historically Underutilized Businesses (HUBs) as required by Texas Government Code, §2161.003. Specifically, this amendment will adopt the Comptroller's rules rather than the Texas Building and Procurement Division rules. Further, this amendment will remove an outdated citation to the Administrative Code and replace it with a citation to the Comptroller's current HUB rules.

This rule is outdated and needs to be updated to conform with Texas Government Code, §2161.003.

The Board has the authority to amend this rule under its general rulemaking authority granted by Texas Education Code, §61.027.

Nichole Bunker-Henderson, General Counsel, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rule. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

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

Nichole Bunker-Henderson, General Counsel, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be to conform with Texas Government Code, §2161.003. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

Request for Comments

Comments on the proposal may be submitted to Kimberly Fuchs, Assistant General Counsel, P.O. Box 12788, Austin, Texas 78711-2788, or via email at Kimberly.Fuchs@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

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

The proposed amendment makes conforming changes to the HUB Program rules.

§1.8. Historically Underutilized Business (HUBs) Program.

In accordance with the Government Code, §2161.003, the Board adopts by reference the rules of the Comptroller [~~Texas Building and Procurement Commission~~], found at Title 34 [~~1~~] Texas Administrative Code, §§2.281 - 2.298 [~~§§111.11 - 111.28~~], concerning the Historically Underutilized Business (HUB) Program. For purposes of implementing the Comptroller's [~~GSC~~] rules at the board, references to state agency or agency shall be considered to be a reference to the board.

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

Filed with the Office of the Secretary of State on April 26, 2024.

TRD-202401840

Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: June 9, 2024
For further information, please call: (512) 427-6271

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CHAPTER 2. ACADEMIC AND WORKFORCE EDUCATION

SUBCHAPTER B. APPROVAL PROCESS FOR A CERTIFICATE

19 TAC §2.32

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter B, §2.32 concerning the approval process for new certificate programs. Texas Education Code, §61.0512(a), requires the Coordinating Board to approve all new certificate programs before an institution of higher education may offer the program. Specifically, the proposed amendments will revise the requirements for notification of new certificate programs.

Rule 2.32, Notification, will be amended to remove the provision requiring CIP codes for all courses in the certificate. Texas Education Code, §61.0512, gives the Coordinating Board authority to approve new certificate programs.

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

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

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is improving the administrability of the Board's existing process for approval of new certificate programs. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The amendment is proposed under Texas Education Code, Section 61.0512, which states that institutions may offer new certificate programs with the Board's approval.

The proposed amendments affect Texas Education Code Section 61.0512.

§2.32. Notification.

Not later than the ninetieth day after an institution initially offers a certificate program, each institution shall provide, in a manner prescribed by Board Staff, the following information:

(1) The number of semester credit hours for the certificate;

(2) The CIP Code for the certificate[~~, if applicable~~];

[~~(3) The CIP Codes for all courses that comprise the certificate;~~]

(3) [~~(4)~~] The name or designation of the certificate;

(4) [~~(5)~~] The type of certificate, if applicable;

(5) [~~(6)~~] Whether the certificate when earned in combination with any other certificate, defined set of courses, or other requirements leads to the award of another credential, including an associate degree or bachelor's degree; and

(6) [~~(7)~~] Other information required to facilitate inclusion of the certificate program in a state credential repository or student advising resources.

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

Filed with the Office of the Secretary of State on April 26, 2024.

TRD-202401841
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: June 9, 2024
For further information, please call: (512) 427-6182

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SUBCHAPTER D. APPROVAL PROCESS FOR NEW ACADEMIC ASSOCIATE DEGREES

19 TAC §2.58

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter D, §2.58, concerning the approval process for new academic associate degree programs. Specifically, the proposed amendments clarify which institution type may offer the embedded academic associate degree and brings rule into alignment with statute.

Texas Education Code (TEC), §§61.051 and 61.0512, provides the Coordinating Board with authority to approve new degree programs at public institutions of higher education. TEC, §130.001, grants the Coordinating Board the responsibility to adopt policies and establish general rules necessary to carry out statutory duties with respect to public junior colleges. TEC, §130.0104, requires each public junior college district to establish a multidisciplinary studies associate degree, and authorizes the Board to adopt rules as necessary. TEC, §61.05151, requires that the number of semester credit hours required for the associate degree not exceed the minimum number required by the institution's accreditor, in the absence of a compelling academic reason provided by the institution.

The proposed amendment clarifies subchapter D (relating to Approval Process for New Associate Degrees) applies only to new academic associate degrees and §2.58 (relating to Embedded Credential: Academic Associate Degree) applies only to embedded academic associate degrees offered by public universities and health-related institutions.

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

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

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is improving administrability of the Coordinating Board's existing program approval process. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The amendment is proposed under Texas Education Code, Sections 61.051 and 61.0512, which provide that no new degree or certificate program may be added to any public institution of higher education expect with specific prior approval of the Coordinating Board.

The proposed amendments affect Texas Education Code, Sections 61.051 and 61.0512.

§2.58. Embedded Credential: Academic Associate Degree.

A [~~public two-year institution,~~ a] public university[~~,~~] or a public health-related institution may offer an academic associate degree as an embedded credential in the same, a related, or supporting field as the bachelor's degree in which a student is currently or has been enrolled. The institution may request approval for the associate degree:

(1) In the application for the bachelor's degree program; or

(2) May request the embedded associate degree program subject to Assistant Commissioner Expedited Review under subchapter A, §2.4(2)(B)(ii), of this chapter (relating to Types of Approval Required).

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

Filed with the Office of the Secretary of State on April 26, 2024.

TRD-202401797
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: June 9, 2024
For further information, please call: (512) 427-6182

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SUBCHAPTER E. APPROVAL PROCESS FOR NEW BACCALAUREATE PROGRAMS AT PUBLIC JUNIOR COLLEGES

19 TAC §2.87

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter E, §2.87, concerning the criteria for new baccalaureate degree programs at public junior colleges. Specifically, the proposed amendments provide clarity on the number of baccalaureate degree programs each public junior college district is authorized to implement.

Texas Education Code, §61.0512(h)(2), gives the Coordinating Board authority to approve programs generally; and Texas Education Code, chapter 130, subchapter L, grants the Coordinating Board authority to administer approval processes for baccalaureate degree programs at public junior colleges specifically. Rule 2.87, Criteria for New Baccalaureate Degree Programs, contains the criteria Coordinating Board Staff use to evaluate baccalaureate degree program proposals submitted by public junior colleges. The amended section is proposed under Texas Education Code, §130.306, which limits public junior colleges to no more than five baccalaureate degree programs at any time. The proposed amendment makes clear this statutory limitation applies to each junior college district regardless of accreditation as one institution or a district with multiple independently accredited institutions.

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

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

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is improved communication between the Coordinating Board and institutions. The proposed amendments provide clarity on the number of baccalaureate degree programs each public junior college district is authorized to implement as authorized by statute. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The amendment is proposed under Texas Education Code, Sections 61.0512(h)(2), 130.302, and 130.312, which provides the Coordinating Board with the authority to administer and approve certain baccalaureate degree programs at public junior colleges.

The proposed amendments affect Texas Education Code Sections 61.0512(h)(2), 130.302, and 130.312, and 19 Texas Administrative Code ch. 2, subchapter E.

§2.87. Criteria for New Baccalaureate Degree Programs.

(a) The Board may authorize baccalaureate degree programs at a public junior college in the fields of applied science, including a degree program in applied science with an emphasis on early childhood education, applied technology, or nursing, that have a demonstrated workforce need.

(b) All proposed baccalaureate degree programs must meet the criteria set out in this subsection, in addition to the general criteria in subchapter A, §2.5 (relating to General Criteria for Program Approval), and subchapter F, §2.118 (relating to Post-Approval Program Reviews), of this chapter.

(c) Each public junior college seeking to offer a baccalaureate degree program must comply with the requirements and limitations specified in Tex. Educ. Code, chapter 130, subchapter L.

(d) A public junior college offering a baccalaureate degree program must meet all applicable accreditation requirements of the Southern Association of Colleges and Schools Commission on Colleges. A public junior college that has attained accreditation by the Southern Association of Colleges and Schools Commission on Colleges is authorized to change accreditors to any accrediting agency approved by the Board under chapter 4, subchapter J of this title (relating to Accreditation).

(e) A public junior college district may not offer more than five baccalaureate degree programs at any time not-withstanding if accredited as a single institution.

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

Filed with the Office of the Secretary of State on April 26, 2024.

TRD-202401799
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: June 9, 2024
For further information, please call: (512) 427-6182

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SUBCHAPTER G. APPROVAL PROCESS FOR NEW DOCTORAL AND PROFESSIONAL DEGREE PROGRAMS

19 TAC §2.145, §2.151

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter G, §2.145 and §2.151, concerning the approval process for new doctoral and professional degree programs. Specifically, the proposed amendments include removing language from §2.145(d) regarding costs associated with external review of proposed doctoral and professional degree programs and correcting a reference cited in §2.151.

Texas Education Code, §61.0512, states that a public institution of higher education may not offer any new degree program, including doctoral and professional degrees, without Board approval.

Rule 2.145, Presentation of Requests and Steps for Implementation, sets out the steps an institution must follow in order to request a new doctoral or professional degree, as well as the approval procedures Board Staff must follow for these programs. The proposed amendment removes language requiring institutions to pay costs associated with external review of a proposed doctoral or professional program. The Coordinating Board has borne the cost of the review, this repeal conforms the text to the practice.

Rule 2.151, Revisions to Approved Doctoral or Professional Programs, outlines how an institution requests a revision or modi-

fication of an approved doctoral or professional program. The proposed amendment clarifies that an institution may request a revision or modification of the program in line with §2.9 regarding Revisions and Modifications to an Approved Program, not §2.7 regarding Informal Notice and Comment on Proposed Local Programs. This corrects a typographical error.

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

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

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section is improved communication between the Coordinating Board and institutions. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The amendments are proposed under Texas Education Code, Sections 61.051 and 61.0512, which provide that no new degree program may be added at any public institution of higher education except with specific prior approval of the Coordinating Board.

The proposed amendments affect Texas Education Code, Sections 61.051 and 61.0512.

§2.145. Presentation of Requests and Steps for Implementation.

(a) The requesting institution must submit a Planning Notification in accordance with subchapter C, §2.41 of this chapter (relating to Planning Notification: Notice of Intent to Plan), at least one year prior to submitting an administratively complete program proposal.

(b) Each institution must request new doctoral and professional degree programs using the New Doctoral and Professional Degree Proposal Form available on the Board's website.

(c) Board Staff will make the determination of administrative completeness in accordance with subchapter A, §2.6 of this chapter (relating to Administrative Completeness).

(d) Board Staff shall utilize out-of-state disciplinary experts to assist in the review process to evaluate the quality of a proposed doctoral or professional program. [~~The institution submitting the proposal is responsible for paying the costs of the external review.~~]

(e) Each proposed doctoral and professional degree program is subject to Board Approval under subchapter A, §2.4(4) of this chapter (relating to Types of Approval Required).

(f) Upon Board approval, Board Staff will add the new doctoral or professional program to the institution's official Program Inventory. The Program Inventory contains the list of programs with official Board approval.

§2.151. Revisions to Approved Doctoral or Professional Programs.

An institution may request a non-substantive or substantive revision or modification to an approved doctoral or professional program under subchapter A, §2.9 [~~§2.7~~] of this chapter (relating to Revisions and Modifications to an Approved Program [~~informal Notice and Comment of Proposed Local Programs~~]).

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

Filed with the Office of the Secretary of State on April 26, 2024.

TRD-202401802
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: June 9, 2024
For further information, please call: (512) 427-6182

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SUBCHAPTER K. APPROVAL PROCESS FOR AN APPLIED ASSOCIATE DEGREE

19 TAC §§2.230 - 2.241

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter K, §§2.230 - 2.241, concerning the approval process for an applied associate degree program at public junior colleges. Specifically, the new subchapter aligns the approval process for an applied associate degree with the approval process for other degree types required under chapter 2 of this title.

Rule 2.230, Purpose, establishes a process for a public junior college to request a new applied associate degree program from the Coordinating Board.

Rule 2.231, Authority, contains statutory provisions authorizing the Coordinating Board to approve new degree programs offered by public institutions of higher education. Texas Education Code (TEC), §61.0512, permits institutions to add new certificate and degree programs only with prior approval of the Coordinating Board. TEC, §130.001, grants the Coordinating Board the responsibility to adopt policies and establish general rules nec-

essary to carry out statutory duties with respect to public junior colleges. TEC, §61.05151, requires that the number of semester credit hours required for the applied associate degree not exceed the minimum number required by the institution's accreditor, in the absence of a compelling academic reason provided by the institution.

Rule 2.232, Submission of Planning Notification, requires a public junior college to submit a Planning Notification to the Coordinating Board prior to submitting a request for a new applied associate degree. The proposed rule requires Coordinating Board staff to provide labor market information to the public junior college within 60 days of receiving the planning notification. The purpose of this section is to ensure that each institution has adequately planned for a new degree program and has information about the potential value and need for the program on a local and statewide basis. The Coordinating Board intends to provide input to each institution about both the need for the program and the value of the resulting credential.

Rule 2.233, Applied Associate Degree Length and Program Content, contains the required criteria for approval of a new applied associate degree program. These provisions ensure the quality of each program and that the program complies with relevant statutes and rules.

Rule 2.234, Approval Required for an Applied Associate Degree, subjects new applied associate degree programs to the approval levels required in subchapter A of this chapter (relating to General Provisions). Proposed programs with more than 50 percent new content require Commissioner approval.

Rule 2.235, Presentation of Requests and Steps for Implementation for a New Applied Associate Degree, lays out the steps for public junior colleges to request a new applied associate degree program. The proposed rules require Coordinating Board staff to provide informal notice and 30-day opportunity for comment to other institutions of higher education in the region. Comments received are taken into consideration during the program review process. This process is intended to ensure there is sufficient statewide and regional demand for each program without unnecessary duplication of programs.

Rule 2.236, Approval Required for a Proposed Revision to an Applied Associate Degree Program, subjects program revisions to approval by notification as required in subchapter A, §2.4(1) of this chapter (relating to Types of Approval Required) if the modifications contain less than 50 percent new content, a new degree name, a new CIP code that will not result in the funding reclassification, the addition of a new Level 1 or 2 certificate consisting of courses in the applied associate program, phasing out an existing applied associate degree program, adding or removing a Special Topics or Local Need course from the curriculum, changing the semester credit hours or contact hours, or changing the length of the applied associate degree by one semester or more. Changes to the CIP code that result in funding reclassification to a high-demand field require Coordinating Board approval. The purpose of this section is to ensure that programs are meeting regional and statewide need, meet the required statutory and rule requirements, but also provide for a streamlined process where appropriate.

Rule 2.237, Criteria for an Applied Associate Degree, requires proposed applied associate degree programs at public junior colleges to meet criteria in subchapter A, §2.5 of this chapter (relating to General Criteria for Program Approval). This requirement ensures that all programs meet the same standards required by statute and rule, and align with the statewide plan for higher education while also providing credentials of value to students.

Rule 2.238, Approval and Semester Credit Hours, subjects new applied associate degrees to the 60 semester credit hours minimum set by the institutional accreditor. Programs exceeding the 60-hour limit must provide a compelling academic reason for the excess hours.

Rule 2.239, Post-Approval Program Reviews, requires the Coordinating Board to conduct post-approval reviews of applied associate degree programs as required in subchapter I of this chapter (relating to Review of Existing Degree Programs).

Rule 2.240, Deactivation and Phasing Out an Applied Associate Degree Program, requires that colleges request phase out of an approved applied associate degree program in accordance with subchapter H of this chapter (relating to Phasing Out Degree and Certificate Programs).

Rule 2.241, Effective Dates of Rules, establishes the effective date of the new rule as September 1, 2024.

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

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

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of adopting this rule will be a uniform process for approval of proposed degree programs, specifically the applied associate degree. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The new sections are proposed under Texas Education Code, Sections 61.051, which provides the Coordinating Board with the authority to coordinate the efficient and effective use of higher education resources and avoid unnecessary duplication; 61.0512, which states that a public institution of higher education may not offer any new degree program without Coordinating Board approval; and 130.001, which grants the Coordinating Board the responsibility to adopt policies and establish general rules necessary to carry out statutory duties with respect to public junior colleges.

The proposed new sections affect Texas Education Code, Sections 61.051, 61.0512, and 130.001.

§2.230. Purpose.

The purpose of this subchapter is to establish the process for an institution to request approval for an applied associate degree program from the Board.

§2.231. Authority.

The authority for this subchapter is Texas Education Code, §§61.051 and 61.0512, which provide that no new degree or certificate program may be added at any public institution of higher education except with specific prior approval of the Board. Texas Education Code, §130.001, grants the Board the responsibility to adopt policies and establish general rules necessary to carry out statutory duties with respect to public junior colleges. Texas Education Code, §61.05151, requires that the number of semester credit hours required for the applied associate degree not exceed the minimum number required by the institution's accreditor, in the absence of a compelling academic reason provided by the institution.

§2.232. Submission of Planning Notification.

An institution of higher education seeking approval to offer a new degree program under this subchapter must submit a Planning Notification to Board Staff in accordance with subchapter C of this chapter (relating to Preliminary Planning Process for New Degree Programs) prior to submitting an administratively complete request for a new applied associate degree proposal.

§2.233. Applied Associate Degree Length and Program Content.

(a) An applied associate degree may be called an associate of applied arts (AAA) or associate of applied science (AAS).

(b) The AAS program may serve as a foundation for the Bachelor of Applied Science (BAS), Bachelor of Applied Arts and Sciences (BAAS) and the Bachelor of Applied Technology (BAT) degree.

(c) Each applied associate degree program shall provide the necessary workforce skills, knowledge, and abilities necessary to attain entry-level employment in an occupation.

(1) The curriculum shall include a minimum of 15 semester credit hours of general education courses.

(2) The remaining curriculum may include both Workforce Education Manual (WECM) and Lower-Division Academic Course Guide Manual (ACGM) courses directly related to the discipline.

(3) Business and industry experts shall provide substantial input into curriculum design through participation in an advisory committee.

(4) The institution shall ensure basic and career technical/workforce skills are integrated into the curriculum.

(5) The institution has an enrollment management plan for the program.

(6) The institution shall review and consider for inclusion in the program skill standards recognized by the Texas Skill Standards Board, if they exist for the discipline.

§2.234. Approval Required for an Applied Associate Degree.

A public junior college, technical college, state college, or any general academic institution authorized by statute to offer the program may request approval for a new applied associate degree.

(1) A proposed applied associate degree is subject to Assistant Commissioner approval under §2.4(2) of this chapter (relating to Types of Approval Required), and in accordance with applicable provisions under subchapter A of this subchapter (relating to General Provisions), except as specifically provided by this rule.

(2) An institution in the Texas State Technical College system may offer the associate of applied science degree in accordance with the provisions of Texas Education Code, §135.04.

§2.235. Presentation of Requests and Steps for Implementation for a New Applied Associate Degree.

(a) A requesting institution may only submit a Planning Notification in accordance with subchapter C of this chapter (relating to Preliminary Planning Process for New Degree Programs) using the forms available on the Coordinating Board's website.

(b) The institution shall demonstrate that the proposed program obtained institution and governing board approval prior to submission.

(c) A requesting institution may only submit an application to offer a new applied associate degree using the forms available on the Coordinating Board's website.

(d) Not later than the sixtieth (60) day after an institution submits an administratively complete application for approval, Board Staff shall provide informal notice and opportunity for comment to other institutions of higher education in the region in accordance with §2.7 of this chapter (relating to Informal Notice and Comment on Proposed Local Programs).

(e) Board Staff will make the determination of administrative completeness in accordance with §2.6 of this chapter (relating to Administrative Completeness).

(f) The Assistant Commissioner, Commissioner, or Board, as applicable, shall approve or deny the proposed program within the timelines specified in §2.4 of this chapter (relating to Types of Approval Required), after receipt of the complete program proposal. If the Assistant Commissioner, Commissioner, or Board does not act to approve or deny the proposal within one year of administrative completeness, the program is considered approved.

(g) Upon approval, Board Staff will add the new degree program to the institution's official Program Inventory. The Program Inventory contains the list of degrees and certificates with Board approval.

§2.236. Approval Required for a Proposed Revision to an Applied Associate Degree Program.

An institution may request a revision or modification to an approved applied associate degree program.

(1) If the proposed applied associate degree program revision contains not greater than 50 percent new content, the proposal will be subject to approval by notification in accordance with §2.4(1) of this chapter (relating to Types of Approval Required).

(2) If the proposed applied associate degree program revision is a change to the CIP code that will result in the funding reclassification of the program to a high-demand field, the proposal will be

subject to Assistant, Associate, or Deputy Commissioner, as applicable for review and approval.

(3) If the proposed applied associate degree program revision includes any of the following, the proposal is subject to approval by notification in accordance with §2.4(1) of this chapter:

(A) A change to the name of an applied associate degree;

(B) A change to the CIP code of an applied associate degree program that will not result in the funding reclassification of the degree;

(C) The addition of a new Level 1 or Level 2 Certificate to an approved applied associate degree program. If a new Level 1 or Level 2 Certificate is added to an approved applied associate degree program, the new certificate content shall consist of courses included in the approved applied associate program;

(D) The phase-out and closure of a credential and the suspension of new student enrollment under §2.171 of this chapter (relating to Program Phase-Out Notification);

(E) The discontinuation of a credential to close the program and remove it from the institution's program inventory;

(F) Special Topics or Local Need courses are added to or removed from the curriculum;

(G) The number of SCH in the credential is changed or, for a CE program, the length is changed by 100 or more contact hours; or

(H) The length of the credential is changed by one semester or more.

§2.237. Criteria for An Applied Associate Degree.

(a) A proposed applied associate degree program shall meet the criteria set out in this subchapter, in addition to the general criteria in §2.5 of this chapter (relating to General Criteria for Program Approval).

(b) Board staff shall ensure that the institution certifies and provides required evidence that a proposed applied associate degree meets the criteria in §2.5 of this chapter.

(c) The institution shall certify that the proposed program complies with all applicable provisions contained in this subchapter and subchapter A of this chapter (relating to General Provisions).

§2.238. Approval and Semester Credit Hours.

An applied associate degree is limited to 60 SCH unless the institution determines that there is a compelling academic reason for requiring completion of additional semester credit hours for the degree (Texas Education Code, §61.05151). If the minimum number of semester credit hours required to complete a proposed applied associate program exceeds 60, the institution shall provide detailed documentation describing the compelling academic reason for the number of required hours, such as programmatic accreditation requirements, statutory requirements, or licensure/certification requirements that cannot be met without exceeding the 60-semester credit hour limit. Board Staff will review the documentation provided and make a determination to approve or deny a request to exceed the 60-semester credit hour limit.

§2.239. Post-Approval Program Reviews.

Board staff conduct post-approval reviews in accordance with subchapter I of this chapter (relating to Review of Existing Degree Programs).

§2.240. Deactivation and Phasing Out an Applied Associate Degree Program.

An institution may request to phase out an applied associate degree program under subchapter H of this chapter (relating to Phasing Out Degree and Certificate Programs).

§2.241. Effective Date of Rules.

This rule applies to each applied associate degree program submitted by an institution of higher education for approval on or after September 1, 2024.

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

Filed with the Office of the Secretary of State on April 26, 2024.

TRD-202401842
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: June 9, 2024
For further information, please call: (512) 427-6182

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SUBCHAPTER L. APPROVAL PROCESS FOR A CAREER AND TECHNICAL EDUCATION CERTIFICATE

19 TAC §§2.260 - 2.268

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter L, §§2.260 - 2.268, concerning the approval process for a career and technical education certificate. Specifically, this new section will clarify the categories of career and technical education certificates that may be developed by institutions and the process by which institutions may submit the certificates to receive approval. This new section will also provide clarification on certificate titles, program length and content. Lastly, the proposed rule describes the process required for an institution to submit a proposed revision or phase-out and closure of a certificate program.

Rule 2.260, Purpose, states that the purpose of the subchapter is to outline a process for institutions to request approval for new career and technical education certificates from the Coordinating Board.

Rule 2.261, Authority, contains statutory provisions authorizing the Coordinating Board to approve career and technical education certificates offered by Texas public institutions of higher education. Texas Education Code, §61.0512, permits institutions to add new certificate programs only with the specific prior approval of the Coordinating Board.

Rule 2.262, Certificate Titles, Length and Program Content, lists the types of career and technical education certificates institutions may offer and describes characteristics of those certificates. The certificate categories and characteristics in this proposed rule align with longstanding industry standards, as well as with certificate definitions used for purposes of community college funding, as adopted by the Coordinating Board in rule.

The proposed rule contains several categories of certificates already in longstanding use by institutions of higher education, some of which are defined in rule in detail for the first time. These categories include Level 1 Certificates, Level 2 Certificates, Advanced Technical Certificates, Continuing Education

Certificates, Enhanced Skills Certificates, and Occupational Skills Awards. The proposed rule specifies the purpose of each certificate type, requirements, prerequisites, and thresholds for certificate lengths where relevant.

The proposed rule also incorporates two newer categories of certificate types: the Institutional Credential Leading to Licensure or Certification (ICLC) and the Third-Party Credential. These definitions align certificate approval rules with categories of credentials used in the new community college finance model as adopted by the Coordinating Board in rule. An ICLC is an institutional credential that has identifiable skill proficiency leading to licensure or certification. The definition is the same as an Occupational Skills Award, but an ICLC may provide training for an occupation that is not included in the Local Workforce Development Board's Target Occupation list. A Third-Party Credential is a certificate for which a third-party provider develops the program content and assessments to evaluate student mastery of content and awards the credential upon successful completion. The institution may embed the credential in an existing course or program or offer the credential as a stand-alone program. The proposed definition includes several criteria for this certificate type, including the inclusion of the certificate in the American Council on Education's (ACE) National Guide.

Rule 2.263, Criteria for Approval, provides clarity to the institution on the content and process requirements that the institution must meet in seeking approval for a certificate. The proposed rule specifically includes the documentation requirements that the institution must provide when seeking approval of a certificate for which no graduate or wage data exist to demonstrate that the certificate is a Credential of Value, including proxy data from a similar certificate program and an attestation from regional employers regarding the hiring of graduates from the program. Defining these documentation requirements will ensure that institutions provide evidence of the value of the new certificate in the labor market, thereby aligning with requirements for the funding of credentials used in the new community college finance model as adopted by the Coordinating Board in rule.

Rule 2.264, Approval Required, defines the factors and the level of approval for a new certificate. Specifically, a proposed new certificate that contains 50 percent or more new content will be subject to expedited review by the Assistant Commissioner. Expedited review will shorten the certificate approval process and must be indicated in the rule. The proposed rule provides clarification to institutions that if a new certificate is selected from an inventory of certificates that the Coordinating Board previously identified as a Credential of Value, the approval will be by notification only. An inventory of certificates that have been identified as Credentials of Value will provide institutions the option of seeking approval for a program that has already demonstrated value in the labor market. Finally, the proposed rule specifies that Third-Party Credentials, Occupational Skills Awards, Advanced Technical Certificates, and Enhanced Skills Certificates will be subject to approval by notification only, thereby significantly shortening the certificate submission and approval time, which will in turn shorten the time to program implementation.

Rule 2.265, Presentation of Requests and Steps for Approval of Proposed New Career and Technical Education Certificates, clarifies that an institution is required to submit an application prior to offering a new Continuing Education Certificate, Level 1 Certificate, Level 2 Certificate, Advanced Technical Certificate, Enhanced Skills Certificate, Occupational Skills Award, Institutional Credential Leading to Licensure or Certification, or Third-Party Credential, and that the institution must gain approval from its governing board prior to submission. This clarification is important as new certificates are now included in these requirements, which is integral in implementing the community college finance model as adopted by the Coordinating Board in rule. The proposed rule also provides clarity on the Coordinating Board approval process and outlines the criteria, timeline, and process for approvals, as well as an institution's option to appeal a decision to the Commissioner of Higher Education. By outlining the certificates that are subject to the proposed rule; the process for submission, approval, and appeal; and the relevant timelines; institutions will have clarity for the planning and implementation of all certificates.

Rule 2.266, Approval Required for a Proposed Revision to a Certificate Program, defines the factors and levels of approval for a revised certificate. Specifically, a proposed revision to a certificate that contains not greater than 49 percent new content will be subject to approval by notification. The proposed rule provides clarity for the specific types of revisions that are allowable and subject to approval by notification. The delineation of the specific certificate revisions that are subject to notification only will shorten the revised certificate submission and approval time, which will in turn shorten the time to program implementation. The proposed rule also clarifies that if a revised certificate includes a change to the Classification of Instructional Program (CIP) code that will result in the funding reclassification of the certificate program to a high-demand field, the proposal will be subject to Assistant Commissioner review and approval. A CIP code change to a high-demand field in the community college funding model would result in the funding of a certificate at a higher rate. Therefore, because of the potential funding impact of this type of CIP code change, review by the Assistant Commissioner is warranted.

Rule 2.267, Phase-Out and Closure of a Certificate Program, provides that institutions must notify and provide a phase-out plan to the Coordinating Board to close a certificate program. This plan is to ensure students are provided the opportunity to be notified and complete the program without penalty.

Rule 2.268, Effective Date of Rules, defines the date of rule implementation. The Coordinating Board intends to adopt a delayed effective date of September 1, 2024, in order to give institutions and the agency time to adopt revised processes in alignment with the new rule.

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

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

Lee Rector, Associate Commissioner for Workforce Education, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as the result of adopting this rule is to establish the approval process for a career and technical education certificate. The establishment of this rule will provide guidance to institutions on which certificates

may be submitted for approval and the process to complete the submission. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The new sections are proposed under Texas Education Code, §61.0512, which provides the Coordinating Board with the authority to approve new certificate programs at institutions of higher education. Texas Education Code, §§130.001 and 130.008, grant the Board the responsibility to adopt policies and establish general rules necessary to carry out statutory duties with respect to a public junior college certificate or degree program. The Board has the responsibility to adopt policies and establish general rules necessary to carry out statutory duties related to a certificate or degree program with respect to Texas State Technical College under Texas Education Code, §135.04, and the Josey School of Vocational Education under Texas Education Code, §96.63.

The proposed new sections affect Texas Education Code, §130A.101.

§2.260. Purpose.

The purpose of this subchapter is to establish the process for an institution to request approval for a new or revised career and technical education certificate program from the Board.

§2.261. Authority.

The authority for this subchapter is Texas Education Code, §§61.003(12), 61.051, 61.0512, and 96.63, which provide that no new degree or certificate program may be added at any public institution of higher education except with specific prior approval of the Board. Texas Education Code, §§130.001 and 130.008, grant the Board the responsibility to adopt policies and establish general rules necessary to carry out statutory duties with respect to a public junior college certificate or degree program. The Board has the responsibility to adopt policies and establish general rules necessary to carry out statutory duties related to a certificate or degree program with respect to Texas State Technical College under Texas Education Code, §135.04, and the Josey School of Vocational Education under Texas Education Code, §96.63.

§2.262. Certificate Titles, Length, and Program Content.

(a) Career and Technical Education Certificate--A post-secondary credential, other than a degree, which a student earns upon successful completion of a career and technical education workforce or continuing education program offered by an institution of higher education. Courses that comprise career and technical education certificates are listed in the Workforce Education Course Manual and the Academic Course Guide Manual and are subject to Board approval.

(b) Certificates subject to this subchapter are defined as follows:

(1) Advanced Technical Certificate (ATC)--has a specific associate or baccalaureate degree or junior level standing in an approved baccalaureate degree program as a prerequisite for admission. It consists of at least 16 semester credit hours and no more than 45 semester credit hours and must be focused, clearly related to the prerequisite degree, and justifiable to meet industry or external agency requirements.

(2) Continuing Education Certificate--is awarded for completion of a program of instruction that meets or exceeds 360 contact hours and earns continuing education units. The certificate program is intended to prepare the student to qualify for employment; to qualify for employment advancement; or to bring the student's knowledge or skills up to date in a particular field or profession.

(3) Enhanced Skills Certificate (ESC)--a certificate associated with an applied associate degree program intended to provide advanced skills identified by business and industry that are not part of the applied associate degree. The certificate must be clearly defined in course content and outcomes. It must consist of at least six (6) semester credit hours and no more than twelve (12) semester credit hours. An ESC may extend an applied associate degree to an overall total that must not exceed 72 semester credit hours. An ESC is awarded concurrently with a degree but may not be considered to be an intrinsic part of the degree or be used to circumvent the 60-semester credit hour associate degree limitation.

(4) Institutional Credential Leading to Licensure or Certification (ICLC)--is awarded by an institution upon a student's completion of a course or series of courses that represent the achievement of identifiable skill proficiency leading to licensure or certification. This definition includes a credential that meets the definition of an Occupational Skills Award in all respects except that the program may provide training for an occupation that is not included in the Local Workforce Development Board's Target Occupations list.

(5) Level 1 Certificate--is designed to provide the necessary academic skills and the workforce skills, knowledge, and abilities necessary to attain entry-level employment or progression toward a Level 2 Certificate or an applied associate degree, with at least 50 percent of course credits drawn from a single technical specialty. A Level 1 Certificate must be designed for a student to complete in one calendar year or less time and consists of at least 15 semester credit hours and no more than 42 semester credit hours.

(6) Level 2 Certificate--consists of at least 30 semester credit hours and no more than 51 semester credit hours.

(7) Occupational Skills Award (OSA)--a sequence of courses that meets the minimum standard for program length specified by the Texas Workforce Commission for the federal Workforce Innovation and Opportunity Act program (9-14 semester credit hours for credit courses or 144-359 contact hours for continuing education courses). An OSA must possess the following characteristics:

(A) The content of the credential must be recommended by an external workforce advisory committee, or the program must provide training for an occupation that is included on the Local Workforce Development Board's Target Occupations list;

(B) In most cases, the credential should be composed of Workforce Education Course Manual (WECM) courses only. However, lower-division courses from the Academic Course Guide Manual (ACGM) may be used if recommended by the external committee and if appropriate for the content of the credential;

(C) The credential complies with the Single Course Delivery guidelines for WECM courses; and

(D) The credential prepares students for employment in accordance with guidelines established for the Workforce Innovation and Opportunity Act.

(8) Third-Party Credential--A certificate as defined in Texas Education Code, §61.003(12)(C). A Third-Party Credential meets the following requirements:

(A) The third-party credential is listed in the American Council on Education's ACE National Guide with recommended semester credit hours;

(B) The third-party credential program content is either embedded in a course, embedded in a program, or is a stand-alone program;

(C) The third-party credential is conferred for successful completion of the third-party instructional program in which a student is enrolled;

(D) The third-party credential is included on the workforce education, continuing education, or academic transcript from the college;

(E) The third-party provider of the certificate develops the instructional program content, develops assessments to evaluate student mastery of the instructional content, and confers the third-party credential; and

(F) The third-party credential meets the requirements in §13.556 of this part (relating to Performance Tier: Fundable Outcomes).

§2.263. Criteria for Approval.

(a) Each certificate program shall meet the requirements of §2.5, except subsection (a)(3), of this chapter (relating to General Criteria for Program Approval); and

(b) Each certificate program must provide the necessary technical and workforce skills necessary to attain entry-level or advanced employment in a related occupation, and shall meet the following requirements:

(1) The certificate program may include both Workforce Education Course Manual (WECM) and Lower-Division Academic Course Guide Manual (ACGM) courses that are directly related to the discipline.

(2) Business and industry experts shall provide substantial input into curriculum design through participation in an advisory committee.

(3) The institution shall integrate basic and career technical/workforce skills into the curriculum.

(4) The institution has reviewed and considered for inclusion in the curriculum of the program applicable skill standards recognized by the Texas Workforce Investment Council, if they exist for the discipline.

(c) A Level 1 Certificate, composed of either workforce or continuing education courses, may only be approved if the program meets or exceeds 360 contact hours.

(d) A course or program that meets or exceeds 780 contact hours in length shall result in the award of appropriate semester credit hours and be applicable to a career and technical education certificate or an applied associate degree program.

(e) The institution shall certify that the proposed certificate program complies with all applicable provisions contained in divisions of this subchapter and subchapter A of this chapter (relating to General Provisions).

(f) The Coordinating Board shall ensure that each institution certifies and provides required evidence that a proposed career and technical education certificate program meets the criteria in §2.5, except paragraph (3), of this chapter.

(g) A proposed new certificate for which there is no graduate and wage data shall be determined to be a Credential of Value, as defined in §13.556(b) of this part (relating to Performance Tier: Fundable Outcomes), based on one or more of the following documentation criteria:

(1) An attestation from one or more regional employers that the employer will hire graduates of the program and the starting wage at which the employer would pay the graduate;

(2) Graduate employment and wage data for an essentially similar program from a different institution of higher education in Texas; or

(3) Graduate employment and wage data for an essentially similar program from an institution of higher education in a state other than Texas.

§2.264. Approval Required.

An application for approval of a new certificate program under this subchapter is subject to the following levels of approval:

(1) If the proposed certificate program, other than a third-party credential, contains 50 percent or more new content, the proposal will be subject to Assistant Commissioner expedited review and approval under §2.4(2)(B)(ii) of this chapter (relating to Types of Approval Required). In this subchapter, Assistant Commissioner means the Assistant, Associate, or Deputy Commissioner designated by the Commissioner.

(2) If the proposed certificate program is included in the inventory of certificates that the Coordinating Board previously identified as Credentials of Value, the proposal will be subject to approval by notification under §2.4(1) of this chapter.

(3) A Third-Party Credential, Occupational Skills Award, Advanced Technical Certificate, and Enhanced Skills Certificate will be subject to approval by notification under 2.4(1) of this chapter.

§2.265. Presentation of Requests and Steps for Approval of Proposed New Career and Technical Education Certificates.

(a) An institution shall submit an application prior to offering a new Continuing Education Certificate, Level 1 Certificate, Level 2 Certificate, Advanced Technical Certificate, Enhanced Skills Certificate, Occupational Skills Award, Institutional Credential for Licensure or Certification, or Third-Party Credential using the forms available on the Coordinating Board's website.

(b) The institution's application shall demonstrate that the governing board approved the proposed certificate program prior to submission.

(c) Board Staff will make the determination of administrative completeness in accordance with §2.6 of this chapter (relating to Administrative Completeness).

(d) The Assistant Commissioner shall approve or deny the proposed certificate program within 60 days, after receipt of the complete certificate program proposal. If the Assistant Commissioner does not act to approve or deny the proposal within one year of administrative completeness, the certificate program is considered approved.

(e) Upon approval, Board Staff will add the new career and technical education certificate program to the institution's Program Inventory. The Program Inventory contains the institution's list of degrees and certificates approved by the Board.

(f) If the Assistant Commissioner denies the proposed certificate program, the institution may appeal the decision to the Commissioner. The Commissioner may, within 60 days after appeal, at his or her sole discretion:

(1) deny the proposed certificate program;

(2) approve the proposed certificate program; or

(3) allow the institution the opportunity to cure deficiencies in the proposed program.

(g) A new certificate program must be implemented within 24 months of the approved implementation date stated in the Coordinating Board approval letter. After 24 months, the institution must submit an application for approval of a new certificate program.

§2.266. Approval Required for a Proposed Revision to a Certificate Program.

An institution may request a revision or modification to an approved certificate program under §2.9(c) of this chapter (relating to Revisions and Modifications to an Approved Program).

(1) If the proposed certificate program revision contains not greater than 49 percent new content, the proposal will be subject to approval by notification.

(2) If the proposed certificate program revision is a change to the Classification of Instructional Program code that will result in the funding reclassification of the certificate program to a high-demand field, the proposal will be subject to Assistant Commissioner review and approval,

(3) If the proposed certificate program revision includes any of the following, the proposal will be subject to approval by notification:

(A) A change to the name of a certificate.

(B) A change to the Classification of Instructional Program code of the certificate program that will not result in the funding reclassification of the certificate.

(C) The revised certificate program is included in the inventory of certificates that the Coordinating Board previously identified as Credentials of Value.

(D) The addition of a new credential to an approved program, including a Level 1 Certificate or Level 2 Certificate to an Applied Associate Degree or an Occupational Skills Award to a Level 1 Certificate or Level 2 Certificate. If a new credential is added to an approved program, the new credential content shall consist of courses included in the approved program.

(E) The phase-out and closure of a credential, including the suspension of new student enrollment, under §2.171 of this chapter (relating to Program Phase-Out Notification).

(F) The certificate revision includes any of the following:

(i) Special Topics or Local Need courses are added to or removed from the curriculum;

(ii) The number of semester credit hours in the credential is changed or, for a Continuing Education Certificate, the length is changed by 100 or more contact hours;

(iii) The length of the credential is changed by one semester or more;

(iv) The certificate level is changed from Level 1 to Level 2; or

(v) The certificate is changed from a Level 2 to a Level 1.

§2.267. Phase-Out and Closure of a Certificate Program.

An institution may request to phase-out and close a certificate program under §2.171 of this chapter (relating to Program Phase-Out Notification).

§2.268. Effective Date of Rules.

(a) Any certificate subject to approval under this subchapter offered for the first time on or after September 1, 2024, is subject to this rule.

(b) Section 2.266, Approval Required for a Proposed Revision to a Certificate Program, is effective on September 1, 2024.

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

Filed with the Office of the Secretary of State on April 26, 2024.

TRD-202401843
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: June 9, 2024
For further information, please call: (512) 427-6344

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

19 TAC §§2.350 - 2.358

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 2, Subchapter O, §§2.350 - 2.358, relating to the Approval Process and Required Reporting for Self-Supporting Degree Programs offered by public institutions of higher education in Texas. The new rules will replace existing rules regarding approval of self-supported courses and programs in Chapter 4, Subchapter Q, relating to Approval of Off-Campus and Self-Supporting Courses and Programs for Public Institutions, which are repealed under separate rule making.

Self-supporting courses and programs have historically been integrated into distance education rules and processes despite self-supporting education not necessarily being delivered off-campus or through distance education. A separate subchapter emphasizes that regardless of the delivery method, self-supporting courses and programs have specific requirements to which they must adhere.

Rule 2.350, Purpose, establishes the purpose of the subchapter, to provide rules and regulations for public institutions of higher education delivering self-supporting programs.

Rule 2.351, Authority, contains the legal authority for Chapter 2, Subchapter O, which is contained in Texas Education Code, §§61.0512(c), 61.059(a, and 61.051.

Rule 2.352, Definitions, provides key definitions related to self-supporting programs and program funding models. Additional general definitions related to program approval can be found in Chapter 2, Subchapter A, §2.3.

Paragraph (1) ("Degree Program Funding Model") provides clarity for the field as to what is being referenced in the rules.

Paragraph (2) ("Formula Funded Degree Program"), and paragraph (5) ("Self-Supporting Degree Program") provides definitions that emphasize that an entire degree program or just a track within an existing degree program is subject to requirements based on the funding model for the degree or track.

Paragraph (3) ("Formula Funding"), amended from §4.272 with additional Education Code references.

Paragraph (4) ("Self-Supporting Courses and Programs"), amended from §4.272 to clarify that they are funded through assessment of fees to the student.

Rule 2.353, Standards and Criteria for Delivery of Self-Supporting Courses and Programs, establishes basic criteria for institutions to adhere to when delivering self-supporting programs. This section amends and simplifies existing standards criteria in §§4.274 - 4.277 and limits standards and criteria to those applicable only to self-supporting courses, certificates, and degree programs.

Rule 2.354, Approval of New Self-Supporting Programs and Tracks, outlines the process for applying for a new degree program with a self-supported funding model or with a self-supported track embedded in the new proposed program. To streamline requirements for institutions, institutions include the funding model information and costs for the degree program in the new degree program request form. This process is already in place through the Coordinating Board's new program approval forms.

Rule 2.355, Approval of Changes to Degree Program Funding Models, outlines the process for institutions to request changes to an existing approved degree program's funding model. Clarity added here emphasizes that a degree program funding model change could be changing the funding model entirely or adding a new funding model track to the degree program. The intent of this clarity is to (1) recognize that changing or adding a funding structure of a program is a significant departure from how the program was originally approved and (2) to ensure any new costs to the program for students is still in alignment with the existing general criteria for program approval as outlined in §2.5 of this subchapter relating to General Criteria for Program Approval.

Previous rules approved by the Board in January 2023, and effective September 1, 2023, specify that changing a funding model of a degree program is a substantive change and therefore changes to degree program funding models must adhere to requirements in §2.9(a)-(b) of this subchapter relating to Revision and Modifications to an Approved Program.

Rule 2.356, Modifications and Phase Out of Self-Supporting Programs, clarifies that requests to phase out or modify existing self-supporting programs, other than as outlined in §2.355, institutions shall follow the same requirements as outlined in §2.9 of this subchapter relating to Revision and Modifications to an Approved Program.

Rule 2.357, Reporting of Self-Supporting Courses, Certificates and Degree Programs, amends current required reporting for self-supporting programs in the CBM 00X as currently outlined in §4.274(5)-(6) and clarifies that required reporting includes courses in self-supported tracks of degree programs. There has been limited reporting of existing self-supporting courses in degrees and tracks across the state despite this reporting currently being a requirement in rule. To maintain an up-to-date program inventory for public institutions, the Coordinating Board must collect the appropriate information from institutions.

Rule 2.358, Effective Dates, ensures that mandatory reporting on the CBM00X does not start until the fall 2025 awards reporting cycle.

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

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

Elizabeth Mayer, Assistant Commissioner Academic and Health Affairs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the subchapter will be a separate and well-defined process for approval of self-supporting courses and degree programs that is more closely tied to statute. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The new sections are proposed under Texas Education Code (TEC), §61.0512(c), which charges the Coordinating Board with ensuring that proposed academic programs have adequate financing from legislative appropriations or other sources of funding. TEC, §61.059(a), also charges the Coordinating Board to implement funding policies that allocate resources efficiently and provide incentives for programs of superior quality and provide incentives for supporting the master plan developed under TEC, §61.051.

The proposed amendments affect Texas Education Code §§61.051, 62.051(c), and 61.059(a).

§2.350. Purpose.

This subchapter establishes rules for all public institutions of higher education in Texas regarding the delivery of self-supporting courses and programs, including those delivered through off-campus or distance education instruction. This subchapter does not apply to courses not delivered for academic credit.

§2.351. Authority.

The authority for this subchapter is Texas Education Code, §61.0512(c), which charges the Coordinating Board with ensuring that proposed academic programs have adequate financing from legislative appropriations or other sources of funding. Texas Education Code, §61.059(a), also charges the Board to implement funding policies that allocate resources efficiently and provide incentives for programs of superior quality and provide incentives for supporting the master plan developed under Texas Education Code, §61.051.

§2.352. Definitions.

(a) Degree Program Funding Model--The mechanism by which an institution acquires funding to support a new or existing academic degree program. Typically, degree programs are funded through student fees only (self-supported) or a combination of student fees and state funding (formula funded).

(b) Formula Funded Degree Program--A degree program or track within a degree program for which the institution reports students for formula-funding.

(c) Formula Funding--The method used to allocate appropriated sources of funds among institutions of higher education as required by Education Code, §61.059, chapter 130 or 130A. A formula-funded course is a for credit course for which an institution is authorized to submit semester credit hours or the equivalent for formula funding.

(d) Self-Supporting Courses and Programs-- For credit courses, certificates, and degree programs whose semester credit hours are not submitted for formula funding, and which are funded through the assessment of student fees by the institution.

(e) Self-Supporting Degree Program--A degree program or track within a degree program for which the institution does not receive formula funding and which are funded through the assessment of student fees by the institution.

§2.353. Standards and Criteria for Delivery of Self-Supporting Courses and Programs.

An institution of higher education enrolling students in a self-supporting course or program shall:

(1) Comply with the standards and criteria of one of the THECB-recognized regional accrediting organizations as defined in §4.192 of this chapter (relating to Recognized Accrediting Organizations);

(2) Ensure each instructional site for a self-supporting program be of sufficient quality for the programs and courses offered;

(3) Provide each student with equivalent academic support services as a student enrolled in a formula-funded course or program; and

(4) Select and evaluate faculty by equivalent standards, review, and approval procedures used by the institution to select and evaluate faculty responsible for formula funded courses and programs.

§2.354. Approval of New Self-Supporting Programs and Tracks.

(a) Requests for Self-Supporting Status for New Programs.

(1) A Public Community or Technical College, Public University, or Health Related Institution may request Coordinating Board approval to offer a degree program or track under self-supporting status in its application materials for the proposed program. The determination of self-supporting status will be approved according to the same approval levels required for the proposed new program approval outlined in 19 TAC Ch. 2 and any applicable criteria under this subchapter.

(2) Board Staff will evaluate the request for self-supporting status according to:

(A) Program Approval. A proposed new program, including one that is self-supported or has a proposed self-supporting track, is subject to approval according to the criteria listed in §2.5 of this subchapter (relating to General Criteria for Program Approval).

(B) Self-Supporting Status. An institution that proposes to offer a degree program as self-supporting is subject to the additional criteria and approval under this subchapter.

(b) Approval. If the request for self-supporting status is approved for the new degree program, Coordinating Board staff will add the program to the institutions' inventory of programs maintained and publicly available for each public institution.

§2.355. Approval Process for Changes to Degree Program Funding Models.

(a) An institution may request a change in the degree program funding model of an approved program. A request to change the degree program funding model for an existing approved degree program must follow the approval procedures outlined in §2.9(a)-(b) of this subchapter (relating to Revisions and Modifications to an Approved Program), outlining the requirements to process and approve substantive revisions and modifications.

(b) Changes to degree program funding models include, but are not limited to:

(1) Changing the degree program funding model from self-supporting to formula funding, or vice versa.

(2) The addition of a new or removal of an existing self-supporting or formula-funded degree program track.

(c) An institution seeking a substantive revision to a degree program funding model shall demonstrate how the proposed revision aligns to the criteria in §2.5 of this subchapter (relating to General Criteria for Program Approval), and approval is subject to that section.

(d) An institution shall seek approval using the forms developed by the Coordinating Board.

(e) An institution shall certify the program has not otherwise been substantially revised since its initial approval but is not required to obtain additional approval for the program under the current rules.

§2.356. Revisions and Phase Out of Approved Self-Supporting Programs.

(a) An institution seeking to modify an existing approved self-supporting degree program, except for a funding model change as outlined in 2.355 of this subchapter (relating to Approval Process for

Changes to Degree Program Funding Models), must follow substantive and non-substantive degree program revisions as outlined in 19 TAC §2.9.

(b) An institution seeking to phase out a degree program that is self-supporting must follow the policies outlined under subchapter H of this chapter (relating to Phasing Out Degree and Certificate Programs).

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

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

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

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

§2.358. Effective Dates.

(a) Sections 2.530 - 2.535 are effective immediately upon adoption.

(b) Section 2.536 is effective November 1, 2024.

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

Filed with the Office of the Secretary of State on April 26, 2024.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: June 9, 2024
For further information, please call: (512) 427-6182

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CHAPTER 10. TEXAS WORKS
SUBCHAPTER TT. TEXAS WORKING OFF-CAMPUS: REINFORCING KNOWLEDGE AND SKILLS (WORKS) INTERNSHIP PROGRAM

19 TAC §§10.910 - 10.917

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 10, Subchapter TT, §§10.910 - 10.917, concerning the establishment of internships for Texas undergraduate college students and Texas employers to develop and provide paid internship opportunities. These internships are funded in part by the state of Texas to enable students employed through the program to attend public or private institutions of higher education in Texas while exploring career options, developing, and improving career readiness, and strengthening workforce skills. Specifically, the Texas Works rules will provide more clarity of program processes and requirements. The proposed new rules will provide closer alignment to the statutory language, support efficiencies in program implementation by the workforce, and help to increase program participation among employers and students.

Texas Education Code (TEC), Chapter 56, Subchapter E-1, §§56.0851 - 56.0857, requires the Coordinating Board to adopt rules for the administration of the program.

Rule 10.910, Authority and Purpose, the Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program is authorized by TEC, Chapter 56, Subchapter E-1, §§56.0851 - 56.0857, with the purpose of funding Texas student internships, with the intention of enabling students employed through the program to explore career options, become career ready, strengthen marketable skills, and attend institutions of higher education.

Rule 10.911, Definitions, provides clarity of the words and terms that are integral to understanding the administration of the rules.

Rule 10.912, Employer Eligibility and Participation Requirements, defines the employer eligibility and participation requirements, which encompass the following: must be a private nonprofit, for-profit, or governmental entity, have an agreement with the Coordinating Board, employ students within their career interest in nonpartisan and nonsectarian activities, and identify the marketable skills to be gained from the internship. The internship positions are to supplement and not supplant normal positions, full wages and benefits are to be covered by the eligible employer and only eligible wages are to be submitted to the Coordinating Board for reimbursement. Eligible employers must demonstrate their capacity to implement the program and follow the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admission or employment. Public or private institutions of higher education and career schools are not eligible to participate in the Texas Works program.

Rule 10.913, Employer Agreement, the employer agreement defines the roles and responsibilities, base wages, Coordinating Board reimbursement amounts, minimum work hours, employment laws, and defines the reporting terms and conditions. This agreement is to be held between the Coordinating Board and the eligible employer.

Rule 10.914, Employer Reimbursement, defines the employer reimbursement approach. Employer reimbursement is to take place upon the completion of reporting requirements per the program guidelines.

Rule 10.915, Qualified Internship Opportunity, defines a qualified internship opportunity. A qualified internship must meet the following components: marketable skills are to be identified, internships must be paid, a minimum of 96 hours in length, are not to be political or sectarian, no more than 25% of the internship work can be administrative and no more than 50% of the eligible employer's workforce may be interns. Federal work-study may not be utilized towards the internship hourly wages and the Coordinating Board sets the maximum number of internship opportunities per eligible employer. In the case that there are insufficient funds to award all selected eligible students, program guidelines will define the priority determination.

Rule 10.916, Student Eligibility, defines program student eligibility which consist of the following: students must be a resident of Texas, be enrolled as a half-time student or within an internship course either prior to or during the semester of the internship period, as an undergraduate student. Texas Works students must be high school graduates and may not participate in more than one Texas Works internship at a time. Additional eligibility criteria are defined within the program guidelines.

Rule 10.917, Records and Retention, defines records retention stipulations for which eligible employers must maintain records and accounts of all transactions, student placements, benefits, and wages for a minimum of seven (7) years. Records are to be made available upon request.

Vanessa Malo, Director, Workforce Education Initiatives, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state government beyond what is currently set out in College Work-Study appropriation (Article III, B.1.5) as a result of enforcing or administering the rules. There would be no fiscal implications for the local government. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

The proposed rules may have an impact on local employment by providing internship support to local businesses and local entities. There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

The public benefit anticipated as result of adopting this rule is to provide Texas undergraduate college students and Texas employers an opportunity to develop and provide paid internships across the state. These internships enable students employed through the program to attend public or private institutions of higher education in Texas while exploring career options, developing, and improving career readiness, and strengthening workforce skills. In addition, adopting this rule is to provide clarity for students and participating entities to implement paid internships. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The new sections are proposed under Texas Education Code, Chapter 56, Subchapter E-1, §§56.0851 - 56.0857, which provides the Coordinating Board with the authority to adopt rules necessary concerning the Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program, to enforce program requirements, conditions, and limitations provided by Subchapter E-1. In addition, rules are to be adopted to ensure compliance with the Civil Rights Act of 1964, Title VI (Pub. L. No. 88-352), which concerns nondiscrimination in admissions or employment.

The proposed new sections affects Texas Education Code, Chapter 56, Subchapter E-1, §§56.0851 - 56.0857. The existing Texas Works Internship Program rules, Texas Administrative Code, Title 19, Chapter 21, Student Services, Subchapter W, Sections 21.700 - 21.707, are being repealed in a separate rule action.

§10.910. Authority and Purpose of the Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program.

(a) Authority. The Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program is authorized by Texas Education Code, chapter 56, subchapter E-1, §§56.0851 - 56.0857.

(b) Purpose. The purpose of the program is to provide paid internships funded in part by the State of Texas to enable students employed through the program to attend public or private institutions of higher education in Texas while exploring career options, developing, and improving career readiness, and strengthening marketable skills.

§10.911. Definitions.

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

(1) Administrative and Financial Capacity--An employer must have legal authority to operate within the state of Texas, be in good standing and have the financial responsibility and administrative capability to administer the Texas Works Internship program.

(2) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

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

(4) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board.

(5) Eligible Employer--An entity that meets the requirements listed in §10.912 of this subchapter (relating to Employer Eligibility and Participation Requirements).

(6) Eligible Institution:

(A) an institution of higher education as defined by Texas Education Code (TEC), §61.003(8); or

(B) a private or independent institution of higher education, as defined by TEC, §61.003(15), other than a private or independent institution of higher education offering only professional or graduate degrees.

(7) Eligible Wages--Gross wages paid to an individual student as required by the student's internship.

(8) Half-Time Student--For undergraduates, enrollment or expected enrollment for the equivalent of six or more semester credit hours per regular semester.

(9) Program or Texas Works Internship Program--The Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program.

(10) Resident of Texas--A resident of the State of Texas as determined in accordance with chapter 21, subchapter B, of this title (relating to Determination of Resident Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

§10.912. Employer Eligibility and Participation Requirements.

(a) In order to participate in the Texas Works Internship Program, an employer must:

(1) be a private nonprofit or for-profit entity or a governmental entity;

(2) enter into an agreement with the Coordinating Board;

(3) provide employment to a student placed through the program in nonpartisan and nonsectarian activities that relate to the student's career interests with identifiable marketable skills;

(4) use program positions only to supplement and not supplant positions normally filled by persons who are not eligible to participate in the program, as provided by this subchapter;

(5) provide the entirety of an employed student's wages and employee benefits as well as submit eligible wages to the Coordinating Board for reimbursement;

(6) follow the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admission or employment; and

(7) Demonstrate the administrative and financial capacity to carry out the employer's responsibilities under the program, including the ability to pay full wages and benefits to a student employed through the program.

(A) An employer must demonstrate its ability to properly administer the Texas Works Internship program. Administrative capability focuses on the processes, procedures, and personnel used in administering the program and comply with reporting requirements. Eligible employers must have an adequate internal system of checks and balances, monitoring and evaluating marketable skills, authorizing, and disbursing funds, and reporting data accurately and in a timely manner.

(B) The Coordinating Board determines an employer's financial capacity based on its ability to meet all its financial obligations, meet third-party financial audit requirements, and satisfactorily resolved any past internship performance violations.

(b) An employer is not eligible to participate in the program if the employer is:

(1) a public or private institution of higher education in Texas; or

(2) a career school or college, as defined by Texas Education Code, §132.001.

§10.913. Employer Agreement.

An agreement between the Coordinating Board and eligible employers will establish the roles and responsibilities, base wages, Coordinating Board reimbursement amount, minimum work hours for students employed, compliance with hiring and employment laws, and data reporting terms and conditions.

§10.914. Employer Reimbursement.

Eligible employers must meet program reporting requirements defined within the program guidelines to receive reimbursement for eligible paid student wages.

§10.915. Qualified Internship Opportunity.

(a) A qualified internship position must meet a specific set of criteria, including:

(1) Internship must identify marketable skills to be strengthened or gained;

(2) Internship must be paid;

(3) Internship must be a minimum of 96 hours;

(4) Intern activities may not be political or sectarian in nature;

(5) No more than 25% of intern's work can be administrative in nature;

(6) No more than 50% of the eligible employer's workforce may be interns; and

(7) Federal work study funds may not be received or used for the internship position.

(b) The Coordinating Board has the right to set a maximum number of internship opportunities per eligible employer.

(c) In the event that available funds are insufficient to award all selected eligible students, a priority determination clause will be implemented per program guidelines provided to eligible employers.

§10.916. Student Eligibility.

(a) To be eligible for employment in the Program a person shall:

(1) be a resident of Texas;

(2) be enrolled for at least the number of hours required of a half-time student or enrolled within an internship course at an eligible institution the semester prior to the assigned internship as defined within program guidelines or actively enrolled at an eligible institution as a half-time student or within an internship course; and

(3) be an undergraduate student.

(b) A person is not eligible to participate in the Program if the person has not graduated from high school or received the equivalent of a high school diploma.

(c) A person may not be employed in more than one Texas Works internship at a time.

(d) Must meet additional eligibility criteria defined within the program guidelines provided to eligible employers.

§10.917. Records Retention.

All employers participating in the Texas Works Internship program shall:

(1) Maintain its records and accounts of all transactions related to intern placement, benefit and wages for not less than seven (7) years after agreement expiration to ensure a full accounting of all funds received, disbursed, and expended by the employer. A participating employer shall immediately make available, upon request of the Coordinating Board, its representative(s), or an auditing entity authorized by law or regulation, all documents and other information related to the Texas Works Internship program.

(2) Immediately make available upon request, records and accounts for inspecting, monitoring, programmatic or financial auditing, or evaluation by the Coordinating Board, its representative(s) and an auditing entity authorized by law or regulation for a period not less than seven (7) years, or whichever is later:

(A) after completion of all services under the Texas Works Internship program;

(B) after the date of the receipt of the participating employer's final claim for reimbursement or submission of the final expenditure report; or

(C) upon final resolution of all invoice questions related to the Texas Works Internship program.

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

Filed with the Office of the Secretary of State on April 26, 2024.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6267

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CHAPTER 15. RESEARCH FUNDS
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §15.10

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 15, Subchapter A, §15.10, concerning the administration of the Texas Research Incentive Program (TRIP). Specifically, amendments clarify the program administration and newly establish the processes for application review in administrative law. Negotiated rulemaking was used in the development of these proposed rules. Reports of negotiated rulemaking committees are available upon request from the Coordinating Board.

There are no amendments to §15.10(a) and (b).

Amendments to §15.10(c) revise definitions to improve the clarity of program administration. The new definitions added are: Administrative Correction, Board, Certification, Coordinating Board, Coordinating Board Staff or Board Staff, Date of Deposit, Date of Receipt, Donor Agreement Form, Internal Review Committee, Matching Grant, and Peer Review. The definitions that are amended are Bundled Gifts, Date of Certification, Eligible Gifts, and Ineligible Gifts. The definition of Gift is deleted.

Paragraph (1) defines administrative correction as the act of submitting additional supporting documentation to verify that a gift is an eligible gift. This provision is required to allow institutions to inform the review of applications by the Commissioner by addressing questions from the internal review committee.

Paragraphs (2), (5) and (6) specify three distinct entities: "Board," meaning the nine-member appointed governing body of the Texas Higher Education Coordinating Board; "Coordinating Board," meaning the state agency as a whole; and "Coordinating Board Staff or Board Staff," meaning the staff of the agency. Separating these terms allows the Coordinating Board to make a distinction between actions taken by the governing body, agency staff, and the agency as a whole.

Paragraph (3) clarifies that bundled gifts are combined from the same private source to determine eligibility for matching grants. The component gifts must be deposited within ten (10) calendar days of the first deposit.

Paragraphs (4) and (7) - (9) amend definitions of the specific dates on which actions occur in the TRIP to ensure specificity within the rule.

Paragraph (4) defines certification as the Board approval of the date of deposit of a gift and its qualification as an eligible gift for matching grants.

Paragraph (7) is an amended definition for date of certification. The previous definition was similar to the new definition for date of deposit.

Paragraphs (8) and (9) are new definitions for date of deposit and date of receipt. These are the date the institution receives cash from a gift and the date the Coordinating Board receives the TRIP application, respectively.

Paragraph (10) defines the donor agreement form, a form currently required as part of a TRIP application.

Paragraph (11) amends the term eligible funds as eligible gifts. The word gift is used consistently throughout the rule. The amendment specifies that non-cash gifts must be converted to cash to be an eligible gift.

Paragraph (13) amends the term ineligible funds to ineligible gifts and corrects the inclusion of bundled gifts to specify bundled gifts less than $100,000 (A). It adds a gift that has been pledged but not received (B), in-kind gifts or discounts (F), and a gift not originally donated for research purposes (H). The definition includes a gift for which an institution has made a commitment to the donor other than use of the gift in the manner the donor specifies (G).

Paragraph (14) defines internal review committee to provide clarity on the role of staff in application review.

Paragraph (15) defines matching grant as the state appropriations used to match eligible gifts in the TRIP program.

Paragraph (16) defines peer review as the review by eligible public institutions of all applications and the submission of challenges to eligibility for matching grants.

Amendments to §15.10(e) clarifies the order by which eligible gifts receive state matching grants when the legislature appropriates less than would be required to fully fund all applications that have been certified to receive state matching grants.

Amendments to §15.10(f) replace the rules for certification of a gift to receive state matching grants. The revised section provides clear and specific requirements on what an eligible application contains and how one must be delivered to the Coordinating Board. The amendment to the rule increases the length of time for institutions to submit an application from thirty (30) days to sixty (60) days to allow more time for institutions to get the required documentation and signatures. In line with current procedures, the amendments also require the submission of two applications - one without redactions and one with redactions to facilitate the peer review process.

Amendments to §15.10(g) delete a requirement to provide a list of university-affiliated entities to the Coordinating Board. New subsection (g) related to returned gifts (previously subsection (h)) improve the clarity of what institutions are expected to do when the eligibility of an application changes after it has received matching funds or after it has been submitted, but not yet received matching funds.

New §15.10(h) establishes how the Coordinating Board reviews applications for eligibility, when institutions engage in peer review of applications, when appeals may be submitted, and when the Commissioner shall make recommendations on appeals. The new subsection provides for the Coordinating

Board to facilitate the peer review process no less than twice in a fiscal year, anticipated to occur in the first and third quarter of a fiscal year. The rule provides discretion for the Commissioner to delay a peer review if necessary for business needs, provides clarity that the internal review committee may recommend that only a portion of a gift be found as an eligible gift for matching grants, and provides for the institution to submit administrative corrections in their appeal. This subsection codifies current procedures related to the TRIP.

New §5.10(i) details how certification occurs and specifically how applications recommended for state matching funds by the internal review committee and the Commissioner's decisions on appealed applications are approved at quarterly meetings of the Board.

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

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

The public benefit anticipated as the result of adopting this rule is improved clarity and definition to how the Coordinating Board administers the Texas Research Incentive Program. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The amendment is proposed under Texas Education Code, Section 62.122, which provides the Coordinating Board with the authority to adopt rules pertaining to the Texas Research Incentive Program.

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

§15.10. Texas Research Incentive Program (TRIP).

(a) Purpose. The purpose of this program is to provide matching funds to assist eligible public institutions in leveraging private gifts for the enhancement of research productivity and faculty recruitment.

(b) Authority.

(1) Texas Education Code, §62.122, establishes the Texas Research Incentive Program to provide matching funds to assist eligible public institutions in leveraging private gifts for the enhancement of research productivity and faculty recruitment.

(2) Texas Education Code, §62.123, establishes the rate of matching and authorizes the Board, to establish procedures for the certification of gifts.

(3) Texas Education Code, §62.124, authorizes the Board, to adopt rules for the administration of the program.

(c) Definitions.

(1) Administrative Correction--The submission of supplemental information or supporting financial documentation to verify that the gift as submitted is restricted to research purposes that meet the requirements of an eligible gift.

(2) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(3) [~~(1)~~] Bundled Gifts--Gifts from the same private source that are combined to determine eligibility for matching grants. All component gifts of a bundled gift must have deposit dates within ten (10) calendar days of the first deposit. [~~Gifts that would otherwise be an eligible gift, but that individually do not have sufficient monetary value to be eligible for Matching Grants, that are combined by the eligible public institution in an attempt to establish eligibility for Matching Grants.~~]

[~~(2) Date of Certification--The date the gift was deposited by the institution in a depository bank or invested by the institution as authorized by law. A non-cash gift shall be certified as the date the gift is converted to cash, and is considered to have been received on that date.~~]

(4) Certification--Board approval of the date of deposit of a gift and its qualification as an eligible gift for purposes of matching grants.

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

(6) Coordinating Board Staff or Board Staff--Agency staff acting under the direction of the Board and the Commissioner.

(7) Date of Certification--The date of the Board meeting upon which certification occurs.

(8) Date of Deposit--The date the institution receives cash or receives all proceeds of converting a non-cash gift to cash. For gifts that are converted to cash over multiple days, the date of deposit is when the entire gift has been converted to cash and received by the institution. A single gift of stocks or bonds that cannot be sold on a single day may be eligible if the sales are concluded and the proceeds are deposited in the institution's account within ten (10) calendar days from the start of sales.

(9) Date of Receipt--The date the Coordinating Board receives the TRIP application for matching grants.

(10) Donor Agreement Form--A form approved by the Commissioner that is required as part of the application for TRIP matching grants.

(11) [~~(3)~~] Eligible Gifts [~~Funds~~]--Cash [~~Gifts~~] or an endowment [~~endowments certified on or after September 1, 2009,~~] to an eligible public institution from private sources in a state fiscal year for the purpose of enhancing research activities at the institution, including [~~a gift or endowment~~] for endowed chairs, professorships, research facilities, research equipment, program costs, graduate research stipends or fellowships, or undergraduate research. Gifts or endowments that are not cash, including those listed in Texas Education Code, §62.121(2), must be converted to cash before they can be submitted as an eligible gift. These include gifts that are bundled from a private source. [~~All gifts, cash and non-cash, must have been originally donated for research purposes.~~]

(12) [~~(4)~~] Eligible Public Institution--An institution of higher education designated as an emerging research university under the Coordinating Board's Accountability System or a university affiliated entity of an emerging research university.

[~~(5) Gift--A contribution received by an institution for which the institution has made no commitment of resources or services that provide a direct benefit to the donor other than committing to use the gift as the donor specifies. Gifts include cash, cash equivalents, marketable securities, closely held securities, money market holdings, partnership interests, personal property, real property, minerals, and life insurance proceeds.~~]

[~~(6) Ineligible Funds--A gift for undergraduate scholarships or undergraduate financial aid grants, bundled gifts, or any portion in excess of $10 million of gifts or endowments received from a single source in a state fiscal year or gifts that are bundled by a university-associated entity.~~]

(13) Ineligible Gifts--A gift that is not an eligible gift under paragraph (11) of this subsection, which may include the following:

(A) A gift or a bundled gift that is less than $100,000;

(B) A gift that has been pledged but has not been received by the institution;

(C) A gift for undergraduate scholarships or undergraduate financial aid grants;

(D) Any portion in excess of $10 million of gifts or endowments received from a single source in a state fiscal year;

(E) A gift that is bundled by a university-affiliated entity;

(F) In-kind gifts or discounts;

(G) A gift for which an institution has made a commitment of resources or services to the benefit of the donor other than the use of the gift in the manner the donor specifies; or

(H) A gift not originally donated for research purposes.

(14) Internal Review Committee--Coordinating Board staff authorized by the Commissioner to review TRIP applications and provide a recommendation on the eligibility of TRIP applications to the Board.

(15) Matching Grant--State appropriations used to match eligible gifts in the program and administered by the Coordinating Board.

(16) Peer Review--The review of all institutional applications by representatives from each eligible public institution for eligibility criteria, including date of deposit and research enhancing activities. Institutions report any challenges of eligibility to the Internal Review Committee.

(17) [~~(7)~~] Private Sources--Any individual or entity that cannot levy taxes[~~,~~] and is not directly supported by tax funds.

(18) [~~(8)~~] Program--The Texas Research Incentive Program (TRIP) established under Texas Education Code, Chapter 62, Subchapter F [~~G~~].

(19) [~~(9)~~] University-Affiliated Entity--An entity whose sole purpose is to support the mission or programs of the university.

(d) Matching Grants. Eligible gifts [~~funds~~] will be matched at the following rates:

(1) 50 percent of the amount if the amount of a gift or endowment made by a donor on a certain date is at least $100,000, but not more than $999,999;

(2) 75 percent of the amount if the amount of a gift or endowment made by a donor on a certain date is at least $1 million but not more than $1,999,999; or

(3) 100 percent of the amount if the amount of a gift or endowment made by a donor on a certain date is $2 million but not more than $10 million.

(e) Distribution of Matching Grants.

(1) The Coordinating Board will distribute matching [~~Matching~~] grants [~~will be distributed~~] in order of the date of certification.

[~~(2) All eligible funds with the same date of certification will be considered in a block.~~]

(2) [~~(3)~~] If there are insufficient appropriations to provide matching grants for eligible gifts [~~funds to match eligible funds~~] with the same date of certification, the Coordinating Board shall fund those eligible gifts in chronological order of their date of receipt, [~~funds will be prorated~~] and any remaining unmatched eligible gifts [~~funds~~] shall be eligible for matching grants in the following fiscal years using funds appropriated to the program, to the extent funds are available.

(f) Application Requirements. An institution may only submit an eligible gift via application to the Coordinating Board to be certified by the Board as eligible for state matching funds.

(1) The application must contain the following information:

(A) Written documentation from the institution verifying the amount, date of deposit, and source of the gift. Acceptable documentation includes transaction receipts and statements from the institution's bank that identify the donor, recipient institution, amount of the transaction, and date of the transaction.

(B) A copy of the fully executed donor agreement form provided by the Coordinating Board describing the purpose and the restrictions of the gift meeting the definition of eligible gifts, including the following information:

(i) The description of the purpose shall describe how the gift would be used.

(ii) Gifts that are made as part of a pledge series may use the first signed donor agreement for subsequent gifts in that pledge series provided that the purpose is the same and a schedule of pledged gifts is provided using the pledge schedule template provided by the Coordinating Board.

(2) Applications shall exclude portions of a gift that do not meet the requirements of an eligible gift.

(3) An institution shall submit the applications electronically and shall include two versions of the application, one with and one without redactions of personally identifiable information or other information that is confidential by law. The redacted copy will be made available to all eligible public institutions for the purpose of eligibility peer review.

(4) Each institution shall provide all information to the Coordinating Board within sixty (60) days of the date of deposit.

[(f) Certification. Any gift must be certified by the Board in order to be considered eligible for Matching Grants. In order for a gift to be certified, the eligible public institution must submit the following information to the Board:]

[(1) A written statement by the bank verifying the amount, and date of the deposit, and name of the donor; or a credit card certification showing the date the institution submitted a charge to the donor's credit card company for payment;]

[(2) A copy of the fully executed donor agreement describing the purpose and the restrictions of the gift meeting the definition of eligible funds; and]

[(3) All information must be provided to the Coordinating Board within 30 days of the date of bank or credit card verification.]

[(g) Eligible public institutions shall provide a complete list of all university-affiliated entities to the Board upon initial application for matching grants and thereafter apprise the Board of any updates to the submitted list.]

(g) [(h)] Returned Gifts. If an eligible institution returns any portion of an eligible gift to the donor or the gift is no longer eligible for matching grants [for any reason any portion of a donation matched by this program is returned to the donor or for any other reason is no longer eligible for matching], the institution shall [must] take the following actions within thirty (30) [30] days of the change:

(1) If the institution has not yet received a matching grant for the eligible gift, the [The] institution shall [must] notify the Coordinating Board as to the amount and date of the change to withdraw the gift or portion of the gift; and

(2) If the institution has received a matching grant for the eligible gift, the [The] institution shall notify the Coordinating Board as to the amount and date of the change and [must] repay the matching grant [match] to the Coordinating Board. If [In the event that] only a portion of the gift [donation] is no longer eligible for matching, the institution may only retain the portion of the match that corresponds to the portion of the gift [donation] that remains eligible for matching.

(h) Application Review. Periodically, but at a minimum twice in a fiscal year, the Coordinating Board shall facilitate the review of submitted applications for TRIP matching grants. Coordinating Board staff shall anticipate beginning the review in the first and third quarter of a fiscal year; however, the Commissioner may delay a cycle if warranted, The Internal Review Committee shall facilitate the following:

(1) The Internal Review Committee shall make applications that have not yet been reviewed available to all eligible institutions so that they may submit peer review of a gift's eligibility. The Internal Review Committee shall provide no less than thirty (30) calendar days for the peer review.

(2) The Internal Review Committee shall, after receiving the peer review recommendations, recommend a preliminary determination on the eligibility of applications. The preliminary determination may find that only a portion of the gift is eligible for matching grants. The Coordinating Board shall communicate this determination to all eligible public institutions.

(3) Each institution shall have no less than thirty (30) calendar days from receipt of preliminary determinations to submit an appeal to the Internal Review Committee regarding a preliminary determination not to fund an application. An institution may provide corrective or explanatory information in their appeal which may include administrative corrections.

(4) The Commissioner shall review and recommend a decision on appealed applications.

(i) Certification. The applications recommended for approval by the Internal Review Committee and the Commissioner's decisions on appealed applications shall be presented at a quarterly meeting of the Board. The Board shall make the final determination of certification for each eligible gift. The Board may find only a portion of the gift to be eligible for matching grants. Certified eligible gifts shall be added to the queue for state matching grants in chronological order by date of certification.

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

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: June 9, 2024
For further information, please call: (512) 427-6548

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CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

SUBCHAPTER N. TEXAS LEADERSHIP SCHOLARS PROGRAM

19 TAC §22.288

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter N, §22.288, concerning the Texas Leadership Scholars Program. Specifically, this amendment will clarify a student's eligibility requirements and the requirements of the participating institution if a student no longer meets the financial need criteria.

Texas Education Code (TEC), Chapter 61, Subchapter T-3, requires the Coordinating Board to adopt rules for the administration of the program, including rules providing for the amount and permissible uses of a scholarship awarded under the program. The amended section provides clarity and guidance to students, participating institutions, and Coordinating Board staff for the program's implementation.

Rule 22.288 outlines the eligibility requirements students must meet to allow an institution to select a student as a scholar under the Texas Leadership Scholars Program. The requirements of this section establish a minimum criteria for a student to be eligible to receive a scholarship. Specifically, the amended section clarifies that a student must apply for financial aid every eligible year. If a student no longer meets the financial need criteria, a

student may remain in the program. In addition, the institution shall make efforts to cover the student's tuition and fees, but is not required to do so. The amendment does not change the number or amount of scholarships available for award.

Dr. Jennielle Strother, Assistant Commissioner for Student Success, has determined that for each of the first five years the sections are in effect the rules do not impose additional costs of compliance beyond those provided in statute. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

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

Dr. Jennielle Strother has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the increase in number of high-achieving, economically disadvantaged students who pursue higher education opportunities they may not have been able to afford or access otherwise. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. Participation in the Texas Leadership Scholars program is voluntary.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The amendment is proposed under Texas Education Code, Section 61.897, which provides the Coordinating Board with the authority to adopt rules as necessary to implement the Texas Leadership Scholars Program.

The proposed new section affects Texas Education Code, Sections 61.891 - 61.897.

§22.288. Eligible Students.

(a) To receive an initial award through the Program, a student must:

(1) Submit an application for scholarship consideration through the Coordinating Board or Administrator;

(2) Have Texas resident status, as determined by chapter 21, subchapter B of this title (relating to Determination of Resident Status);

(3) Graduate from a Texas public high school, including an open-enrollment charter school;

(4) Be enrolled full-time in a baccalaureate degree program at a participating institution the fall semester immediately following high school graduation;

(5) Have applied for any available financial aid assistance;

(6) Be TEXAS Grant eligible, as determined by subchapter L, §22.228 of this chapter (relating to Eligible Students) and meet one of the following criteria under subparagraph (A) or (B) of this paragraph:

(A) Graduate with a distinguished level of achievement under the foundation high school program, and:

(i) Graduate in the top 10% of the student's high school graduating class; or

(ii) Submit with the application a nomination letter from the student's high school principal or counselor; or

(B) Be eligible to graduate with a Texas First Diploma as set out in chapter 21, subchapter D of this title (relating to Texas First Early High School Completion Program).

(b) To receive a continuation award through the Program, a scholar must:

(1) Have previously received an initial year award through this Program;

(2) Be enrolled full-time in a baccalaureate degree program where the scholar received initial award or at another participating eligible institution to which the student has transferred during the period of eligibility;

(3) Make satisfactory academic progress toward the baccalaureate degree at the eligible institution, as defined in §22.289 of this subchapter (relating to Satisfactory Academic Progress) unless the scholar is granted a hardship extension in accordance with §22.295 of this subchapter (relating to Hardship Provision);

(4) Have completed or is on target to complete programmatic requirements set forth in §22.291 and §22.292 of this subchapter (relating to Scholarship Selection Criteria and Academic Achievement Support, respectively) as reported by participating institution; and

(5) Apply for any available financial aid assistance during each year of eligibility.

(c) A student who does not meet the financial need criteria under subsection (a)(6) remains eligible for a continuation award and all benefits of the Program, but the participating institution in which the student is enrolled is not subject to §22.287(a)(4) of this subchapter (relating to Eligible Institutions). Each institution shall make every effort to meet the requirements of §22.287(a)(4) for each continuing student participating in the Program.

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

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER R. NURSING STUDENTS SCHOLARSHIP PROGRAM

19 TAC §§22.360 - 22.369

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter R, §§22.360 - 22.369, concerning the Nursing Students Scholarship Program. Specifically, this new subchapter will outline the authority and purpose, definitions, institutional eligibility requirements, student eligibility requirements, conditions for continued or discontinued eligibility, hardship provisions, scholarship amounts, allocation methodology, and disbursement procedures for a scholarship program to support vocational and professional nursing students. Negotiated rulemaking was used in the development of these proposed rules. Reports of negotiated rulemaking committees are public information and are available upon request from the Coordinating Board.

Rule 22.360 establishes the authority for the subchapter and outlines the program's purpose. Texas Education Code (TEC), Chapter 61, Subchapter L, denotes the relevant sections for this program because the subchapter authorizes both a scholarship and loan repayment assistance program. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

Rule 22.361 establishes definitions for relevant words or terms throughout the subchapter. The definition of "professional nursing program" in paragraph (1) is limited to undergraduate degrees in professional nursing, including both associate and bachelor's degree programs. Given the current and anticipated workforce shortages of vocational and registered nurses and the surplus of advanced practice nurses (those with graduate degrees), the Coordinating Board determined limiting the scope of the program to only undergraduate programs would best serve the health care needs of the state at this time. This determination is in line with the agency's authority in Texas Education Code, Section 61.655(c), to establish categories of persons to receive scholarships, including by considering the type of academic degree pursued. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

Rule 22.362 establishes that institutions of higher education, private or independent institutions of higher education, or an institution described by Texas Education Code, Section 61.651(1)(C), are eligible to participate in the program, provided they enter an agreement with the Coordinating Board and are approved by April 1 each fiscal year. Institutions described by Texas Education Code, Section 61.651(1)(C), are included to align with statutory changes made by Senate Bill (SB) 25 during the 88th legislative session. Subsection (b)(3) provides for a later approval deadline for the 2024 - 2025 academic year to allow for adoption of the proposed rules. This section is implemented to provide for consistent administration of the program by the Coordinating Board. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

Rule 22.363 establishes eligibility for students to participate in the scholarship program, including Texas residency, financial need, enrollment on at least a half-time basis in a professional or vocational nursing program, as defined in §22.361 of this subchapter (relating to Definitions), and satisfactory academic progress requirements. This section is implemented to ensure that appropriated funds for this program are offered to students in a manner that is most impactful, both in meeting the students' financial needs and the state's growing need for qualified vocational and professional nurses. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

Rule 22.364 establishes prioritization criteria for eligible institutions when appropriated funds are insufficient to offer scholarships to all eligible students. Subsections (a) and (b) provide that priority shall be given to students who received a scholarship in the prior academic year and to students who demonstrate the greatest financial need, respectively. Subsection (c) provides that priority shall be given to eligible students who are not yet licensed as a registered nurse in Texas or any other state, which will prioritize funds for new nurses to address the state's large deficit of registered nurses. Subsection (d) authorizes institutions to set additional prioritization criteria, provided they comply with Coordinating Board rules and Texas Education Code, Section 61.655, to allow institutions greater flexibility in determining how scholarships can be disbursed for maximum positive effects. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

Rule 22.365 establishes additional provisions related to student eligibility. Subsection (a) provides that a student's eligibility ends when the student has attempted 15 semester credit hours, or the equivalent, more than the amount required to complete his or her degree or certificate program. This mechanism, as opposed to a specific semester credit hour limit, was selected due to the varying number of semester credit hours required to complete various vocational and professional nursing programs. This provision ensures that limited appropriated funds are used efficiently. Subsection (b) provides for an otherwise eligible student's semester credit hour limit from Subsection (a) to be reset when pursuing a higher-level degree (e.g., vocational nursing to associate degree), provided the student completed the earlier course of study. This provision allows for upskilling within the nursing profession. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

Rule 22.366 provides for hardship provisions that allow institutions to consider otherwise eligible students to receive a scholarship even after failing to meet one of the program's eligibility criteria. The rule lists a non-exhaustive list of potential hardship conditions and requires institutions to document each approved hardship and maintain a publicly available hardship policy. This section is implemented to align with other state financial aid programs and to potentially avert dramatic changes in a student's financial aid emanating from difficult circumstances that may have affected the student's academic performance. The Coordinating

Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

Rule 22.367 establishes the method by which the Coordinating Board will determine the per-semester maximum scholarship amount. Depending on the type of institution, these amounts are tied to the maximum grant amounts of other state financial aid grant programs: Texas Educational Opportunity Grant (TEOG) for public junior colleges, state colleges, and technical colleges; Toward EXcellence, Access, and Success (TEXAS) Grant for public universities and health related institutions; and Tuition Equalization Grant (TEG) for private and independent universities and institutions described by Texas Education Code, Section 61.651(1)(C).

Subsection (a)(3) sets the award maximum as one half the TEG maximum because that figure is calculated on an annualized basis, whereas TEOG and TEXAS Grant maximums are semester-based. These award maximums are implemented to create administrative ease and flexibility for institutions, as well as to weight the allocation methodology established in §22.368 of this subchapter (relating to Allocation of Funds) based on the varying tuition and fee costs of the different types of institutions included in this program.

Subsection (c) prohibits the use of a Nursing Students Scholarship as matching funds for students also receiving TEOG or a TEXAS grant. This addition was included to ensure the program functions as new financial aid for vocational and professional nursing students, rather than a replacement for institutional aid that a student already would have received. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

Rule 22.368 establishes the allocation methodology for the program. Funds will be distributed based on each participating institution's proportional share of the overall need. Institutional need is calculated by multiplying the number of eligible students at an institution with an Expected Family Contribution (EFC) less than or equal to the Pell Grant eligibility cap by the institution's maximum scholarship amount per semester, established in §22.367 of this subchapter (relating to Scholarship Amount). This methodology was established to ensure a fair distribution of funds to participating eligible institutions, while weighting the distribution to account for the relatively higher cost of attendance at four-year institutions.

Subsections (a)(4), (5), and (6) relate to the Coordinating Board's procedures in calculating the allocation for a given year and notifying institutions about the results. These provisions are common throughout the agency's financial aid programs and are included to ensure that allocations are conducted in a consistent and transparent manner.

Subsection (b) limits the total amount of scholarship funds allocated in a fiscal year to an institution described by Texas Education Code, Section 61.651(1)(C), to ten (10) percent of the total allocation. This subsection is a requirement of Texas Education Code, Section 61.656(e), which was a provision of SB 25, passed during the 88th legislative session. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

Rule 22.369 outlines the Coordinating Board's standard practices related to disbursement of funds to institutions and unexpected reductions in funding. These provisions are common throughout the agency's financial aid programs and are included to ensure programs are administered efficiently and transparently. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

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

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

Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be increased financial assistance to support the training of more vocational and registered nurses, of which there is a shortage statewide. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will create or eliminate a government program;

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

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

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

(5) the rules will create a new rule;

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

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

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

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

The new sections are proposed under Texas Education Code, Section 61.656, which provides the Coordinating Board with the authority to establish rules as necessary to administer the program.

The proposed new sections affects Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter R.

§22.360. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Chapter 61, Subchapter L, Financial Aid for Professional Nursing Students and Vocational Nursing Students. This

subchapter establishes procedures to administer Texas Education Code §§61.651, 61.652, and 61.655 - 61.659.

(b) Purpose. The purpose of the Nursing Students Scholarship Program is to promote the health care and educational needs of this state by providing scholarships to eligible professional and vocational nursing students.

§22.361. Definitions.

In addition to the words and terms defined in §22.1 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) Professional Nursing Program--A course of study at an eligible institution leading to an undergraduate degree in professional nursing.

(2) Program--The Nursing Students Scholarship Program.

(3) Scholarship(s)--A scholarship offered through this subchapter.

(3) Vocational Nursing Program--A course of study at an eligible institution intended to prepare a student for licensure as a licensed vocational nurse.

§22.362. Eligible Institutions.

(a) Eligibility.

(1) A college or university defined as an institution of higher education as defined by Texas Education Code, §61.003(8), private or independent institution of higher education as defined by Texas Education Code, §61.003(15), or an institution described by Texas Education Code, §61.651(1)(C), is eligible to participate in the program.

(2) No participating institution may, on the grounds of race, color, national origin, gender, religion, age or disability exclude an individual from participation in, or deny the benefits of the program described in this subchapter.

(3) A participating institution must follow the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admissions.

(b) Approval.

(1) Agreement. Each eligible institution must enter into an agreement with the Coordinating Board, the terms of which shall be prescribed by the Commissioner or his/her designee, prior to being approved to participate in the program.

(2) Approval Deadline. An institution must be approved by April 1 in order for qualified students enrolled in that institution to be eligible to receive scholarships in the following state fiscal year.

(3) Notwithstanding subsection (a)(2) of this section, for the 2024 - 2025 academic year, an institution may indicate intent to participate in the program by the administrative deadline established by the Commissioner.

§22.363. Eligible Students.

To be eligible for a scholarship through the program, a student must:

(1) be a resident of Texas;

(2) show financial need;

(3) be enrolled in a professional or vocational nursing program on at least a half-time basis; and

(4) have made satisfactory academic progress in accordance with the student's institutions' financial aid academic progress requirements.

§22.364. Priority in Scholarships to Students.

(a) If appropriations for the program are insufficient to allow scholarships to all eligible students, priority shall be given to those students who received a scholarship in the prior academic year and continue to demonstrate eligibility pursuant to this subchapter.

(b) In determining student eligibility for a scholarship pursuant to §22.363 of this subchapter (relating to Eligible Students), priority shall be given to those students who demonstrate the greatest financial need at the time the offer is made.

(c) In determining student eligibility for a scholarship pursuant to §22.363 of this subchapter (relating to Eligible Students), priority shall be given to those students enrolled in professional nursing or vocational nursing programs who are not yet licensed as a registered nurse in Texas or any other state.

(d) An institution may set additional prioritization criteria for the awarding of scholarships, so long as such criteria comply with this subchapter and Texas Education Code, §61.655.

§22.365. Discontinuation of Eligibility or Non-Eligibility.

(a) Unless granted a hardship extension in accordance with §22.366 of this subchapter (relating to Hardship Provisions), a student's eligibility ends when the student has attempted 15 semester credit hours, or the equivalent, more than the amount required to complete the degree or certificate program in which the student is enrolled.

(b) In determining eligibility with respect to subsection (a) of this section, a student who has received a scholarship during a previous course of study is considered to have started the student's new course of study with zero semester credit hours, or the equivalent, attempted if the student:

(1) meets all other eligibility criteria; and

(2) completed the previous course of study by earning the intended degree or certificate.

§22.366. Hardship Provisions.

(a) In the event of a hardship or for other good cause, the Program Officer at a participating institution may allow an otherwise eligible student to receive a scholarship:

(1) while failing to make satisfactory academic progress in accordance with the institution's financial aid academic progress requirements;

(2) while enrolled less than half-time; or

(3) while enrolled beyond the scholarship receipt limit, as defined in §22.365(a) of this subchapter (relating to Discontinuation of Eligibility or Non-Eligibility).

(b) Hardship conditions may include, but are not limited to:

(1) documentation of a severe illness or other debilitating condition that may affect the student's academic performance;

(2) documentation that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care may affect his or her academic performance;

(3) documentation of the birth of a child or placement of a child with the student for adoption or foster care, that may affect the student's academic performance; or

(4) the requirement of less than half-time enrollment to complete one's degree or certificate plan.

(c) Documentation of the hardship circumstances approved for a student to receive a scholarship must be kept in the student's files, and the institution must identify students approved for a scholarship based on a hardship to the Coordinating Board.

(d) Each institution shall adopt a hardship policy under this section and have the policy available in writing in the financial aid office for public review upon request.

§22.367. Scholarship Amount.

(a) Scholarship Amount. Each state fiscal year, the maximum scholarship amount per semester shall be:

(1) for institutions eligible to offer grants through the Texas Educational Opportunity Grant Program, the maximum grant amount established in §22.261(b) of this chapter (relating to Grant Amounts);

(2) for institutions eligible to offer grants through the Toward EXcellence, Access, and Success (TEXAS) Grant Program, the maximum grant amount established in §22.234(b) of this chapter (relating to Grant Amounts); or

(3) for institutions eligible to offer grants through the Tuition Equalization Grant Program or an institution described by Texas Education Code, §61.651(1)(C), one half of the maximum grant amount established in §22.28(a)(3)(A) of this chapter (relating to Award Amounts and Adjustments).

(b) The amount of a scholarship plus any other gift aid may not exceed the student's financial need.

(c) For an eligible student who also is a Texas Educational Opportunity Grant or Toward EXcellence, Access, and Success (TEXAS) Grant recipient, a scholarship offered under this subchapter may not be used as financial aid to meet the requirements of §22.261(c) (for TEOG recipients) or §22.234(c) (for TEXAS Grant recipients) of this chapter (relating to Grant Amounts respectively).

§22.368. Allocation of Funds.

(a) Allocations. Allocations are to be determined as follows:

(1) Each institution's percent of the available funds will equal the ratio of its institutional need to the state-wide need.

(2) An institution's institutional need is calculated by multiplying:

(A) the number of students it reported in the most recent certified Financial Aid Database submission who met the following criteria:

(i) were classified as Texas residents;

(ii) were enrolled in a vocational or professional nursing program on at least a half-time basis; and

(iii) have a 9-month Expected Family Contribution, calculated using federal methodology, less than or equal to the Federal Pell Grant eligibility cap for the year reported in the Financial Aid Database submission; and

(B) the institution's maximum scholarship amount, as determined by the Coordinating Board under §22.367(a) of this subchapter (relating to Scholarship Amount).

(3) The state-wide need is calculated as the sum of all eligible institutions' institutional need.

(4) Allocations for both years of the state appropriations' biennium will be completed at the same time. The three most recent certified Financial Aid Database submissions will be used to forecast the data utilized in the calculation of the allocation for the second year of the biennium. Institutions will receive notification of their allocations for both years of the biennium at the same time.

(5) Notwithstanding subsection (a)(4) of this section, allocations for Fiscal Year 2025 will be based on the most recent certified Financial Aid Database submission.

(6) Allocation calculations will be shared with all participating institutions for comment and verification prior to final posting and the institutions will be given ten (10) working days, beginning the day of the notice's distribution and excluding State holidays, to confirm that the allocation report accurately reflects the data they submitted or to notify the Coordinating Board in writing of any inaccuracies.

(b) Limited Allocation for Certain Institutions. Notwithstanding the allocation methodology established in subsection (a) of this section, an institution described by Texas Education Code, §61.651(1)(C), may not receive more than ten (10) percent of the total amount of scholarship funds allocated in a fiscal year. Excess funds that would otherwise be allocated to such an institution will instead be allocated to the remaining eligible institutions according to the allocation methodology established in subsection (a) of this section.

§22.369. Disbursement of Funds.

(a) Disbursement of Funds to Institutions. As requested by institutions throughout the academic year, the Coordinating Board shall forward to each participating institution a portion of its allocation of funds for timely disbursement to students. Institutions will have until the close of business on August 1, or the first working day thereafter if it falls on a weekend or holiday, to encumber program funds from their allocation. After that date, institutions lose claim to any funds in the current fiscal year not yet drawn down from the Coordinating Board for timely disbursement to students. Funds released in this manner in the first year of the biennium become available to the institution for use in the second year of the biennium. Funds released in this manner in the second year of the biennium become available to the Coordinating Board for utilization in scholarship processing. Should these unspent funds result in additional funding available for the next biennium's program, revised allocations, calculated according to the allocation methodology outlined in this rule, will be issued to participating institutions during the fall semester.

(b) Reductions in Funding.

(1) If annual funding for the program is reduced after the start of a fiscal year, the Coordinating Board may take steps to help distribute the impact of reduced funding across all participating institutions by an across-the-board percentage decrease in all institutions' allocations

(2) If annual funding is reduced prior to the start of a fiscal year, the Coordinating Board may recalculate the allocations according to the allocation methodology outlined in this rule for the affected fiscal year based on available dollars.

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

Filed with the Office of the Secretary of State on April 26, 2024.

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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 G. NURSING FACULTY LOAN REPAYMENT ASSISTANCE PROGRAM

19 TAC §§23.187 - 23.190, 23.193

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 23, Subchapter G, §§23.187, 23.188, 23.189, and 23.193, and new §23.190, concerning the Nursing Faculty Loan Repayment Assistance Program. Specifically, these amendments and new rule will redefine Coordinating Board terminology used throughout the subchapter, expand program eligibility to nursing faculty members employed less than full-time, clarify eligibility provisions related to prior employment as nursing faculty, allow the Coordinating Board to set the maximum annual loan repayment assistance amount for the program based on available funds and the number of eligible applicants, and to prorate the maximum award for part-time nursing faculty based on hours worked in relation to their full-time counterparts, and eliminate the previous annual award limit to align with statute.

The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Faculty Loan Repayment Assistance program under Texas Education Code (TEC), §61.9828.

Section 23.187, Definitions, is amended to eliminate the definition of "Coordinating Board," which is being included in the Definitions section of a new General Provisions subchapter that will apply throughout Chapter 23. This change is being implemented to align terminology throughout the chapter. The definition of "service period" in this section is unchanged. Although part-time nursing faculty may now be eligible for loan repayment assistance through this program, their eligibility and awarding must be based on a year of employment, as referenced in TEC, §§61.9822(2) and 61.9823(a). In other words, employment in only a portion of a service period (e.g., for only one semester in an academic year) does not constitute part-time employment for the purposes of this program.

Section 23.187(4) is amended to create a definition of "full-time," to allow the Coordinating Board the ability to prorate loan repayment assistance awards for part-time nursing faculty based on the proportion of hours worked by a part-time applicant to a full-time nursing faculty member. This addition is being completed to implement statutory changes made to TEC, §61.9823, during the 88th legislative session.

Section 23.188, Applicant Eligibility, is amended to expand the eligibility requirement for employment status to allow part-time or full-time nursing faculty to participate. This amendment is being completed to implement statutory changes made to TEC, §61.9822, during the 88th legislative session.

Section 23.188 is further amended to clarify that an applicant must have been employed as nursing faculty for at least one service period during the last year to be eligible for the program. This change is being implemented to align with the program's intended function, which is to offer loan repayment assistance based on current and immediately recent employment as nursing faculty.

Section 23.189, Applicant Ranking Priorities, is amended to change the section title. This change is being implemented to provide greater consistency between agency rules governing the various loan repayment assistance programs.

Section 23.190, Amount of Repayment Assistance, is proposed to allow the Coordinating Board to determine annually the maximum loan repayment assistance amount under the program and to prorate this maximum for eligible part-time nursing faculty. This addition is for the purpose of implementing statutory changes made to TEC, §61.9823, during the 88th legislative session. Establishing the annual maximum has been structured in a way that supports the Coordinating Board's efforts to allocate all money available to the board for the purpose of providing loan repayment assistance under this subchapter. The prior content of this section has been included in new subchapter A, along with other general provisions applicable to all Chapter 23 programs.

Section 23.193, Limitations, is amended to remove the $7,000 annual award limit to allow the Coordinating Board more flexibility on determining award amounts for the program. Provisions related to the agency setting the annual maximum repayment assistance and proration for part-time nursing faculty are addressed in proposed amendments to §23.190, see above. This update is being completed to implement statutory changes made to TEC, §61.9823, during the 88th legislative session.

Section 23.193 is further amended by adding paragraph (4), which clarifies that the amount of loan repayment assistance offered to an individual may not exceed the unpaid principal and interest owed on eligible education loans. This addition codifies existing agency practice and aligns with similar rule provisions in other loan repayment assistance programs administered by the agency.

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

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

Charles W. Contéro-Puls, Assistant Commissioner for Student Financial Aid Programs, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the expansion of eligibility by allowing part-time nursing faculty to participate and greater consistency in rules across the Coordinating Board's loan repayment programs. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

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

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

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

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

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

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

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

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

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

The amendment is proposed under Texas Education Code, Section 61.9828, which provides the Coordinating Board with the authority to establish rules as necessary to administer the Nursing Faculty Loan Repayment Assistance Program.

The proposed amendments affect Texas Administrative Code, Title 19, Part 1, Chapter 23, Subchapter G.

§23.187. Definitions.

In addition to the words and terms defined in §23.1 of this chapter (relating to Definitions), the [~~The~~] following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

[~~(1) Board--The Texas Higher Education Coordinating Board.~~]

(1) [~~(2)~~] Eligible Institution--Texas institutions of higher education or private or independent institutions, as defined in §61.003 of the Texas Education Code.

(2) Full-Time--An average of at least 32 hours per week during the service period at an eligible institution.

(3) Service period--A period of service equal to a minimum of nine months of a 12-month academic year that qualifies an eligible faculty member for an annual education loan repayment award.

(4) Texas Center for Nursing Workforce Studies (TCNWS)--Authorized by Chapter 105 of the Texas Health and Safety Code. Under the governance of the Statewide Health Coordinating Council's Nursing Advisory Committee, the TCNWS serves as a resource for data and research on the nursing workforce in Texas.

§23.188. Applicant Eligibility.

To be eligible to receive loan repayment assistance under this subchapter, an applicant [~~a nurse~~] must:

(1) hold a master's or doctoral degree in nursing;

(2) be licensed by the Texas Board of Nursing for the State of Texas;

(3) apply to the Coordinating Board by the published application deadline; and

(4) at the time of application for repayment assistance, have been employed part-time or full time for at least one service period during the last year as, and be currently employed part-time or full time as a faculty member of a nursing program at an eligible institution in a position that requires an advanced degree in professional nursing.

§23.189. Applicant Ranking Priorities [~~Priorities of Application Acceptance~~].

If there are not sufficient funds to award loan repayment assistance for all eligible nursing faculty whose applications are received by the published deadline, priority shall be given to renewal applications. Initial applications shall be ranked in a manner that takes into account the following information, provided by the Texas Center for Nursing Workforce Studies:

(1) the number of vacant nursing faculty positions, as a percentage of the total number of nursing faculty positions at the eligible institutions; and

(2) the degree of difficulty in recruiting and retaining nursing faculty at the eligible institutions, indicated by the period of time nursing faculty positions remain vacant at the institutions.

§23.190. Amount of Repayment Assistance.

(a) Taking into consideration the amount of available funding and the number of eligible applicants, the Coordinating Board shall determine annually the maximum loan repayment assistance amount offered under this subchapter.

(b) The amount of loan repayment assistance received by a nursing faculty member for part-time employment will be calculated by the Coordinating Board based on the proportion of hours worked by the nursing faculty member in comparison to the hours worked by a full-time nursing faculty member, as defined in §23.187 of this subchapter (relating to Definitions).

§23.193. Limitations.

The following limitations apply to the Nursing Faculty Loan Repayment Assistance Program.

[~~(1) The total annual repayment to one or more eligible lenders shall not exceed $7,000.00.~~]

(1) [~~(2)~~] A nursing faculty member may receive loan repayment assistance under this subchapter for a maximum of five [~~years~~] service periods.

(2) [~~(3)~~] Funds will be available for loan repayment assistance under this subchapter only if there are legislative appropriations, gifts, grants, and donations made for this purpose, and/or funds have been reallocated for this purpose from the Physician Education Loan Repayment Program Account at the end of a fiscal year.

(3) [~~(4)~~] Applications from nursing faculty will be considered by the Coordinating Board only if funds are available for this purpose at the end of the state fiscal year.

(4) An individual'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(c) of this chapter (relating to Eligible Lender and Eligible Education Loan).

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

Filed with the Office of the Secretary of State on April 26, 2024.

TRD-202401847
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: June 9, 2024
For further information, please call: (512) 427-6365

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

SUBCHAPTER D. LICENSING PROVISIONS RELATED TO MILITARY SERVICE MEMBERS, MILITARY VETERANS, AND MILITARY SPOUSES

22 TAC §§203.55 - 203.61

The Texas Funeral Service Commission (Commission) proposes new rules to Texas Administrative Code (TAC), Title 22, Part 10, Chapter 203 in new Subchapter D, Licensing Provisions Related to Military Service Members, Military Veterans, and Military Spouses, §§203.55 - 203.61, regarding the occupational licensure of military service members, military veterans, and military spouses in funeral directing and/or embalming.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The proposed rules under 22 TAC, Chapter 203, Subchapter D implement Texas Occupations Code, Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses.

Proposed new Subchapter D brings the Commission's rules into compliance with existing state law and streamlines all rules regarding the funeral director and embalmer license application process, review, and approval of military service members, military veterans, and military spouses into a single location in Commission rules, making it easy for the public and potential and actual licensees to locate.

Specifically, the new proposed rules provide the following:

Proposed new §203.55 explains the legal basis for the military licensing provisions in subchapter D, and how the rules are interpreted in conjunction with Texas Occupations Code, Chapters 55 and 651. Additionally, the proposed §203.55 includes language to specify that the new proposed subchapter does not modify or alter rights that may be provided under federal law. The proposed rule further states that unless stated otherwise in the new subchapter D, military service member, military veteran, and military spouse license applicants are to comply with the appropriate licensing requirements elsewhere under Texas Administrative Code, title 22, part 10, chapter 203.

Proposed new §203.56 establishes definitions for certain terms that are used throughout the subchapter.

Proposed new §203.57 exempts active service members from paying any license fees while on active duty, and are exempt from paying license renewal fees, late fees or an administrative penalty if the military service member failed to renew the member's license because the license expired while the member was on active duty. The proposed rule also sets forth the type of official documentation acceptable for a military service member to prove the member's active duty status.

Proposed new §203.58 describes that when a military service member or military veteran applies for a license, the Texas Funeral Service Commission will meet to credit any verifiable military service, training or education obtained by an applicant to a license for which the applicant is seeking toward the requirements of that particular license whether a provisional or full license. The language also sets forth how the Commission may verify the applicant's experience, service, training, and education. Further, the proposed rule sets forth when the Commission will not credit an applicant's military experience, service, training or education consistent with §53.007, Texas Occupations Code.

Proposed new §203.59 establishes an alternative method for military service members, military veterans, and military spouses to be licensed as a funeral director or embalmer pursuant to §55.004 and §55.005. As an alternative to regular licensure, the above-described applicants may include a combination of education, continuing education, examinations, letters of good standing, letters of recommendation, work experience, training, clinical, and professional experience to show their competency to be issued a funeral director or embalmer license whether full or provisional. The executive director is given authority to waive any prerequisite of licensure requirements after reviewing and determining whether the military applicant satisfies the alternative licensing requirements as a funeral director or embalmer. The proposed rule also includes language that applicants must submit to a criminal background check and use a Commission-approved form to demonstrate their competency. The Commission would have 30 days to process and approve or deny the license application.

Proposed new §203.60 implements §55.0041, Texas Occupations Code by requiring the Commission to authorize a military service member or military spouse to practice funeral directing or embalming in Texas without obtaining a license under Chapter 651, Texas Occupations Code, if the applicant notifies the Commission of the applicant's intent to practice funeral directing and/or embalming in Texas on a form prescribed by the Commission; holds an active license in funeral directing or embalming in another jurisdiction with licensing requirements that are substantially similar to Texas; has no pending investigation or disciplinary action against the applicant's license; and submits proof of active military duty status to the Commission. The rule sets forth the method the commission will use to determine whether another jurisdiction has funeral directing or embalming licensing requirements substantially equivalent to those in Texas. The proposed rule further states how the Commission may verify if the applicant's license is in good standing, and that the authorization may only be issued once, without renewal, for the period of the active duty orders or no longer than three years. Finally, the proposed rule reinforces that its provisions do not alter those authorized by federal law.

Proposed new §203.61 establishes the length of time that a license granted under the new proposed subchapter D is valid the same amount of time as a funeral director or embalmer license issued under §203.1 of title 22, part 10, or 12 months from the date of issuance, whichever is longer. The same provision applies to apprenticeship licenses granted under the new proposed subchapter D. The proposed rule further states that the Commission must notify the licensees in writing or electronically the requirements for license renewal.

Fiscal Impact on State and Local Government

Sarah Hartsfield, Staff Attorney, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated reductions in costs to state or local governments resulting from the enforcement or administration of the proposed rules. It is further determined that there are no estimated additional costs to local governments as a result of enforcing or administering the proposed rules.

There may be an additional cost to the Commission to update its software system to process applications for military veterans and military spouses for the first year the proposed rules are in effect. However, any potential cost to the Commission will be covered by the Commission's current budget and resources. There are no other estimated costs to Commission for each year of the other four years the proposed rules are in effect.

There is no estimated loss in revenue to the state or to local governments or increase to local governments as a result of enforcing or administering the proposed rules. The Commission already waives licensing fees for active military service members pursuant to Texas Occupations Code § 651.155 and Texas Administrative Code, Title 22, Part 10, §§203.1(f)(6), 203.1(g), 204.2(b), 204.3(b), and 204.4(b).

According to the Commission's records, within the past five years, only six licensees who have applied for a funeral director or embalmer license were active military service members. Although the Commission's records do not account for military veterans or military spouses, it is estimated that the number of license applicants in each category will be less than 10 per year.

In addition to those fees already waived for active military service members, it is projected that in most situations for military veterans and military spouses, their fees would also be waived.

As a result, it is estimated that for each year for the next five years, the decrease in revenue to the state, if any, would be de minimis as a result of enforcing or administering the proposed rules.

Other than what is described above, there are no foreseeable implications relating to the cost or revenues of the state or local governments by enforcing or administering the proposed rules.

Public Benefits/Costs

Sarah Hartsfield also determined that for each year of the first five-year period the proposed rules are in effect, the public will benefit from new rules, and improved clarity regarding the license application procedures and issuance of licenses to military service members, military veterans, and military spouses as funeral directors or embalmers. Further, updating the rules to allow for the expedited licensing process authorized under state law will increase those engaged in the occupation. By increasing the workforce, more Texas families will be served while undergoing the loss of a loved one.

Further, for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules. The proposed rules have no significant economic costs to persons that are licensees, businesses, or the general public in Texas. The rules do not impose additional fees upon licensees, nor do they create requirements that would cause licensees to expend funds for equipment, technology, staff, supplies, or infrastructure.

Local Employment Impact Statement

The proposed rules will not affect local economy. Therefore, the Commission is not required to prepare a local employment impact statement under §2001.022, Texas Government Code.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

The proposed rules have no anticipated adverse economic effect on small businesses, micro-businesses, or rural communities. Therefore, an economic impact statement is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. As a result, the Commission is not required to take any further action under §2001.0045, Texas Government Code.

TAKINGS IMPACT ASSESSMENT

The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under §2007.043, Texas Government Code.

Government Growth impact Statements

Pursuant to Government Code §2001.0221, the Commission provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1) The proposed rules do not create or eliminate a government program.

2) Implementation of the proposed rules would not require the creation of new employee positions or the elimination of existing employee positions.

3) Implementation of the proposed rules would not require an increase or decrease in future legislative appropriations to the Commission.

4) The proposed rules do require an increase or decrease in fees paid to the Commission.

5) The proposed rules create a new regulation. As described earlier, the Commission's rules regarding the licensure of military service members, military veterans, and military spouses are outdated, scattered, and ambiguous. To bring the Commission into full compliance with Texas Occupations Code chapter 55, the agency proposed a new regulation by creating new subchapter D in Texas Administrative Code, Title 22, Part 10, Chapter 203, in which all rules affecting the licensing of military service members, military veterans, and military spouses will be located.

6) The proposed rules expand and repeal existing regulations. The proposed rules expand the Commission's existing regulation regarding the licensing of military service members, military veterans, and military spouses to be consistent with current Texas Occupations Code Chapter 55. The expansion includes improving the process for military service members, military veterans, and military spouses to apply for a license as a funeral director or embalmer, including an apprenticeship license, as well as the Commission's process for expediting the review, approval, and issuance of a license to qualified applicants in the categories mentioned above.

The rule removes provisions of the Commission's existing regulations regarding the licensing of military service members, military veterans, and military spouses that are outdated, inconsistent with state statute and federal law, ambiguous or redundant because the provisions were added to the new proposed rules. The proposed rules do not limit existing regulations.

7) The proposed rules increase the number of individuals subject to the rules' applicability by expanding the options for military service members, military veterans, and military spouses to qualify and apply for a license as a funeral director or embalmer, including an apprentice license, in this state. The proposed rules do not decrease the number of individuals subject to their applicability.

8) The proposed rules would positively affect this state's economy by increasing the state's workforce by expediting the licensure of military service members, military veterans, and military spouses, and therefore enabling them to work in Texas sooner. The proposed rules do not adversely affect this state's economy.

PUBLIC COMMENTS

Comments on the proposed repeal may be submitted by mail to Sarah Hartsfield, Interim-Executive Director/Staff Attorney, Texas Funeral Service Commission, 1801 Congress Avenue Suite 11-800, Austin, Texas 78701 or submitted electronically to sarah.hartsfield@tfsc.texas.gov. The deadline for receipt of comments is 5:00 p.m. Central Time, on May 27, 2024, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Occupations Code §651.152, which authorizes the Texas Funeral Service Commission to adopt rules as necessary to administer and enforce that chapter.

The proposed rules are proposed under Texas Occupations Code §55.002, which authorizes the Commission to adopt rules to exempt a license holder from increased fees or penalties for failing to renew the individual's license if the individual can provide satisfactory proof that the individual was serving as a military service member at the time the Commission-issued license expired. The proposed rules are also based on Texas Occupations Code §55.004(a), which authorizes the Commission to adopt rules to for issuing a funeral director or embalmer license to military service members, military veterans, or military spouses who hold a current license in another jurisdiction with licensing requirements substantially equivalent to those for a funeral director or embalmer license in Texas or within the five years preceding the individual's application, held the same license in Texas. §55.004(c) authorizes the Commission to propose rules for adoption that establish alternate methods for military service members, military veterans, and military spouse to demonstrate competency to satisfy the requirements for obtaining a funeral director or embalmer license, including receiving appropriate credit for training, education, and clinical and professional experience.

These rules are also proposed under §55.0041(e), which gives the Commission the necessary authority to adopt rules to implement §55.0041, Texas Occupations Code, for recognizing a military service member or military spouse to practice funeral directing or embalming in Texas without first obtaining the required license if the member or spouse is currently licensed in good standing by another jurisdiction with substantially equivalent licensing requirements to Texas. Furthermore, §55.0041(e) gives the Commission authority to adopt rules that 1) establish how such applicants are to notify the Commission of their intent to practice funeral directing or embalming in Texas; 2) submit proof to the Commission of the service member's or spouse's residency in Texas, as well as their military identification card; 3) method for the Commission to provide confirmation to the military service member or spouse applicant that the Commission has verified the applicant's license is in good standing with the other jurisdiction and authorize the applicant to practice funeral directing or embalming in Texas; 4) establish how the Commission will determine if another jurisdiction has substantially equivalent licensing requirements to Texas; and 5) creates a process for verifying the applicant's license is in good standing within 30 days of receiving all of the necessary information from the applicant.

The rules are proposed under §55.007, Texas Occupations Code, which provides the necessary authority to the Commission to adopt rules to credit verified military service, training, or education toward the funeral director or embalmer, full or provisional, licensing requirements for applicants who are a military service member or veteran. §55.007 further authorizes the Commission to limit its rules from applying to military service member or veteran license applicants who hold a restricted licensed issued by another jurisdiction or have an unacceptable criminal history pursuant to applicable law.

In addition, the rules are proposed under §55.008, Texas Occupations Code, which gives the Commission the authority to adopt rules to credit verified military service, training, or education that is relevant to funeral directing or embalming to provisional funeral director or provisional embalmer licensing requirements.

The statutory provisions affected by the proposed rules are those set forth in Texas Occupations Code, Chapters 55 and 651. No other statutes, articles, or codes are affected by the proposed rules.

§203.55. Purpose.

(a) This subchapter establishes requirements and procedures authorized or required by Texas Occupations Code, Chapters 55 and 651. Any requirements not provided in rule, but expressly set forth in Chapters 55 and 651 referenced above, apply and must be followed for the licensing of military service members, military veterans, and military spouses.

(b) This subchapter does not modify or alter rights that may be provided under federal law.

(c) Except as otherwise provided by this subchapter:

(1) a person applying for an apprenticeship license as a funeral director and/or embalmer must comply with all of the licensure requirements of §§203.5 - 203.7 of this chapter (regarding the Provisional License; Provisional License Case and Reporting Requirements; and Provisional License Reinstatement and Reapplication);

(2) a person applying for a full funeral director license or embalmer license must comply with all of the requirements of §203.1 of this chapter (regarding Funeral Director and Embalmer License Requirements and Procedure); and

(3) a person applying for the licenses listed in paragraphs (1) and (2) of this subsection must comply with all of the requirements in §§203.15 - 203.17 of this chapter (regarding Required Notification of Criminal Conviction; Consequences of Criminal Conviction; and Criminal History Evaluation Letter).

§203.56. Military Definitions.

For purposes of this subchapter, the following terms have the meanings assigned in §55.001, Texas Occupations Code: "active duty"; "armed forces of the United States"; "military service member"; "military spouse"; and "military veteran."

§203.57. License Fee Exemption or Waiver.

(a) The provisions in this section are in addition to the fee waivers or exemptions set forth in §55.009, Texas Occupations Code.

(b) Pursuant to §55.002, Texas Occupations Code, a licensee is exempt from any penalty or increased fee imposed by the Commission for failing to renew the license in a timely manner if the individual establishes to the satisfaction of Commission staff that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

(c) An active duty military service member is exempt from the payment of license fees for the duration of the license holder's military service and for one year after the date the military service member's active duty status ends.

(d) For purposes of establishing fee exemption status under this section and §651.155(a), Texas Occupations Code, an individual may prove military status by providing a copy of the individual's active duty orders, DD214 form, or other official documentation showing the individual's military status or termination of such.

§203.58. Mandatory Credit for Military Service.

(a) Pursuant to §55.007, Texas Occupations Code, for an applicant who is a military service member or veteran, the Commission shall meet to credit any verifiable military service, training or education obtained by an applicant to a license for which the applicant is seeking toward the requirements of that particular license. The Commission may verify an applicant's military training or education through a joint services transcript, a comparable document issued by the U.S. military or other means available.

(b) If the applicant's verified military service, training or education listed in subsection (a) of this section is relevant to a funeral director or embalmer license, but does not satisfy the requirements for a full license, then the Commission shall credit the applicant's verified military service, training, or education that is relevant toward the requirements of the applicable provisional license.

(c) All applicants shall submit fingerprints for the retrieval of criminal history record information.

(d) This section does not apply to an applicant who holds a restricted license issued by another jurisdiction or has an unacceptable criminal history according to Texas Occupations Code, Chapter 53 (relating to Consequences of Criminal Conviction) or Chapter 651 (Crematory Services, Funeral Directing, And Embalming).

§203.59. Alternative Method of Licensing for Military Service Members, Military Veterans, and Military Spouses.

(a) The executive director may waive any prerequisite to obtaining a license for an applicant who satisfies the requirements in §55.004(a), Texas Occupations Code after reviewing the applicant's credentials.

(b) For purposes of this section, the standard method of demonstrating competency is the specific examination, education, and/or experience required to obtain an individual, provisional or full, funeral directing or embalming license issued by the Commission under Chapter 651, Texas Occupations Code. In lieu of the standard method(s) of demonstrating competency for license and based on applicant's circumstances, the alternative methods for demonstrating competency include, but are not limited to, any combination of the following:

(1) education;

(2) continuing education;

(3) examinations (written and/or practical);

(4) letters of good standing;

(5) letters of recommendation;

(6) work experience;

(7) training;

(8) clinical experience; and

(9) professional experience.

(d) The Commission has 30 days from the date a military service member, military veteran, or military spouse submits an application for alternative licensing to process the application and issue a license to an applicant who qualifies for the license.

(e) A license issued under this section cannot be a limited provisional license pursuant to §55.005(b), Texas Occupations Code. For purposes of this section, "provisional license" does not mean a provisional license as set forth in Chapter 651, Texas Occupations Code.

(f) All applicants shall submit an application and proof of any relevant requirements on a form and in a manner prescribed by the Commission.

(g) All applicants shall submit fingerprints for the retrieval of criminal history record information.

§203.60. Exemption from Licensure for Certain Military Service Members and Military Spouses.

(a) This section establishes rules pursuant to the authority granted in §55.0041, Texas Occupations Code.

(b) The executive director of the Commission must authorize a military service member or military spouse applicant, who meets the qualifications set forth in subsection (c) of this section and §55.0041(a), Texas Occupations Code, to practice funeral directing or embalming in Texas without obtaining a license.

(c) In order to receive authorization to practice in Texas, the military service member or military spouse must:

(1) hold an active license to practice funeral directing or embalming in another jurisdiction that:

(A) that has licensing requirements that are determined by the commission to be substantially equivalent to the requirements for licensure in Texas; and

(B) where the license is currently licensed in good standing in the other jurisdiction;

(2) notify the commission of the military service member or military spouse's intent to practice in Texas on a form prescribed by the commission;

(3) submit a copy of the military service member or military spouse's military identification card; and

(4) submit proof of the military service member or military spouse's residency in Texas and of the military service member's, or, with respect to a military spouse, the military service member to whom the military spouse is married, status as an active duty military service member as defined by §437.001(1), Texas Government Code (relating to Definitions).

(d) For purposes of this section, the commission will determine whether another jurisdiction has licensing requirements that are substantially equivalent to those in Texas by reviewing the other jurisdiction's education, examination, criminal background history, and

apprenticeship or internship requirements for a license to engage in funeral directing or embalming in that jurisdiction compared to this state.

(e) While authorized to practice funeral directing or embalming in this state, the military service member or military spouse shall comply with all other laws and regulations applicable to the practice of funeral directing or embalming in Texas.

(f) The commission has 30 days from the date a military service member or military spouse submits the information required by subsection (c) of this section to:

(1) verify that the member or spouse is active and currently licensed in good standing by another jurisdiction with substantially equivalent licensing requirements to Texas; and

(2) upon confirmation from the other jurisdiction(s) that the person is currently licensed and in good standing with that jurisdiction(s), issue an authorization recognizing the applicant's licensure as the equivalent license in this state.

(g) This authorization to practice is valid during the time the military service member or, with respect to a military spouse, the military service member to whom the military spouse is married is stationed at a military installation in Texas, but not to exceed three years.

(h) In the event of a divorce or similar event that affects a person's status as a military spouse, the spouse may continue to engage in the business or occupation under the authority of this section until the third anniversary of the date the spouse received the authorization described by subsection (f) of this section. A similar event includes the death of the military service member or the military service member's discharge from the military.

(i) An authorization issued under this section may not be renewed.

(j) This section establishes requirements and procedures authorized or required by Texas Occupations Code, Chapter 55, and does not modify or alter rights that may be provided under federal law.

§203.61. Length of License and Renewal.

(a) Licenses granted under this subchapter have the terms established by §203.1 of this chapter (related to Funeral Director and Embalmer License Requirements and Procedure), or a term of 12 months from the date the license is issued, whichever term is longer. This section does not apply to the authorization granted under §203.60 of this subchapter (relating to Exemption from Licensure for Certain Military Service Members and Military Spouses).

(b) Provisional licenses granted under this subchapter have the terms established by §§203.5 - 203.7 of this chapter (related to Provisional License; Provisional License Case and Reporting Requirements; and Provisional License Reinstatement and Reapplication). The provisions in this section do not affect the license renewal extensions according to §55.003, Texas Occupations Code. For the purposes of this section, provisional license has the meaning assigned in Texas Occupations Code, chapter 651, and not the meaning assigned in §55.005(b), Texas Occupations Code.

(c) The Commission shall notify the licensee in writing or by electronic means of the requirements for renewal.

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

Filed with the Office of the Secretary of State on April 25, 2024.

TRD-202401767

Sarah Hartsfield
Interim Executive Director/Staff Attorney
Texas Funeral Service Commission
Earliest possible date of adoption: June 9, 2024
For further information, please call: (512) 936-2474

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 133. HOSPITAL LICENSING

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §133.101, concerning Inspection and Investigation Procedures; and §133.102, concerning Complaint Against Department of State Health Services Surveyor; new §133.101, concerning Integrity of Inspections and Investigations; §133.102, concerning Inspections; §133.103, concerning Complaint Investigations; §133.104, concerning Notice; §133.105, concerning Professional Conduct; and 133.106, concerning Complaint Against an HHSC Representative; and amendments to §133.47, concerning Abuse and Neglect Issues; and §133.121, concerning Enforcement Action.

BACKGROUND AND PURPOSE

The proposal is necessary to implement House Bill (H.B.) 49, 88th Legislature, Regular Session, 2023. H.B. 49 amended Texas Health and Safety Code (HSC) §241.051 to make certain information related to hospital investigations subject to disclosure and create a requirement for HHSC to post certain information related to hospital investigations on the HHSC website.

The proposal is also necessary to update the inspection, complaint investigation, and enforcement procedures for general and special hospitals. These updates are necessary to hold hospitals accountable during the inspection and investigation processes and ensure hospitals provide necessary documentation in a timely manner to HHSC representatives. The proposal revises enforcement procedures to ensure accuracy with current practices and conform to statute. These updates also ensure consistent practices across HHSC Health Care Regulation rulesets, correct outdated language and contact information, and reflect the transition of regulatory authority for hospitals from the Department of State Health Services to HHSC.

A previous version of these repeals, new sections, and amendments was proposed by HHSC in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4081) and expired without being adopted. This version of the proposal considers comments HHSC received during the previous informal and public comment periods.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §133.47, Abuse and Neglect Issues, updates contact information for submitting a complaint, changes "department" to "the Texas Health and Human Services Commission" or "HHSC" to reflect the change of statutory authority from the Department of State Health Services to HHSC. The proposed amendment updates the title of 25 TAC §1.204

and makes other non-substantive updates to increase clarity and consistency with other Health Care Regulation rulesets.

The proposed repeal of §133.101, Inspection and Investigation Procedures, deletes the rule as it is no longer necessary. The content of the rule has been added to proposed new §§133.102 - 133.104.

Proposed new §133.101, Integrity of Inspections and Investigations, places limits on a facility's authority to record HHSC interviews and internal discussions.

The proposed repeal of §133.102, Complaint Against a Department of State Health Services Surveyor, deletes the rule as it is no longer necessary. The content of the rule has been added to proposed new §133.106.

Proposed new §133.102, Inspections, implements HSC §241.051 and makes necessary updates to hospital and special hospital inspection requirements.

Proposed new §133.103, Complaint Investigations, implements HSC §241.051 and makes necessary updates to hospital and special hospital complaint investigation requirements.

Proposed new §133.104, Notice, informs hospitals of the required timeframes regarding responding to a written Statement of Deficiencies by returning a written Plan of Correction, together with any additional evidence of compliance.

Proposed new §133.105, Professional Conduct, informs providers that HHSC reports to the appropriate licensing authorities any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

Proposed new §133.106, Complaint Against an HHSC Representative, informs a hospital about registering a complaint against an HHSC inspector or investigator.

The proposed amendment to §133.121, Enforcement Action, updates the rule's title and creates consistency between this ruleset and other HHSC facility types regarding enforcement procedures. The proposed amendment also makes necessary corrections and updates to reflect current practices and conform with statute, including HSC Chapter 327.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create new regulations;

(6) the proposed rules will expand and repeal existing regulations;

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

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be greater clarity, consistency, and accountability in the inspection and investigation of hospitals. The public and the patients in these facilities will benefit from a more robust system for the investigation of complaints, especially those related to patient safety.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not impose any additional costs or fees on persons required to comply with the rules.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to the Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R101" in the subject line.

SUBCHAPTER C. OPERATIONAL REQUIREMENTS

25 TAC §133.47

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals.

The amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 241.

§133.47. Abuse and Neglect Issues.

(a) Reporting. Incidents of abuse, neglect, exploitation, or illegal, unethical or unprofessional conduct as those terms are defined in subsections (b) and (c) of this section shall be reported to the Texas Health and Human Services Commission (HHSC) as provided in subsections (b) and (c)(3) of this section [~~department~~].

(b) Abuse or neglect of a child, and abuse, neglect, or exploitation of an elderly or disabled person. The following definitions apply only to this subsection.[~~:~~]

(1) Abuse [~~abuse~~] or neglect of a child, as defined in §1.204(a) and (b) of this title (relating to [~~Investigations of~~] Abuse, Neglect, or Exploitation Defined. [~~of Children or Elderly or Disabled Persons); and~~]

(2) Abuse [~~abuse~~], neglect, or exploitation of an elderly or disabled person, as defined in §1.204(a) - (c) [~~§1.204(a) and (b)~~] of this title.

(c) Abuse and neglect of individuals with mental illness, and illegal, unethical, and unprofessional conduct. The requirements of this subsection are in addition to the requirements of subsection (b) of this section.

(1) Definitions. The following definitions are in accordance with Texas Health and Safety Code (HSC), §161.131 and apply only to this subsection. [~~:~~]

(A) Abuse--

(i) Abuse (as the term is defined in [~~42~~] United States Code Title 42 (42 USC) Chapter 114 (relating to Protection and Advocacy for Individuals with Mental Illness) [~~(USC), §10801 et seq.)~~] is any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an [~~a~~] individual with mental illness, and includes acts such as:

(I) the rape or sexual assault of an [~~a~~] individual with mental illness;

(II) the striking of an [~~a~~] individual with mental illness;

(III) the use of excessive force when placing an [~~a~~] individual with mental illness in bodily restraints; and [~~and/or~~]

(IV) the use of bodily or chemical restraints on an [~~a~~] individual with mental illness which is not in compliance with federal and state laws and regulations.

(ii) In accordance with HSC[~~,~~] §161.132(j), abuse also includes coercive or restrictive actions that are illegal or not justified by the patient's condition and that are in response to the patient's request for discharge or refusal of medication, therapy or treatment.

(B) Illegal conduct--Illegal conduct (as the term is defined in HSC[~~,~~] §161.131(4)) is conduct prohibited by law.

(C) Neglect--Neglect (as the term is defined in 42 USC[~~,~~] §10801 et seq.) is a negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death to an [~~a~~] individual with mental illness or which placed an [~~a~~] individual with mental illness at risk of injury or death, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan for an [~~a~~] individual with mental illness, the failure to provide adequate nutrition, clothing, or health care to an [~~a~~] individual with mental illness, or the failure to provide a safe environment for an [~~a~~] individual with mental illness, including the failure to maintain adequate numbers of appropriately trained staff.

(D) Unethical conduct--Unethical conduct (as the term is defined in HSC[~~,~~] §161.131(11)) is conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

(E) Unprofessional conduct--Unprofessional conduct (as the term is defined in HSC[~~,~~] §161.131(12)) is conduct prohibited under rules adopted by the state licensing agency for the respective profession.

(2) Posting requirements. A hospital [~~facility~~] shall prominently and conspicuously post for display in a public area that is readily visible to patients, residents, volunteers, employees, and visitors a statement of the duty to report abuse and neglect, or illegal, unethical, or unprofessional conduct in accordance with HSC[~~,~~] §161.132(e). The statement shall be in English and in a second language appropriate to the demographic makeup of the community served and contain the current toll-free telephone number for submitting a complaint to HHSC as specified on the HHSC website [~~of the department's patient information and complaint line at (888) 973-0022~~].

(3) Reporting responsibility.

(A) Reporting abuse and neglect. A person, including an employee, volunteer, or other person associated with the hospital [~~facility~~] who reasonably believes or who knows of information that would reasonably cause a person to believe that the physical or mental health or welfare of a patient of the hospital [~~facility~~] who is receiving mental health or chemical dependency services has been, is, or will be adversely affected by abuse or neglect (as those terms are defined in this subsection) by any person shall as soon as possible, but no later than 24 hours after, report the information supporting the belief to HHSC [~~the department~~] or to the appropriate state health care regulatory agency in accordance with HSC[~~,~~] §161.132(a).

(B) Reporting illegal, unprofessional, or unethical conduct. An employee of or other person associated with a hospital, [~~facility~~] including a health care professional, who reasonably believes or who knows of information that would reasonably cause a person to believe that the hospital [~~facility~~] or an employee or health care professional associated with the hospital [~~facility~~], has, is, or will be engaged in conduct that is or might be illegal, unprofessional, or unethical and that relates to the operation of the hospital [~~facility~~] or mental health or chemical dependency services provided in the hospital [~~facility~~] shall as soon as possible, but no later than 48 hours after, report the information supporting the belief to HHSC [~~the department~~] or to the appropriate state health care regulatory agency in accordance with HSC[~~,~~] §161.132(b).

(4) Training requirements. A hospital that provides comprehensive medical rehabilitation, mental health, or substance use [abuse] services shall annually provide as a condition of continued licensure a minimum of eight hours of in-service training designed to assist employees and health care professionals associated with the hospital [facility] in identifying patient abuse or neglect and illegal, unprofessional, or unethical conduct by or in the hospital [facility] and establish a means for monitoring compliance with the requirement.

(d) Investigations. A complaint under this subsection will be investigated or referred by HHSC [the department] as follows:

(1) Allegations under subsection (b) of this section will be investigated in accordance with §1.205 of this title (relating to Reports and Investigations) and §1.206 of this title (relating to Completion of Investigation);

(2) Allegations under subsection (c) of this section will be investigated in accordance with §133.103 [§133.101] of this chapter [title] (relating to Complaint Investigations [Inspection and Investigation Procedures]). Allegations concerning a health care professional's failure to report abuse and neglect or illegal, unprofessional, or unethical conduct will not be investigated by HHSC [the department] but will be referred to the individual's licensing board for appropriate disciplinary action.

(3) Allegations under both subsections (b) and (c) will be investigated in accordance with §1.205 and §1.206 of this title except as noted in paragraph (2) of this subsection concerning a health care professional's failure to report.

(e) Submission of complaints. A complaint made under this section may be submitted in writing or verbally to HHSC [the Patient Quality Care Unit, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199, telephone, (888) 973-0022].

(f) Notification.

(1) For complaints under subsection (b) of this section, HHSC [the department] shall provide notification according to the following.

(A) HHSC [The department] shall notify the reporter, if known, in writing of the outcome of the completed [complete] investigation.

(B) HHSC [The department] shall notify the alleged victim, and the alleged victim's [his or her] parent or guardian if a minor, in writing of the outcome of the completed investigation.

(2) For complaints under subsection (c) of this section, HHSC informs [the department shall inform], in writing, the complainant who identifies themselves by name and address of the following:

(A) the receipt of the complaint;

(B) if the complainant's allegations are potential violations of this chapter warranting an investigation;

(C) whether the complaint will be investigated by HHSC [the department];

(D) whether and to whom the complaint will be referred; and

(E) the findings of the complaint investigation.

(g) HHSC [Department] reporting and referral.

(1) Reporting health care professional to licensing board.

(A) In cases of abuse, neglect, or exploitation, as those terms are defined in subsection (b) of this section, by a licensed, certified, or registered health care professional, HHSC [the department] may forward a copy of the completed investigative report to the state agency that [which] licenses, certifies, or registers the health care professional. Any information which might reveal the identity of the reporter or any other patients [or clients] of the hospital [facility] must be blacked out or deidentified.

(B) A health care professional who fails to report abuse and neglect or illegal, unprofessional, or unethical conduct as required by subsection (c)(3) of this section may be referred by HHSC [the department] to the individual's licensing board for appropriate disciplinary action.

(2) Sexual exploitation reporting requirements. In addition to the reporting requirements described in subsection (c)(3) of this section, a mental health services provider must report suspected sexual exploitation in accordance with Texas Civil Practice and Remedies Code[,] §81.006.

(3) Referral follow-up. HHSC [The department] shall request a report from each referral agency of the action taken by the agency six months after the referral.

(4) Referral of complaints. A complaint containing allegations which are not a violation of HSC[,] Chapter 241[,] or this chapter will not be investigated by HHSC [the department] but shall be referred to law enforcement agencies or other agencies, as appropriate.

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

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Karen Ray
General Counsel
Department of State Health Services
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For further information, please call: (512) 834-4591

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SUBCHAPTER F. INSPECTION AND INVESTIGATION PROCEDURES

25 TAC §133.101, §133.102

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 241.

§133.101. Inspection and Investigation Procedures.

§133.102. Complaint Against a Department of State Health Services Surveyor.

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

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25 TAC §§133.101 - 133.106

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 241.

§133.101. Integrity of Inspections and Investigations.

(a) In order to preserve the integrity of the Texas Health and Human Services Commission's (HHSC's) inspection and investigation process, a hospital:

(1) may not record, listen to, or eavesdrop on any HHSC interview with hospital staff or patients that the hospital staff knows HHSC intends to keep confidential as evidenced by HHSC taking reasonable measures to prevent from being overheard; and

(2) may not record, listen to, or eavesdrop on any HHSC internal discussions outside the presence of hospital staff when HHSC has requested a private room or office or distanced themselves from hospital staff and the hospital obtains HHSC's written approval before beginning to record or listen to the discussion.

(b) A hospital shall inform HHSC when security cameras or other existing recording devices in the hospital are in operation during any internal discussion by or among HHSC staff.

(c) When HHSC by words or actions permits hospital staff to be present, an interview or conversation for which hospital staff are present does not constitute a violation of this rule.

(d) This section does not prohibit an individual from recording an HHSC interview with the individual.

§133.102. Inspections.

(a) The Texas Health and Human Services Commission (HHSC) may conduct an inspection of each hospital prior to the issuance or renewal of a license.

(1) A hospital is not subject to additional annual licensing inspections subsequent to the issuance of the initial license while the hospital maintains:

(A) certification under Title XVIII of the Social Security Act, 42 United States Code (USC), §§1395 et seq.; or

(B) accreditation from The Joint Commission, the American Osteopathic Association, or other national accreditation organization for the offered services.

(2) HHSC may conduct an inspection of a hospital exempt from an annual licensing inspection under paragraph (1) of this subsection before issuing a renewal license to the hospital if the certification or accreditation body has not conducted an on-site inspection of the hospital in the preceding three years and HHSC determines that an inspection of the hospital by the certification or accreditation body is not scheduled within 60 days of the license expiration date.

(b) HHSC may conduct an unannounced, on-site inspection of a hospital at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate compliance with or prevent a violation of:

(1) any applicable statute or rule;

(2) a hospital's plan of correction;

(3) an order or special order of the HHSC executive commissioner or the executive commissioner's designee;

(4) a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the hospital.

(c) An applicant or licensee, by applying for or holding a license, consents to entry and inspection of any of its hospitals by HHSC.

(d) HHSC inspections to evaluate a hospital's compliance may include:

(1) initial, change of ownership, or relocation inspections for the issuance of a new license;

(2) inspections related to changes in status, such as new construction or changes in services, designs, or bed numbers;

(3) routine inspections, which may be conducted without notice and at HHSC's discretion, or prior to renewal;

(4) follow-up on-site inspections, conducted to evaluate implementation of a plan of correction for previously cited deficiencies;

(5) inspections to determine if an unlicensed hospital is offering or providing, or purporting to offer or provide, treatment; and

(6) entry in conjunction with any other federal, state, or local agency's entry.

(e) A hospital shall cooperate with any HHSC inspection and shall permit HHSC to examine the hospital's grounds, buildings, books, records, and other documents and information maintained by or on behalf of the hospital, unless prohibited by law.

(f) A hospital shall permit HHSC access to interview members of the governing body, personnel, and patients, including the opportunity to request a written statement.

(g) A hospital shall permit HHSC to inspect and copy any requested information, unless prohibited by law. If it is necessary for HHSC to remove documents or other records from the hospital, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(h) Upon entry, HHSC holds an entrance conference with the hospital's designated representative to explain the nature, scope, and estimated duration of the inspection.

(i) During the inspection, the HHSC representative gives the hospital representative an opportunity to submit information and evidence relevant to matters of compliance being evaluated.

(j) When an inspection is complete, the HHSC representative holds an exit conference with the hospital representative to inform the

hospital representative of any preliminary findings of the inspection, including possible health and safety concerns. The hospital may provide any final documentation regarding compliance during the exit conference.

(k) HHSC shall maintain the confidentiality of hospital records as applicable under state or federal law. Except as provided by subsection (l) of this section, all information and materials in the possession of or obtained or compiled by HHSC in connection with an inspection are confidential and not subject to disclosure under Texas Government Code Chapter 552 (relating to Public Information), and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than HHSC or its employees or agents involved in the enforcement action except that this information may be disclosed to:

(1) persons involved with HHSC in the enforcement action against the hospital;

(2) the hospital that is the subject of the enforcement action, or the hospital's authorized representative;

(3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate hospital services;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying and hospital-identifying information has been deleted.

(l) The following information is subject to disclosure in accordance with Texas Government Code Chapter 552, only to the extent that all personally identifiable information of a patient or health care provider is omitted from the information:

(1) a notice of the hospital's alleged violation, which must include the provisions of law the hospital is alleged to have violated, and a general statement of the nature of the alleged violation;

(2) the number of investigations HHSC conducted of the hospital;

(3) the pleadings in any administrative proceeding to impose a penalty against the hospital for the alleged violation;

(4) the outcome of each investigation HHSC conducted of the hospital, including:

(A) reprimand issuance;

(B) license denial or revocation;

(C) corrective action plan adoption; or

(D) administrative penalty imposition and the penalty amount;

(5) a final decision, investigative report, or order issued by HHSC to address the alleged violation; and

(6) any other information required by law to be disclosed under public information request laws.

(m) Within 90 days after the date HHSC issues a final decision, investigative report, or order to address a hospital's alleged violation, HHSC posts certain information on the HHSC website in accordance with Texas Health and Safety Code §241.051.

§133.103. Complaint Investigations.

(a) A hospital shall provide each patient and applicable legally authorized representative at the time of admission with a written statement identifying the Texas Health and Human Services Commission (HHSC) as the agency responsible for investigating complaints against the hospital.

(1) The statement shall inform persons that they may direct a complaint to HHSC Complaint and Incident Intake (CII) and include current CII contact information, as specified by HHSC.

(2) The hospital shall prominently and conspicuously post this statement in patient common areas and in visitor's areas and waiting rooms so that it is readily visible to patients, employees, and visitors. The information shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) HHSC evaluates all complaints. A complaint must be submitted using HHSC's current CII contact information for that purpose, as described in subsection (a) of this section.

(c) HHSC documents, evaluates, and prioritizes complaints directed to HHSC CII based on the seriousness of the alleged violation and the level of risk to patients, personnel, and the public.

(1) Allegations determined to be within HHSC's regulatory jurisdiction relating to a hospital may be investigated under this chapter.

(2) HHSC may refer complaints outside HHSC's jurisdiction to an appropriate agency, as applicable.

(d) HHSC conducts investigations to evaluate a hospital's compliance following a complaint of abuse, neglect, or exploitation; or a complaint related to the health and safety of patients. Complaint investigations may be coordinated with the federal Centers for Medicare & Medicaid Services and its agents responsible for the inspection of hospitals to determine compliance with the Conditions of Participation under Title XVIII of the Social Security Act, (42 USC, §§1395 et seq.), so as to avoid duplicate investigations.

(e) HHSC may conduct an unannounced, on-site investigation of a hospital at any reasonable time, including when treatment services are provided, to inspect or investigate:

(1) a hospital's compliance with any applicable statute or rule;

(2) a hospital's plan of correction;

(3) a hospital's compliance with an order of the HHSC executive commissioner or the executive commissioner's designee;

(4) a hospital's compliance with a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the hospital.

(f) An applicant or licensee, by applying for or holding a license, consents to entry and investigation of any of its facilities by HHSC.

(g) A hospital shall cooperate with any HHSC investigation and shall permit HHSC to examine the hospital's grounds, buildings, books, records, video surveillance, and other documents and information maintained by, or on behalf of, the hospital, unless prohibited by law.

(h) A hospital shall permit HHSC access to interview members of the governing body, personnel, and patients, including the opportunity to request a written statement.

(i) A hospital shall permit HHSC to inspect and copy any requested information, unless prohibited by law. If it is necessary for HHSC to remove documents or other records from the hospital, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(j) Upon entry, the HHSC representative holds an entrance conference with the hospital's designated representative to explain the nature, scope, and estimated duration of the investigation.

(k) The HHSC representative holds an exit conference with the hospital representative to inform the hospital representative of any preliminary findings of the investigation. The hospital may provide any final documentation regarding compliance during the exit conference.

(l) Once an investigation is complete, HHSC reviews the evidence from the investigation to evaluate whether there is a preponderance of evidence supporting the allegations contained in the complaint.

(m) HHSC shall maintain the confidentiality of hospital records as applicable under state or federal law. Except as provided by subsection (n) of this section , all information and materials in the possession of or obtained or compiled by HHSC in connection with an investigation are confidential and not subject to disclosure under Texas Government Code Chapter 552, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than HHSC or its employees or agents involved in the enforcement action except that this information may be disclosed to:

(1) persons involved with HHSC in the enforcement action against the hospital;

(2) the hospital that is the subject of the enforcement action, or the hospital's authorized representative;

(3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate hospital services;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying and hospital-identifying information has been deleted.

(n) The following information is subject to disclosure in accordance with Texas Government Code Chapter 552, only to the extent that all personally identifiable information of a patient or health care provider is omitted from the information:

(1) a notice of the hospital's alleged violation, which must include the provisions of law the hospital is alleged to have violated, and a general statement of the nature of the alleged violation;

(2) the number of investigations HHSC conducted of the hospital;

(3) the pleadings in any administrative proceeding to impose a penalty against the hospital for the alleged violation;

(4) the outcome of each investigation HHSC conducted of the hospital, including:

(A) reprimand issuance;

(B) license denial or revocation;

(C) corrective action plan adoption; or

(D) administrative penalty imposition and the penalty amount; and

(5) a final decision, investigative report, or order issued by HHSC to address the alleged violation; and

(6) any other information required by law to be disclosed under public information request laws.

(o) Within 90 days after the date HHSC issues a final decision, investigative report, or order to address a hospital's alleged violation, HHSC posts certain information on the HHSC website in accordance with Texas Health and Safety Code Section 241.051 (relating to Inspections).

§133.104. Notice.

(a) A hospital is deemed to have received any Texas Health and Human Services Commission (HHSC) correspondence on the date of receipt, or three business days after mailing, whichever is earlier.

(b) When HHSC finds deficiencies:

(1) HHSC provides the hospital with a written Statement of Deficiencies (SOD) within 10 business days after the exit conference via U.S. Postal Service or electronic mail.

(2) Within 10 calendar days after the hospital's receipt of the SOD, the hospital shall return to HHSC a written Plan of Correction (POC) that addresses each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(A) HHSC determines if a POC and proposed timeframes are acceptable, and, if accepted, notifies the hospital in writing.

(B) If HHSC does not accept the POC, HHSC notifies the hospital in writing and requests the hospital submit to HHSC a modified POC and any additional evidence of compliance no later than 10 business days after HHSC notifies the hospital in writing.

(C) The hospital shall correct the identified deficiencies and submit to HHSC evidence verifying implementation of corrective action within the timeframes set forth in the POC, or as otherwise specified by HHSC.

(3) Regardless of a hospital's compliance with this subsection or HHSC's acceptance of a hospital's POC, HHSC may, at any time, propose to take enforcement action as appropriate under this chapter.

§133.105. Professional Conduct.

In addition to any enforcement action under this chapter, the Texas Health and Human Services Commission reports, in writing, to the appropriate licensing board any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

§133.106. Complaint Against an HHSC Representative.

A hospital may register a complaint against a Texas Health and Human Services Commission (HHSC) representative who conducts an inspection or investigation under this subchapter by following the procedure listed on the HHSC website.

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

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Karen Ray
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Department of State Health Services
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SUBCHAPTER G. ENFORCEMENT

25 TAC §133.121

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner

of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §241.026, which requires HHSC to develop, establish, and enforce standards for the construction, maintenance, and operation of licensed hospitals.

The amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 241.

§133.121. Enforcement [~~Action~~].

Enforcement is a process by which a sanction is proposed, and if warranted, imposed on an applicant or licensee regulated by the Texas Health and Human Services Commission (HHSC) for failure to comply with applicable statutes, rules, and orders [~~Enforcement action may be taken for the following reasons~~].

(1) Denial, suspension or revocation of a license or imposition of an administrative penalty. HHSC [~~The department~~] has jurisdiction to enforce violations of the Act or the rules adopted under this chapter. HHSC [~~The department~~] may deny, suspend, or revoke a license or impose an administrative penalty for [~~if the licensee or applicant~~]:

(A) failure [~~fails~~] to comply with any applicable provision of the Texas Health and Safety Code (HSC), including Chapters 241, [~~or~~] 311, and 327;

(B) failure [~~fails~~] to comply with any provision of this chapter or any other applicable laws [~~(25 Texas Administrative Code, Chapter 133)~~];

(C) the hospital, or any of its employees, committing an act which causes actual harm or risk of harm to the health or safety of a patient [~~fails to comply with a special license condition~~];

(D) the hospital, or any of its employees, materially altering any license issued by HHSC;

(E) failure to comply with minimum standards for licensure;

(F) failure to provide a complete license application;

(G) [~~(D)~~] failure [~~fails~~] to comply with an order of the HHSC executive commissioner [~~department~~] or another enforcement procedure under HSC[~~,~~] Chapters 241, [~~or~~] 311, or 327;

(H) [~~(E)~~] [~~has~~] a history of failure to comply with the applicable rules [~~adopted under this chapter~~] relating to patient environment, health, safety, and rights that reflect more than nominal noncompliance;

(I) [~~(F)~~] the hospital aiding, committing, abetting, or permitting [~~has aided, abetted or permitted~~] the commission of an illegal act;

(J) [~~(G)~~] the hospital, or any of its employees, committing [~~has committed~~] fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to HHSC [~~the department~~] or required to be maintained by the hospital [~~facility~~] pursuant to HSC Chapter 241 and the provisions of this chapter;

(K) failure to comply with other state and federal laws affecting the health, safety, and rights of hospital patients;

(L) [~~(H)~~] failure [~~fails~~] to timely pay an assessed administrative penalty as required by HHSC [~~penalties in accordance with HSC, Chapter 241~~];

(M) failure to submit an acceptable plan of correction for cited deficiencies within the timeframe required by HHSC;

(N) [~~(I)~~] failure [~~fails~~] to timely implement plans of corrections to deficiencies cited by HHSC within the dates designated in the plan of correction [~~the department~~]; [~~or~~]

(O) [~~(J)~~] failure [~~fails~~] to comply with applicable requirements within a designated probation period; or [~~.~~]

(P) the hospital terminating the hospital's Medicare provider agreement if the hospital is certified under Title XVIII of the Social Security Act, 42 United States Code (USC), §1395 et seq.

(2) Denial of a license. HHSC [~~The department~~] has jurisdiction to enforce violations of [~~the~~] HSC[~~,~~] Chapters 241, [~~and~~] 311, and 327 and this chapter. HHSC [~~The department~~] may deny a license if the applicant:

(A) fails to provide timely and sufficient information required by HHSC [~~the department~~] that is directly related to the application; or

(B) has had the following actions taken against the applicant within the two-year period preceding the application:

(i) decertification or cancellation of its contract under the Medicare or Medicaid program in any state;

(ii) federal Medicare or state Medicaid sanctions or penalties;

(iii) unsatisfied federal or state tax liens;

(iv) unsatisfied final judgments;

(v) eviction involving any property or space used as a hospital in any state;

(vi) unresolved [~~state Medicaid or~~] federal Medicare or state Medicaid audit exceptions;

(vii) denial, suspension, or revocation of a hospital license, a private psychiatric hospital license, or a license for any health care facility in any state; or

(viii) a court injunction prohibiting ownership or operation of a facility.

(3) Emergency suspension. Following notice and opportunity for hearing, the executive commissioner of HHSC [~~the department of state health services (commissioner)~~] or a person designated by the executive commissioner may issue an emergency order in relation to the operation of a hospital licensed under this chapter if the executive commissioner or the executive commissioner's designee determines that the hospital is violating this chapter, a rule adopted pursuant to this chapter, a special license provision, injunctive relief, an order of the executive commissioner or the executive commissioner's designee, or another enforcement procedure permitted under this chapter and the provision, rule, license provision, injunctive relief, order, or enforcement procedure relates to the health or safety of the hospital's patients.

(A) HHSC [~~The department~~] shall send written notice of the hearing and shall include within the notice the time and place of the hearing. The hearing must be held within 10 days after the date of the hospital's receipt of the notice.

(B) The hearing shall be held in accordance with HHSC's [~~the department's~~] informal hearing rules.

(C) The order shall be effective on delivery to the hospital or at a later date specified in the order.

(4) Probation. In lieu of denying, suspending, or revoking the license, HHSC [~~the department~~] may place [~~schedule~~] the hospital

on [facility for a] probation for a period of not less than 30 days, if HHSC finds that the hospital [facility] is [found] in repeated noncompliance with these rules or HSC[,] Chapter 241, and the hospital's [facility's] noncompliance does not endanger the public's health and safety [of the public].

(A) HHSC shall provide notice to the hospital of the probation and of the items of noncompliance not later than the 10th day before the probation period begins.

(B) During the probation period, the hospital shall correct the items of noncompliance and report the corrections to HHSC for approval.

(5) Administrative penalty. HHSC [The department] has jurisdiction to impose an administrative penalty against a hospital [facility] licensed or regulated under this chapter for violations of [the] HSC[,] Chapters 241, [and] 311, and 327 and this chapter. The imposition of an administrative penalty shall be in accordance with the provisions of [the] HSC[,] §241.059, [and] §241.060, and §327.008.

(6) Licensure of persons or entities with criminal backgrounds. HHSC [The department] may deny a person or entity a license or suspend or revoke an existing license on the grounds that the person or entity has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the ownership or operation of a hospital [facility]. HHSC [The department] shall apply the requirements of Texas [the] Occupations Code[,] Chapter 53.

(A) HHSC [The department] is entitled under Texas Government Code Chapter 411 to obtain criminal history information maintained by the Texas Department of Public Safety [(Government Code, §411.122)], the Federal Bureau of Investigation, [(Government Code, §411.087)] or any other law enforcement agency to investigate the eligibility of an applicant for an initial or renewal license and to investigate the continued eligibility of a licensee.

(B) In determining whether a criminal conviction directly relates, HHSC [the department] shall apply the requirements and consider the provisions of Texas Occupations Code[,] Chapter 53 [§53.022 and §53.023].

(C) The following felonies and misdemeanors directly relate to the duties and responsibilities of the ownership or operation of a health care facility because these criminal offenses indicate an ability [inability] or a tendency for the person to be unable to own or operate a hospital [facility]:

(i) a misdemeanor violation of HSC[,] Chapter 241;

(ii) a misdemeanor or felony involving moral turpitude;

(iii) a misdemeanor or felony relating to deceptive business practices;

(iv) a misdemeanor or felony of practicing any health-related profession without a required license;

(v) a misdemeanor or felony under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(vi) a misdemeanor or felony under [the] Texas Penal Code (TPC), Title 5, involving a patient, resident, or a client of any health care facility, a home and community support services agency or a health care professional; or

(vii) a misdemeanor or felony under the TPC:

(I) Title 4 [offenses of attempting or conspiring to commit any of the offenses in this clause];

(II) Title 5 [offenses against the person];

(III) Title 7 [offenses against property];

(IV) Title 8 [offenses against public administration];

(V) Title 9 [offenses against public order and decency];

(VI) Title 10 [offenses against public health, safety and morals]; or

(VII) Title 11 [offenses involving organized crime].

(7) [(viii)] Offenses listed in paragraph (6)(C) [subparagraph(C)] of this subsection [paragraph] are not exclusive in that HHSC [the department] may consider similar criminal convictions from other state, federal, foreign, or military jurisdictions that indicate an [demonstrate the] inability or tendency for [of] the person or entity to own or operate a hospital [facility].

(8) [(ix)] HHSC shall revoke a [A] license [shall be revoked] on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(9) [(7)] Notice. If HHSC [the department] proposes to deny, suspend, or revoke a license, or impose an administrative penalty, HHSC [the department] shall send a notice of the proposed action by certified mail, return receipt requested, at the address shown in the current records of HHSC [the department] or HHSC [the department] may personally deliver the notice. The notice to deny, suspend, or revoke a license, or impose an administrative penalty, shall state the alleged facts or conduct to warrant the proposed action, provide an opportunity to demonstrate or achieve compliance, and shall state that the applicant or license holder has an opportunity for a hearing before taking [imposition of] the action.

(10) [(8)] Acceptance. Within 20 calendar days after receipt of the notice, the applicant or licensee may notify HHSC [the department], in writing, of acceptance of HHSC's [the department's] determination or request a hearing.

(11) [(9)] Hearing request.

(A) A request for a hearing by the applicant or licensee shall be in writing and submitted to HHSC [the department] within 20 calendar days of receipt of the notice of the proposed action described in paragraph (9) of this subsection. Receipt of the notice is presumed to occur on the third [30th] day after the date HHSC mails the notice [is mailed by the department] to the last known address [known] of the applicant or licensee.

(B) A hearing shall be conducted pursuant to Texas Government Code Chapter 2001, and Title 1, Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act)[, Government Code, Chapter 2001].

(12) [(10)] No response to notice. If an [the] applicant or licensee [fails to timely respond to the notice or] does not request a hearing in writing within 20 calendar [30] days after receiving the notice [date] of the proposed action [notice], the case shall be set for a hearing.

(13) [(11)] Notification of HHSC's [department's] final decision. HHSC [The department] shall send the licensee or applicant a copy of HHSC's [the department's] decision for denial, suspension or revocation of a license or imposition of an administrative penalty by certified [registered] mail, which shall include the findings of fact and

conclusions of law on which HHSC [~~the department~~] based its decision.

(14) Admission of new patients upon suspension or revocation. Upon HHSC's determination to suspend or revoke a license, the license holder may not admit new patients until HHSC reissues the license.

(15) [~~(12)~~] Decision to suspend or revoke. When HHSC's [~~the department's~~] decision to suspend or revoke a license is final, the licensee must immediately cease operation, unless the district court issues a stay of such action [~~is issued by the district court~~].

(16) [~~(13)~~] Return of original license. Upon suspension, revocation or non-renewal of the license, the original license shall be returned to HHSC within 30 calendar days of HHSC's notification [~~the department upon the effective date of the department's determination~~].

(17) [~~(14)~~] Reapplication following denial or revocation.

(A) One year after HHSC's [~~After the department's~~] decision to deny or revoke, or the voluntary surrender of a license by a hospital [~~facility~~] while enforcement action is pending, a hospital [~~facility~~] may petition HHSC [~~the department~~], in writing, for a license. Expiration of a license prior to HHSC's decision becoming final shall not affect the one-year waiting period required before a petition can be submitted.

(B) HHSC [~~The department~~] may allow a reapplication for licensure if there is proof that the reasons for the original action no longer exist.

(C) HHSC [~~The department~~] may deny reapplication for licensure if HHSC [~~the department~~] determines that:

(i) the reasons for the original action continues;

(ii) the petitioner has failed to offer sufficient proof that conditions have changed; or

(iii) the petitioner has demonstrated a repeated history of failure to provide patients a safe environment or has violated patient rights.

(D) If HHSC [~~the department~~] allows a reapplication for licensure, the petitioner shall be required to meet the requirements as described in §133.22 of this chapter [~~title~~] (relating to Application and Issuance of Initial License).

(18) [~~(15)~~] Expiration of a license during suspension. A hospital [~~facility~~] whose license expires during a suspension period may not reapply for license renewal until the end of the suspension period.

(19) [~~(16)~~] Surrender of a license. In the event that enforcement, as defined in this subsection, is pending or reasonably imminent, the surrender of a hospital [~~facility~~] license shall not deprive HHSC [~~the department~~] of jurisdiction in regard to enforcement against the hospital [~~facility~~].

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

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Karen Ray
General Counsel
Department of State Health Services
Earliest possible date of adoption: June 9, 2024
For further information, please call: (512) 834-4591

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CHAPTER 135. AMBULATORY SURGICAL CENTERS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §135.21, concerning Inspections; §135.24, concerning Enforcement; and §135.25, concerning Complaints; an amendment to §135.22, concerning Renewal of License; and new §135.61, concerning Integrity of Inspections and Investigations; §135.62, concerning Inspections; §135.63, concerning Complaint Investigations; §135.64, concerning Notice; §135.65, concerning Professional Conduct; §135.66, concerning Complaint Against an HHSC Representative; and §135.67, concerning Enforcement.

BACKGROUND AND PURPOSE

The purpose of the proposal is to update the inspection, complaint investigation, and enforcement procedures for ambulatory surgical centers (ASCs). These updates are necessary to hold ASCs accountable during the inspection and investigation processes and ensure ASCs provide necessary documentation in a timely manner to HHSC representatives. The proposal revises enforcement procedures to ensure accuracy with current practices and conform to statute. These updates also ensure consistent practices across HHSC Health Care Regulation rulesets, correct outdated language and contact information, and reflect the transition of regulatory authority for ASCs from the Department of State Health Services (DSHS) to HHSC.

A previous version of these repeals, amendment, and new sections was proposed by HHSC in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4087) and expired without being adopted. This version of the proposal considers comments HHSC received during the previous informal and public comment periods.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §135.21, Inspections, deletes the rule as it is no longer necessary. The content of the rule has been added to proposed new §135.62.

The proposed amendment to §135.22, Renewal of License, makes necessary updates to reflect the transition of regulatory authority from DSHS to HHSC. The proposed amendment also specifies the time frame for an ASC to return the license to HHSC when the ASC cannot provide sufficient evidence that it submitted a renewal application and fee within 30 days prior to the expiration date of the license.

The proposed repeal of §135.24, Enforcement, deletes the rule as it is no longer necessary. The content of the rule has been added to proposed new §135.67.

The proposed repeal of §135.25, Complaints, deletes the rule as it is no longer necessary. The content of the rule has been added to proposed new §135.63.

Proposed new §135.61, Integrity of Inspections and Investigations, places limits on an ASC's authority to record HHSC interviews and internal discussions.

Proposed new §135.62, Inspections, makes necessary updates to ASC inspection requirements.

Proposed new §135.63, Complaint Investigations, makes necessary updates to ASC complaint investigation requirements.

Proposed new §135.64, Notice, informs an ASC of the required timeframes for responding to a written Statement of Deficiencies by returning a written Plan of Correction, together with any additional evidence of compliance.

Proposed new §135.65, Professional Conduct, informs providers that HHSC reports to the appropriate licensing authorities any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

Proposed new §135.66, Complaint Against an HHSC Representative, informs an ASC about registering a complaint against an HHSC inspector or investigator.

Proposed new §135.67, Enforcement, creates consistency between this ruleset for ASCs and other HHSC facility types regarding enforcement procedures and makes necessary corrections and updates to reflect current practices and conform with statute.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

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

(6) the proposed rules will expand and repeal existing regulations;

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

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; and do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be greater clarity, consistency, and accountability in the inspection and investigation of ASCs. The public and the patients in these facilities will benefit from a more robust system for the investigation of complaints, especially those related to patient safety.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not impose any additional costs or fees on persons required to comply with the rules.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to the Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R101" in the subject line.

SUBCHAPTER A. OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

25 TAC §§135.21, 135.24, 135.25

STATUTORY AUTHORITY

The repeals authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §243.009, which requires HHSC to adopt rules for licensing of ASCs; and §243.010, which requires those rules to include minimum standards applicable to ASCs.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 243.

§135.21. Inspections.
§135.24. Enforcement.
§135.25. Complaints.

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

Filed with the Office of the Secretary of State on April 29, 2024.

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Karen Ray
General Counsel
Department of State Health Services
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For further information, please call: (512) 834-4591

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25 TAC §135.22

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §243.009, which requires HHSC to adopt rules for licensing of ASCs; and §243.010, which requires those rules to include minimum standards applicable to ASCs.

The amendment implements Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 243.

§135.22. Renewal of License.

(a) The Texas Health and Human Services Commission (HHSC) sends [~~department shall send~~] written notice of expiration of a license to an ambulatory surgical center (ASC) at least 60 days before the expiration date. If the applicant has not received notice, it is the duty of the ASC to notify HHSC [~~the department~~] and request a renewal application.

(b) HHSC [~~The department~~] shall issue a renewal license to an ASC that meets the minimum standards for a license set forth in this chapter [~~these sections~~].

(1) The ASC shall submit the following to HHSC [~~the department~~] no later than 30 days prior to the expiration date of the license:

(A) a completed renewal application form;

(B) a nonrefundable license fee; and

(C) if the ASC is accredited by the Joint Commission, the Accreditation Association for Ambulatory Health Care, or the American Association for Accreditation of Ambulatory Surgery Facilities, documented evidence of current accreditation status.

(2) Renewal licenses shall be valid for two years.

(c) If an [~~the~~] applicant fails to timely submit an application and fee in accordance with subsection (b) of this section, HHSC [~~the department~~] shall notify the applicant that the ASC shall cease providing ambulatory surgical services. If the ASC can provide HHSC [~~the department~~] with sufficient evidence that the submission was completed in a timely manner and all dates were adhered to, HHSC dismisses the cease to perform [~~shall be dismissed~~]. If the ASC cannot provide sufficient evidence, the ASC shall [~~immediately thereafter~~] return the license to HHSC within 30 days after HHSC's notification by certified mail. If an [~~the~~] applicant wishes to provide ambulatory surgical services after the expiration date of the license, the applicant shall reapply for a license under §135.20 of this chapter [~~title~~] (relating to Initial Application and Issuance of License).

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

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Karen Ray
General Counsel
Department of State Health Services
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For further information, please call: (512) 834-4591

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SUBCHAPTER D. INSPECTION, INVESTIGATION, AND ENFORCEMENT PROCEDURES

25 TAC §§135.61 - 135.67

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §243.009, which requires HHSC to adopt rules for licensing of ASCs; and §243.010, which requires those rules to include minimum standards applicable to ASCs.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 243.

§135.61. Integrity of Inspections and Investigations.

(a) In order to preserve the integrity of the Texas Health and Human Services Commission's (HHSC's) inspection and investigation process, an ambulatory surgical center's (ASC's) staff:

(1) may not record, listen to, or eavesdrop on any HHSC interview with ASC staff or patients that the ASC staff knows HHSC intends to keep confidential as evidenced by HHSC taking reasonable measures to prevent from being overheard; and

(2) may not record, listen to, or eavesdrop on any HHSC internal discussions outside the presence of ASC staff when HHSC has requested a private room or office or distanced themselves from ASC staff and the ASC obtains HHSC's written approval before beginning to record or listen to the discussion.

(b) An ASC shall inform HHSC when security cameras or other existing recording devices in the ASC are in operation during any internal discussion by or among HHSC staff.

(c) When HHSC by words or actions permits ASC staff to be present, an interview or conversation for which ASC staff are present does not constitute a violation of this rule.

(d) This section does not prohibit an individual from recording an HHSC interview with the individual.

§135.62. Inspections.

(a) The Texas Health and Human Services Commission (HHSC) may conduct an unannounced, on-site inspection of an ambulatory surgical center (ASC) at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate compliance with or prevent a violation of:

(1) any applicable statute or rule;

(2) an ASC's plan of correction;

(3) an order or special order of the HHSC executive commissioner or the executive commissioner's designee;

(4) a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the ASC.

(b) An applicant or licensee, by applying for or holding a license, consents to entry and inspection of any of its ASCs by HHSC.

(c) HHSC inspections to evaluate an ASC's compliance may include:

(1) initial, change of ownership, or relocation inspections for the issuance of a new license;

(2) inspections related to changes in status, such as new construction or changes in services, designs, or bed numbers;

(3) routine inspections, which may be conducted without notice and at HHSC's discretion, or prior to renewal;

(4) follow-up on-site inspections, conducted to evaluate implementation of a plan of correction for previously cited deficiencies;

(5) inspections to determine if an unlicensed ASC is offering or providing, or purporting to offer or provide, treatment; and

(6) entry in conjunction with any other federal, state, or local agency's entry.

(d) An ASC shall cooperate with any HHSC inspection and shall permit HHSC to examine the ASC's grounds, buildings, books, records, and other documents and information maintained by or on behalf of the ASC, unless prohibited by law.

(e) An ASC shall permit HHSC access to interview members of the governing body, personnel, and patients, including the opportunity to request a written statement.

(f) An ASC shall permit HHSC to inspect and copy any requested information, unless prohibited by law. If it is necessary for HHSC to remove documents or other records from the ASC, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(g) HHSC shall maintain the confidentiality of ASC records as applicable under state and federal law.

(h) Upon entry, HHSC holds an entrance conference with the ASC's designated representative to explain the nature, scope, and estimated duration of the inspection.

(i) During the inspection, the HHSC representative gives the ASC representative an opportunity to submit information and evidence relevant to matters of compliance being evaluated.

(j) When an inspection is complete, the HHSC representative holds an exit conference with the ASC representative to inform the facility representative of any preliminary findings of the inspection, including any possible health and safety concerns. The ASC may provide any final documentation regarding compliance during the exit conference.

§135.63. Complaint Investigations.

(a) An ambulatory surgical center (ASC) shall provide each patient and applicable legally authorized representative at the time of admission with a written statement identifying the Texas Health and Human Services Commission (HHSC) as the agency responsible for investigating complaints against the ASC.

(1) The statement shall inform persons that they may direct a complaint to HHSC Complaint and Incident Intake (CII) and include current CII contact information, as specified by HHSC.

(2) The ASC shall prominently and conspicuously post this statement in patient common areas and in visitor's areas and waiting rooms so that it is readily visible to patients, employees, and visitors. The information shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) HHSC evaluates all complaints. A complaint must be submitted using HHSC's current CII contact information for that purpose, as described in subsection (a) of this section.

(c) HHSC documents, evaluates, and prioritizes complaints directed to HHSC CII based on the seriousness of the alleged violation and the level of risk to patients, personnel, and the public.

(1) Allegations determined to be within HHSC's regulatory jurisdiction relating to health care facilities may be investigated under this chapter.

(2) HHSC may refer complaints outside HHSC's jurisdiction to an appropriate agency, as applicable.

(d) HHSC conducts investigations to evaluate an ASC's compliance following a complaint of abuse, neglect, or exploitation; or a complaint related to the health and safety of patients.

(e) HHSC may conduct an unannounced, on-site investigation of an ASC at any reasonable time, including when treatment services are provided, to inspect or investigate:

(1) an ASC's compliance with any applicable statute or rule;

(2) an ASC's plan of correction;

(3) an ASC's compliance with an order of the HHSC executive commissioner or the executive commissioner's designee;

(4) an ASC's compliance with a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the ASC.

(f) An applicant or licensee, by applying for or holding a license, consents to entry and investigation of any of its ASCs by HHSC.

(g) An ASC shall cooperate with any HHSC investigation and shall permit HHSC to examine the ASC's grounds, buildings, books, records, and other documents and information maintained by, or on behalf of, the ASC, unless prohibited by law.

(h) An ASC shall permit HHSC access to interview members of the governing body, personnel, and patients, including the opportunity to request a written statement.

(i) HHSC shall maintain the confidentiality of ASC records as applicable under state and federal law.

(j) An ASC shall permit HHSC to inspect and copy any requested information, unless prohibited by law. If it is necessary for HHSC to remove documents or other records from the ASC, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(k) Upon entry, the HHSC representative holds an entrance conference with the ASC's designated representative to explain the nature, scope, and estimated duration of the investigation.

(l) The HHSC representative holds an exit conference with the ASC representative to inform the ASC representative of any preliminary findings of the investigation. The ASC may provide any final documentation regarding compliance during the exit conference.

(m) Once an investigation is complete, HHSC reviews the evidence from the investigation to evaluate whether there is a preponderance of evidence supporting the allegations contained in the complaint.

§135.64. Notice.

(a) An ambulatory surgical center (ASC) is deemed to have received any Texas Health and Human Services Commission (HHSC) correspondence on the date of receipt, or three business days after mailing, whichever is earlier.

(b) When HHSC finds deficiencies:

(1) HHSC provides the ASC with a written Statement of Deficiencies (SOD) within 10 business days after the exit conference via U.S. Postal Service or electronic mail.

(2) Within 10 calendar days after the facility's receipt of the SOD, the ASC shall return to HHSC a written Plan of Correction (POC) that addresses each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(A) HHSC determines if a POC and proposed timeframes are acceptable, and, if accepted, notifies the ASC in writing.

(B) If HHSC does not accept the POC, HHSC notifies the ASC in writing and requests the ASC submit a modified POC and any additional evidence of compliance no later than 10 business days after HHSC notifies the ASC in writing.

(C) The ASC shall correct the identified deficiencies and submit to HHSC evidence verifying implementation of corrective action within the timeframes set forth in the POC, or as otherwise specified by HHSC.

(3) Regardless of an ASC's compliance with this subsection or HHSC's acceptance of an ASC's POC, HHSC may, at any time, propose to take enforcement action as appropriate under this chapter.

§135.65. Professional Conduct.

In addition to any enforcement action under this chapter, the Texas Health and Human Services Commission reports, in writing, to the appropriate licensing board any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

§135.66. Complaint Against an HHSC Representative.

An ambulatory surgical center may register a complaint against a Texas Health and Human Services Commission (HHSC) representative who conducts an inspection or investigation under this subchapter by following the procedure listed on the HHSC website.

§135.67. Enforcement.

(a) Enforcement is a process by which a sanction is proposed, and if warranted, imposed on an applicant or licensee regulated by the Texas Health and Human Services Commission (HHSC) for failure to comply with applicable statutes, rules, and orders.

(b) HHSC has jurisdiction to enforce violations of the Act or the rules adopted under this chapter. HHSC may deny, suspend, or revoke a license or impose an administrative penalty for:

(1) failure to comply with any applicable provision of the Texas Health and Safety Code (HSC), including Chapter 243;

(2) failure to comply with any provision of this chapter or any other applicable laws;

(3) the ambulatory surgical center (ASC), or any of its employees, commits an act which causes actual harm or risk of harm to the health or safety of a patient;

(4) the ASC, or any of its employees, materially alters any license issued by HHSC;

(5) failure to comply with minimum standards for licensure;

(6) failure to provide a complete license application;

(7) failure to comply with an order of the HHSC executive commissioner or another enforcement procedure under the Act;

(8) a history of failure to comply with the applicable rules relating to patient environment, health, safety, and rights;

(9) the ASC aiding, committing, abetting, or permitting the commission of an illegal act;

(10) the ASC, or any of its employees, committing fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to HHSC or required to be maintained by the ASC pursuant to the Act and the provisions of this chapter;

(11) failure to timely pay an assessed administrative penalty as required by HHSC;

(12) failure to submit an acceptable plan of correction for cited deficiencies within the timeframe required by HHSC;

(13) failure to timely implement plans of correction to deficiencies cited by HHSC within the dates designated in the plan of correction;

(14) failure to comply with applicable requirements within a designated probation period; or

(15) the ASC terminating the ASC's Medicare provider agreement if the ASC is certified under Title XVIII of the Social Security Act, 42 United States Code (USC), §1395 et seq.

(c) HHSC has jurisdiction to enforce violations of the Act and this chapter. HHSC may deny a license if the applicant:

(1) fails to provide timely and sufficient information required by HHSC that is directly related to the license application; or

(2) has had the following actions taken against the applicant within the two-year period preceding the license application:

(A) decertification or cancellation of its contract under the Medicare or Medicaid program in any state;

(B) federal Medicare or state Medicaid sanctions or penalties;

(C) unsatisfied federal or state tax liens;

(D) unsatisfied final judgments;

(E) eviction involving any property or space used as an ASC in any state;

(F) unresolved federal Medicare or state Medicaid audit exceptions;

(G) denial, suspension, or revocation of an ASC license, a hospital license, a private psychiatric hospital license, or a license for any health care facility in any state; or

(H) a court injunction prohibiting ownership or operation of a facility.

(d) HHSC may deny a person or entity a license or suspend or revoke an existing license on the grounds that the person or entity has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the ownership or operation of an ASC.

(1) In determining whether a criminal conviction directly relates, HHSC shall apply the requirements and consider the provisions of Texas Occupations Code Chapter 53.

(2) The following felonies and misdemeanors directly relate to the duties and responsibilities of the ownership or operation of an ASC because these criminal offenses indicate an ability or a tendency for the person to be unable to own or operate an ASC:

(A) a misdemeanor violation of the Act;

(B) a misdemeanor or felony involving moral turpitude;

(C) a misdemeanor or felony relating to deceptive business practices;

(D) a misdemeanor or felony of practicing any health-related profession without a required license;

(E) a misdemeanor or felony under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(F) a misdemeanor or felony under Texas Penal Code (TPC) Title 5, involving a patient, resident, or a client of any health care facility, a home and community support services agency, or a health care professional;

(G) a misdemeanor or felony under the TPC:

(i) Title 4;

(ii) Title 5;

(iii) Title 7;

(iv) Title 8;

(v) Title 9;

(vi) Title 10; or

(vii) Title 11.

(H) Offenses listed in paragraph (2) of this subsection are not exclusive in that HHSC may consider similar criminal convictions from other state, federal, foreign or military jurisdictions that indicate an inability or tendency for the person or entity to be unable to own or operate an ASC.

(3) HHSC shall revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(e) If HHSC proposes to deny, suspend, or revoke a license, or impose an administrative penalty, HHSC shall send a notice of the proposed action by certified mail, return receipt requested, at the address shown in the current records of HHSC or HHSC may personally deliver the notice. The notice to deny, suspend, or revoke a license, or impose an administrative penalty, shall state the alleged facts or conduct to warrant the proposed action, provide an opportunity to demonstrate or achieve compliance, and shall state that the applicant or licensee has an opportunity for a hearing before taking the action.

(f) Within 20 calendar days after receipt of the notice described in subsection (e) of this section, the applicant or licensee shall notify HHSC, in writing, of acceptance of HHSC's determination or request a hearing.

(g) A request for a hearing by the applicant or licensee shall be in writing and submitted to HHSC within 20 calendar days after receipt of the notice described in subsection (e) of this section. Receipt of the notice is presumed to occur on the third day after the date HHSC mails the notice to the last known address of the applicant or licensee.

(1) A hearing shall be conducted pursuant to Texas Government Code Chapter 2001 and Texas Administrative Code Title 1 Chapter 357, Subchapter I (relating to Hearings Conducted Under the Administrative Procedure Act).

(2) If an applicant or licensee does not request a hearing in writing within 20 calendar days after receiving the notice of the proposed action described in subsection (e) of this section, the applicant or licensee is deemed to have waived the opportunity for a hearing and HHSC shall take the proposed action.

(h) If HHSC finds that a violation of the standards or licensing requirements prescribed by the Act creates an immediate threat to the health and safety of patients of an ASC, HHSC may petition the district court for a temporary restraining order to restrain continuing violations.

(i) If a person violates the licensing requirements or the standards prescribed by the Act, HHSC may petition the district court for an injunction to prohibit the person from continuing the violation or to restrain or prevent the establishment or operation of an ASC without a license issued under the Act.

(j) HHSC may issue an emergency order to suspend a license issued under this chapter, if HHSC has reasonable cause to believe that the conduct of a licensee creates an immediate danger to public health and safety.

(1) An emergency suspension is effective immediately without a hearing on notice to the licensee.

(2) On written request of the licensee to HHSC for a hearing, HHSC refers the matter to the State Office of Administrative Hearings (SOAH). An administrative law judge of the office conducts a hearing not earlier than the 10th day or later than the 30th day after the date the hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and any appeal are governed by HHSC's rules for a contested case hearing and Texas Government Code Chapter 2001.

(k) In lieu of denying, suspending or revoking the license, HHSC may place the ASC on probation for a period of not less than 30 days, if HHSC finds the ASC is in repeated non-compliance with this chapter or the Act, and the ASC's noncompliance does not endanger the public's health and safety.

(1) HHSC shall provide notice of the probation to the ASC not later than the 10th day before the date the probation begins. The notice includes the items of noncompliance that resulted in placing the ASC on probation and shall designate the period of the probation.

(2) During the probationary period, the ASC shall correct the items of noncompliance and report the corrections to HHSC for approval.

(3) HHSC may verify the corrective actions through an on-site inspection.

(l) HHSC may impose an administrative penalty on a person licensed under this chapter who violates the Act, this chapter, or an order adopted under this chapter.

(1) A penalty collected under this section shall be deposited in the state treasury in the general revenue fund.

(2) A proceeding to impose an administrative penalty is considered a contested case hearing under Texas Government Code Chapter 2001.

(3) The amount of the penalty may not exceed $1,000 for each violation, and each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this paragraph may not exceed $5,000.

(4) In determining the amount of an administrative penalty assessed under this section, HHSC shall consider:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(B) the threat to health or safety caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter a future violation;

(E) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(F) any other matter that justice may require.

(5) If HHSC initially determines that a violation occurred, HHSC shall give written notice of the report by certified mail to the person alleged to have committed the violation following the exit conference date. The notice includes:

(A) a brief summary of the alleged violation;

(B) a statement of the amount of the recommended administrative penalty; and

(C) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(6) Within 20 calendar days after the date the person receives the notice under paragraph (5) of this subsection, the person in writing may:

(A) accept the determination and recommended administrative penalty of HHSC; or

(B) make a request for a hearing on the occurrence of the violation, the amount of the administrative penalty, or both.

(7) If the person accepts the determination and recommended administrative penalty or if the person fails to respond to the notice, the HHSC executive commissioner or the executive commissioner's designee by order approves the determination and imposes the recommended penalty.

(8) If the person requests a hearing under paragraph (6)(B) of this subsection, the HHSC executive commissioner refers the matter to SOAH. The hearing shall be conducted in accordance with Texas Government Code Chapter 2001, and all applicable SOAH and HHSC rules.

(9) Based on the proposal for the decision made by the administrative law judge under paragraph (8) of this subsection, the HHSC executive commissioner by order may find that a violation occurred or a violation did not occur.

(10) The HHSC executive commissioner or the executive commissioner's designee sends notice of the executive commissioner's order under paragraph (9) of this subsection to the person alleged to have committed the violation in accordance with Texas Government Code Chapter 2001. The notice shall include:

(A) a statement of the right of the person to judicial review of the order;

(B) separate statements of the findings of fact and conclusions of law; and

(C) the amount of any penalty assessed.

(11) Within 30 calendar days after the date an order of the HHSC executive commissioner under paragraph (9) of this subsection that imposes an administrative penalty becomes final, the person shall:

(A) pay the penalty; or

(B) appeal the penalty by filing a petition for judicial review of the executive commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

(12) Within the 30-day period prescribed by paragraph (11) of this subsection, a person who files a petition for judicial review may:

(A) stay enforcement of the penalty by:

(i) paying the penalty to the court for placement in an escrow account; or

(ii) giving the court a supersedeas bond that is approved by the court for the amount of the penalty, and that is effective until all judicial review of the HHSC executive commissioner's order is final; or

(B) request the court to stay enforcement of the penalty by:

(i) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(ii) sending a copy of the affidavit to the HHSC executive commissioner by certified mail.

(C) If the HHSC executive commissioner receives a copy of an affidavit under subparagraph (B) of this paragraph, the executive commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. In accordance with HSC §243.016(c), the court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(13) If the person does not pay the penalty and the enforcement of the penalty is not stayed, HHSC may refer the matter to the attorney general for collection of the penalty. As provided by HSC §243.016(d), the attorney general may sue to collect the penalty.

(14) A decision by the court is governed by HSC §243.016(e) and (f), and provides the following.

(A) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(B) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

(15) The remittance of penalty and interest is governed by HSC §243.016(g) and provides the following.

(A) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

(B) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(C) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(16) The release of supersedeas bond is governed by HSC §243.016(h) and provides the following.

(A) If the person gave a supersedeas bond and the court does not uphold the penalty, the court shall order, when the court's judgment becomes final, the release of the bond.

(B) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

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

Filed with the Office of the Secretary of State on April 29, 2024.

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Karen Ray
General Counsel
Department of State Health Services
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For further information, please call: (512) 834-4591

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 506. SPECIAL CARE FACILITIES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §506.61, concerning Inspection and Investigation Procedures; and §506.62, concerning Complaint Against a Texas Department of Health Representative; new §§506.61, concerning Integrity of Inspections and Investigations; 506.62, concerning Inspections; 506.63, concerning Complaint Investigations; 506.64, concerning Notice; 506.65, concerning Professional Conduct; and 506.66, concerning Complaint Against an HHSC Representative; and amendments to §506.71, concerning License Denial, Suspension, Revocation and Probation; and §506.73, concerning Administrative Penalties.

BACKGROUND AND PURPOSE

The purpose of the proposal is to update the inspection, complaint investigation, and enforcement procedures for special care facilities. These updates are necessary to hold facilities accountable during the inspection and investigation processes and ensure facilities provide necessary documentation in a timely manner to HHSC representatives. The proposal revises enforcement procedures to ensure accuracy with current practices and conform to statute. These updates also ensure consistent practices across HHSC Health Care Regulation rulesets and correct outdated language and contact information, and reflect the transition of regulatory authority for special care facilities from the Department of State Health Services (DSHS) to HHSC.

A previous version of these repeals, new sections, and amendments was proposed by HHSC in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4093) and expired without being adopted. This version of the proposal considers comments HHSC received during the previous informal and public comment periods.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §506.61, Inspection and Investigation Procedures, deletes the rule as it is no longer necessary. The content of the rule has been added to proposed new §§506.62 - 506.64.

Proposed new §506.61, Integrity of Inspections and Investigations, places limits on a facility's authority to record HHSC interviews and internal discussions.

The proposed repeal of §506.62, Complaint Against a Texas Department of Health Representative, deletes the rule as it is no longer necessary. The content of the rule has been added to proposed new §506.66.

Proposed new §506.62, Inspections, makes necessary updates to special care facility inspection requirements.

Proposed new §506.63, Complaint Investigations, makes necessary updates to special care facility complaint investigation requirements.

Proposed new §506.64, Notice, informs a facility of the required timeframes for responding to a written Statement of Deficiencies by returning a written Plan of Correction, together with any additional evidence of compliance.

Proposed new §506.65, Professional Conduct, informs providers that HHSC reports to the appropriate licensing authorities any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

Proposed new §506.66, Complaint Against an HHSC Representative, informs a facility about registering a complaint against an HHSC inspector or investigator.

The proposed amendment to §506.71, License Denial, Suspension, Revocation and Probation, creates consistency between this ruleset for a special care facility and other HHSC facility types regarding enforcement procedures and makes necessary corrections and updates to this section to reflect current practices and conform with statute.

The proposed amendment to §506.73, Administrative Penalties, makes necessary updates to reflect the transition of responsibility for special care facilities from DSHS to HHSC.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

(5) the proposed rules will create new regulation;

(6) the proposed rules will expand and repeal existing regulations;

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

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; and do not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be greater clarity, consistency, and accountability in the inspection and investigation of special care facilities. The public and the patients in these facilities will benefit from a more robust system for the investigation of complaints, especially those related to patient safety.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not impose any additional costs or fees on persons required to comply with the rules.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to the Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R101" in the subject line.

SUBCHAPTER E. INSPECTIONS AND INVESTIGATIONS

26 TAC §506.61, §506.62

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code § 248.026, which requires HHSC to adopt rules that establish minimum standards for special care facilities.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 248.

§506.61. Inspection and Investigation Procedures.

§506.62. Complaint Against a Texas Department of Health Representative.

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

Filed with the Office of the Secretary of State on April 29, 2024.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 834-4591

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26 TAC §§506.61 - 506.66

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code § 248.026, which requires HHSC to adopt rules that establish minimum standards for special care facilities.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 248.

§506.61. Integrity of Inspections and Investigations.

(a) In order to preserve the integrity of the Texas Health and Human Services Commission's (HHSC's) inspection and investigation process, a facility:

(1) may not record, listen to, or eavesdrop on any HHSC interview with facility staff or residents that the facility staff knows HHSC intends to keep confidential as evidenced by HHSC taking reasonable measures to prevent from being overheard; and

(2) may not record, listen to, or eavesdrop on any HHSC internal discussions outside the presence of facility staff when HHSC has requested a private room or office or distanced themselves from facility staff and the facility obtains HHSC's written approval before beginning to record or listen to the discussion.

(b) A facility shall inform HHSC when security cameras or other existing recording devices in the facility are in operation during any internal discussion by or among HHSC staff.

(c) When HHSC by words or actions permits facility staff to be present, an interview or conversation for which facility staff are present does not constitute a violation of this rule.

(d) This section does not prohibit an individual from recording an HHSC interview with the individual.

§506.62. Inspections.

(a) The Texas Health and Human Services Commission (HHSC) may conduct an unannounced, on-site inspection of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate compliance with or prevent a violation of:

(1) any applicable statute or rule;

(2) a facility's plan of correction;

(3) an order or special order of the HHSC executive commissioner or the executive commissioner's designee;

(4) a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(b) An applicant or licensee, by applying for or holding a license, consents to entry and inspection of any of its facilities by HHSC.

(c) HHSC inspections to evaluate a facility's compliance may include:

(1) initial, change of ownership, or relocation inspections for the issuance of a new license;

(2) inspections related to changes in status, such as new construction or changes in services, designs, or bed numbers;

(3) routine inspections, which may be conducted without notice and at HHSC's discretion, or prior to renewal;

(4) follow-up on-site inspections, conducted to evaluate implementation of a plan of correction for previously cited deficiencies;

(5) inspections to determine if an unlicensed facility is offering or providing, or purporting to offer or provide treatment; and

(6) entry in conjunction with any other federal, state, or local agency's entry.

(d) A facility shall cooperate with any HHSC inspection and shall permit HHSC to examine the facility's grounds, buildings, books, records, and other documents and information maintained by or on behalf of the facility, unless prohibited by law.

(e) A facility shall permit HHSC access to interview members of the governing body, personnel, and residents, including the opportunity to request a written statement.

(f) A facility shall permit HHSC to inspect and copy any requested information, unless prohibited by law. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(g) HHSC shall maintain the confidentiality of facility records as applicable under state and federal law.

(h) Upon entry, HHSC holds an entrance conference with the facility's designated representative to explain the nature, scope, and estimated duration of the inspection.

(i) During the inspection, the HHSC representative gives the facility representative an opportunity to submit information and evidence relevant to matters of compliance being evaluated.

(j) When an inspection is complete, the HHSC representative holds an exit conference with the facility representative to inform the facility representative of any preliminary findings of the inspection, including possible health and safety concerns. The facility may provide any final documentation regarding compliance during the exit conference.

§506.63. Complaint Investigations.

(a) A facility shall provide each resident and applicable legally authorized representative at the time of admission with a written statement identifying the Texas Health and Human Services Commission (HHSC) as the agency responsible for investigating complaints against the facility.

(1) The statement shall inform persons that they may direct a complaint to HHSC Complaint and Incident Intake (CII) and include current CII contact information, as specified by HHSC.

(2) The facility shall prominently and conspicuously post this statement in resident common areas and in visitor's areas and waiting rooms so that it is readily visible to residents, employees, and visitors. The information shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) HHSC evaluates all complaints. A complaint must be submitted using HHSC's current CII contact information for that purpose, as described in subsection (a) of this section.

(c) HHSC documents, evaluates, and prioritizes complaints directed to HHSC CII based on the seriousness of the alleged violation and the level of risk to residents, personnel, and the public.

(1) Allegations determined to be within HHSC's regulatory jurisdiction relating to health care facilities may be investigated under this chapter.

(2) HHSC may refer complaints outside HHSC's jurisdiction to an appropriate agency, as applicable.

(d) HHSC shall conduct investigations to evaluate a facility's compliance following a complaint of abuse, neglect, or exploitation; or a complaint related to the health and safety of residents.

(e) HHSC may conduct an unannounced, on-site investigation of a facility at any reasonable time, including when treatment services are provided, to inspect or investigate:

(1) a facility's compliance with any applicable statute or rule;

(2) a facility's plan of correction;

(3) a facility's compliance with an order of the executive commissioner or the executive commissioner's designee;

(4) a facility's compliance with a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(f) An applicant or licensee, by applying for or holding a license, consents to entry and investigation of any of its facilities by HHSC.

(g) A facility shall cooperate with any HHSC investigation and shall permit HHSC to examine the facility's grounds, buildings, books, records, and other documents and information maintained by, or on behalf of, the facility, unless prohibited by law.

(h) A facility shall permit HHSC access to interview members of the governing body, personnel, and residents, including the opportunity to request a written statement.

(i) A facility shall permit HHSC to inspect and copy any requested information, unless prohibited by law. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(j) HHSC shall maintain the confidentiality of facility records as applicable under state and federal law.

(k) Upon entry, the HHSC representative holds an entrance conference with the facility's designated representative to explain the nature, scope, and estimated duration of the investigation.

(l) The HHSC representative holds an exit conference with the facility representative to inform the facility representative of any preliminary findings of the investigation. The facility may provide any final documentation regarding compliance during the exit conference.

(m) Once an investigation is complete, HHSC reviews the evidence from the investigation to evaluate whether there is a preponderance of evidence supporting the allegations contained in the complaint.

§506.64. Notice.

(a) A facility is deemed to have received any Texas Health and Human Services Commission (HHSC) correspondence on the date of receipt, or three business days after mailing, whichever is earlier.

(b) When HHSC finds deficiencies:

(1) HHSC provides the facility with a written Statement of Deficiencies (SOD) within 10 business days after the exit conference via U.S. Postal Service or electronic mail.

(2) Within 10 calendar days after the facility's receipt of the SOD, the facility shall return to HHSC a written Plan of Correction (POC) that addresses each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(A) HHSC determines if a POC and proposed timeframes are acceptable, and, if accepted, notifies the facility in writing.

(B) If HHSC does not accept the POC, HHSC notifies the facility in writing and requests the facility submit a modified POC and any additional evidence of compliance no later than 10 business days after HHSC notifies the facility in writing.

(C) The facility shall correct the identified deficiencies and submit to HHSC evidence verifying implementation of corrective action within the timeframes set forth in the POC, or as otherwise specified by HHSC.

(3) Regardless of a facility's compliance with this subsection or HHSC's acceptance of a facility's POC, HHSC may, at any time, propose to take enforcement action as appropriate under this chapter.

§506.65. Professional Conduct.

In addition to any enforcement action under this chapter, the Texas Health and Human Services Commission reports, in writing, to the appropriate licensing board any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

§506.66. Complaint Against an HHSC Representative.

A facility may register a complaint against a Texas Health and Human Services Commission (HHSC) representative who conducts an inspection or investigation under this subchapter by following the procedure listed on the HHSC website.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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SUBCHAPTER F. ENFORCEMENT

26 TAC §506.71, §506.73

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code § 248.026, which requires HHSC to adopt rules that establish minimum standards for special care facilities.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 248.

§506.71. License Denial, Suspension, Revocation and Probation.

(a) Enforcement is a process by which a sanction is proposed, and if warranted, imposed on an applicant or licensee regulated by the Texas Health and Human Services Commission (HHSC) for failure to comply with applicable statutes, rules, and orders.[~~The department may deny, suspend, suspend on an emergency basis, or revoke a license if the applicant or facility fails to comply with any provision of the Act or this chapter.~~]

(b) Denial, suspension or revocation of a license or imposition of an administrative penalty. HHSC has jurisdiction to enforce violations of Health and Safety Code (HSC) Chapter 248 (relating to Special Care Facilities) and this chapter. HHSC may deny, suspend, or revoke a license or impose an administrative penalty for:

(1) failure to comply with any applicable provision of the HSC, including Chapter 248;

(2) failure to comply with any provision of this chapter or any other applicable laws;

(3) the facility, or any of its employees, committing an act which causes actual harm or risk of harm to the health or safety of a resident;

(4) the facility, or any of its employees, materially altering any license issued by HHSC;

(5) failure to comply with minimum standards for licensure;

(6) failure to provide a complete license application;

(7) failure to comply with an order of the HHSC executive commissioner or another enforcement procedure under HSC Chapter 248;

(8) a history of failure to comply with the applicable rules relating to resident environment, health, safety, and rights;

(9) the facility aiding, committing, abetting, or permitting the commission of an illegal act;

(10) the facility, or any of its employees, committing fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to HHSC or required to be maintained by the facility pursuant to HSC Chapter 248 and the provisions of this chapter;

(11) failure to timely pay an assessed administrative penalty as required by HHSC;

(12) failure to submit an acceptable plan of correction for cited deficiencies within the timeframe required by HHSC;

(13) failure to timely implement plans of corrections to deficiencies cited by HHSC within the dates designated in the plan of correction; or

(14) failure to comply with applicable requirements within a designated probation period.

[(b) The department may take action under subsection (a) of this section for fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to the department or required to be maintained by the facility pursuant to the provisions of this chapter.]

(c) HHSC [The department] may deny a person or entity a license or suspend or revoke an existing [valid license, or disqualify a person from receiving a] license on the grounds that the person or entity has been convicted [because of a person's conviction] of a felony or misdemeanor that [if the crime] directly relates to the duties and responsibilities of the ownership or operation of a facility.

(1) In determining whether a criminal conviction directly relates, HHSC [the department] shall apply the requirements and consider the provisions of Texas Occupations Code Chapter 53. [:]

[(A) the nature and seriousness of the crime;]

[(B) the relationship of the crime to the purposes for requiring a license to engage in the occupation;]

[(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and]

[(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.]

[(2) In addition to the factors that may be considered under paragraph (1) of this subsection, the department, in determining the present fitness of a person who has been convicted of a crime, shall consider the provisions of Texas Occupations Code, §53.022 and §53.023 (relating to Ineligibility for License).]

(2) [(3)] The following felonies and misdemeanors directly relate to the duties and responsibilities of the ownership or operation of a health care facility because these criminal offenses indicate an ability or a tendency for the person to be unable to own or operate a facility:

(A) a misdemeanor violation of HSC Chapter 248 [the Act];

(B) a misdemeanor or felony [an offense] involving moral turpitude;

(C) a misdemeanor or felony [an offense] relating to deceptive business practice;

(D) a misdemeanor or felony [an offense] of practicing any health-related profession without a required license;

(E) a misdemeanor or felony [an offense] under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(F) a misdemeanor or felony [an offense] under [Title 5 of the] Texas Penal Code (TPC) Title 5, involving a patient, resident, or client of any [a] health care facility, [or] a home and community support services agency, or a health care professional; [or]

(G) a misdemeanor or felony [an offense] under TPC [various titles of the Texas Penal Code]:

(i) Title 4;

(ii) [(i)] Title 5 [concerning offenses against the person];

(iii) [(ii)] Title 7 [concerning offenses against property];

(iv) Title 8;

(v) [(iii)] Title 9 [concerning offenses against public order and decency];

(vi) [(iv)] Title 10 [concerning offenses against public health, safety, and morals]; or

(vii) Title 11; or

[(v) Title 4 concerning offenses of attempting or conspiring to commit any of the offenses in this subsection; or]

(H) Offenses listed in paragraph (2) of this subsection are not exclusive in that HHSC may consider similar criminal convictions from other state, federal, foreign or military jurisdictions that [other misdemeanors or felonies which] indicate an inability or tendency for the person to be unable to own or operate a facility[if action by the department will promote the intent of the Act, this chapter or Texas Occupations Code, §53.022 and §53.023].

(d) HHSC shall revoke a license on the [Upon a] licensee's imprisonment following a felony conviction, felony community supervision [probation] revocation, revocation of parole, or revocation of mandatory supervision[, his license shall be revoked].

(e) If HHSC [the department] proposes to deny, suspend, or revoke a license, or impose an administrative penalty, HHSC [the director] shall send a notice of the proposed action by certified mail, return receipt requested, at the address shown in the current records of HHSC, or HHSC may personally deliver the notice. The notice to deny, suspend, or revoke a license, or impose an administrative penalty, shall state the alleged facts or conduct to warrant the proposed action, provide an opportunity to demonstrate or achieve compliance, and shall state that the applicant or license holder has an opportunity for a hearing before taking the action [notify the applicant or the facility by mail of the reasons for the proposed action and offer the applicant or facility an opportunity for a hearing. The applicant or facility must request a hearing within 30 calendar days of receipt of the notice. The request must be in writing and submitted to the Health Facility Licensing and Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. A hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001,

and the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health). If the applicant or facility does not request a hearing, in writing, within 30 calendar days of receipt of the notice or does not appear at a scheduled hearing, the applicant or facility is deemed to have waived the opportunity for a hearing and the proposed action shall be taken. Receipt of the notice is presumed to occur on the tenth calendar day after the notice is mailed to the last address known to the department unless another date is reflected on a United States Postal Service return receipt].

(f) Within 20 calendar days after receipt of the notice, the applicant or licensee may notify HHSC, in writing, of acceptance of HHSC's determination or request a hearing.

(g) A request for a hearing by the applicant or licensee shall be in writing and submitted to HHSC within 20 calendar days after receipt of the notice. Receipt of the notice is presumed to occur on the third day after the date HHSC mails the notice to the last known address of the applicant or licensee.

(1) A hearing shall be conducted pursuant to Texas Government Code Chapter 2001 and Texas Administrative Code Title 1 Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).

(2) If an applicant or licensee does not request a hearing in writing within 20 calendar days after receiving the notice of the proposed action described in subsection (e) of this section, the applicant or licensee is deemed to have waived the opportunity for a hearing and HHSC shall take the proposed action.

(h) [(f)] HHSC [The department] may issue an emergency order to suspend [or revoke] a license [to be] effective immediately when HHSC [the department] has reasonable cause to believe that the conduct of a license holder creates an immediate danger to public [the] health and safety [of persons are threatened]. HHSC [The department] shall notify the facility of the emergency action by mail or personal delivery of the notice. On written request of [If requested by] the license holder to HHSC for [,the department shall conduct] a hearing, HHSC refers the matter to the State Office of Administrative Hearings [which shall be not earlier than ten calendar days from the effective date of the suspension or revocation]. [The effective date of the emergency action shall be stated in the notice. The hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, and the department's formal hearing procedures in Chapter 1 of this title (relating to the Texas Board of Health).]

[(g) If a person violates a requirement of the Act or this chapter, the department may petition the district court to restrain the person from continuing the violation.]

(i) [(h)] In lieu of denying, suspending, or revoking the license, HHSC [the department] may place [schedule] the facility on [for a] probation for a period of not less than 30 days, if HHSC finds that the facility is [found] in repeated non-compliance with this chapter or HSC Chapter 248, and the facility's noncompliance does not endanger the public's health and safety [of the public].

§506.73. Administrative Penalties.

(a) Imposition of penalty. The Texas Health and Human Services Commission (HHSC) [department] may impose an administrative penalty on a person licensed under this chapter who violates the Act, this chapter, or an order adopted under this chapter.

(b) Deposit of penalty. A penalty collected under this section shall be deposited in the state treasury in the general revenue fund.

(c) Contested case. A proceeding to impose the penalty is considered to be a contested case under Texas Government Code [,] Chapter 2001.

(d) Amount of penalty.

(1) The amount of the penalty may not exceed $1,000 for each violation, except for violations of §506.31(b)(6) of this chapter (relating to General Functions) [§125.31(b)(6) of this title (pertaining to General Functions)], which are limited to $500. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The total amount of the penalty assessed for a violation continuing or occurring on separate days under this paragraph may not exceed $5,000.

(2) In determining the amount of an administrative penalty assessed under this section, HHSC [the department] shall consider:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(B) the threat to health or safety caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter a future violation;

(E) whether the violator demonstrated good faith, including when applicable whether the violator made good faith efforts to correct the violation; and

(F) any other matter that justice may require.

(e) Report and notice of violation and penalty.

(1) If HHSC [the department] initially determines that a violation occurred, HHSC sends [the department will give] written notice of the report by certified mail to the person alleged to have committed the violation following the exit conference date.

(2) The notice must include:

(A) a brief summary of the alleged violation;

(B) a statement of the amount of the recommended penalty based on the factors listed in subsection (d)(2) of this section; and

(C) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(f) Penalty to be paid or hearing requested.

(1) Within 20 calendar days after the date the person receives the notice sent under subsection (e) of this section, the person in writing may:

(A) accept HHSC's [the] determination and recommended penalty [of the department]; or

(B) [make a] request [for] a hearing on the occurrence of the violation, the amount of the penalty, or both.

(2) If the person accepts the determination and recommended penalty or if the person fails to respond to the notice, the HHSC executive commissioner [of public health commissioner)] or the commissioner's designee by order shall approve the determination and impose the recommended penalty.

(g) Hearing.

(1) If the person requests a hearing, the HHSC executive commissioner or the commissioner's designee shall refer the matter to the State Office of Administrative Hearings (SOAH). The hearing

shall be conducted in accordance with Texas Government Code Chapter 2001 and all applicable SOAH and HHSC rules.

(2) As mandated by Health and Safety Code (HSC) [~~,~~] §248.105(a), [~~the~~] SOAH shall promptly set a hearing date and give written notice of the time and place of the hearing to the person.

(A) An administrative law judge of the SOAH shall conduct the hearing.

(B) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the HHSC executive commissioner a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(h) Decision by HHSC executive commissioner.

(1) Based on the findings of fact, conclusions of law, and proposal for a decision made by the administrative law judge under subsection (g)(2) of this section, the HHSC executive commissioner or the commissioner's designee by order may find that a violation has occurred and may impose a penalty or may find that no violation has occurred.

(2) The HHSC executive commissioner or the executive commissioner's designee shall give notice of the executive commissioner's order under paragraph (1) of this subsection to the person alleged to have committed the violation in accordance with Texas Government Code [~~,~~] Chapter 2001. The notice must include:

(A) a statement of the right of the person to judicial review of the order;

(B) separate statements of the findings of fact and conclusions of law; and

(C) the amount of any penalty assessed.

(i) Options following decision. Within 30 calendar days after the date the order of the HHSC executive commissioner under subsection (h) of this section that imposes an administrative penalty becomes final, the person shall:

(1) pay the penalty; or

(2) appeal the penalty by filing a petition for judicial review of the HHSC executive commissioner's order contesting the occurrence of the violation, the amount of the penalty, or both.

(j) Stay of enforcement of penalty.

(1) Within the 30-day period prescribed by subsection (i) of this section, a person who files a petition for judicial review in accordance with subsection (i)(2) of this section may:

(A) stay enforcement of the penalty by:

(i) paying the penalty to the court for placement in an escrow account; or

(ii) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the HHSC executive commissioner's order is final; or

(B) request the court to stay enforcement of the penalty by:

(i) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(ii) sending a copy of the affidavit to the HHSC executive commissioner by certified mail.

(2) If the HHSC executive commissioner receives a copy of an affidavit under paragraph (1)(B) of this subsection, the executive commissioner may file with the court, within five days after the date the copy is received, a contest to the affidavit. In accordance with [~~Health and Safety Code (HSC),~~] §248.108(b), the court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty or to give a supersedeas bond.

(k) Collection of penalty.

(1) If the person does not pay the penalty and the enforcement of the penalty is not stayed, HHSC [~~the department~~] may refer the matter to the attorney general for collection of the penalty.

(2) As provided by HSC [~~,~~] §248.109(b), the attorney general may sue to collect the penalty.

(l) Decision by court. A decision by the court is governed by HSC [~~,~~] §248.110 [~~,~~] and provides the following.

(1) If the court sustains the finding that a violation occurred, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty.

(2) If the court does not sustain the finding that a violation occurred, the court shall order that no penalty is owed.

(m) Remittance of penalty and interest and release of supersedeas bond. The remittance of penalty and interest is governed by HSC [~~,~~] §248.111[~~,~~] and provides the following.

(1) If the person paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, that the appropriate amount plus accrued interest be remitted to the person within 30 days after the date that the judgment of the court becomes final.

(2) The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(3) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(n) Release of bond. The release of supersedeas bond is governed by HSC [~~,~~] §248.112 [~~,~~] and provides the following.

(1) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(2) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

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

Filed with the Office of the Secretary of State on April 29, 2024.

TRD-202401866
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: June 9, 2024
For further information, please call: (512) 834-4591

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CHAPTER 510. PRIVATE PSYCHIATRIC HOSPITALS AND CRISIS STABILIZATION UNITS

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §510.1, concerning Purpose; §510.2, concerning Definitions; §510.21, concerning General; §510.22, concerning Application and Issuance of Initial License; §510.23, concerning Application and Issuance of Renewal License; §510.24, concerning Change of Ownership; §510.25, concerning Time Periods for Processing and Issuing Licenses; §510.26, concerning Fees; §510.41, concerning Facility Functions and Services; §510.42, concerning Discrimination or Retaliation Standards; §510.43, concerning Patient Transfer Policy; §510.46, concerning Abuse and Neglect Issues; §510.61, concerning Patient Transfer Agreements; §510.62, concerning Cooperative Agreements; §510.101, concerning Fire Prevention and Protection; §510.121, concerning Requirements for Buildings in which Existing Licensed Facilities are Located; §510.122, concerning New Construction Requirements; §510.123, concerning Spatial Requirements for New Construction; §510.125, concerning Building with Multiple Occupancies; §510.127, concerning Preparation, Submittal, Review and Approval of Plans; §510.128, concerning Construction, Surveys, and Approval of Project; §510.129, concerning Waiver Requests, and §510.131, concerning Tables.

BACKGROUND AND PURPOSE

The proposal is necessary to correct cross-references throughout 26 TAC Chapter 510 after the rules were administratively transferred from 25 TAC Chapter 134 to 26 TAC Chapter 510. These proposed non-substantive amendments will maintain accurate references to 25 TAC and 26 TAC. The proposed amendments also correct outdated citations and references to programs that no longer exist; update language to reflect current HHSC organization; and increase consistency with statute, HHSC rules, and HHSC rulemaking guidelines.

A previous version of these amended rules was proposed in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4099) and expired without being adopted. This version of the proposal considers comments HHSC received during the previous public comment period. The public will have another 31-day period to comment on this version of these proposed amended rules.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §510.1, Purpose, updates the statutory reference for the rules and replaces the term "Department of Health" with "HHSC" to reflect the transition of regulatory authority to HHSC. The proposed amendment also replaces the term "mental hospitals" with "psychiatric hospitals."

The proposed amendment to §510.2, Definitions, adds definitions for "HHSC" and "plan of correction" to increase consistency across the rule sets for licensed health care facilities.

The definitions for "action plan," "applicant," "community center," "contaminated linen," "crisis stabilization unit," "dentist," "dietitian," "emergency medical condition," "fast-track projects," "governing body," "inpatient services," "licensed vocational nurse," "mental illness," "mobile unit," "owner," "pharmacist," "physician," "podiatrist," "premises," "registered nurse," "transfer," "universal precautions," and "violation" are updated to ensure clarity, update outdated language and punctuation, ensure consistency with statute and across rule sets for licensed health care facilities, and reflect updated entity names.

The definitions for "board," "department," "director," "division," "learning disability," and "mental retardation" are deleted as they refer to defunct entities, inactive programs, or outdated terms no longer used in the chapter.

The proposed amendment deletes the definition for "legally reproduced form" from this section and provides the definition for the term in §510.41(g)(6) and deletes the definition for "oral surgeon" and provides the definition for the term in §510.41(a)(1)(C). The terms only appear in these sections.

The proposed amendment also removes definitions for "medical error," "reportable event," and "root cause analysis" related to the patient safety program, which was created by House Bill (H.B.) 1614, 78th Legislature, Regular Session, 2003, and expired in 2007. The proposed amendment also makes other non-substantive edits in this section to improve clarity and ensure consistency with HHSC rulemaking guidelines, including renumbering the section for the deletion and addition of paragraphs.

The proposed amendment to §510.21, General, updates rule references to reflect the rule chapter transfer from 25 TAC to 26 TAC, replaces the term "department" with "HHSC," updates rule language to ensure consistency with statute, and makes other non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.22, Application and Issuance of Initial License, updates rule references to reflect the rule chapter transfer from 25 TAC to 26 TAC, replaces the term "department" with "HHSC," and makes other non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines. The proposed amendment also updates §510.22(d)(2)(A) regarding "expiration date" by removing outdated language for initial licenses issued prior to 2005 because these licenses have expired, and the language is no longer needed to distinguish between licenses issued prior to 2005. The reference to §510.87, located in §510.22(f), refers to rules proposed elsewhere in this issue of the *Texas Register.* The proposed amendment also updates or clarifies the term "survey" to refer either to a "field survey" or "inspection," as applicable, to ensure consistency with current HHSC terminology and statutory language and replaces "pre-survey conference" with "pre-licensure conference" to reflect current HHSC terminology.

The proposed amendment to §510.23, Application and Issuance of Renewal License, replaces the term "department" with "HHSC" and updates rule references to reflect the rule chapter transfer from 25 TAC to 26 TAC. The proposed amendment updates the annual fire safety inspection report requirements language to provide additional clarity, updates a reference to the Joint Commission to accurately refer to its current name, and removes language in §510.23(b)(1) related to the patient safety program. The reference to §510.82, located in §510.23(b)(2), refers to rules proposed elsewhere in this issue of the *Texas Register.* The proposed amendment also updates §510.23(b)(3)-(5) by removing outdated language for renewal licenses issued prior to 2005 because these licenses have expired, and the language is no longer needed to distinguish between licenses issued prior to 2005. The proposed amendment also updates the term "survey" to "inspection" to ensure consistency with current HHSC terminology and statutory language.

The proposed amendment to §510.24, Change of Ownership, replaces the term "department" with "HHSC", updates rule ref-

erences to reflect the rule chapter transfer from 25 TAC to 26 TAC, and makes other non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines. The proposed amendment also updates or clarifies the term "survey" to refer either to a "field survey" or "inspection," as applicable, to ensure consistency with current HHSC terminology and statutory language.

The proposed amendment to §510.25, Time Periods for Processing and Issuing Licenses, replaces the term "division" with "HHSC," updates rule references to reflect the rule chapter transfer from 25 TAC to 26 TAC, and makes other non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.26, Fees, replaces the term "department" with "HHSC," updates rule references to reflect the rule chapter transfer from 25 TAC to 26 TAC, and clarifies the term "survey" under §510.26(a)(1) and §510.26(d) is a "field survey" to ensure consistency with current HHSC terminology and statutory language. The proposed amendment also updates the licensure period from 12 to 24 months in §510.26(b)(1) to align with the 24-month licensure period indicated in §510.22 and §510.23, and updates licensure fees accordingly. The proposed amendment also makes other non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.41, Facility Functions and Services, updates rule references to reflect the rule chapter transfer from 25 TAC to 26 TAC; updates references to the Code of Federal Regulations (CFR) to accurately reflect the titles of the references to various parts of 42 CFR; and replaces the term "department" with "HHSC". The proposed amendment also adds clarity by indicating the licensing entity for oral surgeons and describes the types of legally reproduced medical records. The proposed amendment also makes other non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.42, Discrimination or Retaliation Standards, makes non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.43, Patient Transfer Policy, updates rule references to reflect the rule chapter transfer from 25 TAC to 26 TAC, replaces the term "department" with "HHSC," removes a reference to a defunct agency, and makes other non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.46, Abuse and Neglect Issues, replaces the term "department" with "HHSC," updates rule references to reflect the rule chapter transfer from 25 TAC to 26 TAC, and makes other non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines. The proposed amendment to §510.46(c)(2) updates the abuse and neglect, or illegal, unethical or unprofessional conduct posting requirements to require the posting include HHSC's current toll-free telephone number for submitting complaints. The proposed amendment also removes outdated information in §510.46(g)(2) requiring HHSC to refer certain complaints to the Texas Department of Mental Health and Mental Retardation because that agency no longer exists and HHSC is responsible for carrying out its duties. The reference to §510.83, located in §510.46(d)(2), refers to rules proposed elsewhere in this issue of the *Texas Register.*

The proposed amendment to §510.61, Patient Transfer Agreements, updates rule references to reflect the rules transfer from 25 TAC to 26 TAC and makes other non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.62, Cooperative Agreements, updates a rule reference to reflect the rules transfer from 25 TAC to 26 TAC, replaces the term "department" with "HHSC," replaces the term "mental hospital" with "psychiatric hospital," and makes other non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment revises the title of Subchapter F to "Fire Prevention and Protection."

The proposed amendment to §510.101, Fire Prevention and Protection, updates outdated information, corrects a typographical error, and updates rule references to reflect the rules transfer from 25 TAC to 26 TAC. Other non-substantive edits are made to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.121, Requirements for Buildings in which Existing Licensed Facilities are Located, replaces the term "department" with "HHSC," removes outdated information, and updates rule references to reflect the rules transfer from 25 TAC to 26 TAC. Other non-substantive edits are made to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.122, New Construction Requirements, makes non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines, removes outdated information, replaces the term "department" with "HHSC," and updates rule references to reflect the rules transfer from 25 TAC to 26 TAC.

The proposed amendment to §510.123, Spatial Requirements for New Construction, updates outdated information, updates rule references to reflect the rules transfer from 25 TAC to 26 TAC, and makes non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.125, Building with Multiple Occupancies, removes outdated information, updates rule references to reflect the rules transfer from 25 TAC to 26 TAC, replaces the term "department" with "HHSC," and makes non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.127, Preparation, Submittal, Review and Approval of Plans, replaces the term "department" with "HHSC," updates rule references to reflect the rules transfer from 25 TAC to 26 TAC, removes outdated information, and updates a reference to the Texas Board of Professional Engineers to correctly refer to the board's current name. Other non-substantive edits are made to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.128, concerning Construction, Surveys, and Approval of Project, updates rule references to reflect the rules transfer from 25 TAC to 26 TAC, replaces the term "department" with "HHSC," removes outdated information, and makes non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.129, Waiver Requests, removes outdated information, updates rule references to reflect

the rules transfer from 25 TAC to 26 TAC, replaces the term "department" with "HHSC," and makes non-substantive edits to improve clarity and ensure consistency with HHSC rulemaking guidelines.

The proposed amendment to §510.131, Tables, updates the figure titles to reflect the rules transfer from 25 TAC to 26 TAC.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does have foreseeable implications relating to costs or revenues of state and local governments.

Applicants for initial and renewal facility licensure must pay a license fee for a two-year license term, as required by the Texas Health and Safety Code (HSC) §577.006(a), rather than the current rule requirement for an applicant to pay for a one-year license term, which will increase costs for the applicant in the first year of the licensing term.

Specifically, an applicant for licensure must pay a licensure fee of $200 per bed with a $6,000 minimum for the two-year license term rather than $100 per bed with a $3,000 minimum. Paying the entire licensing fee up front results in a decrease of revenue to the state in the second year of the licensing term.

HHSC cannot estimate the increase in revenue because HHSC is unable to estimate how many applicants there will be for private psychiatric hospital and crisis stabilization unit (CSU) licenses in any year and the number of beds in these facilities.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will affect fees paid to HHSC;

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

(6) the proposed rules will not expand, limit, or repeal existing rules;

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

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there may be an adverse economic effect on small businesses, micro-businesses, or rural communities as the rules are proposed.

The proposed rules require the approximately 66 private psychiatric hospitals and CSUs to pay a license fee for a two-year license term, as required by HSC §577.006(a), rather than the current rule requirement for an applicant to pay for a one-year license term. HHSC is unable to estimate the number of private psychiatric hospitals meeting the definition of a small business, micro-business, or rural community that will be impacted by the proposed rules as well as the adverse economic effect of the proposal.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, HHSC Deputy Executive Commissioner of Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public will benefit from accurate and up-to-date rule language and statutory and rule references, greater clarity in the rules, and consistency between existing statutes and HHSC rules.

Trey Wood has also determined that for the first five years the rules are in effect, persons who are required to comply with the proposed rules may incur economic costs because the proposed rules require facilities to pay a license fee for a two-year license term, as required by HSC §577.006(a), rather than the current rule requirement for an applicant to pay for a one-year license term.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to the Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule "24R041" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

26 TAC §510.1, §510.2

STATUTORY AUTHORITY

The rule amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

§510.1. Purpose.

(a) The purpose of this chapter is to implement Texas [~~the Private Mental Hospitals and Other Mental Health Facilities licensing Act,~~] Health and Safety Code [~~,~~] Chapter 577, which requires psychiatric [~~mental~~] hospitals and mental health facilities that provide court-ordered mental health services to be licensed by the Texas [~~Department of~~] Health and Human Services Commission.

(b) This chapter provides definitions, and establishes licensing procedures, operational requirements, standards for voluntary agreements, enforcement procedures, fire prevention and safety requirements, and physical plant and construction requirements for private psychiatric hospitals and crisis stabilization units.

(c) Compliance with this chapter does not constitute release from the requirements of other applicable federal, state, or local laws, codes, rules, regulations and ordinances. This chapter must be followed where it exceeds other codes and ordinances.

§510.2. Definitions.

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

(1) Action plan--A written document that includes specific measures to correct identified problems or areas of concern; identifies strategies for implementing system improvements; and includes outcome measures to indicate the effectiveness of system improvements in reducing, controlling, or eliminating identified problem areas.

(2) Adverse event--An event that results in unintended harm to the patient by an act of commission or omission rather than by the underlying disease or condition of the patient.

(3) Applicant--A [~~The~~] person who seeks a private psychiatric hospital license or crisis stabilization unit license from the Texas Health and Human Services Commission (HHSC) and who is legally responsible for the operation of the facility [~~, whether by lease or ownership, who seeks a license from the department~~].

[~~(4) Board--The Texas Board of Health.~~]

(4) [~~(5)~~] Community center--A center established under Texas Health and Safety Code[~~,~~] Chapter 534, Subchapter A.

(5) [~~(6)~~] Contaminated linen--Linen [~~which has been~~] soiled with blood or other potentially infectious materials or linen containing [~~may contain~~] sharps. Other potentially infectious materials means:

(A) [~~the following~~] human body fluids such as [~~:~~] semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, [~~any~~] body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(B) any unfixed tissue or organ (other than intact skin) from a human (living or dead); and

(C) Human Immunodeficiency Virus (HIV)-containing cell or tissue cultures, organ cultures, and HIV or Hepatitis B Virus (HBV) containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

(6) [~~(7)~~] Crisis stabilization unit (CSU)--A mental health facility operated by a community center or other entity designated by the local mental health authority [~~Texas Department of Mental Health and Mental Retardation~~] in accordance with Texas Health and Safety Code [~~,~~] §534.054, that provides treatment to individuals who are the subject of a protective custody order issued in accordance with Texas Health and Safety Code [~~,~~] §574.022.

(7) [~~(8)~~] Dentist--A person licensed to practice dentistry by the Texas State Board of Dental Examiners. This includes a doctor of dental surgery or a doctor of dental medicine.

[~~(9) Department--The Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.~~]

(8) [~~(10)~~] Dietitian--A person who is currently licensed by the Texas Department of Licensing and Regulation [~~State Board of Examiners of Dietitians~~] as a licensed dietitian or provisional licensed dietitian [~~,~~] or who is a registered dietitian with the American Dietetic Association.

[~~(11) Director--The director of the Health Facility Licensing and Compliance Division, Texas Department of Health.~~]

[~~(12) Division--The Health Facility Licensing and Compliance Division, Texas Department of Health.~~]

(9) [~~(13)~~] Emergency medical condition--A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances or symptoms of substance use disorder [~~abuse~~]) such that the absence of immediate medical attention could reasonably be expected to result in one or more [~~all~~] of the following:

(A) placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part; or

(D) with respect to a pregnant woman who is having contractions:

(i) that there is inadequate time to effect a safe transfer to another hospital before delivery; or

(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

(10) [~~(14)~~] Facility--A private psychiatric hospital or a crisis stabilization unit.

(11) [~~(15)~~] Facility administration--Administrative body of a facility headed by an individual who has the authority to represent the facility and who is responsible for the operation of the facility according to the policies and procedures of the facility governing body.

(12) [~~(16)~~] Fast-track project [~~projects~~] --A construction project for [~~in~~] which it is necessary to begin initial phases of construction before later phases of the construction documents are fully completed in order to establish other design conditions or because of time constraints [~~such as mandated deadlines~~].

(13) [~~(17)~~] Governing body--The governing authority of a facility [~~which is~~] responsible for the facility's organization, management, control, and operation, including appointment of the medical staff. This term [~~;~~] includes the owner or partners for facilities owned or operated by an individual or partners.

(14) [~~(18)~~] Governmental unit--A political subdivision of the state, including a hospital district, county, or municipality, and any department, division, board, or other agency of a political subdivision.

(15) HHSC--The Texas Health and Human Services Commission.

(16) [~~(19)~~] Hospital--A private psychiatric hospital.

(17) [~~(20)~~] Inpatient services--Services provided to a patient admitted to a hospital for an intended length of stay of 24 hours or more [~~greater~~].

[~~(21) Learning disability--When a severe discrepancy exists when the individual's assessed intellectual ability is above the mentally retarded range, but where the individual's assessed educational achievement in areas specified is more than one standard deviation below the individual's intellectual ability.~~]

[~~(22) Legally reproduced form--A medical record retained in hard copy, microform (microfilm or microfiche), or other electronic medium.~~]

(18) [~~(23)~~]Licensed vocational nurse--An individual who is currently licensed as a licensed vocational nurse (LVN) by the Texas Board of Nursing [~~Vocational Nurse Examiners~~] in accordance with Texas Occupations Code [~~,~~] Chapter 301 [~~302~~].

(19) [~~(24)~~] Licensee--A person or governmental unit who has been granted a private psychiatric hospital license or crisis stabilization unit license.

[~~(25) Medical error--The failure of a planned action to be completed as intended, the use of a wrong plan to achieve an aim, or the failure of an unplanned action that should have been completed, that results in an adverse event.~~]

(20) [~~(26)~~] Medical staff--Licensed physicians and other licensed practitioners permitted by law and by the facility to provide medical care independently in the facility.

(21) [~~(27)~~] Mental health services--All services concerned with research, prevention, and detection of mental disorders and disabilities and all services necessary to treat, care for, supervise, and rehabilitate persons who have a mental illness.

(22) [~~(28)~~] Mental illness--An illness, disease, or condition, other [~~(other~~] than [~~a sole diagnosis of~~] epilepsy, dementia [~~senility~~], substance use disorder, [~~mental retardation, autism,~~] or intellectual disability [~~pervasive developmental disorder)~~] that:

(A) substantially impairs a person's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs [~~an individual's~~] behavior as demonstrated by recent disturbed behavior.

[~~(29) Mental retardation--Significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.~~]

(23) [~~(30~~] Minor--A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

(24) [~~(31)~~] Mobile unit--Any pre-manufactured structure, trailer, or self-propelled unit equipped with a chassis on wheels and intended to provide shared medical services to the community on a temporary basis. Some of these units are equipped with expanding walls[~~,~~] and designed to be moved on a daily basis.

[~~(32) Oral surgeon--A person licensed by the State Board of Dental Examiners in the specialty of dentistry which includes the diagnosis, surgical and adjunctive treatment of diseases, injuries, and defects involving both the functional and esthetic aspects of the hard and soft tissues of the oral and maxillofacial regions.~~]

(25) [~~(33)~~] Outpatient services--Services provided to patients whose medical needs can be met in less than 24 hours and are provided within the facility.

(26) [~~(34)~~] Owner--One of the following persons who [~~which~~] will hold or does hold a license issued under Texas Health and Safety Code [~~,~~] Chapter 577, in the person's name or the person's assumed name:

(A) a corporation;

(B) a governmental unit;

(C) a limited liability company;

(D) an individual;

(E) a partnership if a partnership name is stated in a written partnership agreement or an assumed name certificate;

(F) all partners in a partnership if a partnership name is not stated in a written partnership agreement or an assumed name certificate; or

(G) all co-owners under any other business arrangement.

(27) [~~(35)~~] Patient--An individual who is receiving mental health services under this chapter.

(28) [~~(36)~~] Person--An individual, firm, partnership, corporation, association, joint stock company, joint venture, or local authority, and includes a receiver, trustee, assignee, or other similar representative of those entities.

(29) [~~(37)~~] Pharmacist--A person who is licensed to practice pharmacy by the Texas State Board of Pharmacy in accordance with Texas Occupations Code[~~,~~] Chapter 558.

(30) [~~(38)~~] Physician--An individual who is:

(A) licensed as a physician by the Texas [~~State Board of~~] Medical Board [~~Examiners~~] in accordance with [~~Chapter 155 of the~~] Texas Occupations Code Chapter 155; or

(B) authorized to perform medical acts under an institutional permit at a Texas postgraduate training program approved by the Accreditation Council on Graduate Medical Education, the American Osteopathic Association, or the Texas [~~State Board of~~] Medical Board [~~Examiners~~].

(31) Plan of correction--A documented and directed response to any compliance issue identified in a report provided to the facility by HHSC staff after a facility inspection or investigation, which is required to state how and when any compliance issues identified in the report will be corrected.

(32) [~~(39)~~] Podiatrist--A podiatrist licensed by the Texas Department of Licensing and Regulation [~~State Board of Podiatry Examiners~~].

(33) [~~(40)~~] Political subdivision--A county, municipality, or hospital district in this state but does not include a department, board, or agency of the state that has statewide authority and responsibility.

(34) [~~(41)~~] Practitioner--A health care professional licensed in the state [~~State~~] of Texas, other than a physician.

(35) [~~(42)~~] Premises--A premises is [~~may be any of the following~~]:

(A) a single building where inpatients receive hospital services; or

(B) multiple buildings where inpatients receive hospital services, provided that the following criteria are met:

(i) all inpatient buildings and inpatient services are subject to the control and direction of the governing body of the hospital;

(ii) all inpatient buildings are within a 30-mile radius of the main address of the licensee;

(iii) there is integration of the organized medical staff of the hospital;

(iv) there is a single chief executive officer who reports directly to the governing body and through whom all administrative authority flows and who exercises control and surveillance over all administrative activities of the hospital;

(v) there is a single chief medical officer who reports directly to the governing body and who is responsible for all medical staff activities of the hospital; and

(vi) each building that is geographically separate from other buildings contains at least one nursing unit for inpatients, unless providing only diagnostic or laboratory services, or a combination thereof, in the building for hospital inpatients.

(36) [~~(43)~~] Private psychiatric hospital--A hospital that provides inpatient mental health services to individuals with a mental illness or with a substance use disorder except that, at all times, a majority of the individuals admitted are individuals with a mental illness. Such services include psychiatric assessment and diagnostic services, physician services, professional nursing services, and monitoring for patient safety provided in a restricted environment.

(37) [~~(44)~~] Registered nurse--An individual who is licensed as a registered nurse by the Texas Board of Nursing [~~Nurse Examiners~~] in accordance with Texas Occupations Code [~~,~~] Chapter 301.

(38) [~~(45)~~] Relocatable unit--Any structure, not on wheels, built to be relocated at any time and provide medical services. These structures vary in size.

~~[(46) Reportable event--A medical error or adverse event or occurrence which the facility is required to report to the department, as set out in §134.47 of this title (relating to Patient Safety Program).]~~

~~[(47) Root cause analysis--An interdisciplinary review process for identifying the basic or contributing causal factors that underlie a variation in performance associated with an adverse event or reportable event. It focuses primarily on systems and processes, includes an analysis of underlying cause and effect, progresses from special causes in clinical processes to common causes in organizational processes, and identifies potential improvements in processes or systems.]~~

(39) [~~(48)~~] Stabilize--With respect to an emergency medical condition, to provide such medical treatment of the condition necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or that the woman has delivered the child and the placenta.

(40) [~~(49)~~] Transfer--The movement (including the discharge) of an individual outside a facility at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the facility, but does not include such a movement of an individual who has been declared dead [~~,~~] or leaves the facility without the permission of any such person.

(41) [~~(50)~~] Transportable unit--Any pre-manufactured structure or trailer, equipped with a chassis on wheels, intended to provide shared medical services to the community on an extended temporary basis. These units are designed to be moved periodically, depending on need.

(42) [~~(51)~~] Universal precautions--Procedures for disinfecting [~~disinfection~~] and sterilizing [~~sterilization of~~] reusable medical devices and [~~the~~] appropriate use of infection control, including hand washing, [~~the~~] use of protective barriers, and [~~the~~] use and disposal of needles and other sharp instruments as those procedures are defined by the Centers for Disease Control and Prevention (CDC) of the United States Department of [~~Public~~] Health and Human Services [~~Service~~]. This term includes standard precautions as defined by CDC which are designed to reduce the risk of transmission of blood borne and other pathogens in facilities.

(43) [~~(52)~~] Violation--Failure to comply with a [~~the~~] licensing statute, [~~a~~] rule or standard, special license provision, or [~~an~~] order issued by HHSC [~~the commissioner of health or the commissioner's designee,~~] adopted or enforced under the licensing statute. Each day a violation continues or occurs is a separate violation for purposes of imposing an administrative [~~a~~] penalty.

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

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Karen Ray
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Health and Human Services Commission
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SUBCHAPTER B. APPLICATION AND ISSUANCE OF A LICENSE

26 TAC §§510.21 - 510.26

STATUTORY AUTHORITY

The rule amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

§510.21. General.

(a) License required.

(1) A facility shall obtain a license prior to admitting patients.

(2) Upon written request, the Texas Health and Human Services Commission (HHSC) [~~department~~] shall furnish a person with an application for a private psychiatric hospital or a crisis stabilization unit license.

(3) An applicant shall submit a [~~The~~] license application [~~shall be submitted~~]in accordance with §510.22 [~~§134.22~~] of this subchapter [~~title~~] (relating to Application and Issuance of Initial Li-

cense). The applicant shall retain copies of all application documents submitted to HHSC [~~the department~~].

(b) Compliance.

(1) A hospital shall comply with Texas [~~the provisions of the~~] Health and Safety Code (HSC)[~~,~~] Chapter 577, this chapter, and the following rules: [~~administered by the Texas Board of Mental Health and Mental Retardation (TDMHMR) during the licensing period.~~]

(A) 25 TAC Chapter 404, Subchapter E [~~of this title~~] (relating to Rights of Persons Receiving Mental Health Services);

(B) 25 TAC Chapter 405, Subchapter E [~~of this title~~] (relating to Electroconvulsive Therapy (ECT));

(C) 25 TAC Chapter 414 [~~405~~], Subchapter I [~~FF of this title~~] (relating to Consent to Treatment with Psychoactive Medication--Mental Health Services [~~Medication~~]);

(D) 25 TAC Chapter 415 [~~405~~], Subchapter F [~~of this title~~] (relating to [~~Voluntary and Involuntary Behavioral~~] Interventions in Mental Health Services [~~Programs~~]); and[~~,~~]

(E) Chapter 568 [~~411, Subchapter J~~] of this title (relating to Standards of Care and Treatment in Psychiatric Hospitals).

(2) A Crisis stabilization unit (CSU) [~~CSU~~] shall comply with [~~the provisions of~~] HSC[~~,~~] Chapter 577, this chapter, Chapter 306 [~~411~~], Subchapter B [~~M~~] of this title (relating to Standards of Care in Crisis Stabilization Units), and paragraph (1)(A)-(D) of this subsection.

(c) Scope of facility license.

(1) A facility license is issued for the premises and person or governmental unit named in the application.

(2) A facility license shall not include outpatient services located apart from the licensed premises.

(3) A facility license shall not include spaces licensed by another licensing agency.

(4) Multiple facilities may share one building.

(A) Each facility shall be licensed separately.

(B) Spaces within the building may not be included under more than one facility license.[~~; and~~]

(C) Each facility in the building shall comply with Subchapter G [~~the requirements~~] of this chapter [§134.125] (relating to Physical Plant and Construction Requirements) [~~Building with Multiple Occupancies)~~].

(5) Multiple hospitals may be licensed under one license number.

(A) Hospitals must comply with the following in order to be licensed under a multiple hospital license:

(i) meet the criteria for multiple buildings in the definition of premises in §510.2(35) [~~§134.2(39)~~] (relating to Definitions); and

(ii) when the multiple site location is a previously licensed hospital, the hospital must meet the architectural requirements contained in Subchapter G [~~§134.121(b)~~] of this chapter [~~title (relating to Requirements for Buildings in which Existing Licensed Facilities are Located)~~] and be approved for occupancy by HHSC's [~~the division's~~] Architectural Review Unit [~~and Engineering Program~~].

(B) HHSC [~~The department~~] will issue a license listing the primary hospital and all multiple location sites [~~site(s)~~] when the hospitals meet the requirements of subparagraph (A) of this paragraph, and the primary hospital has submitted:

(i) a written request to HHSC [~~the department~~] for a multiple location application; and

(ii) a completed application and licensing fee.

(C) When HHSC receives a multiple location application and a change of ownership application [~~are received~~] simultaneously, HHSC [~~the department~~] will process the change of ownership application separately prior to the multiple location addendum.

(d) Display. A facility shall prominently and conspicuously display the license in a public area of the licensed premises that is readily visible to patients, employees, and visitors.

(e) Alteration. A facility license shall not be altered.

(f) Transfer or assignment prohibited. A facility license shall not be transferred or assigned. The facility shall comply with the provisions of §510.24 [§134.24] of this subchapter [~~title~~] (relating to Change of Ownership) in the event of a change in the ownership.

(g) Changes which affect the license.

(1) A facility shall notify HHSC [~~the department~~] in writing prior to the occurrence of any of the following:

(A) addition or deletion of those services indicated on the license application;

(B) changes in designed bed capacity as the phrase is used in §510.26(b)(1)(A) - (C) [~~§134.26(b)(1)(A)-(C)~~] of this subchapter [~~title~~] (relating to Fees);

(C) request to change license classification; and

(D) any construction, renovation, or modification of the facility buildings.

(2) A facility shall notify HHSC [~~the department~~] in writing at the time of the occurrence of any of the following:

(A) cessation of operation of the facility which[~~. The facility~~] shall include in the written notice the location where the medical records will be stored and the identity and telephone number of the custodian of the medical records;

(B) change in certification or accreditation status; and

(C) change in facility name, telephone number, or administrator.

§510.22. Application and Issuance of Initial License.

(a) Application submittal. The applicant shall submit the following documents to the Texas Health and Human Services Commission (HHSC) [~~department~~] no earlier than 60 calendar days prior to the projected opening date of the facility:

(1) an accurate and complete application form;

(2) a copy of the facility's patient transfer policy which is developed in accordance with §510.43 [~~§134.43~~] of this chapter [~~title~~] (relating to Patient Transfer Policy) and is signed by both the chairman and secretary of the governing body attesting to the date the policy was adopted by the governing body and the effective date of the policy;

(3) a copy of the facility's memorandum of transfer form which contains at a minimum the information described in §510.43(d)(10)(B) [~~§134.43(d)(10)(B)~~] of this chapter [~~title~~];

(4) for existing facilities, a copy of a fire safety inspection [~~survey~~] indicating approval by the local fire authority in whose jurisdiction the facility is based that is dated no earlier than one year prior

to the opening date. For new construction, additions, and renovation projects, written approval by the local building department and local fire authority shall be submitted at the time of the final construction field survey by HHSC [~~the department~~];

(5) documentation of accreditation by an accrediting organization approved by the Centers for Medicare & Medicaid Services [~~Joint Commission on Accreditation of Healthcare Organizations~~], if applicable;

(6) the appropriate license fee as required in §510.26 [~~§134.26~~] of this subchapter [~~title~~] (relating to Fees);

(7) if the applicant is a sole proprietor, partnership with individuals as a partner, or a corporation in which an individual has an ownership interest of at least 25 percent [~~25%~~] of the business entity, the names and social security numbers of the individuals; and

(8) a multiple hospital location application form for multiple hospitals to be licensed under a single license number, if applicable.

(b) Additional documentation for new facilities or conversions from non-facility [~~nonfacility~~] buildings. In addition to the document submittal requirements in subsection (a) of this section, an applicant shall complete the following [~~shall be completed~~] prior to the issuance of a license.

(1) The applicant shall submit preliminary [~~Preliminary~~] and final architectural plans and specifications [~~shall be submitted~~] for review and approval by HHSC [~~the department~~] in accordance with Subchapter G [~~§134.127~~] of this chapter [~~title~~] (relating to [~~Preparation, Submittal, Review~~] Physical Plant and Construction Requirements) [~~Approval of Plans~~)].

(2) For new construction, HHSC shall conduct field surveys [~~shall be conducted by the department~~] in accordance with Subchapter G [~~§134.128(b)~~] of this chapter [~~title (relating to Construction, Surveys, and Approval of Project)~~] to determine that the facility was constructed or remodeled in accordance with this chapter.

(3) When an applicant intends to reopen and license a building formerly licensed as a hospital or crisis stabilization unit, HHSC shall conduct an on-site field survey [~~shall be conducted by the department~~] in accordance with Subchapter G [~~§134.128(b)~~] of this chapter [~~title~~] to determine compliance with applicable construction and fire safety requirements.

(4) The applicant shall pay all [~~All~~] plan review and construction field survey fees [~~shall be paid~~] to HHSC [~~the department~~].

(5) The applicant shall obtain a [~~A~~] certificate of occupancy approved by the local fire authority, and issued by the city building inspector, if applicable, [~~shall be obtained~~] and submit a copy [~~submitted~~] to HHSC [~~the department~~].

(6) The applicant shall submit a [~~A~~] complete and accurate Final Construction Approval form signed by facility administration to HHSC [~~shall be submitted to the department~~].

(c) Prelicensure [~~Presurvey~~] conference. The applicant or the applicant's [~~applicants~~] representative shall attend a prelicensure [~~presurvey~~] conference at the office designated by HHSC [~~the department~~]. The purpose of the prelicensure [~~presurvey~~] conference that HHSC[~~, which is conducted by department~~] staff conducts[~~,~~] is to review licensure rules and inspection [~~survey~~] documents and provide consultation before [~~prior to~~] the on-site licensure inspection [~~survey. The department~~]. HHSC may waive the prelicensure [~~presurvey~~] conference requirement.

(d) Issuance of license. When HHSC determines [~~it is determined that~~] the facility has complied with subsections (a)-(c) of this section, HHSC [~~the department~~] shall issue the license to the applicant.

(1) Effective date. The license shall be effective on the date the facility is determined to be compliant [~~in compliance~~] with subsections (a)-(c) of this section. The effective date shall not be before [~~prior to~~] the date of the final construction field survey conducted by HHSC [~~the department~~].

(2) Expiration date. For initial licenses issued:

[~~(A) For initial licenses issued prior to January 1, 2005.~~]

[~~(i) If the effective date of the license is the first day of a month, the license expires on the last day of the 11th month after issuance.~~]

[~~(ii) If the effective date of the license is the second or any subsequent day of a month, the license expires on the last day of the 12th month after issuance.~~]

[~~(B) For initial licenses issued January 1, 2005, or after.~~]

(A) [~~(i)~~] If the effective date of the license is the first day of a month, the license expires on the last day of the 23rd month after issuance.

(B) [~~(ii)~~] If the effective date of the license is the second or any subsequent day of a month, the license expires on the last day of the 24th month after issuance.

(e) Withdrawal of application. If an applicant decides not to continue the application process for a license or renewal of a license, the applicant may withdraw the application [~~may be withdrawn. The department~~] . HHSC shall acknowledge receipt of the request to withdraw.

(f) Denial of a license. Denial of a license shall be governed by §510.87 [~~§134.83~~] of this chapter [~~title~~] (relating to Enforcement).

(g) Inspection [~~Survey~~]. During the initial licensing period, HHSC [~~the department~~] shall conduct an inspection [~~a survey~~] of the facility to ascertain compliance with the provisions of Texas [~~the~~] Health and Safety Code[~~,~~] Chapter 577 and this chapter.

(1) A facility shall request HHSC conduct an on-site inspection [~~survey to be conducted~~] after the facility [~~one inpatient~~] has [~~been~~] admitted and provided services to one inpatient.

(2) A facility shall be providing services to at least one inpatient in the facility at the time of the inspection [~~survey~~].

(3) If a hospital has applied to participate in the federal Medicare program, HHSC [~~the survey~~] may conduct the inspection [~~be conducted~~] in conjunction with the licensing inspection [~~survey~~] to determine compliance with Code of Federal Regulations Title 42 [~~Code of Federal Regulations,~~] Part 482 [~~(relating to Medicare Conditions of Participation for Hospitals)~~].

§510.23. Application and Issuance of Renewal License.

(a) Renewal notice. The Texas Health and Human Services Commission (HHSC) [~~department~~] shall send a renewal notice to a facility at least 60 calendar days before the expiration date of a license.

(1) If the facility has not received the renewal notice from HHSC [~~the department~~] within 45 calendar days before [~~prior to~~] the expiration date, it is the duty of the facility to notify HHSC [~~the department~~] and request a renewal application for a license.

(2) If the facility fails to submit the application and fee within 15 calendar days before [~~prior to~~] the expiration date of the li-

cense, HHSC [the department] shall send by certified mail to the facility a letter advising that unless the license is renewed, the facility must cease operations upon the expiration of the license.

(b) Renewal license. HHSC [The department] shall issue a renewal license to a facility which meets the minimum requirements for a license.

(1) The facility shall submit the following to HHSC before [the department prior to] the expiration date of the license:

(A) a complete and accurate application form;

(B) a copy of a passing fire safety inspection report conducted within the last 12 months and one from the year prior [survey] indicating approval by the local fire authority in whose jurisdiction the facility is based, as HHSC requires annual fire safety inspections for a facility's continued licensure [that is dated no earlier than one year prior to the application date];

(C) the renewal license fee; and

(D) documentation of accreditation by an accrediting organization approved by the Centers for Medicare & Medicaid Services [the Joint Commission on Accreditation of Healthcare Organizations], if applicable. [;]

[(E) an annual events report in accordance with §134.47(b)(1) of this title (relating to Patient Safety Program); and]

[(F) a best practices report in accordance with §134.47(b)(2) of this title.]

(2) HHSC [The department] may conduct an inspection before [a survey prior to] issuing a renewal license in accordance with §510.82 [§134.81] of this chapter [title] (relating to Inspections [Survey and Investigation Procedures]).

(3) Renewal licenses are valid for 24 months [issued prior to January 1, 2005, will be valid for 12 months].

[(4) Renewal licenses issued January 1, 2005, through December 31, 2005, will be valid for either 12 or 24 months, to be determined by the department prior to the time of license renewal.]

[(5) Renewal licenses issued January 1, 2006, or after will be valid for 24 months.]

(c) Notice to cease operation and return license. If a facility fails to submit the complete and accurate application form, documents, and fee by the expiration date of the license, HHSC [the department] shall notify the facility by certified mail that it must cease operation and immediately return the license by certified mail to HHSC [the department]. If the facility wishes to provide services after the expiration date of the license, it shall apply for a license under §510.22 [§134.22] of this subchapter [title] (relating to Application and Issuance of Initial License).

§510.24. Change of Ownership.

(a) Change of ownership defined. A change of ownership occurs when there is a change in the person legally responsible for the operation of the facility, whether by lease or by ownership.

(1) If a corporate licensee amends its articles of incorporation to revise its name and the tax identification number does not change, this subsection does not apply, except that the corporation must notify the Texas Health and Human Services Commission (HHSC) [department] within 10 calendar days after the effective date of the name change.

(2) The sale of stock of a corporate licensee does not cause this subsection to apply.

(b) License application required. The new owner shall submit an application for an initial license to HHSC before [the department prior to] the date of the change of ownership or not later than 10 calendar days following the date of a change of ownership. The application shall be in accordance with §510.22 [§134.22] of this subchapter [title] (relating to the Application and Issuance of Initial License). In addition to the documents required in §510.22 [§134.22] of this subchapter [title], the applicant shall include the effective date of the change of ownership.

(c) Inspections. For a change of ownership, HHSC may waive the [Surveys. The] on-site construction field survey and health inspection [surveys] required by §510.22 [§134.22] of this subchapter [title may be waived by the department].

(d) Issuance of license. When the new owner has complied with the provisions of §510.22 [§134.22] of this subchapter, HHSC [title, the department] shall issue a license which shall be effective the date of the change of ownership.

(e) Expiration of license. The expiration date of the license shall be in accordance with §510.22(d)(2) [§134.22(d)(2)] of this subchapter [title].

(f) License void. The previous owner's license shall be void on the effective date of the new owner's license.

§510.25. Time Periods for Processing and Issuing Licenses.

(a) General.

(1) The receipt date for an application for an initial license or a renewal license is the date the application is received by the Texas Health and Human Services Commission (HHSC) [division].

(2) An application for an initial license is complete when HHSC [the division] has received, reviewed, and found acceptable the information described in §510.22(a) [§134.22(a)] and (b) of this subchapter [title] (relating to Application and Issuance of Initial License).

(3) An application for a renewal license is complete when HHSC [the division] has received, reviewed, and found acceptable the information described in §510.23(b) [§134.23(b)] of this subchapter [title] (relating to Application and Issuance of Renewal License).

(b) Time periods. An application for an initial license or renewal license shall be processed in accordance with the following time periods.

(1) The first time period begins on the date HHSC [the division] receives the application and ends on the date the license is issued, or, if the application is received incomplete, the period ends on the date the facility is issued a written notice that the application is incomplete. The written notice shall describe the specific information that is required before the application is considered complete. The first time period is 20 business [working] days.

(2) The second time period begins on the date HHSC [the division] receives the last item necessary to complete the application and ends on the date the license is issued. The second time period is 20 business [working] days.

(c) Reimbursement of fees.

(1) In the event the application is not processed in the time periods [as] stated in subsection (b) of this section, the applicant has the right to request HHSC [the division to] reimburse in full the fee paid for [in] that [particular] application process. If HHSC [the division] does not agree [that] the established periods have been violated or finds [that] good cause existed for exceeding the established periods, the request shall be denied.

(2) Good cause for exceeding the period established exists [~~is considered to exist~~] if:

(A) the number of applications for licenses to be processed exceeds by 15 percent [~~15%~~] or more the number processed in the same calendar quarter the preceding year;

(B) another public or private entity utilized in the application process caused the delay; or

(C) other conditions existed which gave good cause for exceeding the established periods.

(d) Appeal. If the request for full reimbursement authorized by subsection (c) of this section is denied, the applicant may then appeal to the HHSC Executive Commissioner [~~commissioner of health~~] (commissioner) for a resolution of the dispute. The applicant shall give written notice to the commissioner requesting full reimbursement of all filing fees paid because the application was not processed within the adopted time period. HHSC [~~The division~~] shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner shall make the final decision and provide written notification of the decision to the applicant and HHSC [~~the division~~].

(e) Contested case hearings. The procedures set out in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) [~~§1.21 of this title~~] apply to all hearings requested under this chapter.

§510.26. Fees.

(a) General.

(1) All fees paid to the Texas Health and Human Services Commission (HHSC) [~~department~~] are nonrefundable except for [~~with the exception of~~] fees for field surveys that were not conducted.

(2) All fees shall be paid to HHSC [~~the department~~].

(b) License fees.

(1) The fee for an initial license or a renewal license is $200 [~~$100~~] per bed per 24 [~~12~~] months based upon the designed bed capacity. The total fee may not be less than $6,000 [~~$3,000~~] per 24 [~~12~~] months. The designed bed capacity is determined as follows.

(A) The designed bed capacity is the maximum number of patient beds that can be accommodated in rooms that comply with the requirements for patient room suites in Subchapter G [~~§134.123~~] of this chapter [~~title~~] (relating to Physical Plant and Construction [~~Spatial~~] Requirements [~~for New Construction~~)]).

(B) The maximum designed bed capacity includes beds that comply with the requirements in Subchapter G [~~§134.123~~] of this chapter [~~title~~] even if the beds are unoccupied or the space is used for other purposes such as offices or storage rooms, provided such rooms can readily be returned to patient use. All required support and service areas must be maintained in place. For example, the removal of a nurse station in an unused patient bedroom wing of 20 beds would effectively eliminate [~~effectivelyeliminate~~] those 20 beds from the designed capacity.

(C) The number of licensed beds in a multiple occupancy room shall be determined by the design even if the number of beds actually placed in the room is less than the designed capacity.

(2) An additional fee shall be submitted with the Final Construction Approval form for an increase in the number of beds resulting from an approved construction project and an additional plan review fee if the construction cost increases to the next higher fee schedule according to subsection (c)(4) of this section.

(3) A facility will not receive a refund of previously submitted fees should the designed bed capacity decrease as a result of an approved construction project.

(c) Plan review fees. This subsection outlines the fees which must accompany the application for plan review and all proposed plans and specifications covering the construction of new buildings or alterations to existing buildings which must be submitted for review and approval by HHSC [~~the department~~] in accordance with Subchapter G [~~§134.127~~] of this chapter [~~title (relating to Preparation, Submittal, Review and Approval of Plans)~~].

(1) Construction plans will not be reviewed or approved until the required fee and an application for plan review are received by HHSC [~~the department~~].

(2) Plan review fees are based upon the estimated construction project costs which are the total expenditures required for a proposed project from initiation to completion, including at least the following items.

(A) Construction project costs shall include expenditures for physical assets such as:

(i) site acquisition;

(ii) soil tests and site preparation;

(iii) construction and improvements required as a result of the project;

(iv) building, structure, or office space acquisition;

(v) renovation;

(vi) fixed equipment; and

(vii) energy provisions and alternatives.

(B) Construction project costs shall include expenditures for professional services including:

(i) planning consultants;

(ii) architectural fees;

(iii) fees for cost estimation;

(iv) legal fees;

(v) management fees; and

(vi) feasibility study.

(C) Construction project costs shall include expenditures or costs associated with financing, excluding long-term interest, but including:

(i) financial advisor;

(ii) fund-raising expenses;

(iii) lender's or investment banker's fee; and

(iv) interest on interim financing.

(D) Construction project costs shall include expenditure allowances for contingencies including:

(i) inflation;

(ii) inaccurate estimates;

(iii) unforeseen fluctuations in the money market; and

(iv) other unforeseen expenditures.

(3) Regarding purchases, donations, gifts, transfers, and other comparable arrangements whereby the acquisition is to be made for no consideration or at less than the fair market value, the project cost shall be determined by the fair market value of the item to be acquired as a result of the purchase, donation, gift, transfer, or other comparable arrangement.

(4) The plan review fee schedule based on cost of construction is:

(A) $100,000 or less: $300;

(B) $100,001 to $600,000: $850;

(C) $600,001 to $2,000,000: $2,000;

(D) $2,000,001 to $5,000,000: $3,000;

(E) $5,000,001 to $10,000,000: $4,000; and

(F) $10,000,001 and over: $5,000.

(5) If an estimated construction cost cannot be established, the estimated cost shall be based on $105 per square foot. No construction project shall be increased in size, scope, or cost unless the appropriate fees are submitted with the proposed changes.

(d) Construction field survey fees. A fee of $500 and an application [~~Application for Survey~~] form for each field survey shall be submitted to HHSC [~~the department~~] at least three weeks prior to the anticipated field survey date. Construction field surveys will not be conducted until all required fees are received by HHSC [~~the department~~]. If additional construction field surveys of the proposed project are requested, the appropriate additional fees shall be submitted before [~~prior to~~] any field surveys conducted by HHSC [~~the~~] staff [~~of the department~~]. When follow up [~~followup~~] construction field surveys are performed to verify plans of correction, the fee shall be submitted upon completion of the field survey.

(e) Cooperative agreement application fee. The application fee for a cooperative agreement, established under Texas Health and Safety Code[~~,~~] Chapter 314[~~,~~] is $10,000. The application fee shall be submitted with an application for a cooperative agreement.

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

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Karen Ray
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Health and Human Services Commission
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SUBCHAPTER C. OPERATIONAL REQUIREMENTS

26 TAC §§510.41, - 510.43, 510.46

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

§510.41. Facility Functions and Services.

(a) Anesthesia services. If the hospital furnishes anesthesia services, these services shall be provided in a well-organized manner under the direction of a qualified physician. The anesthesia service is responsible for all anesthesia administered in the hospital.

(1) Organization and staffing. The organization of anesthesia services shall be appropriate to the scope of the services offered. Anesthesia shall be administered only by:

(A) a qualified anesthesiologist;

(B) a physician (other than an anesthesiologist);

(C) a dentist, oral surgeon (licensed by the State Board of Dental Examiners), or podiatrist who is qualified to administer anesthesia under state law; or

(D) a certified registered nurse anesthetist who is under the supervision, as set forth in [~~the Medical Practice Act,~~] Texas Occupations Code[~~,~~] Title 3, Subtitle B, and [~~the Nursing Practice Act,~~] Texas Occupations Code[~~,~~] Chapter 301, of the operating physician or of an anesthesiologist who is immediately available if needed.

(2) Delivery of services. Anesthesia services shall be consistent with needs and resources. Policies on anesthesia procedures shall include the delineation of pre-anesthesia and post-anesthesia responsibilities. The policies shall ensure that the following are provided for each patient.

(A) A pre-anesthesia evaluation by an individual qualified to administer anesthesia under paragraph (1) of this subsection shall be performed within 48 hours prior to the procedure.

(B) An intraoperative anesthesia record shall be provided. The record shall include any complications or problems occurring during the anesthesia including time, description of symptoms, review of affected systems, and treatments rendered. The record shall correlate with the controlled substance administration record.

(C) A post-anesthesia follow-up report shall be written by the person administering the anesthesia before transferring the patient from the recovery room and shall include evaluation for recovery from anesthesia, level of activity, respiration, blood pressure, level of consciousness, and patient color.

(i) With respect to inpatients, a post-anesthesia evaluation for proper anesthesia recovery shall be performed after transfer from recovery and within 48 hours after the procedure by the person administering the anesthesia, registered nurse (RN), or physician in accordance with policies and procedures approved by the medical staff.

(ii) With respect to outpatients, immediately prior to discharge, a post-anesthesia evaluation for proper anesthesia recovery shall be performed by the person administering the anesthesia, RN, or physician in accordance with policies and procedures approved by the medical staff.

(b) Dietary services. The facility shall have organized dietary services that are directed and staffed by adequate qualified personnel. However, a facility that has a contract with an outside food management company or an arrangement with another facility may meet this requirement if the company or other facility has a dietitian who serves the facility on a full-time, part-time, or consultant basis, and if the

company or other facility maintains at least the minimum requirements specified in this section, and provides for the frequent and systematic liaison with the facility medical staff for recommendations of dietetic policies affecting patient treatment. The facility shall ensure that there are sufficient personnel to respond to the dietary needs of the patient population being served.

(1) Organization.

(A) A facility shall have an employee who is qualified by experience or training to serve as director of the food and dietetic service[,] and is [be] responsible for the daily management of the dietary services. This employee shall be full-time in a hospital; the crisis stabilization unit employee does not have to be full-time.

(B) There shall be a qualified dietitian who works full-time, part-time, or on a consultant basis. If by consultation, such services shall occur at least once per month for not less than eight hours. The dietitian shall:

(i) be currently licensed under the laws of this state to use the titles of licensed dietitian or provisional licensed dietitian, or be a registered dietitian;

(ii) maintain standards for professional practice;

(iii) supervise the nutritional aspects of patient care;

(iv) make an assessment of the nutritional status and adequacy of nutritional regimen, as appropriate;

(v) provide diet counseling and teaching, as appropriate;

(vi) document nutritional status and pertinent information in patient medical records, as appropriate;

(vii) approve menus; and

(viii) approve menu substitutions.

(C) There shall be administrative and technical personnel competent in their respective duties. The administrative and technical personnel shall:

(i) participate in established departmental or facility training pertinent to assigned duties;

(ii) conform to food handling techniques in accordance with paragraph (2)(E)(vii) of this subsection;

(iii) adhere to clearly defined work schedules and assignment sheets; and

(iv) comply with position descriptions which are job specific.

(2) Director. The director shall:

(A) comply with a position description which is job specific;

(B) clearly delineate responsibility and authority;

(C) participate in conferences with administration and department heads;

(D) establish, implement, and enforce policies and procedures for the overall operational components of the department to include[, but not be limited to]:

(i) quality assurance;

(ii) frequency of meals served;

(iii) non-routine occurrences; and

(iv) identification of patient trays;

(E) maintain authority and responsibility for the following[, but not be limited to]:

(i) orientation and training;

(ii) performance evaluations;

(iii) work assignments;

(iv) supervision of work and food handling techniques;

(v) procurement of food, paper, chemical, and other supplies, to include implementation of first-in first-out rotation system for all food items;

(vi) menu planning; and

(vii) ensuring compliance with 25 TAC Chapter 228 [of this title] (relating to Retail Food Establishments).

(3) Diets. Menus shall meet the needs of the patients.

(A) Therapeutic diets shall be prescribed by a physician [the physician(s)] responsible for the care of the patients. The dietary department of the facility shall:

(i) establish procedures for the processing of therapeutic diets to include [, but not be limited to]:

(I) accurate patient identification;

(II) transcription from nursing to dietary services;

(III) diet planning by a dietitian;

(IV) regular review and updating of diet when necessary; and

(V) written and verbal instruction to patient and family. It shall be in the patient's primary language, if practicable, prior to discharge. What is or would have been practicable shall be determined by the facts and circumstances of each case;

(ii) ensure that therapeutic diets are planned in writing by a qualified dietitian;

(iii) ensure that menu substitutions are approved by a qualified dietitian;

(iv) document pertinent information about the patient's response to a therapeutic diet in the medical record; and

(v) evaluate therapeutic diets for nutritional adequacy.

(B) Nutritional needs shall be met in accordance with recognized dietary practices and in accordance with orders of a physician [the physician(s)] responsible for the care of the patients. The following requirements shall be met.

(i) Menus shall provide a sufficient variety of foods served in adequate amounts at each meal according to the guidance provided in the Recommended Dietary Allowances (RDA), as published by the Food and Nutrition Board, National Academy of Sciences, National Research Council, Tenth edition, 1989[, which may be obtained by writing the National Academy Press, 2101 Constitution Avenue, Box 285, Washington, D.C. 20055, telephone (888) 624-8373].

(ii) A maximum of 15 hours shall not be exceeded between the last meal of the day (i.e. supper) and the breakfast meal, unless a substantial snack is provided. The facility shall adopt, imple-

ment, and enforce a policy on the definition of "substantial" to meet each patient's varied nutritional needs.

(C) A current therapeutic diet manual approved by the dietitian and medical staff shall be readily available to all medical, nursing, and food service personnel. The therapeutic manual shall:

(i) be revised as needed, not to exceed five [~~5~~] years;

(ii) be appropriate for the diets routinely ordered in the facility;

(iii) have standards in compliance with the RDA;

(iv) contain specific diets which are not in compliance with RDA; and

(v) be used as a guide for ordering and serving diets.

(c) Governing body.

(1) Legal responsibility. There shall be a governing body responsible for the organization, management, control, and operation of the facility, including appointment of the medical staff. For facilities owned and operated by an individual or by partners, the individual or partners shall be considered the governing body.

(2) Organization. The governing body shall be formally organized in accordance with a written constitution or bylaws which clearly set forth the organizational structure and responsibilities.

(3) Meeting records. Records of governing body meetings shall be maintained.

(4) Responsibilities relating to the medical staff. The governing body shall:

(A) ensure that the medical staff has current bylaws, rules, and regulations which are implemented and enforced;

(B) approve medical staff bylaws and other medical staff rules and regulations;

(C) determine, in accordance with state law and with the advice of the medical staff, which categories of practitioners are eligible candidates for appointment to the medical staff;

(D) ensure that criteria for selection include individual character, competence, training, experience, and judgment;

(E) ensure that under no circumstances is the accordance of staff membership or professional privileges in the facility dependent solely upon certification, fellowship or membership in a specialty body or society;

(F) ensure the process for considering applications for medical staff membership and privileges affords each candidate for appointment procedural due process;

(G) ensure in granting or refusing medical staff membership or privileges, the facility does not differentiate on the basis of the academic medical degree;

(H) ensure that equal recognition is given to training programs accredited by the Accreditation Council on Graduate Medical Education and by the American Osteopathic Association if graduate medical education is used as a standard or qualification for medical staff membership or privileges for a physician;

(I) ensure that equal recognition is given to certification programs approved by the American Board of Medical Specialties and the Bureau of Osteopathic Specialists if board certification is used as a standard or qualification for medical staff membership or privileges for a physician;

(J) ensure that the medical staff is accountable to the governing body for the quality of care provided to patients;

(K) ensure that a facility's credentials committee acts expeditiously and without unnecessary delay when a candidate for appointment submits a completed application, as defined by each hospital, for medical staff membership or privileges, in accordance with the following:

(i) the [~~The~~] credentials committee shall take action on the completed application not later than the 90th day after the date on which the application is received;

(ii) the [~~The~~] governing body shall take final action on the application for medical staff membership or privileges not later than the 60th day after the date on which the recommendation of the credentials committee is received; and

(iii) the [~~The~~] facility must notify the applicant in writing of the facility's final action, including a reason for denial or restriction of privileges, not later than the 20th day after the date on which final action is taken;

(L) ensure the facility complies with the requirements for reporting to the Texas Medical Board the results and circumstances of any professional review action in accordance with Texas [~~the Medical Practice Act,~~] Occupations Code[~~,~~] §160.002 and §160.003.

(5) Facility administration. The governing body shall appoint a chief executive officer or administrator who is responsible for managing the facility.

(6) Patient care. In accordance with facility policy, the governing body shall ensure that:

(A) every patient is under the care of a physician, but this[~~. This~~] provision is not to be construed to limit the authority of a physician to delegate tasks to other qualified health care personnel to the extent recognized under state law;

(B) patients are admitted to the facility only by members of the medical staff who have been granted admitting privileges; and

(C) a physician is on duty or on-call at all times.

(7) Contracted services. The governing body shall be responsible for services furnished in the facility whether or not they are furnished directly or under contracts. The governing body shall ensure that a contractor of services (including one for shared services and joint ventures) furnishes services in a safe and effective manner that permits the facility to comply with all applicable rules and standards for contracted services.

(8) Nurse staffing. The governing body shall adopt, implement, and enforce a written nurse staffing policy to ensure that an adequate number and skill mix of nurses are available to meet the level of patient care needed. The governing body policy shall require that hospital administration adopt, implement, and enforce a nurse staffing plan and policies that:

(A) require significant consideration be given to the nurse staffing plan recommended by the hospital's nurse staffing committee and the committee's evaluation of any existing plan;

(B) are based on the needs of each patient care unit and shift and on evidence relating to patient care needs;

(C) ensure that all nursing assignments consider client safety [~~,~~] and are commensurate with the nurse's educational preparation, experience, knowledge, and physical and emotional ability;

(D) require use of the official nurse services staffing plan as a component in setting the nurse staffing budget;

(E) encourage nurses to provide input to the nurse staffing committee relating to nurse staffing concerns;

(F) protect from retaliation nurses who provide input to the nurse staffing committee; and

(G) comply with subsection (j) of this section.

(d) Infection control. The facility shall provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There shall be an active program for the prevention, control, and investigation of infections and communicable diseases.

(1) Organization and policies. A person shall be designated as infection control coordinator. The facility shall ensure that policies governing prevention, control and surveillance of infections and communicable diseases are developed, implemented, and enforced.

(A) There shall be a system for identifying, reporting, investigating, and controlling nosocomial infections and communicable diseases between patients and personnel.

(B) The infection control coordinator shall maintain a log of all reportable diseases and nosocomial infections designated as epidemiologically significant according to the facility's infection control policies.

(C) There shall be a written policy for reporting all reportable diseases to the local health authority or the Infectious Disease Epidemiology and Surveillance Division, Department of State Health Services[, ~~Mail Code 2822, P.O. Box 149347, Austin, TX 78714-9347,~~] in accordance with 25 TAC Chapter 97 [~~of this title~~] (relating to Communicable Diseases).

(2) Responsibilities of the chief executive officer (CEO), medical staff, and chief nursing officer (CNO). The CEO, the medical staff, and the CNO shall be responsible for the following.

(A) The facility-wide quality assurance program and training programs shall address problems identified by the infection control coordinator.

(B) Successful corrective action plans in affected problem areas shall be implemented.

(3) Universal precautions. The facility shall adopt, implement, and enforce a written policy to monitor compliance of the facility and its personnel and medical staff with universal precautions in accordance with Texas Health and Safety Code [~~,~~] Chapter 85, Subchapter I [~~(relating to the Prevention of Transmission of HIV and Hepatitis B Virus by Infected Health Care Workers).~~] .

(e) Laboratory services. The facility shall provide [~~directly,~~] or have available, adequate laboratory services to meet the needs of its patients.

(1) Facility laboratory services. A facility that provides laboratory services shall comply with the Clinical Laboratory Improvement Amendments of 1988 (CLIA 1988), in accordance with the requirements specified in [~~42~~] Code of Federal Regulations (CFR) Title 42 [~~(CFR),~~] Part 493 [~~§§493.1 - 493.1780~~]. CLIA 1988 applies to all facilities with laboratories that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(2) Contracted laboratory services. The facility shall ensure that all laboratory services provided to its patients through a contractual agreement are performed in a facility certified in the appropriate specialties and subspecialties of service in accordance with the requirements specified in 42 CFR Part 493 to comply with CLIA 1988.

(3) Adequacy of laboratory services. The facility shall ensure the following.

(A) Emergency laboratory services shall be available 24 hours a day.

(B) A written description of services provided shall be available to the medical staff.

(C) The laboratory shall make provision for proper receipt and reporting of tissue specimens.

(4) Chemical hygiene. A facility that provides laboratory services directly shall adopt, implement, and enforce written policies and procedures to manage, minimize, or eliminate the risks to laboratory personnel of exposure to potentially hazardous chemicals in the laboratory which may occur during the normal course of job performance.

(f) Linen and laundry services. The facility shall provide sufficient clean linen to ensure the comfort of the patient. The facility, whether it operates its own laundry or uses commercial service, shall ensure the following.

(1) Employees of a facility involved in transporting, processing, or otherwise handling clean or soiled linen shall be given initial and follow-up in-service [~~inservice~~] training to ensure a safe product for patients and to safeguard employees in their work.

(2) Clean linen shall be handled, transported, and stored by methods that will ensure its cleanliness.

(3) All contaminated linen shall be placed and transported in bags or containers labeled or color-coded.

(4) Employees who have contact with contaminated linen shall wear gloves and other appropriate personal protective equipment.

(5) Contaminated linen shall be handled as little as possible and with minimum agitation. Contaminated linen shall not be sorted or rinsed in patient care areas.

(6) All contaminated linen shall be bagged or put into carts at the location where it was used.

(A) Bags containing contaminated linen shall be closed prior to transport to the laundry.

(B) Whenever contaminated linen is wet and presents a reasonable likelihood of soak-through of or leakage from the bag or container, the linen shall be deposited and transported in bags that prevent leakage of fluids to the exterior.

(C) All linen placed in chutes shall be bagged.

(D) If chutes are not used to convey linen to a central receiving or sorting room, then adequate space shall be allocated on the various nursing units for holding the bagged contaminated linen.

(7) Linen shall be processed as follows.[~~:~~]

(A) If hot water is used, linen shall be washed with detergent in water with a temperature of at least 71 degrees Centigrade (160 degrees Fahrenheit) for 25 minutes. Hot water requirements specified in Subchapter G [~~Table 5 of §134.131(e)~~] of this chapter [~~title~~] (relating to Physical Plant and Construction Requirements [~~Tables~~]) shall be met.

(B) If low temperature (less than or equal to 70 degrees Centigrade) (158 degrees Fahrenheit) laundry cycles are used, chemi-

cals suitable for low-temperature washing at proper use concentration shall be used.

(C) Commercial dry cleaning of fabrics soiled with blood also renders these items free of the risk of pathogen transmission.

(8) Flammable liquids shall not be used in the laundry.

(g) Medical record services. The facility shall have a medical record service that has administrative responsibility for medical records. A medical record shall be maintained for every individual who presents to the hospital for evaluation or treatment.

(1) The organization of the medical record service shall be appropriate to the scope and complexity of the services performed. The facility shall employ adequate personnel to ensure prompt completion, filing, and retrieval of records.

(2) The facility shall have a system of coding and indexing medical records. The system shall allow for timely retrieval by diagnosis and procedure, in order to support medical care evaluation studies.

(3) The facility shall adopt, implement, and enforce a policy to ensure that the facility complies with Texas Health and Safety Code[,] §576.005 [(~~relating to Confidentiality of Records~~)] and Texas Health and Safety Code Chapter 611[, (~~relating to Mental Health Records~~)].

(4) The medical record shall contain information to justify admission and continued hospitalization, support the diagnosis, and describe the patient's progress and response to medications and services. Medical records shall be accurately written, promptly completed, properly filed and retained, and accessible.

(5) The facility shall use a system of author identification and record maintenance that ensures the integrity of the authentication and protects the security of all entries to the records.

(A) The author of each entry shall be identified and shall authenticate the author's [~~his or her~~] entry.

(B) Authentication shall include signatures, written initials, or computer entry.

(C) Use of signature stamps by physicians may be allowed in facilities when the signature stamp is authorized by the individual whose signature the stamp represents. The administrative offices of the facility shall have on file a signed statement to the effect that the individual [~~he or she~~] is the only person [~~one~~] who has and uses the stamp [~~and uses it~~]. Delegation of use to another individual shall not be acceptable.

(D) A list of computer codes and written signatures shall be readily available and shall be maintained under adequate safeguards.

(E) Signatures by facsimile shall be acceptable. If received on a thermal machine, the facsimile document shall be copied onto regular paper.

(6) Medical records (reports and printouts) shall be retained by the facility in their original or legally reproduced form, which is a medical record retained in hard copy, microform (microfilm or microfiche), or another electronic medium, for a period of at least 10 [~~ten~~] years. Films, scans, and other image records shall be retained for a period of at least five years. For retention purposes, medical records that shall be preserved for ten years include:

(A) identification data;

(B) the medical history of the patient;

(C) evidence of a physical examination and psychiatric evaluation;

(D) admitting diagnosis;

(E) diagnostic and therapeutic orders;

(F) properly executed informed consent forms for procedures and treatments specified by the medical staff, or by federal or state laws if applicable, to require written patient consent;

(G) treatment plans;

(H) clinical observations, including the results of therapy and treatment, all orders, nursing notes, medication records, vital signs, and other information necessary to monitor the patient's condition;

(I) reports of procedures, tests, and their results, including laboratory, pathology, and radiology reports;

(J) results of all consultative evaluations of the patient and appropriate findings by clinical and other staff involved in the care of the patient;

(K) discharge summary with outcome of hospitalization, disposition of care, and provisions for follow-up care; and

(L) final diagnosis with completion of medical records within 30 calendar days following discharge.

(7) If a patient was younger [~~less~~] than 18 years of age at the time the patient [~~he~~] was last treated, the facility may authorize the disposal of those medical records relating to the patient on or after the date of the patient's [~~his~~] 20th birthday or on or after the 10th anniversary of the date on which the patient [~~he~~] was last treated, whichever date is later.

(8) The facility shall not destroy medical records that relate to any matter that is involved in litigation if the facility knows the litigation has not been finally resolved.

(9) If a licensed facility closes [~~should close~~], the facility shall notify the Texas Health and Human Services Commission (HHSC) [~~department~~] at the time of closure, the disposition of the medical records, including the location of where the medical records will be stored and the identity and telephone number of the custodian of the records.

(h) Medical staff.

(1) The medical staff shall be composed of physicians and may also be composed of podiatrists, dentists, and other practitioners appointed by the governing body.

(A) The medical staff shall periodically conduct appraisals of its members according to medical staff bylaws.

(B) The medical staff shall examine credentials of candidates for medical staff membership and make recommendations to the governing body on the appointment of the candidate.

(2) The medical staff shall be well-organized and accountable to the governing body for the quality of the medical care provided to patients.

(A) The medical staff shall be organized in a manner approved by the governing body.

(B) If the medical staff has an executive committee, a majority of the members of the committee shall be doctors of medicine or osteopathy.

(C) Records of medical staff meetings shall be maintained.

(D) The responsibility for organization and conduct of the medical staff shall be assigned only to an individual physician.

(E) Each medical staff member shall sign a statement signifying they will abide by medical staff and hospital policies.

(3) The medical staff shall adopt, implement, and enforce bylaws, rules, and regulations to carry out its responsibilities. The bylaws shall:

(A) be approved by the governing body;

(B) include a statement of the duties and privileges of each category of medical staff (e.g., active, courtesy, consultant);

(C) describe the organization of the medical staff;

(D) describe the qualifications to be met by a candidate in order for the medical staff to recommend that the candidate be appointed by the governing body; and

(E) include criteria for determining the privileges to be granted and a procedure for applying the criteria to individuals requesting privileges.

(i) Mobile, transportable, and relocatable units. If the facility provides diagnostic procedures or treatments in mobile, transportable, or relocatable units, the facility shall adopt, implement, and enforce procedures which address the potential emergency needs for those inpatients who are taken to mobile units on the facility premises for diagnostic procedures or treatment.

(j) Nurse staffing.

(1) The hospital shall establish a nurse staffing committee as a standing committee of the hospital. As used in this subsection, "committee" or "staffing committee" means a nurse staffing committee established under this paragraph.

(A) The committee shall be composed of:

(i) at least 60 percent [~~60%~~] registered nurses who are involved in direct patient care at least 50 percent [~~50%~~] of their work time and selected by their peers who provide direct care during at least 50 percent [~~50%~~] of their work time;

(ii) members who are representative of the types of nursing services provided at the hospital; and

(iii) the chief nursing officer of the hospital who is a voting member.

(B) Participation on the committee by a hospital employee as a committee member shall be part of the employee's work time and the hospital shall compensate that member for that time accordingly. The hospital shall relieve the committee member of other work duties during committee meetings.

(C) The committee shall meet at least quarterly.

(D) The responsibilities of the committee shall be to:

(i) develop and recommend to the hospital's governing body a nurse staffing plan that meets the requirements of paragraph (2) of this subsection;

(ii) review, assess, and respond to staffing concerns expressed to the committee;

(iii) identify the nurse-sensitive outcome measures the committee will use to evaluate the effectiveness of the official nurse services staffing plan;

(iv) evaluate, at least semiannually, the effectiveness of the official nurse services staffing plan and variations between the plan and the actual staffing; and

(v) submit to the hospital's governing body, at least semiannually, a report on nurse staffing and patient care outcomes, including the committee's evaluation of the effectiveness of the official nurse services staffing plan and aggregate variations between the staffing plan and actual staffing.

(2) The hospital shall adopt, implement, and enforce a written official nurse services staffing plan. As used in this subsection, "patient care unit" means a unit or area of a hospital in which registered nurses provide patient care.

(A) The official nurse services staffing plan and policies shall:

(i) require significant consideration be given to the nurse staffing plan recommended by the hospital's nurse staffing committee and the committee's evaluation of any existing plan;

(ii) be based on the needs of each patient care unit and shift and on evidence relating to patient care needs;

(iii) require use of the official nurse services staffing plan as a component in setting the nurse staffing budget;

(iv) encourage nurses to provide input to the nurse staffing committee relating to nurse staffing concerns;

(v) protect nurses who provide input to the nurse staffing committee from retaliation; and

(vi) comply with this subsection.

(B) The plan shall:

(i) set minimum staffing levels for patient care units that are:

(I) based on multiple nurse and patient considerations; and [~~an~~]

(II) determined by the nursing assessment and in accordance with evidence-based safe nursing standards; and

(ii) include a method for adjusting the staffing plan shift to shift for each patient care unit to provide staffing flexibility to meet patient needs;

(iii) include a contingency plan when patient care needs unexpectedly exceed direct patient care staff resources;

(iv) include how on-call time will be used;

(v) reflect current standards established by private accreditation organizations, governmental entities, national nursing professional associations, and other health professional organizations;

(vi) include a mechanism for evaluating the effectiveness of the official nurse services staffing plan based on patient needs, nursing-sensitive quality indicators, nurse satisfaction measures collected by the hospital, and evidence-based nurse staffing standards; and

(vii) be used by the hospital as a component in setting the nurse staffing budget and guiding the hospital in assigning nurses hospital wide.

(C) The hospital shall make readily available to nurses on each patient care unit at the beginning of each shift the official nurse services staffing plan levels and current staffing levels for that unit and that shift.

(3) The hospital shall annually report to HHSC [~~the department~~] on:

(A) whether the hospital's governing body has adopted a nurse staffing policy;

(B) whether the hospital has established a nurse staffing committee that meets the membership requirements of paragraph (1) of this subsection;

(C) whether the nurse staffing committee has evaluated the hospital's official nurse services staffing plan and has reported the results of the evaluation to the hospital's governing body; and

(D) the nurse-sensitive outcome measures the committee adopted for use in evaluating the hospital's official nurse services staffing plan.

(4) Mandatory overtime. The hospital shall adopt, implement, and enforce policies on use of mandatory overtime.

(A) As used in this subsection:

(i) "on-call time" means time spent by a nurse who is not working but who is compensated for availability; and

(ii) "mandatory overtime" means a requirement that a nurse work hours or days that are in addition to the hours or days scheduled, regardless of the length of a scheduled shift or the number of scheduled shifts each week. Mandatory overtime does not include prescheduled on-call time or time immediately before or after a scheduled shift necessary to document or communicate patient status to ensure patient safety.

(B) A hospital may not require a nurse to work mandatory overtime, and a nurse may refuse to work mandatory overtime.

(C) This section does not prohibit a nurse from volunteering to work overtime.

(D) A hospital may not use on-call time as a substitute for mandatory overtime.

(E) The prohibitions on mandatory overtime do not apply if:

(i) a health care disaster, such as a natural or other type of disaster that increases the need for health care personnel, unexpectedly affects the county in which the nurse is employed or affects a contiguous county;

(ii) a federal, state, or county declaration of emergency is in effect in the county in which the nurse is employed or is in effect in a contiguous county;

(iii) there is an emergency or unforeseen event of a kind that:

(I) does not regularly occur

(II) increases the need for health care personnel at the hospital to provide safe patient care; and

(III) could not prudently be anticipated by the hospital; or

(iv) the nurse is actively engaged in an ongoing medical or surgical procedure and the continued presence of the nurse through the completion of the procedure is necessary to ensure the health and safety of the patient. The nurse staffing committee shall ensure that scheduling a nurse for a procedure that could be anticipated to require the nurse to stay beyond the end of his or her scheduled shift does not constitute mandatory overtime.

(F) If a hospital determines that an exception exists under subparagraph (E) of this paragraph, the hospital shall, to the extent possible, make and document a good faith effort to meet the staffing need through voluntary overtime, including calling per diems and agency nurses, assigning floats, or requesting an additional day of work from off-duty employees.

(G) A hospital may not suspend, terminate, or otherwise discipline or discriminate against a nurse who refuses to work mandatory overtime.

(k) Outpatient services. If the facility provides outpatient services within the facility, written policies and procedures describing the operation of the services shall be adopted, implemented, and enforced.

(l) Pharmacy services. The facility shall provide pharmaceutical services that meet the needs of the patients.

(1) License. A facility that stores and dispenses prescription drugs for administration to a patient by a person authorized by law to administer the drug, shall be licensed, as required, by the Texas State Board of Pharmacy.

(2) Organization. The facility shall have a pharmacy directed by a licensed pharmacist.

(3) Medical staff. The medical staff shall be responsible for developing policies and procedures that minimize drug errors. This function may be delegated to the facility's organized pharmaceutical services.

(4) Pharmacy management and administration. The pharmacy or drug storage area shall be administered in accordance with accepted professional principles.

(A) Standards of practice as defined by state law shall be followed regarding the provision of pharmacy services.

(B) The pharmaceutical services shall have an adequate number of personnel to ensure quality pharmaceutical services including emergency services.

(i) The staff shall be sufficient in number and training to respond to the pharmaceutical needs of the patient population being served. There shall be an arrangement for emergency services.

(ii) Employees shall provide pharmaceutical services within the scope of their license and education.

(C) Drugs and biologicals shall be properly stored to ensure ventilation, light, security, and temperature controls.

(D) Records shall have sufficient detail to follow the flow of drugs from entry through dispensation.

(E) There shall be adequate controls over all drugs and medications including floor stock. Drug storage areas shall be approved by the pharmacist, and floor stock lists shall be established.

(F) Inspections of drug storage areas shall be conducted throughout the hospital under pharmacist supervision.

(G) There shall be a drug recall procedure.

(H) A full-time, part-time, or consulting pharmacist shall be responsible for developing, supervising, and coordinating all the activities of the pharmacy services.

(i) Direction of pharmaceutical services may not require on premises supervision but may be accomplished through regularly scheduled visits in accordance with state law.

(ii) A job description or other written agreement shall clearly define the responsibilities of the pharmacist.

(I) Current and accurate records shall be kept of the receipt and disposition of all scheduled drugs.

(i) There shall be a record system in place that provides the information on controlled substances in a readily retrievable manner which is separate from the patient record.

(ii) Records shall trace the movement of scheduled drugs throughout the services, documenting utilization or wastage.

(iii) The pharmacist shall be responsible for determining that all drug records are in order and that an account of all scheduled drugs is maintained and reconciled with written orders.

(5) Delivery of services. In order to provide patient safety, drugs and biologicals shall be controlled and distributed in accordance with applicable standards of practice, consistent with federal and state laws.

(A) All compounding, packaging, and dispensing of drugs and biologicals shall be under the supervision of a pharmacist and performed consistent with federal and state laws.

(B) Drugs and biologicals shall be kept in a locked storage area.

(i) A policy shall be adopted, implemented, and enforced to ensure the safeguarding, transferring, and availability of keys to the locked storage area.

(ii) Dangerous drugs as well as controlled substances shall be secure from unauthorized use.

(C) Outdated, mislabeled, or otherwise unusable drugs and biologicals shall not be available for patient use.

(D) When a pharmacist is not available, drugs and biologicals shall be removed from the pharmacy or storage area only by personnel designated in the policies of the medical staff and pharmaceutical service, in accordance with federal and state laws.

(i) There shall be a current list of individuals identified by name and qualifications who are designated to remove drugs from the pharmacy.

(ii) Only amounts sufficient for immediate therapeutic needs shall be removed.

(E) Drugs and biologicals not specifically prescribed as to time or number of doses shall automatically be stopped after a reasonable time that is predetermined by the medical staff.

(i) Stop order policies and procedures shall be consistent with those of the nursing staff and the medical staff rules and regulations.

(ii) A protocol shall be established by the medical staff for the implementation of the stop order policy, in order that drugs shall be reviewed and renewed, or automatically stopped.

(iii) A system shall be in place to determine compliance with the stop order policy.

(F) Drug administration errors, adverse drug reactions, and incompatibilities shall be immediately reported to the attending physician and, if appropriate, to the facility-wide quality assurance program. There shall be a mechanism in place for capturing, reviewing, and tracking medication errors and adverse drug reactions.

(G) Abuses and losses of controlled substances shall be reported, in accordance with applicable federal and state laws, to the individual responsible for the pharmaceutical services, and to the chief executive officer, as appropriate.

(H) Information relating to drug interactions and information on drug therapy, side effects, toxicology, dosage, indications for use, and routes of administration shall be immediately available to the professional staff.

(i) A pharmacist shall be readily available by telephone or other means to discuss drug therapy, interactions, side effects, dosage, assist in drug selection, and assist in the identification of drug induced problems.

(ii) There shall be staff development programs on drug therapy available to facility staff to cover such topics as new drugs added to the formulary, how to resolve drug therapy problems, and other general information as the need arises.

(I) A formulary system shall be established by the medical staff to ensure quality pharmaceuticals at reasonable costs.

(m) Quality assurance. The governing body shall ensure that there is an effective, ongoing, facility-wide, data-driven quality assurance (QA) program to evaluate the provision of patient care.

(1) Implementation plan. The facility-wide QA program shall be on-going and have a written plan of implementation.

(A) All organized services related to patient care, including services furnished by contract, shall be evaluated.

(B) Nosocomial infections and medication therapy shall be evaluated.

(C) All medical services performed in the facility shall be evaluated as they relate to appropriateness of diagnosis and treatment.

(2) Implementation. The facility shall take and document appropriate remedial action to address deficiencies found through the QA program. The facility shall document the outcome of the remedial action.

(3) Discharge planning. The facility shall have an effective, ongoing discharge planning program that facilitates the provision of follow-up care.

(A) Discharge planning shall be completed prior to discharge.

(B) Patients, along with necessary medical information, shall be transferred or referred to appropriate facilities, agencies, or outpatient services, as needed for follow-up or ancillary care.

(C) Screening and evaluation before patient discharge from facility. In accordance with 42 CFR [~~Code of Federal Regulations (CFR),~~] Part 483, Subpart C [~~(relating to Requirements for Long Term Care Facilities)~~] and the rules [~~of the Department of Aging and Disability Services (DADS)~~] set forth in [~~40 TAC~~] Chapter 303 of this title [~~17,~~] (relating to Preadmission Screening and Resident Review (PASRR)), all patients who are being considered for discharge from the facility to a nursing facility shall be screened, and if appropriate, evaluated, prior to discharge by the facility and admission to the nursing facility to determine whether the patient may have a mental illness, intellectual disability or developmental disability.

(i) If the screening indicates that the patient has a mental illness, intellectual disability or developmental disability, the facility shall contact and arrange for the local mental health authority designated pursuant to Texas Health and Safety Code[~~,~~] §533.035[~~,~~] to conduct, prior to facility discharge, an evaluation of the patient in accordance with the applicable provisions of the PASRR rules.

(ii) The purpose of PASRR is:

(I) [~~(i)~~] to ensure that placement of the patient in a nursing facility is necessary;

(II) [~~(ii)~~] to identify alternate placement options when applicable; and

(III) [~~(iii)~~] to identify specialized services that may benefit the person with a diagnosis of mental illness, intellectual disability, or developmental disability.

(n) Radiology services. When radiology services are provided, written policies and procedures shall be adopted, implemented, and enforced which describe the radiology services provided in the facility and how employee and patient safety will be maintained.

(1) Safety Precautions. Proper safety precautions shall be maintained against radiation hazards. This includes adequate shielding for patients, personnel, and facilities.

(2) Equipment Inspections. Inspection of equipment shall be made periodically. Defective equipment shall be promptly repaired or replaced.

(3) Radiation Exposure. Radiation workers shall be checked, by the use of exposure meters or badge tests, for amount of radiation exposure. Exposure reports and documentation shall be available for review.

(4) Service Provision. Radiology services shall be provided only on the order of individuals with privileges granted by the medical staff and of other physicians or practitioners authorized by the medical staff and governing body to order such services.

(5) Personnel.

(A) A qualified full-time, part-time, or consulting radiologist shall supervise the ionizing radiology services and shall interpret only those radiology tests that are determined by the medical staff to require a radiologist's specialized knowledge. For purposes of this section a radiologist is a physician who is qualified by education and experience in radiology in accordance with medical staff bylaws.

(B) Only personnel designated as qualified by the medical staff shall use the radiology equipment and administer procedures.

(6) Records. Records of radiology services shall be maintained. The radiologist or other individuals who have been granted privileges to perform radiology services shall sign reports of his or her interpretations.

(o) Respiratory care services. When respiratory care services are provided, written policies and procedures shall be adopted, implemented, and enforced which describe the provision of respiratory care services in the facility. Personnel qualified to perform specific procedures and the amount of supervision required for personnel to carry out specific procedures shall be designated in writing.

(p) Waste and waste disposal.

(1) Special waste and liquid or sewage [~~liquid/sewage~~] waste management.

(A) The hospital shall comply with the requirements set forth by the Texas Department of State Health Services [~~department~~] in 25 TAC §§1.131 - 1.137 [~~of this title~~] (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related [~~Care Related~~] Facilities) and the Texas Commission on Environmental Quality (TCEQ) requirements in 30 TAC Chapter 326 [~~§330.1207~~] (relating to [~~Generators of~~] Medical Waste Management).

(B) All sewage and liquid wastes shall be disposed of in a municipal sewerage system or a septic tank system permitted by the TCEQ in accordance with 30 TAC Chapter 285 (relating to On-Site Sewage Facilities).

(2) Waste receptacles.

(A) Waste receptacles shall be conveniently available in all toilet rooms, patient areas, staff work areas, and waiting rooms. Receptacles shall be routinely emptied of their contents at one or more [~~a~~] central locations [~~location(s)~~] into closed containers.

(B) Waste receptacles shall be properly cleaned with soap and hot water, followed by treatment of inside surfaces of the receptacles with a germicidal agent.

(C) All containers for other municipal solid waste shall be leak-resistant, have tight-fitting covers, and be rodent-proof.

(D) Non-reusable containers shall be of suitable strength to minimize animal scavenging or rupture during collection operations.

§510.42. Discrimination or Retaliation Standards.

(a) Posting requirements for reporting a violation of law. In accordance with Texas Health and Safety Code (HSC)[~~,~~] §161.134(j) and §161.135(h), each facility shall prominently and conspicuously post for display in a public area of the facility that is readily visible to patients, residents, employees, and visitors a statement that employees, staff, and nonemployees are protected from discrimination or retaliation for reporting a violation of law. The statement shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) Discrimination relating to employee reporting a violation of law. In accordance with HSC[~~,~~] §161.134(a), a facility may not suspend or terminate the employment of, discipline, or otherwise discriminate against an employee for reporting to the employee's supervisor, an administrator of the hospital, a state regulatory agency, or a law enforcement agency, a violation of law, including a violation of [~~the~~] Texas Health and Safety Code Chapter 577 [~~Act~~] or this chapter.

(c) Retaliation relating to nonemployee reporting a violation of law. In accordance with HSC [~~,~~] §161.135(a), a facility may not retaliate against a person who is not an employee for reporting a violation of law, including a violation of Texas Health and Safety Code Chapter 577 [~~the ACT~~] or this chapter.

§510.43. Patient Transfer Policy.

(a) Definitions.

(1) For purposes of this section, a transferring facility is a private psychiatric hospital licensed under Texas Health and Safety Code (HSC)[~~,~~] Chapter 577.

(2) For purposes of this section, a receiving facility is one of the following:

(A) a private psychiatric hospital licensed under HSC[~~,~~] Chapter 577;

(B) a general or special hospital licensed under HSC[~~,~~] Chapter 241;

(C) a hospital operated by HHSC [~~the Texas Department of Mental Health and Mental Retardation~~];

(D) a hospital operated by a federal agency; or

(E) a chemical dependency treatment facility licensed under HSC[~~,~~] Chapter 464.

(3) For purposes of this section, patient is defined as an individual:

(A) seeking treatment who may or may not be under the immediate supervision of a personal attending physician, and who, within reasonable medical probability, requires immediate or continuing services and medical care; or

(B) admitted as a patient.

(b) Applicability.

(1) If a transferring facility or a receiving facility is licensed under HSC[~~,~~] Chapter 577, it must comply with all requirements of this section.

(2) Receiving facilities, other than those licensed under HSC[~~,~~] Chapter 577, are not governed by these rules.

(c) General.

(1) The governing body of each transferring facility shall adopt, implement, and enforce a policy relating to patient transfers that is consistent with this section and contains each of the requirements in subsection (d) of this section. Facility administration has the authority to represent a facility during the transfer from or receipt of patients into the facility.

(2) The transfer policy shall be adopted by the governing body of the facility after consultation with the medical staff.

(3) The policy shall govern transfers not covered by a transfer agreement in accordance with §510.61 [~~§134.61~~] of this chapter [~~title~~] (relating to Patient Transfer Agreements).

(4) The movement of a stable patient from a transferring facility to a receiving facility is not considered to be a transfer under this section if it is the understanding and intent of both facilities that the patient is going to the receiving facility only for tests, the patient will not remain overnight at the receiving facility, and the patient will return to the transferring facility. This paragraph applies only when a patient remains stable during transport to and from the facilities and during testing.

(5) The policy shall include a written operational plan to provide for patient transfer transportation services if the transferring facility does not provide its own patient transfer transportation services.

(6) Each governing body, after consultation with the medical staff, may implement its transfer policy by adopting transfer agreements with other receiving facilities in accordance with §510.61 [~~§134.61~~] of this chapter [~~title~~].

(d) Requirements for transfer of patients between facilities.

(1) Discrimination. Except as is specifically provided in paragraphs (5)(E) and (5)(F) [~~(F)~~] and (6)(A) and (6)(B) [~~(B)~~] of this subsection, relating, respectively, to mandated providers and designated providers, the policy shall provide that the transfer of a patient may not be predicated upon arbitrary, capricious, or unreasonable discrimination based upon race, religion, national origin, age, sex, physical condition, or economic status.

(2) Disclosure. The policy shall recognize the right of an individual to request transfer into the care of a physician and a receiving facility of the individual's [~~his~~] own choosing; however, if a patient is transferred for economic reasons and the patient's choice is predicated upon or influenced by representations made by the transferring physician or transferring facility administration regarding the availability of medical care and services at a reduced cost or no cost to the patient, the physician or facility administration shall fully disclose to the patient the eligibility requirements established by the patient's chosen physician or receiving facility.

(3) Patient evaluation. The policy shall provide that each patient who arrives at a transferring facility is evaluated in accordance with §568.41 [~~the Texas Department of Mental Health and Mental Retardation §411.468~~] of this title (relating to Responding to an Emergency Medical Condition [~~of a Patient, Prospective Patient, or Individual who Arrives on Hospital Property Requesting Examination or Treatment~~]).

(A) After receiving a report on the patient's condition from the nursing staff by telephone or radio, if the physician on call determines that an immediate transfer of the patient is medically appropriate and that the time required to conduct a personal examination and evaluation of a patient will unnecessarily delay the transfer to the detriment of the patient, the physician on call may order the transfer by telephone or radio.

(B) Physician orders for the transfer of a patient which are issued by telephone or radio shall be reduced to writing in the patient's medical record, signed by the staff member receiving the order, and countersigned by the physician authorizing the transfer as soon as possible. The patient transfers resulting from physician orders issued by telephone or radio shall be subject to automatic review by the medical staff pursuant to paragraph (8) of this subsection.

(4) Facility personnel, written protocols, standing delegation orders, eligibility, and payment information. The policy of the transferring facility and receiving facility shall provide that licensed nurses and other qualified personnel are available and on duty to assist with patient transfers and to provide accurate information regarding eligibility and payment practices. The policy shall provide that written protocols or standing delegation orders are in place to guide personnel when a patient requires transfer.

(5) Transfer of patients who have emergency medical conditions.

(A) If a patient has an emergency medical condition which has not been stabilized or when stabilization of the patient's vital signs is not possible because the transferring facility does not have the appropriate equipment or personnel to correct the underlying process, evaluation and treatment shall be performed and transfer shall be carried out as quickly as possible.

(B) The policy shall provide that the transferring facility may not transfer a patient with an emergency medical condition which has not been stabilized unless:

(i) the patient or a legally responsible person acting on the patient's behalf, after being informed of the transferring facility's obligations under this section and of the risks and benefits of transfer, requests transfer in writing;

(ii) a physician has signed a certification, which includes a summary of the risks and benefits, that, based on the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at a receiving facility outweigh the increased risks to the patient and, in the case of labor, to the unborn child from effecting the transfer; or

(iii) if the physician who made the determination to transfer a patient with an emergency condition is not physically present at the time of transfer, a qualified medical person, as designated by facility policy, may sign a certification described in clause (ii) of this subparagraph after consultation with the physician and the[~~. The~~] physician shall countersign the physician certification within a reasonable period of time.

(C) Except as provided by subparagraphs (E) and (F) of this paragraph and paragraph (6)(A) and (6)(B) [~~(B)~~] of this sub-

section, the policy shall provide that the transfer of patients who have emergency medical conditions, as determined by a physician, shall be undertaken for medical reasons only.

(D) Except as expressly permitted in clauses (i) and (ii) of this subparagraph, the policy shall provide for the receipt of patients who have an emergency medical condition so that upon notification of and prior to a transfer, the receiving facility shall, after determining whether or not space, personnel and services necessary to provide appropriate care for the patient are available, respond to the transferring facility, within 30 minutes, either accepting or refusing the transfer. The 30-minute time period begins at the time a member of the staff of the receiving facility receives the call initiating the request to transfer.

(i) The policy may permit response within a period of time in excess of 30 minutes but no longer than one hour if there are extenuating circumstances for the delay. If the transfer is accepted, the reason for the delay shall be documented on the memorandum of transfer.

(ii) The response time may be extended before the expiration of the initial 30 minutes period by agreement among the parties to the transfer. If the transfer is accepted, the agreed extension shall be documented in the memorandum of transfer.

(E) The policy shall recognize and comply with the requirements of HSC [~~the Indigent Health Care and Treatment Act, HSC,~~] §§61.030-61.032 and §§61.057-61.059 [~~(relating to Mandated Providers)~~] since those requirements may apply to a patient.

(F) The policy shall acknowledge contractual obligations and comply with statutory or regulatory obligations which may exist concerning a patient and a designated provider.

(G) The policy shall require that all reasonable steps are taken to secure the informed refusal of a patient refusing a transfer or a related examination and treatment or of a person acting on a patient's behalf refusing a transfer or a related examination and treatment. Reasonable steps include:

(i) a factual explanation of the increased medical risks to the patient reasonably expected from not being transferred, examined, or treated at the transferring facility;

(ii) a factual explanation of any increased risks to the patient from not effecting the transfer; and

(iii) a factual explanation of the medical benefits reasonably expected from the provision of appropriate treatment at a receiving facility.

(H) The informed refusal of a patient, or of a person acting on a patient's behalf, to examination, evaluation or transfer shall be documented and signed if possible by the patient or by a person acting on the patient's behalf, dated and witnessed by the attending physician or facility employee, and placed in the patient's medical record.

(I) Transfer of patients may occur routinely or as part of a regionalized plan for obtaining optimal care for patients at a more appropriate or specialized health care entity.

(6) Transfer of patients who do not have emergency medical conditions.

(A) The policy shall recognize and comply with the requirements of HSC [~~the Indigent Health Care and Treatment Act, HSC,~~] §§61.030-61.032 and §§61.057-61.059 [~~(relating to Mandated Providers)~~] as those requirements may apply to a patient.

(B) The policy shall acknowledge contractual obligations and comply with statutory or regulatory obligations which may exist concerning a patient and a designated provider.

(C) The policy shall require that all reasonable steps are taken to secure the informed refusal of a patient refusing a transfer or a related examination and treatment or of a person acting on a patient's behalf refusing a transfer or a related examination and treatment. Reasonable steps include:

(i) a factual explanation of the increased medical risks to the patient reasonably expected from not being transferred, examined, or treated at the transferring facility;

(ii) a factual explanation of any increased risks to the patient from not effecting the transfer; and

(iii) a factual explanation of the medical benefits reasonably expected from the provision of appropriate treatment at a receiving facility.

(D) The informed refusal of a patient, or of a person acting on a patient's behalf, to examination, evaluation or transfer shall be documented and signed if possible by the patient or by a person acting on the patient's behalf, dated and witnessed by the attending physician or facility employee, and placed in the patient's medical record.

(E) Transfer of patients may occur routinely or as part of a regionalized plan for obtaining optimal care for patients at a more appropriate or specialized health care entity.

(F) The policy shall recognize the right of an individual to request a transfer into the care of a physician and a receiving facility of the individual's own choosing.

(7) Physician's duties and standard of care.

(A) The policy shall provide that the transferring physician shall determine and order life support measures which are medically appropriate to stabilize the patient prior to transfer and to sustain the patient during transfer.

(B) The policy shall provide that the transferring physician shall determine and order the utilization of appropriate personnel and equipment for the transfer.

(C) The policy shall provide that in determining the use of medically appropriate life support measures, personnel, and equipment, the transferring physician shall exercise that degree of care which a reasonable and prudent physician exercising ordinary care in the same or similar locality would use for the transfer.

(D) The policy shall provide that except as allowed under paragraph (3)(B) of this subsection, prior to each patient transfer, the physician who authorizes the transfer shall personally examine and evaluate the patient to determine the patient's medical needs and to ensure that the proper transfer procedures are used.

(E) The policy shall provide that prior to transfer, the transferring physician shall secure a receiving physician and a receiving facility that are appropriate to the medical needs of the patient and that will accept responsibility for the patient's medical treatment and care.

(8) Record review for standard of care. The policy shall provide that the medical staff review appropriate records of patients transferred to determine that the appropriate standard of care has been met.

(9) Medical record.

(A) The policy shall provide that a copy of those portions of the patient's medical record which are available and relevant to the transfer and to the continuing care of the patient be forwarded to the receiving physician and receiving facility with the patient. If all necessary medical records for the continued care of the patient are not available at the time the patient is transferred, the records shall be forwarded to the receiving physician and receiving facility as soon as possible.

(B) The medical record shall contain at a minimum:

(i) a brief description of the patient's medical history and physical examination;

(ii) a working diagnosis and recorded observations of physical assessment of the patient's condition at the time of transfer;

(iii) the reason for the transfer;

(iv) the results of all diagnostic tests, such as laboratory tests;

(v) pertinent X-ray films and reports; and

(vi) any other pertinent information.

(10) Memorandum of transfer.

(A) The policy shall provide that a memorandum of transfer be completed for every patient who is transferred.

(B) The memorandum shall contain the following information:

(i) the patient's full name, if known;

(ii) the patient's race, religion, national origin, age, sex, physical disability [~~handicap~~], if known;

(iii) the patient's address and next of kin, address, and phone number if known;

(iv) the names, telephone numbers and addresses of the transferring and receiving physicians;

(v) the names, addresses, and telephone numbers of the transferring and receiving facilities;

(vi) the time and date on which the patient first presented or was presented to the transferring physician and transferring facility;

(vii) the time and date on which the transferring physician secured a receiving physician;

(viii) the name, date, and time administration was contacted in the receiving facility;

(ix) signature, time, and title of the transferring facility administration who contacted the receiving facility;

(x) the certification required by paragraph (5)(B)(ii) of this subsection, if applicable (the certification may be part of the memorandum of transfer form or may be on a separate form attached to the memorandum of transfer form);

(xi) the time and date on which the receiving physician assumed responsibility for the patient;

(xii) the time and date on which the patient arrived at the receiving facility;

(xiii) signature and date of receiving administration;

(xiv) type of vehicle and company used;

(xv) type of equipment and personnel needed in transfers;

(xvi) name and city of facility to which patient was transported;

(xvii) diagnosis by transferring physician; and

(xviii) attachments by transferring facility.

(C) A copy of the memorandum of transfer shall be retained by the transferring and receiving facilities. The memorandum shall be filed separately from the patient's medical record and in a manner that facilitates [~~which will facilitate~~] its inspection by HHSC [~~the department~~]. All memorandum of transfer forms filed separately shall be retained for five years.

(e) Violations. A facility violates HSC[~~,~~] Chapter 577 and this section if:

(1) the facility fails to comply with the requirements of this section; or

(2) the governing body fails or refuses to:

(A) adopt a transfer policy which is consistent with this section and contains each of the requirements in subsection (d) of this section;

(B) adopt a memorandum of transfer form which meets the minimum requirements for content contained in this section; or

(C) enforce its transfer policy and the use of the memorandum of transfer.

§510.46. Abuse and Neglect Issues.

(a) Reporting. Incidents of abuse, neglect, exploitation, or illegal, unethical or unprofessional conduct shall be reported to the Texas Health and Human Services Commission (HHSC) [~~department~~] as provided in subsections (b) and (c) of this section.

(b) Abuse or neglect of a child, and abuse, neglect, or exploitation of an elderly or disabled person. The following definitions apply only to this subsection.

(1) Abuse or neglect of a child, as defined in 25 TAC [~~Texas Administrative Code (TAC)~~] §1.204(a) and (b) (relating to [~~Investigations of~~] Abuse, Neglect, and [~~or~~] Exploitation Defined [~~of Children or Elderly or Disabled Persons~~]).

(2) Abuse, neglect, or exploitation of an elderly or disabled person, as defined in 25 TAC §1.204(a) - (c) [~~and (b) of this title~~].

(c) Abuse and neglect of individuals with mental illness, and illegal, unethical, and unprofessional conduct. The requirements of this subsection are in addition to the requirements of subsection (b) of this section.

(1) Definitions. The following definitions are in accordance with Texas Health and Safety Code (HSC) [~~,~~] §161.131 and apply only to this subsection. [~~:~~]

(A) Abuse--[~~-~~]

(i) Abuse (as the term is defined in [~~42~~] United States Code (USC) Title 42 Chapter 114[~~, §10801 et seq.~~)] is any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an [~~a~~] individual with mental illness, and includes acts such as:

(I) the rape or sexual assault of an [~~a~~] individual with mental illness;

(II) the striking of an [a] individual with mental illness;

(III) the use of excessive force when placing an [a] individual with mental illness in bodily restraints; and

(IV) the use of bodily or chemical restraints on an [a] individual with mental illness which is not in compliance with federal and state laws and regulations.

(ii) In accordance with HSC[,] §161.132(j), abuse also includes coercive or restrictive actions that are illegal or not justified by the patient's condition and that are in response to the patient's request for discharge or refusal of medication, therapy, or treatment.

(B) Illegal conduct--Illegal conduct (as the term is defined in HSC[,] §161.131(4)) is conduct prohibited by law.

(C) Neglect--Neglect (as the term is defined in 42 USC[,] §10801 et seq.) is a negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death to an [a] individual with mental illness or which placed an [a] individual with mental illness at risk of injury or death, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan for an [a] individual with mental illness, the failure to provide adequate nutrition, clothing, or health care to an [a] individual with mental illness, or the failure to provide a safe environment for an [a] individual with mental illness, including the failure to maintain adequate numbers of appropriately trained staff.

(D) Unethical conduct--Unethical conduct (as the term is defined in HSC[,] §161.131(11)) is conduct prohibited by the ethical standards adopted by state or national professional organizations for their respective professions or by rules established by the state licensing agency for the respective profession.

(E) Unprofessional conduct--Unprofessional conduct (as the term is defined in HSC[,] §161.131(12)) is conduct prohibited under rules adopted by the state licensing agency for the respective profession.

(2) Posting requirements. A facility shall prominently and conspicuously post for display in a public area that is readily visible to patients, residents, volunteers, employees, and visitors a statement of the duty to report abuse and neglect, or illegal, unethical or unprofessional conduct in accordance with HSC[,] §161.132(e). The statement shall be in English and in a second language appropriate to the demographic makeup of the community served and contain the number of the current toll-free telephone number for submitting a complaint to HHSC as specified on the HHSC website [department's patient information and complaint line at (888) 973-0022].

(3) Reporting responsibility.

(A) Reporting abuse and neglect. A person, including an employee, volunteer, or other person associated with the facility who reasonably believes or who knows of information that would reasonably cause a person to believe that the physical or mental health or welfare of a patient of the facility who is receiving mental health or chemical dependency services has been, is, or will be adversely affected by abuse or neglect (as those terms are defined in this subsection) by any person shall as soon as possible, but no later than 24 hours after, report the information supporting the belief to HHSC [the department] or to the appropriate state health care regulatory agency in accordance with HSC[,] §161.132(a).

(B) Reporting illegal, unprofessional, or unethical conduct. An employee of or other person associated with a facility including a health care professional, who reasonably believes or who knows of information that would reasonably cause a person to believe that the facility or an employee or health care professional associated with the facility, has, is, or will be engaged in conduct that is or might be illegal, unprofessional, or unethical and that relates to the operation of the facility or mental health or chemical dependency services provided in the facility shall as soon as possible, but no later than 48 hours after, report the information supporting the belief to HHSC [the department] or to the appropriate state health care regulatory agency in accordance with HSC[,] §161.132(b).

(4) Training requirements. A facility providing mental health or substance use services shall comply with §568.121 of this title (relating to Staff Member Training) [the memorandum of understanding (MOU) adopted by the Texas Commission on Alcohol and Drug Abuse in 40 TAC §148.205 (relating to Training Requirements Relating to Abuse, Neglect, and Unprofessional or Unethical Conduct). The MOU applies] to all employees and associated health care professionals who are assigned to or who provide services in the facility.

(d) Investigations. A complaint under this subsection will be investigated or referred by HHSC [the department] as follows.

(1) Allegations under subsection (b) of this section will be investigated in accordance with 25 TAC §1.205 [of this title] (relating to Reports and Investigations [of Children or Elderly or Disabled Persons]) and 25 TAC §1.206 [of this title] (relating to Completion of Investigation).

(2) Allegations under subsection (c) of this section will be investigated in accordance with §510.83 [§134.81] of this chapter [title] (relating to Complaint Investigations [Survey and Investigation Procedures]). Allegations concerning a health care professional's failure to report abuse and neglect or illegal, unprofessional, or unethical conduct will not be investigated by HHSC [the department] but will be referred to the individual's licensing board for appropriate disciplinary action.

(3) Allegations under both subsections (b) and (c) will be investigated in accordance with 25 TAC §§1.205 and 1.206 [of this title] except as noted in paragraph (2) of this subsection concerning a health care professional's failure to report.

(e) Submission of complaints. A complaint made under this section shall [may] be submitted in writing or orally [verbally] to HHSC [the Health Facility Licensing and Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, telephone, (888) 973-0022].

(f) Notification.

(1) For complaints under subsection (b) of this section, HHSC [the department] shall provide notification according to the following:

(A) HHSC [The department] shall notify the reporter, if known, in writing of the outcome of the complete investigation.

(B) HHSC [The department] shall notify the alleged victim, and the alleged victim's [his or her] parent or guardian if a minor, in writing of the outcome of the completed investigation.

(2) For complaints under subsection (c) of this section, HHSC [the department] shall inform, in writing, the complainant who identifies themselves by name and address of the following:

(A) the receipt of the complaint;

(B) if the complainant's allegations are potential violations of this chapter warranting an investigation;

(C) whether the complaint will be investigated by HHSC [~~the department~~];

(D) whether and to whom the complaint will be referred; and

(E) the findings of the complaint investigation.

(g) HHSC [~~Department~~] reporting and referral.

(1) Reporting health care professional to licensing board.

(A) In cases of abuse, neglect, or exploitation, as those terms are defined in subsection (b), by a licensed, certified, or registered health care professional, HHSC [~~the department~~] may forward a copy of the completed investigative report to the state agency which licenses, certifies or registers the health care professional. Any information which might reveal the identity of the reporter or any other patients or clients of the facility must be blacked out or deidentified.

(B) A health care professional who fails to report abuse and neglect or illegal, unprofessional, or unethical conduct as required by subsection (c)(3) of this section may be referred by HHSC [~~the department~~] to the individual's licensing board for appropriate disciplinary action.

[~~(2) Abusive treatment methods. The department shall report or forward a copy of a complaint concerning an abusive treatment method to the Texas Department of Mental Health and Mental Retardation.~~]

(2) [~~(3)~~] Sexual exploitation reporting requirements. In addition to the reporting requirements described in subsection (c)(3) of this section, a mental health services provider must report suspected sexual exploitation in accordance with Texas Civil Practice and Remedies Code[~~,~~] §81.006.

(3) [~~(4)~~] Referral follow-up. HHSC [~~The department~~] shall request a report from each referral agency of the action taken by the agency six months after the referral.

(4) [~~(5)~~] Referral of complaints. A complaint containing allegations which are not a violation of HSC[~~,~~] Chapters 571 through [~~or~~] 577 or this chapter will not be investigated by HHSC [~~the department~~] but shall be referred to law enforcement agencies or other agencies, as appropriate.

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

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SUBCHAPTER D. VOLUNTARY AGREEMENTS

26 TAC §510.61, §510.62

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

§510.61. Patient Transfer Agreements.

(a) General provisions.

(1) Transfer agreements between transferring facilities and receiving facilities as those terms are defined in §510.43 [~~§134.43~~] of this chapter [~~title~~] (relating to Patient Transfer Policy) are voluntary.

(2) If transfer agreements are executed that are consistent with the requirements of subsection (b) of this section, any patient transfers shall be governed by the agreement. The memorandum of transfer described in §510.43(d)(10) [~~§134.43(d)(10)~~] of this chapter [~~title~~] is not required for transfers governed by an agreement.

(3) Multiple transfer agreements may be entered into based upon the type or level of medical services available at other facilities.

(b) Rules for patient transfer agreements.

(1) A patient transfer agreement shall contain the following.

(A) Except as specifically provided in paragraph (4) of this subsection, relating to mandated providers, the transfer of a patient shall not be predicated upon arbitrary, capricious, or unreasonable discrimination based upon race, religion, national origin, age, sex, physical condition, or economic status.

(B) The transfer or receipt of patients in need of emergency care shall not be based upon the individual's inability to pay for the services rendered.

(2) The patient transfer agreement shall require that patient transfers be accomplished in a medically appropriate manner by determining the availability of appropriate facilities, services, and staff for providing care to the patient and by providing:

(A) medically appropriate life support measures which a reasonable and prudent physician in the same or similar locality exercising ordinary care would use to stabilize the patient prior to transfer and to sustain the patient during the transfer;

(B) appropriate personnel and equipment which a reasonable and prudent physician in the same or similar locality exercising ordinary care would use for the transfer; and

(C) all necessary records for continuing the care for the patient.

(3) The facility shall recognize the right of an individual to request transfer into the care of a physician and facility of the individual's own choosing.

(4) The facility shall recognize and comply with the requirements of Texas [~~the Indigent Health Care and Treatment Act,~~] Health and Safety Code §61.030 through §61.032 and §61.057 through §61.059[~~, Chapter 61 (relating to the Transfer of Patients to Mandated Providers)~~].

(5) The patient transfer agreement shall provide that a patient with an emergency medical condition which has not been stabilized shall not be transferred unless the following occurs.

(A) The patient, or a legally responsible person acting on the patient's behalf, after being informed of the facility's obligations under this section and of the risk of transfer, has requested transfer to another facility in writing.

(B) A physician has signed a certification, which includes a summary of the risks and benefits, that, based on the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another facility outweigh the increased risks to the patient and, in the case of labor, to the unborn child from effecting the transfer.

(C) If a physician is not physically present at the time a patient is transferred, a qualified medical person has signed a certification described in subparagraph (B) of this paragraph after consultation with a physician who has made the determination described in subparagraph (B) of this paragraph and who will subsequently countersign the certification within a reasonable period of time.

§510.62. Cooperative Agreements.

(a) A cooperative agreement is an agreement among two or more hospitals for the allocation or sharing of health care equipment, facilities, personnel, or services, and may be established in accordance with Texas Health and Safety Code (HSC) [,] Chapter 314.

(b) For purposes of this section only, a hospital is a private psychiatric [~~mental~~] hospital licensed under HSC[,] Chapter 577, or a general or special hospital licensed under HSC[,] Chapter 241.

(c) A hospital may negotiate and enter into cooperative agreements with other hospitals in the state if the likely benefits resulting from the agreement outweigh any disadvantages attributable to a reduction in competition that may result from the agreements. Acting through their boards of directors, a group of hospitals may conduct discussions or negotiations concerning cooperative agreements, provided that the discussions or negotiations do not involve price fixing or predatory pricing.

(d) Parties to a cooperative agreement may apply to HHSC [~~the department~~] for a certification of public advantage governing the cooperative agreement. The application must include the application fee in accordance with §510.26(e) [~~§134.26(e)~~] of this chapter [~~title~~] (relating to Fees), and a written copy of the cooperative agreement that describes the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. A copy of the application and copies of all additional related materials must be submitted to the attorney general and to HHSC [~~the department~~] at the same time.

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

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SUBCHAPTER F. FIRE PREVENTION AND SAFETY REQUIREMENTS

26 TAC §510.101

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

§510.101. Fire Prevention and Protection.

(a) Fire inspections.

(1) Annual inspection. Approval of the fire protection of a facility by the local fire department or State Fire Marshall's Office shall be a prerequisite for licensure.

(2) Purpose of inspection. The purpose of these inspections shall be to ascertain and to cause to be corrected any conditions liable to cause fire or violations of any of the provisions or intent of these rules, or of any other applicable ordinances, which affect fire safety in any way.

(3) Hazardous or dangerous conditions or materials. Whenever any of the officers, members, or inspectors of the fire department or bureau of fire prevention find in any building or upon any premises dangerous or hazardous conditions or materials, removal or remedy of dangerous conditions or materials shall be carried out in a manner specified by the inspector or officer [~~inspector/officer~~].

(4) Access for inspection. At all reasonable hours, the chief of the fire department, the chief of the bureau of fire prevention, or any of the fire inspectors may enter any building or premises for the purpose of making an inspection or investigation which may be deemed necessary under the provisions of these rules.

(b) Fire reporting. All occurrences of fire shall be reported to the local fire authority and shall be reported in writing to the Texas [~~Hospital Licensing Director,~~] Health [~~Facility Licensing~~] and Human Services Commission [~~Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756~~], as soon as possible but not later than 10 calendar days following the occurrence.

(1) The fire incident report shall indicate as a minimum the following information:

(A) the fire origin and area or location [~~area/location~~];

(B) amount of damage;

(C) were patients or employees or staff [~~employees/staff~~] injured;

(D) was the fire department notified and did they respond;

(E) how was the fire detected;

(F) how was the fire extinguished;

(G) what caused the fire;

(H) was there a general evacuation or just area evacuation; and

(I) has the fire area or location [~~area/location~~] been reoccupied.

(2) The fire incident report shall be provided on facility letterhead and signed by hospital administration.

(3) A copy of the fire marshal [~~marshall~~] incident report shall be provided if the fire marshal [~~marshall~~] wrote an incident report.

(c) Fire protection. Fire protection shall be provided in accordance with the requirements of National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 2000 edition (NFPA 101), §18-7, and §510.121(a)(1) [~~§134.121(a)(1)~~] of this chapter [~~title~~] (relating to Requirements for Buildings in which Existing Licensed Facilities are Located), and §510.122(a)(1) [~~§134.122(a)(1)~~] and (d) of this chapter [~~title~~] (relating to New Construction Requirements). When required or installed, sprinkler systems for exterior fire exposures shall comply with National Fire Protection Association 80A, Recommended Practice for Protection of Buildings from Exterior Fire Exposures, 1999 edition. [~~All documents published by NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, Post Office Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.~~]

(d) Smoking rules. Each facility shall adopt, implement, and enforce a smoking policy. The policy shall include the minimal provisions of NFPA 101[~~,~~] §18-7.4.

(e) Fire extinguishing systems. Inspection, testing, and maintenance of fire-fighting equipment shall be conducted by each facility.

(1) Water-based fire protection systems. All fire sprinkler systems, fire pumps, fire standpipe and hose systems, water storage tanks, and valves and fire department connections shall be inspected, tested and maintained in accordance with National Fire Protection Association 25, Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems, 1995 edition.

(2) Range hood extinguishers. Fire extinguishing systems for commercial cooking equipment, such as at range hoods, shall be inspected and maintained in accordance with National Fire Protection Association 96, Standard for Ventilation Control and Fire Protection of Cooking Operations, 1998 edition.

(3) Portable fire extinguishers. Every portable fire extinguisher located in a facility or upon facility property shall be installed, tagged, and maintained in accordance with National Fire Protection Association 10, Standard for Portable Fire Extinguishers, 1998 edition.

(f) Fire protection and evacuation plan. A plan for the protection of patients in the event of fire and their evacuation from the building when necessary shall be formulated according to NFPA 101[~~,~~] §18-7. Copies of the plan shall be available to all staff.

(1) Posting requirements. An evacuation floor plan shall be prominently and conspicuously posted for display throughout the facility in public areas that are readily visible to patients, residents, employees, and visitors.

(2) Annual training. Each facility shall conduct an annual training program for instruction of all personnel in the location and use of fire-fighting equipment. All employees shall be instructed regarding their duties under the fire protection and evacuation plan.

(g) Fire drills. The facility shall conduct at least one fire drill per shift per quarter, which shall include communication of alarms, simulation of evacuation of patients and other occupants, and use of fire-fighting equipment. Documentation of the drills shall be maintained for a period of not less than one year.

(h) Fire alarm system. Every facility and building used for patient care shall have an approved fire alarm system. Each fire alarm system shall be installed and tested in accordance with §510.121(a)(1)(A) [~~§134.121(a)(1)(A)~~] of this chapter [~~title~~] for existing facilities, and §510.122(d)(5)(M) [~~§134.122(d)(5)(N)~~] of this chapter [~~title~~] for new construction.

(i) System for communicating an alarm of fire. A reliable communication system shall be provided as a means of reporting a fire to the fire department. This is in addition to the automatic alarm transmission to the fire department required by NFPA 101 [~~,~~] §18-3.4.3.2.

(j) Fire department access. As an aid to fire department services, every facility shall provide the following.

(1) Driveways. The facility shall maintain driveways, free from all obstructions, to main buildings for fire department apparatus use.

(2) Floor plans. Upon request, the facility shall submit a copy of the floor plans of the building to the local fire department officials.

(3) Outside identification. The facility shall place proper identification on the outside of the main building showing the locations of siamese connections and standpipes as required by the local fire department services.

(k) Fire department protection. When a facility is located outside of the service area or range of the public fire protection, arrangements shall be made to have the nearest fire department respond in case of a fire.

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

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SUBCHAPTER G. PHYSICAL PLANT AND CONSTRUCTION REQUIREMENTS

26 TAC §§510.121 - 510.123, 510.125, 510.127 - 510.129, 510.131

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The amendments implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapter 577.

§510.121. Requirements for Buildings in which Existing Licensed Facilities are Located.

(a) Compliance. All buildings in which existing facilities licensed by the Texas Health and Human Services Commission (HHSC) [~~department~~] are located shall comply with this subsection.

(1) Minimum fire safety and construction requirements.

(A) Existing licensed facilities shall meet the requirements for health care occupancies contained in the 1985, 1988, 1991 or 2000 editions of the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, (NFPA 101), and the facility licensing rules (1988, 1989 or 1994) under which the buildings or sections of buildings were constructed or last modified. [~~All documents published by NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.~~]

(B) Existing facilities or portions of existing facilities constructed prior to the adoption of any of the editions of NFPA 101, the Facility Licensing Standards, and the facility licensing rules listed in subparagraph (A) of this paragraph, shall comply with this section and Chapter 19, NFPA 101, 2000 edition.

(C) Compliance with the requirements of Chapter 3 of the National Fire Protection Association 101A, Alternative Approaches to Life Safety, 1998 edition, (relating to Fire Safety Evaluation System for Health Care Occupancies) will be acceptable in lieu of complying with the requirements of Chapter 19, NFPA 101, 2000 edition.

(2) Remodeling of existing facilities. All requirements listed in this chapter relating to new construction are applicable to renovations, additions and alterations unless stated otherwise.

(A) Alteration or installation of new equipment. Any alteration or any installation of new equipment shall be accomplished as nearly as practicable with the requirements for new construction, except that when existing conditions make changes impractical to accomplish, minor deviations from functional requirements may be permitted if the intent of the requirements is met and if the care and safety of patients will not be jeopardized. A request for deviation must be submitted in writing to HHSC [~~the Hospital Licensing Director, Health Facility Licensing and Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and approved by the department~~].

(B) Installation, alteration, or extension approval. No new system of mechanical, electrical, plumbing, fire protection, or piped medical gas system may be installed or any such existing system be replaced, materially altered or extended in an existing building licensed as a facility, until complete plans and specifications for the replacement, installation, alteration, or extension have been submitted to HHSC [~~the department~~], reviewed and approved in accordance with §510.127 [~~§134.127~~] of this subchapter [~~title~~] (relating to Preparation, Submittal, Review and Approval of Plans).

(C) Minor remodeling or alterations. All remodeling or alterations which do not involve alterations to load bearing members or partitions, change functional operation, affect fire safety (e.g. modifications to the fire, smoke, and corridor walls), add or subtract beds or services for which the facility is licensed, and do not involve changes listed in subparagraph (B) of this paragraph, shall be submitted for approval without submitting contract documents. Such approval shall be requested in writing with a brief description of the proposed changes and a simple floor plan for evaluation and determination of disposition.

(D) Major remodeling or alterations. Plans shall be submitted in accordance with §510.127 [~~§134.127~~] of this subchapter [~~title~~] for all major remodeling or alterations. All remodeling or alterations which involve alterations to load bearing members or partitions, change functional operation, affect fire safety (e.g. modifications to the fire, smoke, and corridor walls), or change the designed bed capacity or services over those for which the facility is licensed are considered as major remodeling and alterations.

(E) Phasing of construction in existing facilities. Projects involving alterations of and additions to existing buildings shall be programmed and phased so that on-site construction will minimize disruptions of existing functions. Access, exit access, and fire protection shall be maintained so that the safety of the occupants will not be jeopardized during construction. Dust and vapor barriers shall be provided to separate areas undergoing demolition and construction from occupied areas. Temporary sound barriers shall be provided where intense prolonged construction noises will disturb patients or staff in the occupied portions of the building.

(F) Nonconforming conditions. When doing renovation work, if it is found to be infeasible to correct all of the nonconforming conditions in the existing facility in accordance with these rules, a conditional approval may be granted by HHSC [~~the department~~] if the operation of the facility, necessary access by the handicapped, and safety of the patients are not jeopardized by the nonconforming condition.

(b) Previously licensed facilities. Buildings which have been licensed previously as facilities but have been vacated or used for purposes other than as facilities and which are not in compliance with the 1985, 1988, 1991 or 2000 editions of the NFPA 101, and facility licensing rules (1988, 1989 or 1994) under which the building or sections of buildings were constructed shall comply with the requirements of §510.122 [~~§134.122~~] of this subchapter [~~title~~] (relating to New Construction Requirements), §510.123 [~~§134.123~~] of this subchapter [~~title~~] (relating to Spatial Requirements for New Construction), §510.125 [~~§134.125~~] of this subchapter [~~title~~] (relating to Building with Multiple Occupancies), §510.127 [~~§134.127~~] of this subchapter [~~title~~], and §510.130 [~~§134.130~~] of this subchapter [~~title~~] (relating to Record Drawings, Manuals and Design Data), inclusively.

§510.122. New Construction Requirements.

(a) Facility location. Any proposed new facility shall be easily accessible to the community and to service vehicles such as delivery trucks, ambulances, and fire protection apparatus. No building may be converted for use as a facility which, because of its location, physical condition, state of repair, or arrangement of facilities, would be hazardous to the health and safety of the patients.

(1) Hazardous locations.

(A) Underground and above ground hazards. New facilities or additions to existing facilities shall not be built within 125 feet of right away/easement of hazardous locations including [~~but not limited to~~] underground liquid butane or propane, liquid petroleum or natural gas transmission lines, high pressure lines, and not under high voltage electrical lines.

(B) Fire hazards. New facilities shall not be built within 300 feet of above ground or underground storage tanks containing liquid petroleum or other flammable liquids used in connection with a bulk plant, marine terminal, aircraft refueling, bottling plant of a liquefied petroleum gas installation, or near other hazardous or hazard producing plants.

(2) Undesirable locations.

(A) Nuisance producing sites. New facilities shall not be located near nuisance producing industrial sites, feed lots, sanitary landfills, or manufacturing plants producing excessive noise or air pollution.

(B) Cemeteries. New facilities shall not be located near a cemetery in a manner that allows direct view of the cemetery from patient windows.

(C) Flood plains. Construction of new facilities shall be avoided in designated flood plains. Where such is unavoidable, access and required functional facility components shall be constructed above the designated flood plain. This requirement also applies to new additions to existing facilities or portions of facilities which have been licensed previously as facilities but which have been vacated or used for purposes other than facilities. This requirement does not apply to remodeling of existing licensed facilities.

(D) Airports. Construction of new facilities shall be avoided in close proximity to airports. When facilities are proposed to be located near airports, recommendations of the Texas Aviation Authority and the Federal Aviation Authority shall apply. A facility may not be constructed within a rectangular area formed by lines perpendicular to and two miles (10,560 feet) from each end of any runway and by lines parallel to and one-half mile (2,640 feet) from each side of any runway.

(b) Environmental considerations. Development of a facility site and facility construction shall be governed by state and local regulations and requirements with respect to the effect of noise and traffic on the community and the environmental impact on air and water.

(c) Facility site.

(1) Paved roads and walkways. Paved roads shall be provided within the lot lines to provide access from public roads to the main entrance, entrances serving community activities, and to service entrances, including loading and unloading docks for delivery trucks. Finished surface walkways shall be provided for pedestrians.

(2) Parking. Off-street parking shall be available for visitors, employees, and staff. Parking structures directly accessible from a facility shall be separated with two-hour fire rated noncombustible construction. When used as required means of egress for facility occupants, parking structures shall comply with National Fire Protection Association 88A, Standard for Parking Structures, 1998 edition. This requirement does not apply to freestanding parking structures. [~~All documents published by National Fire Protection Association (NFPA) as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.~~]

(A) Number of parking places. In the absence of a formal parking study, one parking space shall be provided for each day shift employee plus one space for one and one-half patient beds. This ratio may be reduced in an area convenient to a public transportation system or to public parking facilities on the basis of a formal parking study. Parking shall be increased accordingly when the size of an existing facility is increased.

(B) Additional parking. Additional parking shall be required to accommodate medical staff, outpatient and other services when such services are provided.

(C) Delivery parking. Separate parking facilities shall be provided for delivery vehicles.

(D) Accessible [~~Handicapped~~] parking. Parking spaces for [~~handicapped~~] persons with disabilities shall be provided in accordance with the Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, 42 United States Code, Chapter 126, and Title 36 Code of Federal Regulations, Part 1191, Appendix A, Accessibility Guidelines for Buildings and Facilities.

(d) Building design and construction requirements. Every building and every portion thereof shall be designed and constructed to sustain all dead and live loads in accordance with accepted engineering practices and standards and the local governing building codes. Where there is no local governing building code, one of the following codes shall be adhered to: Uniform Building Code, 1999 edition, published by the International Conference of Building Officials [~~, 5360 Workman Mill Road, Whittier, California 90601, telephone (562) 699-0541; or the Standard Building Code, 1997 edition, published by the Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206, telephone (205) 591-1853~~].

(1) General architectural requirements. All new construction, including conversion of an existing building to a facility, establishing a separately licensed facility in a building with an existing licensed health care occupancy, and establishing a licensed facility in a non-health [~~nonhealth~~] care occupancy shall comply with Chapter 18 of the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 2000 edition (NFPA 101), and Subchapters [~~subchapters~~] F and G of this chapter (relating to Fire Prevention and Safety Requirements [~~,~~] and Physical Plant and Construction Requirements, respectively). The facility shall comply with the requirements of this paragraph and any specific architectural requirements for the particular unit or suite of the facility in accordance with §510.123 [~~§134.123~~] of this subchapter [~~title~~] (relating to Spatial Requirements for New Construction).

(A) Special design provisions. Special provisions shall be made in the design of a facility in regions where local experience shows loss of life or extensive damage to buildings resulting from hurricanes, tornadoes, or floods.

(B) Foundations. Foundations shall rest on natural solid bearing if satisfactory bearing is available. Proper soil-bearing values shall be established in accordance with recognized requirements. If solid bearing is not encountered at practical depths, the structure shall be supported on driven piles or drilled piers designed to support the intended load without detrimental settlement, except that one-story buildings may rest on a fill designed by a soils engineer. When engineered fill is used, site preparation and placement of fill shall be done under the direct full-time supervision of the soils engineer. The soils engineer shall issue a final report on the compacted fill operation and certification of compliance with the job specifications. All footings shall extend to a depth not less than one foot below the estimated maximum frost line.

(C) Physical environment. A physical environment that protects the health and safety of patients, personnel, and the public shall be provided in each facility. The physical premises of the facility and those areas of the facility's physical structure that are used by the patients (including all stairwells, corridors, and passageways) shall meet the local building and fire safety codes and subchapters F and G of this chapter.

(D) Construction type. A facility may occupy an entire building or a portion of a building, provided the facility portion of the building is separated from the rest of the building in accordance with subparagraph (E) of this paragraph and the entire building or the facility portion of the building complies with new construction requirements (type of construction permitted for facilities by NFPA 101, §18-1.6.2), and the entire building is protected with a fire sprinkler system conforming with requirements of National Fire Protection Association 13, Standard for the Installation of Sprinkler Systems, 1999 Edition (NFPA 13).

(E) Separate buildings. Portions of a building divided horizontally with two-hour fire rated walls which are continuous (without offsets) from the foundation to above the roof shall be considered as a separate building. Communicating openings in the two-hour wall shall be limited to public spaces such as lobbies and corridors. All such

openings shall be protected with self-closing one and one-half hour, Class B fire door assemblies.

(F) Design for people with disabilities [~~the handicapped~~]. Special considerations benefiting [~~handicapped~~] staff, visitors, and patients with disabilities shall be provided. Each facility shall comply with the Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, 42 United States Code, Chapter 126, and Title 36 Code of Federal Regulations, Part 1191, Appendix A, Accessibility Guidelines for Buildings and Facilities.

(G) Other regulations. Certain projects may be subject to other regulations, including those of federal, state, and local authorities. The more stringent standard or requirement shall apply when a difference in requirements for construction exists.

(H) Exceeding minimum requirements. Nothing in this subchapter shall be construed to prohibit a better type of building construction, more exits, or otherwise safer conditions than the minimum requirements specified in this subchapter.

(I) Equivalency. Nothing in this subchapter is intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety to those prescribed by this subchapter, providing technical documentation which demonstrates equivalency is submitted to the department for approval.

(J) Freestanding buildings (not for patient use). Separate freestanding buildings for nonpatient use such as the heating plant, boiler plant, laundry, repair workshops, or general storage may be of unprotected non-combustible construction, protected non-combustible construction, or fire-resistive construction and be designed in accordance with other occupancy classifications requirements listed in NFPA 101.

(K) Freestanding buildings (for patient use other than sleeping). Buildings containing areas for patient use which do not contain patient sleeping areas and in which care or treatment is rendered to ambulatory inpatients who are capable of judgment and appropriate physical action for self-preservation under emergency conditions, may be classified as ambulatory health care occupancies or business occupancies as listed in NFPA 101[,] Chapters 20 and 38, respectively, instead of facility occupancy. Such buildings shall be located at least 20 feet from the facility unless protected by an approved automatic sprinkler system.

(L) Energy conservation. In new construction and in major alterations and additions to existing buildings and in new buildings, electrical and mechanical components shall be selected for efficient utilization of energy.

(2) General detail and finish requirements. Details and finishes in new construction projects, including additions and alterations, shall be in compliance with this paragraph, with NFPA 101, Chapter 18, with local building codes, and with any specific detail and finish requirements for the particular unit or suite as contained in §510.123 [~~§134.123~~] of this subchapter [~~title~~].

(A) General detail requirements.

(i) Fire safety. Fire safety features, including compartmentation, means of egress, automatic extinguishing systems, inspections, smoking regulations, and other details relating to fire prevention and fire protection shall comply with §510.121 [~~§134.121~~] of this subchapter [~~title~~] (relating to Requirements for Buildings in which Existing Licensed Facilities are Located), and NFPA 101[,] Chapter 18 requirements for facilities. The Fire Safety Evaluation System for Health Care Occupancies contained in the National Fire Protection Association 101A, Alternative Approaches to Life Safety, 1998 edition, Chapter 3, shall not be used in new building construction, renovations, or additions to existing facilities.

(ii) Access to exits. Corridors providing access to all patient, diagnostic, treatment, and sleeping rooms and exits shall be at least six feet in clear and unobstructed width (except as allowed by NFPA 101, §18-2.3.3, Exceptions 1 and 2), not less than 7 feet 6 inches in height, and constructed in accordance with requirements listed in NFPA 101[,] §18-3.6.

(iii) Corridors in other occupancies. Public corridors in outpatient, administrative, and service areas which are designed to other than facility requirements and are the required means of egress from the facility shall be not less than five feet in width.

(iv) Encroachment into the means of egress. Items such as drinking fountains, telephone booths or stations, and vending machines shall be so located as to not project into and restrict exit corridor traffic or reduce the exit corridor width below the required minimum. Portable equipment shall not be stored so as to project into and restrict exit corridor traffic or reduce the exit corridor width below the required minimum.

(v) Doors in means of egress. All door leaves in the means of egress shall be not less than 36 inches wide or as otherwise permitted for facilities by NFPA 101[,] §18-2.3.5.

(vi) Sliding doors. When sliding doors are provided to a means of egress corridor, the sliding doors shall have break-away provisions, positive latching devices, and shall be installed to resist passage of smoke.

(vii) Control doors. Designs that include cross-corridor control doors should be avoided. When unavoidable, cross-corridor control doors shall consist of two 32-inch wide leaves which swing in a direction opposite from the other, or of the double acting type, and be provided with view panels.

(viii) Emergency access. Rooms containing bathtubs, showers, or water closets, intended for patient use shall be provided with at least one outswinging door or special frame and hardware which will permit the door to swing out for staff access to a patient who may have collapsed against the door. The width of such doors shall not be less than 36 inches.

(ix) Obstruction of corridors. All doors which swing towards the corridor must be recessed. Corridor doors to rooms not subject to occupancy (any room that you can walk into and close the door behind you is considered occupiable) may swing into the corridor, provided that such doors comply with the requirements of NFPA 101[,] §7-2.1.4.3.

(x) Stair landing. Doors shall not open immediately onto a stair without a landing. The landing shall be 44 inches deep or have a depth at least equal to the door width, whichever is greater.

(xi) Doors to rooms subject to occupancy. All doors to rooms subject to occupancy shall be of the swing type except that horizontal sliding doors complying with the requirements of NFPA 101[,] §18-2.2.2.9 are permitted. Door leaves to rooms subject to occupancy shall not be less than 36 inches wide unless noted otherwise.

(xii) Operable windows and exterior doors. Windows that can be opened without tools or keys and outer doors without automatic closing devices shall be provided with insect screens.

(xiii) Glazing. Glass doors, lights, sidelights, borrowed lights, and windows located within 12 inches of a door jamb or with a bottom-frame height of less than 18 inches and a top-frame

height of more than 36 inches above the finished floor which may be broken accidentally by pedestrian traffic shall be glazed with safety glass or plastic glazing material that will resist breaking and will not create dangerous cutting edges when broken. Similar materials shall be used for wall openings in activity areas such as recreation and exercise rooms, unless otherwise required for fire safety. Safety glass, tempered or plastic glazing materials shall be used for shower doors and bath enclosures, interior windows and doors. Plastic and similar materials used for glazing shall comply with the flame-spread ratings of NFPA 101[,] §18-3.3.

(xiv) Fire doors. All fire doors shall be listed by an independent testing laboratory and shall meet the construction requirements for fire doors in National Fire Protection Association 80, Standard for Fire Doors and Fire Windows, 1999 edition. Reference to a labeled door shall be construed to include labeled frame and hardware.

(xv) Elevator doors. Elevator shaft openings shall be protected with a B labeled one-hour fire protection rated doors in buildings less than four stories; and one and one-half hour fire protection rated doors in buildings four or more stories.

(xvi) Elevator lobbies. Elevator lobbies shall have at least 10 feet of clear floor space in front of the elevator doors.

(xvii) Grab bars. Grab bars shall be provided at patient toilets, showers and tubs. The bars shall have sufficient strength and anchorage to sustain a concentrated vertical or horizontal load of 250 pounds. Grab bars are not permitted at bathing and toilet fixtures unless designed and installed to eliminate the possibility of patients harming themselves. Grab bars intended for use by persons with a disability [~~the disabled~~] shall also comply with ADA requirements.

(xviii) Soap dishes. Recessed soap dishes shall be provided at all showers and bathtubs.

(xix) Hand washing facilities. Location and arrangement of fittings for hand washing facilities shall permit their proper use and operation. Hand washing fixtures with hands-free operable controls shall be provided within each procedure room, workroom, examination and treatment room and all toilet rooms unless noted otherwise. Hands-free includes blade-type handles, and foot, knee, or sensor operated controls. Particular care shall be given to the clearances required for blade-type operating handles. Lavatories and hand washing facilities shall be securely anchored to withstand an applied vertical load of not less than 250 pounds on the front of the fixture. In addition to the specific areas noted, hand washing facilities shall be provided and conveniently located for staff use throughout the facility where patient care and services are provided.

(xx) Hand drying. Provisions for hand drying shall be included at all hand washing facilities except scrub sinks. There shall be hot air dryers or individual paper or cloth units enclosed in such a way as to provide protection against dust or soil and ensure single unit dispensing.

(xxi) Mirrors. Mirrors shall not be installed at hand washing fixtures where asepsis control and sanitation requirements would be lessened by hair combing.

(xxii) Ceiling heights. The minimum ceiling height shall be eight feet with the following exceptions.

(I) Minor rooms. Ceilings in storage rooms, toilet rooms, and other minor rooms shall be not less than 7 feet 6 inches.

(II) Boiler rooms. Boiler rooms shall have ceiling clearances not less than 2 feet 6 inches above the main boiler header and connecting piping.

(III) Overhead clearance. Suspended tracks, rails, pipes, signs, lights, door closers, exit signs, and other fixtures that protrude into the path of normal traffic shall not be less than 6 feet 8 inches above the finished floor.

(xxiii) Areas producing impact noises. Recreation rooms, exercise rooms, and similar spaces where impact noises may be generated shall not be located directly over patient bed area unless special provisions are made to minimize noise.

(xxiv) Noise reduction. Noise reduction criteria in accordance with the Table 1 in §510.131(a) [~~§134.131(a)~~] of this subchapter [~~title~~] (relating to Tables) shall apply to partitions, floor, and ceiling construction in patient areas.

(xxv) Rooms with heat producing equipment. Rooms containing heat-producing equipment such as heater rooms, laundries, etc. shall be insulated and ventilated to prevent any occupied floor surface above from exceeding a temperature differential of 10 degrees Fahrenheit above the ambient room temperature.

(xxvi) Chutes. Linen and refuse chutes shall comply with the requirements of National Fire Protection Association 82, Standard on Incinerators and Waste and Linen Handling Systems and Equipment, 1999 edition, and NFPA 101[,] §18-5.4.

(xxvii) Thresholds and expansion joint covers. Thresholds and expansion joint covers shall be flush with the floor surface to facilitate the use of wheelchairs and carts. Expansion and seismic joints shall be constructed to restrict the passage of smoke and fire and shall be listed by a nationally recognized testing laboratory.

(xxviii) Housekeeping room.

(I) In addition to the housekeeping rooms [~~room(s)~~] required in certain suites, sufficient housekeeping rooms shall be provided throughout the facility as required to maintain a clean and sanitary environment.

(II) Each housekeeping room shall contain a floor receptor or service sink and storage space for housekeeping equipment and supplies.

(xxix) Public toilets. In addition to the public toilets required for the main lobby, a public toilet [~~public toilet(s)~~] shall be provided convenient to each public and visitor waiting area. This may be a single unisex toilet for small waiting areas.

(B) General finish requirements.

(i) Cubicle curtains and draperies.

(I) Cubicle curtains, draperies and other hanging fabrics shall be noncombustible or flame retardant and shall pass both the small scale and the large scale tests of National Fire Protection Association 701, Standard Methods of Fire Tests for Flame-Resistant Textiles and Films, 1999 edition. Copies of laboratory test reports for installed materials shall be submitted to the Texas Health and Human Services Commission [~~department~~] at the time of the final construction inspection.

(II) Cubicle curtains shall be provided to assure patient privacy.

(ii) Flame spread, smoke development and noxious gases. Flame spread and smoke developed limitations of interior finishes shall comply with Table 2 of §510.131(b) [~~§134.131(b)~~] of this subchapter [~~title~~] and NFPA 101 [,] §10-2.1. The use of materials known to produce large or concentrated amounts of noxious or toxic gases shall not be used in exit accesses or in patient areas. Copies of laboratory test reports for installed materials tested in accordance with

National Fire Protection Association 255, Standard Method of Test of Surface Burning Characteristics of Building Materials, 2000 edition, and National Fire Protection Association 258, Standard Research Test Method for Determining Smoke Generation of Solid Materials, 1997 edition, shall be provided.

(iii) Floor finishes. Flooring shall be easy to clean and have wear resistance appropriate for the location involved. Floors that are subject to traffic while wet (such as shower and bath areas, kitchens, and similar work areas) shall have a nonslip surface. In all areas frequently subject to wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions. The following are acceptable floor finishes:

(I) painted concrete;

(II) vinyl and vinyl composition tiles and sheets;

(III) monolithic or seamless flooring: [~~.~~]

(-a-) where [~~Where~~] required, seamless flooring shall be impervious to water, coved, and installed integral with the base, tightly sealed to the wall, and without voids that can harbor insects or retain dirt particles; and [~~.~~]

(-b-) welded [~~Welded~~] joint flooring is acceptable;

(IV) ceramic and quarry tile;

(V) wood floors;

(VI) carpet flooring, which if [~~. Carpeting~~] installed in patient rooms and similar patient care areas, shall be treated to prevent bacterial and fungal growth;

(VII) terrazzo; and

(VIII) poured in place floors.

(iv) Wall finishes. Wall finishes shall be smooth, washable, moisture resistant, and cleanable by standard housekeeping practices. Wall finishes shall comply with requirements contained in Table 2 of §510.131(b) [~~§134.131(b)~~] of this subchapter [~~title,~~] and NFPA 101 [~~,~~] §18-3.3.

(I) Wall finishes shall be water resistant in the immediate area of plumbing fixtures.

(II) Wall finishes in areas subject to frequent wet cleaning methods shall be impervious to water, tightly sealed and without voids.

(v) Floor, wall and ceiling penetrations. Floor, wall, and ceiling penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of dirt particles, rodents, and insects. Joints of structural elements shall be similarly sealed.

(vi) Ceiling types. All occupied rooms and spaces shall be provided with finished ceilings. Ceilings which are a part of a rated roof or ceiling [~~roof/ceiling~~] assembly or a floor or ceiling [~~floor/ceiling~~] assembly shall be constructed of listed components and installed in accordance with the listing. Three types of ceilings that are required in various areas of the facility are the following.[~~:~~]

(I) Ordinary ceilings. Ceilings such as acoustical tiles installed in a metal grid which are dry cleanable with equipment used in daily housekeeping activities such as dusters and vacuum cleaners.

(II) Washable ceilings. Ceilings that are made of washable, smooth, moisture impervious materials such as painted lay-in gypsum wallboard or vinyl faced acoustic tile in a metal grid.

(III) Monolithic ceilings. Ceilings which are monolithic from wall to wall (painted solid gypsum wallboard), smooth and without fissures, open joints, or crevices and with a washable and moisture impervious finish.

(vii) Special construction. Special conditions may require special wall and ceiling construction for security in areas such as storage of controlled substances and areas where patients are likely to attempt suicide or escape.

(viii) Materials finishes. Materials known to produce noxious gases when burned shall not be used for mattresses, upholstery, and wall finishes.

(3) General mechanical requirements. This paragraph contains common requirements for mechanical systems; steam and hot and cold water systems; air-conditioning, heating and ventilating systems; plumbing fixtures; piping systems; and thermal and acoustical insulation. The facility shall comply with the requirements of this paragraph and any specific mechanical requirements for the particular unit or suite of the facility in accordance with §510.123 [~~§134.123~~] of this subchapter [~~title~~].

(A) Cost. All mechanical systems shall be designed for overall efficiency and life cycle costing, including operational costs. Recognized engineering procedures shall be followed to achieve the most economical and effective results. In no case shall patient care or safety be sacrificed for conservation.

(B) Equipment location. Mechanical equipment may be located indoors or outdoors (when in a weatherproof enclosure), or in separate buildings [~~building(s)~~].

(C) Vibration isolation. Mechanical equipment shall be mounted on vibration isolators as required to prevent unacceptable structure-borne vibration. Ducts, pipes, etc. connected to mechanical equipment which is a source of vibration shall be isolated from the equipment with vibration isolators.

(D) Performance and acceptance. Prior to completion and acceptance of the facility, all mechanical systems shall be tested, balanced, and operated to demonstrate to the design engineer or the design engineer's [~~his~~] representative that the installation and performance of these systems conform to the requirements of the plans and specifications.

(i) Material lists. Upon completion of the contract, the owner shall be provided with parts lists and procurement information with numbers and description for each piece of equipment.

(ii) Instructions. Upon completion of the contract, the owner shall be provided with instructions in the operational use of systems and equipment as required.

(E) Heating, ventilating and air conditioning (HVAC) systems. All HVAC systems shall comply with and shall be installed in accordance with the requirements of National Fire Protection Association 90A, Standard for the Installation of Air Conditioning and Ventilating Systems, 1999 edition, (NFPA 90A), NFPA 99, Chapter 5, the requirements contained in this subparagraph, and the specific requirements for a particular unit in accordance with §510.123 [~~§134.123~~] of this subchapter [~~title~~].

(i) General ventilation requirements. All rooms and areas in the facility listed in Table 3 of §510.131(c) [~~§134.131(c)~~] of this subchapter [~~title~~] shall have provision for positive ventilation. Fans serving exhaust systems shall be located at the discharge end and shall be conveniently accessible for service. Exhaust systems may be combined, unless otherwise noted, for efficient use of recovery devices required for energy conservation. The ventilation rates shown in Table

3 of §510.131(c) [§134.131(c)] of this subchapter [title] shall be used only as minimum requirements since they do not preclude the use of higher rates that may be appropriate. Supply air to the building and exhaust air from the building shall be regulated to provide a positive pressure within the building with respect to the exterior.

(I) Cost reduction methods. To reduce utility costs, the building design and systems proposed shall utilize energy conserving procedures including recovery devices, variable air volume, load shedding, systems shut down or reduction of ventilation rates (when specifically permitted) in certain areas when unoccupied, insofar as patient care is not jeopardized.

(II) Economizer cycle. Mechanical ventilation shall be arranged to take advantage of outside air supply by using an economizer cycle when appropriate to reduce heating and cooling systems loads. Innovative design that provides for additional energy conservation while meeting the intent of this section for acceptable patient care will be considered.

(III) Outside air intake locations. Outside air intakes shall be located at least 25 feet from exhaust outlets of ventilating systems, combustion equipment stacks, medical-surgical vacuum systems, plumbing vents, or areas which may collect vehicular exhaust or other noxious fumes. (Prevailing winds and proximity to other structures may require other arrangements.) Plumbing and vacuum vents that terminate five feet above the level of the top of the air intake may be located as close as 10 feet.

(IV) Low air intake location limit. The bottom of outside air intakes serving central systems shall be located as high as practical but at least six feet above ground level, or if installed above the roof, three feet above the roof level.

(V) Contaminated air exhaust outlets. Exhaust outlets from areas (kitchen hoods, ethylene oxide sterilizers, etc.) that exhaust contaminated air shall be above the roof level and arranged to exhaust upward.

(VI) Directional air flow. Ventilation systems shall be designed and balanced to provide directional flow as shown in Table 3 of §510.131(c) [§134.131(c)] of this subchapter [title]. For reductions and shut down of ventilation systems when a room is unoccupied, the provisions in Note 4 of Table 3 of §510.131(c) [§134.131(c)] of this subchapter [title] shall be followed.

(VII) Areas requiring fully ducted systems. Fully ducted supply, return and exhaust air for HVAC systems shall be provided for all general patient care areas and where required for fire safety purposes. Combination systems, utilizing both ducts and plenums for movement of air in these areas shall not be permitted. Such areas include isolation rooms and food preparation areas.

(VIII) Ventilation start-up requirements. Air handling systems shall not be started up and operated without the filters installed in place. This includes the 90% efficiency filters where required. Ducts shall be cleaned thoroughly by an air duct cleaning contractor when the air handling systems have been operating without the required filters in place.

(IX) Humidifier location. When duct humidifiers are located upstream of the final filters, they shall be located at least 15 feet from the filters. Ductwork with duct-mounted humidifiers shall be provided with a means of removing water accumulation. An adjustable high-limit humidistat shall be located downstream of the humidifier to reduce the potential of condensation inside the duct. All duct take-offs should be sufficiently downstream of the humidifier to ensure complete moisture absorption. Reservoir-type water spray or evaporative pan humidifiers shall not be used.

(ii) Filtration requirements. All central air handling systems serving patient care areas, including nursing unit corridors, shall be equipped with filters having efficiencies equal to, or greater than, those specified for those types of areas in Table 4 of §510.131(d) [§134.131(d)] of this subchapter [title]. Filter efficiencies shall be average efficiencies tested in accordance with American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE), Inc., Standard 52, 1999 edition [, (relating to Gravimetric and Dust Spot Procedures for Testing Air Cleaning Devices Used in General Ventilation for Removing Particulate Matter)]. All joints between filter segments [,] and between filter segments and the enclosing ductwork, shall have gaskets and seals to provide a positive seal against air leakage. Air handlers serving more than one room shall be considered as central air handlers. [All documents published by ASHRAE as referenced in this section may be obtained by writing or calling the ASHRAE, Inc. at the following address or telephone number: ASHRAE, Inc., 1791 Tullie Circle, N. E., Atlanta, GA 30329; telephone (404) 636-8400.]

(I) Filtration requirements for air handling units serving single rooms requiring asepsis control. Dedicated air handlers serving only one room where asepsis control is required, including [such as, but not limited to,] operating rooms, delivery rooms, special procedure rooms, and nurseries shall be equipped with filters having efficiencies equal to, or greater than, those specified for patient care areas in Table 4 of §510.131(d) [§134.131(d)] of this subchapter [title].

(II) Filtration requirements for air handling units serving other single rooms. Dedicated air handlers serving all other single rooms shall be equipped with nominal filters installed at the return air grille.

(III) Location of multiple filters. Where two filter beds are required by Table 4 of §510.131(d) [§134.131(d)] of this subchapter [title], filter bed number one shall be located upstream of the air-conditioning equipment [,] and filter bed number two shall be downstream of the supply fan or blowers.

(IV) Location of single filters. Where only one filter bed is required by Table 4 of §510.131(d) [§134.131(d)] of this subchapter [title], it shall be located upstream of the supply fan. Filter frames shall be durable and constructed to provide an airtight fit with the enclosing ductwork.

(V) Pressure monitoring devices. A manometer or draft gauge shall be installed across each filter bed having a required efficiency of 75% or more including hoods requiring high efficiency particulate air (HEPA) filters.

(iii) Thermal and acoustical insulation for air handling systems. Asbestos insulation shall not be used.

(I) Thermal duct insulation. Air ducts and casings with outside surface temperature below ambient dew point or temperature above 80 degrees Fahrenheit shall be provided with thermal insulation.

(II) Insulation in air plenums and ducts. Linings in air ducts and equipment shall meet the Erosion Test Method described in Underwriters Laboratories, Inc., Standard Number 181 [(relating to Factory-Made Duct Materials and Air Duct Connectors). This document may be obtained from the Underwriters Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062-2096].

(III) Insulation flame spread and smoke developed ratings. Interior and exterior insulation, including finishes and adhesives on the exterior surfaces of ducts and equipment, shall have a flame spread rating of 25 or less and a smoke developed rating of 50 or less as required by NFPA 90A [,] Chapters 2 and 3.

(IV) Linings and acoustical traps. Duct lining and acoustical traps exposed to air movement shall not be used in ducts serving critical care areas. This requirement shall not apply to mixing boxes and acoustical traps that have approved nonabrasive coverings over such linings.

(V) Frangible insulation. Insulation of soft and spray-on types shall not be used where it is subject to air currents or mechanical erosion or where loose particles may create a maintenance problem.

(VI) Existing duct linings. Internal linings shall not be used in ducts, terminal boxes, or other air system components supplying operating rooms, delivery rooms, birthing rooms, labor rooms, recovery rooms, nurseries, trauma rooms, isolation rooms, and intensive care units unless terminal filters of at least 90% efficiency are installed downstream of linings.

(iv) Fire damper requirements. Fire dampers shall be located and installed in all ducts at the point of penetration of a two-hour or higher fire rated wall or floor in accordance with the requirements of NFPA 101 [~~,~~] §18-5.2.

(v) Smoke damper requirements. Smoke dampers shall be located and installed in accordance with the requirements of NFPA 101[~~,~~] §18-3.7.3, and NFPA 90A [~~,~~] Chapter 3.

(I) Fail-safe installation. Smoke dampers shall close on activation of the fire alarm system by smoke detectors installed and located as required by National Fire Protection Association 72, National Fire Alarm Code, 1999 edition (NFPA 72), Chapter 5; NFPA 90A, Chapter 4; and NFPA 101, §18-3.7; the fire sprinkler system; and upon loss of power. Smoke dampers shall not close by fan shut-down alone.

(II) Interconnection of air handling fans and smoke dampers. Air handling fans and smoke damper controls may be interconnected so that closing of smoke dampers will not damage the ducts.

(III) Frangible devices. Use of frangible devices for shutting smoke dampers is not permitted.

(vi) Acceptable damper assemblies. Only fire damper and smoke damper assemblies integral with sleeves and listed for the intended purpose shall be acceptable.

(vii) Duct access doors. Unobstructed access to duct openings in accordance with NFPA 90A [~~,~~] §2-3.4, shall be provided in ducts within reach and sight of every fire damper, smoke damper and smoke detector. Each opening shall be protected by an internally insulated door which shall be labeled externally to indicate the fire protection device located within.

(viii) Restarting controls. Controls for restarting fans may be installed for convenient fire department use to assist in evacuation of smoke after a fire is controlled, provided that provisions are made to avoid possible damage to the system because of closed dampers. To accomplish this, smoke dampers shall be equipped with remote control devices.

(ix) Make-up air. If air supply requirements in Table 3 of §510.131(c) [~~§134.131(e)~~] of this subchapter [~~title~~] do not provide sufficient air for use by exhaust hoods and safety cabinets, filtered make-up air shall be ducted to maintain the required air flow direction in that room. Make-up systems for hoods shall be arranged to minimize short circuiting of air and to avoid reduction in air velocity at the point of contaminant capture.

(4) General piping systems and plumbing fixture requirements. All piping systems and plumbing fixtures shall be designed and installed in accordance with the requirements of the National Standard Plumbing Code, published by the National Association of Plumbing-Heating-Cooling Contractors (PHCC), 2000 edition, and this paragraph. [~~The National Standard Plumbing Code may be obtained by writing or calling the PHCC at the following address or telephone number: Plumbing-Heating-Cooling Contractors, P. O. Box 6808, Falls Church, VA 22040; telephone (800) 533-7694. The facility shall comply with the requirements of this paragraph and any specific piping systems and plumbing requirements for the particular unit or suite of the facility in accordance with §134.123 of this title.~~]

(A) Piping systems.

(i) Water supply systems. Water service pipe to point of entrance to the building shall be brass pipe, copper tube (not less than type M when buried directly), copper pipe, cast iron water pipe, galvanized steel pipe, or approved plastic pipe. Water distribution system piping within buildings shall be brass pipe, copper pipe, copper tube, or galvanized steel pipe. Piping systems shall be designed to supply water at sufficient pressure to operate all fixtures and equipment during maximum demand.

(I) Valves. Each water service main, branch main, riser, and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

(II) Backflow preventers. Backflow preventers (vacuum breakers) shall be installed on hose bibbs, laboratory sinks, janitor sinks, bedpan flushing attachments, and on all other fixtures to which hoses or tubing can be attached.

(III) Flushing valves. Flush valves installed on plumbing fixtures shall be of a quiet operating type, equipped with silencers.

(IV) Capacity of water heating equipment. Water heating equipment shall have sufficient capacity to supply water for clinical, dietary and laundry use at the temperatures and amounts specified in Table 5 of §510.131(e) [~~§134.131(e)~~] of this subchapter [~~title~~].

(V) Water temperature measurements. Water temperatures shall be measured at hot water point of use or at the inlet to processing equipment.

(VI) Water storage tanks. Water storage tanks [~~tank(s)~~] shall be fabricated of corrosion-resistant metal or lined with noncorrosive material.

(VII) Hot water distribution. Water distribution systems shall be arranged to provide hot water at each hot water outlet at all times.

(VIII) Emergency water supply. Emergency potable water storage shall be provided. The storage capacity shall not be less than 500 gallons or 12 gallons per patient bed, whichever is greater. Capacity of hot water storage tanks may be included as part of the required emergency water capacity when valves and piping systems are arranged to make this water available at all times.

(ii) Fire sprinkler systems. Fire sprinkler systems shall be provided in facilities as required by NFPA 101, §18-3.5. All fire sprinkler systems shall be designed, installed, and maintained in accordance with the requirements of NFPA13, and shall be certified as required by §510.127(d)(3)(C) [~~§134.127(d)(3)(C)~~] of this subchapter [~~title~~] (relating to Preparation, Submittal, Review and Approval of Plans).

(iii) Nonflammable medical gas and clinical vacuum systems. Nonflammable medical gas and clinical vacuum system installations shall be designed, installed and certified in accordance with the requirements of NFPA 99, §4-3 for Level I systems and the requirements of this clause.

(I) Outlets. Nonflammable medical gas and clinical vacuum outlets shall be provided in accordance with Table 6 of §510.131(f) [~~§134.131(f)~~] of this subchapter [~~title~~].

(II) Installer qualifications. All installations of the medical gas piping systems shall be done only by, or under the direct supervision of a holder of a master plumber license or a journeyman plumber license with a medical gas piping installation endorsement issued by the Texas State Board of Plumbing Examiners.

(III) Installer tests. Prior to closing of walls, the installer shall perform an initial pressure test, a blowdown test, a secondary pressure test, a cross-connection test, and a purge of the piping system as required by NFPA 99.

(IV) Qualifications for conducting verification tests and inspections. Verification tests and inspections by a party, other than the installer, shall be conducted by individuals who are technically competent and experienced in the field of piped medical gas systems.

(V) Verification tests. Upon completion of the installer inspections and tests and after closing of walls, verification tests of the medical gas piping systems, the warning system, and the gas supply source shall be conducted. The verification tests shall include a cross-connection test, valve test, flow test, piping purge test, piping purity test, final tie-in test, operational pressure tests, and medical gas concentration test.

(VI) Verification test requirements. Verification tests of the medical gas piping system, the warning system, shall be performed on all new piped medical gas systems, additions, renovations, or repaired portions of an existing system. All systems that are breached and components that are added, renovated, or replaced shall be inspected and appropriately tested. The breached portions of the systems subject to inspection and testing shall be all of the new and existing components in the immediate zone or area located upstream of the point or area of intrusion and downstream to the end of the system or a properly installed isolation valve.

(VII) Warning system verification tests. Verification tests of piped medical gas systems shall include tests of the source alarms and monitoring safeguards, master alarm systems, and the area alarm systems.

(VIII) Source equipment verification tests. Source equipment verification tests shall include medical gas supply sources (bulk and manifold) and the compressed air source systems (compressors, dryers, filters, and regulators).

(IX) Written certification. Upon successful completion of all verification tests, written certification for affected piped medical gas systems and piped medical vacuum systems including the supply sources and warning systems shall be provided by a party technically competent and experienced in the field of medical gas pipeline testing stating that the provisions of NFPA 99 have been adhered to and systems integrity has been achieved. The written certification shall be submitted directly to the facility and the installer. A copy shall be forwarded to HHSC [~~the department~~] by the facility.

(X) Facility responsibility. Before new piped medical gas systems, additions, renovations, or repaired portions of an existing system are put into use, the facility shall be responsible for ensuring that the gas delivered at the outlet is the gas shown on the outlet label and that the proper connecting fittings are checked against their labels.

(XI) Documentation of medical gas and clinical vacuum outlets. Documentation of the installed, modified, extended, or repaired medical gas piping system shall be submitted to HHSC [~~the department~~] by the same party certifying the piped medical gas systems. The number and type of medical gas outlets (oxygen, vacuum, medical air, nitrogen, nitrous oxide, etc.) shall be documented and arranged tabularly by room numbers and room types.

(iv) Steam and hot water systems.

(I) Boilers. Boilers shall have the capacity, based upon the net ratings as published in The I-B-R Ratings Book for Boilers, Baseboard Radiation and Finned Tube (commercial) by the Hydronics Institute Division of GAMA, to supply the normal requirements of all systems and equipment. The number and arrangement of boilers shall be such that, when one boiler breaks down or routine maintenance requires that one boiler be temporarily taken out of service, the capacity of the remaining boilers [~~boiler(s)~~] shall be sufficient to provide hot water service for clinical, dietary, and patient use, steam for sterilization and dietary purposes, and heating for emergency, recovery, treatment, and general patient rooms. However, reserve capacity for space heating of noncritical care areas (e.g. general patient rooms and administrative areas) is not required in geographical areas where a design dry bulb temperature equals 25 degrees Fahrenheit or higher as based on the 99% design value shown in the Handbook of Fundamentals, 1999 edition, published by ASHRAE, Inc. [~~The document published by the Hydronics Institute Division of GAMA as referenced in this rule may be obtained by writing or calling the Hydronics Institute Division of GAMA, P. O. Box 218, Berkeley Heights, N.J. 07922-0218, telephone (908) 464-8200.~~]

(II) Boiler accessories. Boiler feed pumps, heating circulating pumps, condensate return pumps, and fuel oil pumps shall be connected and installed to provide normal and standby service.

(III) Valves. Supply and return mains and risers of cooling, heating, and process steam systems shall be valved to isolate the various sections of each system. Each piece of equipment shall be valved at the supply and return ends except that vacuum condensate returns need not be valved at each piece of equipment.

(v) Drainage systems.

(I) Above ground piping. Soil stacks, drains, vents, waste lines, and leaders installed above ground within buildings shall be drain-waste-vent (DWV) weight or heavier and shall be [~~:~~] copper pipe, copper tube, cast iron pipe, or galvanized iron pipe.

(II) Underground piping. All underground building drains shall be [~~:~~] cast iron soil pipe, hard temper copper tube (DWV or heavier), acrylonitrile-butodiene-styrene (ABS) plastic pipe (DWV Schedule 40 or heavier), polyvinyl chloride (PVC) plastic pipe (DWV Schedule 40 or heavier), or extra strength vitrified clay pipe (VCP) with compression joints or couplings with at least 12 inches of earth cover.

(III) Drains for chemical wastes. Separate drainage systems for chemical wastes (acids and other corrosive materials) shall be provided. Materials acceptable for chemical waste drainage systems shall include chemically resistant glass pipe, high silicone content cast iron pipe, VCP, plastic pipe, or plastic lined pipe.

(IV) Drains above sensitive areas. Drainage pipes shall not be located above sensitive clean or sterile areas such as

sterile processing, storage of food or of food preparation and serving areas, etc. unless protected from leaks or condensation by an approved method such as drip pans.

(V) Sewers. Building sewers shall discharge into a community sewerage system. Where such a system is not available, a facility providing sewage treatment must conform to applicable local and state regulations.

(vi) Thermal insulation for piping systems and equipment. Insulation shall be provided for the following:

(I) boilers, smoke breeching, and stacks;

(II) steam supply and condensate return piping;

(III) hot water piping and all hot water heaters, generators, converters, and storage tanks;

(IV) chilled water, refrigerant, other process piping, equipment operating with fluid temperatures below ambient dew point, and water supply and drainage piping on which condensation may occur and insulation [. ~~Insulation~~] on cold surfaces shall include an exterior vapor barrier; and

(V) other piping, ducts, and equipment as necessary to maintain the efficiency of the system.

(vii) Pipe and equipment insulation rating. Flame spread shall not exceed 25 and smoke development rating shall not exceed 150 for pipe insulation as determined by an independent testing laboratory in accordance with National Fire Protection Association 255, Standard Method of Test of Surface Burning Characteristics of Building Materials, 2000 edition. Smoke development rating for pipe insulation located in environmental air areas shall not exceed 50.

(viii) Identification. All piping including heating, ventilating, air-conditioning (HVAC) shall be color coded or otherwise marked for easy identification.

(ix) Asbestos insulation. Asbestos insulation shall not be used.

(B) Plumbing fixtures. Plumbing fixtures shall be made of nonabsorptive acid-resistant materials and shall comply with the recommendations of the National Standard Plumbing Code, and this paragraph.

(i) Sink and lavatory controls. All fixtures used by medical and nursing staff and all lavatories used by patients and food handlers shall be trimmed with valves which can be operated without the use of hands. Blade handles used for this purpose shall not be less than four inches in length. Single lever or wrist blade devices may be used.

(ii) Clinical sink traps. Clinical sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface.

(iii) Back flow or siphoning. All plumbing fixtures and equipment shall be designed and installed to prevent the back-flow or back-siphonage of any material into the water supply. The over-the-rim type water inlet shall be used wherever possible. Vacuum-breaking devices shall be properly installed when an over-the-rim type water inlet cannot be utilized.

(iv) Drinking fountain. Each drinking fountain shall be designed so that the water issues at an angle from the vertical, the end of the water orifice is above the rim of the bowl, and a guard is located over the orifice to protect it from lip contamination.

(v) Sterilizing equipment. All sterilizing equipment shall be designed and installed to prevent not only the contamination of the water supply but also the entrance of contaminating materials into the sterilizing units.

(vi) Hose attachment. No hose shall be affixed to any faucet if the end of the hose can become submerged in contaminated liquid unless the faucet is equipped with an approved, properly installed vacuum-breaker.

(vii) Bedpan washers and sterilizers. Bedpan washers and sterilizers shall be designed and installed so that both hot and cold water inlets shall be protected against back-siphonage at maximum water level.

(viii) Flood level rim clearance. The water supply spout for lavatories and sinks required in patient care areas shall be mounted so that its discharge point is a minimum of five inches above the rim of the fixture.

(ix) Floor drains or floor sinks. Where floor drains or floor sinks are installed, they shall be of a type that can be easily cleaned by removal of the cover. Removable stainless steel mesh shall be provided in addition to grilled drain cover to prevent entry of large particles of waste which might cause stoppages.

(x) Under counter piping. Under counter piping and above floor drains shall be arranged (raised) so as not to interfere with cleaning of floor below the equipment.

(xi) Ice machines. All ice making machines shall be of the self-dispensing type, unless otherwise specified.

(5) General electrical requirements. This paragraph contains common electrical requirements. The facility shall comply with the requirements of this paragraph and with any specific electrical requirements for the particular unit or suite of the facility in accordance with §510.123 [~~§134.123~~] of this subchapter [~~title~~]. Electrical systems shall comply with NFPA 99 [~~,~~] Chapter 3.

(A) Electrical installations. All new electrical material and equipment, including conductors, controls, and signaling devices, shall be installed in compliance with applicable sections of the National Fire Protection Association 70, National Electrical Code, 1999 edition (NFPA 70), and NFPA 99 and as necessary to provide a complete electrical system. Electrical systems and components shall be listed by nationally recognized listing agencies as complying with available standards and shall be installed in accordance with the listings and manufacturers' instructions.

(i) All fixtures, switches, sockets, and other pieces of apparatus shall be maintained in a safe and working condition.

(ii) Extension cords and cables shall not be used for permanent wiring.

(iii) All electrical heating devices shall be equipped with a pilot light to indicate when the device is in service, unless equipped with a temperature limiting device integral with the heater.

(iv) All equipment, fixtures, and appliances shall be properly grounded in accordance with NFPA 70.

(v) Under-counter receptacles and conduits shall be arranged (raised) to not interfere with cleaning of floor below the equipment.

(B) Installation testing and certification.

(i) Installation testing. The electrical installations, including alarm, nurses calling system and communication systems,

shall be tested to demonstrate that equipment installation and operation is appropriate and functional.

(I) Grounding continuity shall be tested as described in NFPA 99 for new or existing work.

(II) A written record of performance tests on special electrical systems and equipment shall show compliance with applicable codes and standards.

(ii) Installation certification. Certifications in affidavit form signed by a registered electrical engineer attesting that the electrical service, electrical equipment, and electrical appliances have been installed in compliance with the approved plans, [~~and/or~~] applicable standards, or both shall be submitted to HHSC [~~the department~~] when requested.

(C) Electrical safeguards. Shielded isolation transformers, voltage regulators, filters, surge suppressors, and other safeguards shall be provided as required where power line disturbances are likely to affect fire alarm components, data processing, equipment used for treatment, and automated laboratory diagnostic equipment.

(D) Services and switchboards. Main switchboards shall be located in separate rooms, separated from adjacent areas with one-hour fire rated enclosures containing only electrical switchgear and distribution panels and shall be accessible to authorized persons only. These rooms shall be ventilated to provide an environment free of corrosive or explosive fumes and gases, or any flammable and combustible materials. Switchboards shall be located convenient for use and readily accessible for maintenance as required by NFPA 70, Article 384. Overload protective devices shall operate properly in ambient temperatures.

(E) Panelboards. Panelboards serving normal lighting and appliance circuits shall be located on the same floor as the circuits they serve. Panelboards serving critical branch emergency circuits may serve three floors, the floor where the panelboard is located, the floor above and the floor below. Panelboards serving life safety branch circuits may serve three floors, the floor where the panelboard is located, and the floors above and below.

(i) Circuiting shall minimize the number of receptacles on a single branch circuit, in order to limit the effects of a branch circuit outage, caused by one faulted device. Any life-support equipment on that circuit would be lost.

(ii) Loading of branch circuits is limited by NFPA 70, Articles 210, 220, and 384.

(F) Wiring. All conductors for controls, equipment, lighting and power operating at 100 volts or higher shall be installed in accordance with the requirements of NFPA 70, Article 517. All surface mounted wiring operating at less than 100 volts shall be protected from mechanical injury with metal raceways to a height of seven feet above the floor. Conduits and cables shall be supported in accordance with NFPA 70, Article 300.

(G) Lighting.

(i) Lighting intensity for staff and patient needs shall comply with Chapter 17, Institution and Public Building Lighting, Health Care Facilities, of the Illuminating Engineering Society of North America (IES) Lighting Handbook, published by the IES [, ~~345 East 47th Street, N.Y., N.Y. 10017~~].

(I) Consideration should be given to controlling intensity and wavelength to prevent harm to the patient's eyes (i.e., cataracts due to ultraviolet light).

(II) Approaches to buildings and parking lots, and all spaces within buildings shall have fixtures that can be illuminated as necessary. All rooms including storerooms, electrical and mechanical equipment rooms, and all attics shall have sufficient artificial lighting so that all parts of these spaces shall be clearly visible.

(III) Consideration should be given to the special needs of the elderly. Excessive contrast in lighting levels that makes effective sight adaptation difficult shall be minimized.

(ii) Means of egress and exit sign lighting intensity shall comply with NFPA 101[,] §§7-8, 7-9 and 7-10.

(iii) Electric lamps which may be subject to breakage or which are installed in fixtures in confined locations when near woodwork, paper, clothing, or other combustible materials, shall be protected by wire guards, or plastic shields.

(iv) Ceiling mounted examination light fixtures shall be suspended from rigid support structures mounted above the ceiling.

(H) Receptacles. Only listed "hospital" grade single-grounding or duplex-grounding receptacles shall be used in all patient care areas. This does not apply to special purpose receptacles.

(i) Installations of multiple ganged receptacles shall be permitted in patient care areas.

(ii) Electrical outlets powered from the critical branch shall be provided in all patient care, procedure and treatment locations in accordance with NFPA 99[,] §3-4.2.2.2(c). At least one receptacle at each patient treatment or procedure location shall be powered from the normal power panel.

(iii) Replacement of malfunctioning receptacles and installation of new receptacles powered from the critical branch in existing facilities shall be accomplished with receptacles of the same distinct color as the existing receptacles.

(iv) In locations where mobile X-ray or other equipment requiring special electrical configuration is used, the additional receptacles shall be distinctively marked for the special use.

(v) Each receptacle shall be grounded to the reference grounding point by means of a green insulated copper equipment grounding conductor.

(I) Equipment.

(i) Equipment required for safe operation of the facility shall be powered from the equipment system in accordance with the requirements contained in NFPA 99 [,] §3-4.2.2.3.

(ii) Boiler accessories including feed pumps, heat-circulating pumps, condensate return pumps, fuel oil pumps, and waste heat boilers shall be connected and installed to provide both normal and standby service.

(J) Ground fault circuit interrupters (GFCI). GFCIs shall comply with NFPA 70. When GFCIs are used in critical areas, provisions shall be made to ensure that other essential equipment is not affected by activation of one interrupter.

(K) Nurses calling systems. Three different types of nurses calling systems are required to be installed in a facility: a nurses regular calling system; a nurses emergency calling system; and a staff emergency assistance calling system. The facility shall comply with the requirements of this paragraph and any specific requirements for nurses calling systems for the particular unit of the facility in accordance with §510.123 [~~§134.123~~] of this subchapter [~~title~~].

(i) A nurses regular calling system is intended for routine communication between each patient and the nursing staff. Activation of the system at a patient's regular calling station will sound a repeating (every 20 seconds) audible signal at the nurse station, indicate type and location of call on the system monitor, and activate a distinct visible signal in the corridor at the patient suites door. In multi-corridor nursing units, additional visible signals shall be installed at corridor intersections. The audible signal shall be canceled and two-way voice communication between the patient room and the nursing staff shall be established at the unit's nursing station when the call is answered by the nursing staff. The visible signals [~~signal(s)~~] in the corridor shall be canceled upon termination of the call. An alarm shall activate at the nurses station when the call cable is unplugged.

(ii) A nurses emergency calling system shall be installed in all toilets used by all patients to summon nursing staff in an emergency. Activation of the system shall sound a repeating (every 5 seconds) audible signal at the nurse station, indicate type and location of call on the system monitor, and activate a distinct visible signal in the corridor at the patient suites door. In multi-corridor nursing units, additional visible signals shall be installed at corridor intersections. The visible and audible signals shall be cancelable only at the patient calling station. Activation of the system shall also activate distinct visible signals in the clean workroom, in the soiled workroom, medication, charting, clean linen storage, nourishment, nurse lounge and equipment storage. When conveniently located and accessible from both the bathing and toilet fixtures, one emergency call station may serve one bathroom. A nurses emergency call system shall be accessible to a collapsed patient lying on the floor.

(iii) A staff emergency assistance calling system (code blue) is intended to be used by staff to summon additional help in an emergency. In open suites, an emergency assistant call system device shall be located at the head of each bed and in each individual room. The emergency assistance calling device can be shared between two beds if conveniently located. Activation of the system will sound an audible signal at the nursing unit's nurses station, indicate type and location of call on the system monitor and activate a distinct visible signal in the corridor at the patient suites door. In multi-corridor nursing units, additional visible signals shall be installed at corridor intersections. Activation of the system shall also activate visible and audible signals in the clean workroom, in the soiled workroom, medication, charting, clean linen storage, nourishment, equipment storage, and examination or treatment rooms [~~examination/treatment room(s)~~] with back up to a continuously staffed area (other than the nurse station or an administrative center) from which assistance can be summoned. The system shall have voice communication capabilities so that the type of emergency or help required may be specified.

(L) Emergency electric service. A Type I essential electrical system shall be provided in each facility in accordance with requirements of NFPA 99, [~~NFPA 99,~~] NFPA 101, and National Fire Protection Association 110, Standard for Emergency and Standby Power Systems, 1999 edition. Exception: Crisis stabilization units have the option of providing a Type II essential electrical system in accordance with the requirements of NFPA 99 and NFPA 101.

(i) The number of transfer switches to be used shall be based on reliability, design and load considerations.

(ii) All wiring installation of the emergency system of the essential electrical system shall be mechanically protected in nonflexible metal raceways in compliance with NFPA 70 [,] §517-30(c)(3).

(iii) The stored fuel capacity for emergency generators shall be sufficient to permit continuous operation for at least 24 hours at full load.

(M) Fire alarm system. A fire alarm system which complies with NFPA 101 [,] §18-3.4, and with NFPA 72 [,] Chapter 3 requirements, shall be provided in each facility. The required fire alarm system components are as follows. [:]

(i) A fire alarm control panel (FACP) shall be installed at a continuously attended (24 hour) location. A remote fire alarm annunciator listed for fire alarm service and installed at a continuously attended location and is capable of indicating both visual and audible alarm, trouble and supervisory signals in accordance with the requirements of NFPA 72 may be substituted for the FACP.

(ii) Manual fire alarm pull stations shall be installed in accordance with NFPA 101[,] §18-3.4.

(iii) Smoke detectors for door release service shall be installed on the ceiling at each door opening in the smoke partition in accordance with NFPA 72 [,] §2-10.6, where the doors are held open with electromagnetic devices conforming with NFPA 101 [,] §18-2.2.6.

(iv) Ceiling mounted smoke detectors [~~detector(s)~~] shall be installed in room containing the FACP when this room is not attended continuously by staff as required by NFPA 72 [,] §1-5.6.

(v) Smoke detectors shall be installed in supply air ducts in accordance with NFPA 72 [,] §2-10.4.2 and §2-10.5, and with NFPA 90A §4-4.2.

(vi) Smoke detectors shall be installed in return air ducts in accordance with requirements of NFPA 72 [,] §2-10.4.2.2 and §2-10.5, and NFPA 90A [,] §4-4.2(2).

(vii) Fire sprinkler system water flow switches shall be installed in accordance with requirements of NFPA 101 [,] §9-6.2; NFPA 13 [,] §3-10; and NFPA 72 [,] §3-8.5.

(viii) Sprinkler system valve supervisory switches shall be installed in accordance with the requirements of NFPA 72 [,] §3-8.6.

(ix) Audible alarm indicating devices shall be installed in accordance with the requirements of NFPA 101, §18-3.4., and NFPA 72 [,] §6-3.

(x) Visual fire alarm indicating devices which comply with the requirements of §510.122(d)(1)(F) [~~§134.122(d)(1)(F)~~] of this subchapter [~~title~~] (relating to New Construction Requirements) and NFPA 72 [,] §6-4 [,] shall be provided.

(xi) Devices for transmitting alarm for alerting the local fire brigade or municipal fire department of fire or other emergency shall be provided. The devices shall be listed for the fire alarm service by a nationally recognized laboratory [,] and be installed in accordance with such listing and the requirements of NFPA 72.

(xii) A smoke detection system for spaces open to corridor(s) shall be provided when required by NFPA 101 [,] §18-3.6.1.

(xiii) A fire alarm signal notification which complies with NFPA 101 [,] §9-6.3, shall be provided to alert occupants of fire or other emergency.

(xiv) Wiring for fire alarm detection circuits and fire alarm notification circuits shall comply with requirements of NFPA 70, Article 760.

(xv) A smoke detection system for elevator recall shall be located in elevator lobbies, elevator machine rooms and at the top of elevator hoist ways as required by NFPA 72 [~~,~~] §3-9.3.7.

(I) The elevator recall smoke detection system in new construction shall comply with requirements of American Society of Mechanical Engineers/American National Standards Institute (ASME/ANSI) A17.1, Safety Code for Elevators and Escalators, 1996 edition. [~~The publications of the ASME/ANSI referenced in this section may be obtained by writing ASME/ANSI, United Engineering Center, 345 East 47th Street, New York, N.Y. 10017.~~]

(II) The elevator recall smoke detection system in existing facilities shall comply with requirements of ASME/ANSI A17.3, Safety Code for Existing Elevators and Escalators, 1995 edition.

(xvi) A smoke detection system for initiating smoke removal from atriums shall be located above the highest floor level of the atrium and at return intakes from the atrium in accordance with National Fire Protection Association 92B, Guide for Smoke Management Systems in Malls, Atria, and Large Areas, 1995 edition.

(xvii) Smoke detectors [~~detector(s)~~] for shut-down of air handling units shall be provided. The detectors shall be installed in accordance with NFPA 90A [~~,~~] §4-4.2.

(xviii) New or modified fire alarm systems shall be certified as meeting applicable [~~pplicable~~] NFPA standards such as NFPA 101, 72A, 72E, etc. on form FML-009 040392 of the Office of the State Fire Marshal. A copy of the fire alarm system certification shall be submitted to HHSC [~~the department~~].

(N) Telecommunications and information systems. Telecommunications and information systems central equipment shall be installed in a separate location designed for the intended purpose. Special air conditioning and voltage regulation shall be provided as recommended by the manufacturer.

(O) Lightning protection systems. When installed, lightning protection systems shall comply with National Fire Protection Association 780, Standard for the Installation of Lightning Protection Systems, 1997 edition.

§510.123. Spatial Requirements for New Construction.

(a) Administration and public suite. The following rooms or areas shall be provided.

(1) Primary entrance. An entrance at grade level shall be accessible and protected from inclement weather with a drive-under canopy for loading and unloading passengers.

(2) Lobby. A main lobby shall be located at the primary entrance and shall include a reception and information counter or desk, waiting spaces [~~space(s)~~], public toilet facilities, public telephones, drinking fountains [~~fountain(s)~~], and storage room or alcove for wheelchairs.

(3) Admissions area. An admissions area shall include a waiting area, work counters or desk, private interview spaces, and storage room or alcove for wheelchairs. The waiting area and wheelchair storage may be shared with similar areas located in the main lobby.

(4) General or individual offices [~~office(s)~~]. Office space shall be provided for business transactions, medical and financial records, and administrative and professional staffs.

(5) Multipurpose rooms [~~room(s)~~]. Rooms [~~Room(s)~~] shall be provided for conferences, meetings, and health education purposes including provisions for showing visual aids.

(6) Storage. Storage for office equipment and supplies shall be provided. The construction protection for the storage room or area shall be in accordance with the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 1997 edition (NFPA 101) [~~,~~] §18-3.1. [~~All documents published by the NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address and telephone number: Post Office Box 9101, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, (800) 344-3555.~~]

(b) Cart cleaning and sanitizing unit. A cart cleaning and sanitizing unit is optional for crisis stabilization units.

(1) Architectural requirements.

(A) Cart cleaning, sanitizing and storage shall be provided for carts serving dietary services and linen services.

(B) Cart facilities may be provided for each service or be centrally located.

(C) Hand washing fixtures shall be provided in cart cleaning, sanitizing and storage areas.

(2) Details and finishes. Details and finishes shall be in accordance with §510.122(d)(2) [~~§134.122(d)(2)~~] of this subchapter [~~title~~] (relating to New Construction Requirements) and this paragraph.

(A) Flooring in the cart cleaning and sanitizing unit shall be of the seamless type, or ceramic or quarry tile as required by §510.122(d)(2)(B)(iii)(III) [~~§134.122(d)(2)(B)(iii)(III)~~] or (IV) of this subchapter [~~title~~].

(B) Ceilings in the cart cleaning and sanitizing unit shall be the monolithic type as required by §510.122(d)(2)(B)(vi)(III) [~~§134.122(d)(2)(B)(vi)(III)~~] of this subchapter [~~title~~].

(3) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §510.122(d)(4) [~~§134.122(d)(4)~~] of this subchapter [~~title~~] and this paragraph.

(A) Hand washing fixtures shall be provided with hot and cold water. Hot and cold water fixtures shall be provided in cart cleaning and sanitizing locations.

(B) Where floor drains or floor sinks are installed, they shall be of a type that can be easily cleaned by removal of the cover. Removable stainless steel mesh shall be provided in addition to a grilled drain cover to prevent entry of large particles of waste which might cause stoppages. Floor drains and floor sinks shall be located to avoid conditions where removal of covers for cleaning is difficult.

(c) Central sterile supply suite. A central sterile supply suite is optional for crisis stabilization units.

(1) Architectural requirements.

(A) Supply storage. A storage room for clean and sterile supplies shall be provided. The storage room shall have adequate areas and counters for breakdown of prepackaged supplies.

(B) Equipment storage. An equipment storage room shall be provided.

(2) Details and finishes. Details and finishes shall be in accordance with §510.122(d)(2) [~~§134.122(d)(2)~~] of this subchapter [~~title~~] and this paragraph. Ceilings in supply storage room shall be monolithic type in accordance with §510.122(d)(2)(B)(vi)(III) [~~§134.122(d)(2)(vi)(III)~~] of this subchapter [~~title~~].

(3) Mechanical Requirements. Mechanical requirements shall be in accordance with §510.122(d)(3) [~~§134.122(d)(3)~~] of this subchapter [~~title~~] and this paragraph.

(A) The sterile supply room shall include provisions for ventilation, humidity, and temperature control.

(B) Filtration requirements for air handling units serving the central sterile supply suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of §510.131(d) [~~§134.131(d)~~] of this subchapter [~~title~~] (relating to Tables).

(C) Duct linings exposed to air movement shall not be used in ducts serving the central sterile supply suite unless terminal filters of at least 90% efficiency are installed downstream of linings. This requirement shall not apply to mixing boxes and acoustical traps that have special coverings over such lining.

(d) Dietary suite.

(1) Architectural requirements.

(A) General. Construction, equipment, and installation shall comply with the standards specified in 25 TAC Chapter 228 [~~of this title~~](relating to Retail Food Establishments).

(B) Food service facilities. Food services shall be provided by an on-site food preparation system or an off-site food service system or a combination of the two. The following minimum functional elements shall be provided on-site regardless of the type of dietary services.

(i) Dining area. Provide dining space [~~space(s)~~] for ambulatory patients, staff, and visitors with a minimum floor space of 15 square feet per person to be seated. The footage requirement does not include serving areas. The dining area and service areas shall be separate from the food preparation and distribution areas.

(ii) Receiving area. This receiving area shall have direct access to the outside for incoming dietary supplies or off-site food preparation service and shall be separate from the general receiving area. The receiving area shall contain a control station and an area for breakout for loading, unloading, uncrating, and weighing supplies. The entrance area to the receiving area shall be covered from the weather.

(iii) Storage spaces. Storage spaces shall be convenient to receiving area and food preparation area and shall be located to exclude traffic through the food preparation area. Regardless of the type of food services provided, the facility shall provide storage of food for emergency use for a minimum of four calendar days.

(I) Storage space [~~space(s)~~]. Storage space [~~space(s)~~] shall be provided for bulk, refrigerated, and frozen foods.

(II) Cleaning supply storage. This room or closet shall be used to store non-food items that might contaminate edibles. This storage area may be combined with the housekeeping room.

(iv) Food preparation area. Counter space shall be provided for food prep work, equipment, and an area to assemble trays for distribution for patient meals.

(v) Ice making equipment. Ice making equipment shall be provided for both drinks and food products (self-dispensing equipment) and for general use (storage-bin type equipment).

(vi) Hand washing. Hand washing fixtures with hands-free operable controls shall be conveniently located at all food preparation areas and serving areas.

(vii) Food service carts. When a cart distribution system is provided, space shall be provided for storage, loading, distribution, receiving, and sanitizing of the food service carts. The cart traffic shall be designed to eliminate any danger of cross-circulation between outgoing food carts and incoming soiled carts, and the cleaning and sanitizing process. Cart circulation shall not be through food processing areas.

(viii) Ware washing room. A ware washing room equipped with commercial type dishwasher equipment shall be located separate from the food preparation and serving areas. Space shall be provided for receiving, scraping, sorting, and stacking soiled tableware and for transferring clean tableware to the using areas. Hand washing facilities with hands-free operable controls shall be located within the soiled dish wash area. A physical separation to prevent cross traffic between the dirty side and clean side of the dish wash areas shall be provided.

(ix) Pot washing facilities. A three compartmented sink of adequate size for intended use shall be provided convenient to the food preparation area. Supplemental heat for hot water to clean pots and pans shall be by booster heater or by steam jet.

(x) Waste storage room. A food waste storage room shall be conveniently located to the food preparation and ware washing areas but not within the food preparation area. It shall have direct access to the facility's [~~facility's~~] waste collection and disposal facilities. A waste storage room is optional for crisis stabilization units [~~CSUs~~].

(xi) Sanitizing facilities. Storage areas and sanitizing facilities for garbage or refuse cans, carts, and mobile tray conveyors shall be provided. All containers for trash storage shall have tight-fitting lids.

(xii) Housekeeping room. A housekeeping room shall be provided for the exclusive use of the dietary department. Where hot water or steam is used for general cleaning, additional space within the room shall be provided for the storage of hoses and nozzles.

(xiii) Office spaces. An office shall be provided for the use of the food service manager or the dietary service manager. In smaller facilities, a designated alcove may be located in an area that is part of the food preparation area.

(xiv) Toilets and locker spaces. A toilet room [~~room(s)~~] shall be provided for the exclusive use of the dietary staff. Toilets shall not open directly into the food preparation areas [~~,~~] but must be in close proximity to them. For larger facilities, a locker room or space for lockers shall be provided for staff belongings.

(C) Additional service areas, rooms, and facilities. When an on-site food preparation system is used, in addition to the items required in subparagraph (B), the following service areas, rooms, and facilities shall be provided.

(i) Food preparation facilities. When food preparation systems are provided, there shall be space and equipment for preparing, cooking, and baking.

(ii) Tray assembly line. A patient tray assembly and distribution area shall be located within close proximity to the food preparation and distribution areas.

(iii) Food storage. The food storage room shall be adequate in size to accommodate food for a seven calendar day menu cycle.

(iv) Additional storage areas [~~area(s)~~]. Additional areas [~~area(s)~~] shall be provided for the storage of cooking wares, extra trays, flatware, plastic and paper products, and portable equipment.

(v) Drying storage area. Provisions shall be made for drying and storage of pots and pans from the pot washing room.

(D) Equipment. Equipment for use in the dietary suite shall meet the following requirements.

(i) Mechanical devices shall be heavy duty, suitable for the use intended, and easily cleaned. Where equipment is movable, provide heavy duty locking casters. Equipment with fixed utility connections shall not be equipped with casters.

(ii) Floor, wall, and top panels of walk-in coolers, refrigerators, and freezers shall be insulated. Coolers and refrigerators shall be capable of maintaining a temperature down to freezing. Freezers shall be capable of maintaining a temperature of 20 degrees below 0 degrees Fahrenheit. Coolers, refrigerators, and freezers shall be thermostatically controlled to maintain desired temperature settings in increments of two degrees or less. Interior temperatures shall be indicated digitally and visible from the exterior. Controls shall include audible and visible high and low temperature alarm. The time of alarm shall be automatically recorded.

(iii) Walk-in units may be lockable from the outside but must have a release mechanism for exit from inside at all times. The interior shall be lighted. All shelving shall be corrosion resistant, easily cleaned, and constructed and anchored to support a loading of at least 100 pounds per linear foot.

(iv) All cooking equipment shall be equipped with automatic shut-off devices to prevent excessive heat buildup.

(E) Vending services. When vending machines are provided, a dedicated room or an alcove shall be located so that access is available at all times.

(2) Details and finishes. Details and finishes shall be in accordance with §510.122(d)(2) [~~§134.122(d)(2)~~] of this subchapter [~~title~~] and this paragraph.

(A) Details.

(i) Food storage shelves shall not be less than six inches above the finished floor and the space below the bottom shelf shall be closed in and sealed tight for ease of cleaning.

(ii) Operable windows and doors not equipped with automatic closing devices shall be equipped with insect screens.

(iii) Food processing areas in the central dietary kitchen shall have ceiling heights not less than nine feet. Ceiling mounted equipment shall be supported from rigid structures located above the finished ceiling.

(iv) Mirrors shall not be installed at hand washing fixtures in the food preparation areas.

(B) Finishes.

(i) Floors in areas used for food preparation, food assembly, soiled and clean ware cleaning shall be water-resistant and grease-proof. Floor surfaces, including tile joints, shall be resistant to food acids.

(ii) Wall bases in food preparation, food assembly, soiled and clean ware cleaning and other areas which are frequently subject to wet cleaning methods shall be made integral and coved with the floor, tightly sealed to the wall, constructed without voids that can harbor insects, retain dirt particles, and be impervious to water.

(iii) In the dietary and food preparation areas, the wall construction, finishes, and trim, including the joints between the walls and the floors, shall be free of voids, cracks, and crevices.

(iv) The ceiling in food preparation and food assembly areas shall be washable as required by §510.122(d)(2)(B)(vi)(II) of this subchapter [~~§134.122(d)(2)(B)(vi)(II)~~].

(v) The ceiling in the food storage room [~~,~~] and soiled and clean ware cleaning area shall be of the monolithic type as required by §510.122(d)(2)(B)(vi)(III) of this subchapter [~~§134.122(d)(2)(B)(vi)(III)~~].

(3) Mechanical Requirements. Mechanical requirements shall be in accordance with §510.122(d)(3) [~~§134.122(d)(3)~~] of this subchapter [~~title~~] and this paragraph.

(A) Exhaust hoods handling grease-laden vapors in food preparation centers shall comply with National Fire Protection Association 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 1998 edition. All hoods over cooking ranges shall be equipped with grease filters, fire extinguishing systems, and heat-actuated fan controls. Clean out openings shall be provided every 20 feet and at any changes in direction in the horizontal exhaust duct systems serving these hoods. (Horizontal runs of ducts serving range hoods should be kept to a minimum.)

(B) When air change standards in Table 3 of §510.131(c) [~~§134.131(c)~~] of this subchapter [~~title~~] do not provide sufficient air for proper operation of exhaust hoods (when in use), supplementary filtered makeup air shall be provided in these rooms to maintain the required airflow direction and exhaust velocity. Makeup systems for hoods shall be arranged to minimize "short circuiting" of air and to avoid reduction in air velocity at the point of contaminant capture.

(C) Air handling units serving the dietary suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of §510.131(d) [~~§134.131(d)~~] of this subchapter [~~title~~].

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §510.122(d)(4) [~~§134.122(d)(4)~~] of this subchapter [~~title~~] and this paragraph.

(A) The kitchen grease traps shall be located and arranged to permit easy access without the need to enter food preparation or storage areas. Grease traps shall be of capacity required and shall be accessible from outside of the building without need to interrupt any services.

(B) Grease traps or grease interceptors shall be located outside the food preparation area and shall comply with the requirements in the National Association of Plumbing-Heating-Cooling Contractors (PHCC), National Standard Plumbing Code, 2000 edition. [~~This publication may be obtained from the National Association of Plumbing-Heating-Cooling Contractors, 180 South Washington Street, Falls Church, VA 22046; telephone (703) 237-8100.~~]

(C) The material used for plumbing fixtures shall be non-absorptive and acid-resistant.

(D) Water spouts used at lavatories and sinks shall have clearances adequate to avoid contaminating utensils and containers.

(E) Hand washing fixtures used by food handlers shall be trimmed with valves that can be operated without hands. Single lever or wrist blade devices may be used. Blade handles used for this purpose shall not be less than four inches in length.

(F) Drainage and waste piping shall not be installed in the space above the ceiling or installed in an exposed location in food preparation centers, food serving facilities and food storage areas unless special precautions are taken to protect the space below from leakage and condensation from necessary overhead piping.

(G) No plumbing lines may be exposed overhead or on walls where possible leaks would create a potential for food contamination.

(5) Electrical requirements. Electrical requirements shall be in accordance with §510.122(d)(5) [~~§134.122(d)(5)~~] of this subchapter [~~title~~] and this paragraph.

(A) Exhaust hoods shall have an indicator light indicating that the exhaust fan is in operation.

(B) The electrical circuits [~~circuit(s)~~] to equipment in wet areas shall be provided with five milliampere GFCI.

(e) Emergency treatment room.

(1) Architectural requirements.

(A) Emergency treatment room. As a minimum requirement, a facility shall provide at least one emergency treatment room to handle emergencies. The emergency treatment room may be located anywhere in the facility and shall meet the following requirements.

(i) The emergency treatment room shall have a minimum clear area of 120 square feet clear floor area exclusive of fixed and movable cabinets and shelves. The minimum clear room dimension exclusive of fixed cabinets and built-in shelves shall be 10 feet. The emergency treatment room shall contain cabinets, medication storage, work counter, examination light, and hand washing fixtures with hands-free operable controls. Exception: Crisis stabilization units are not required to have medication storage in the emergency treatment room.

(ii) Storage space shall be provided within the room or on an emergency cart and be under staff control for general medical emergency supplies and medications. Adequate space shall be provided for emergency equipment.

(B) Secured holding room. When provided, this room shall be constructed to allow for security, patient and staff safety, patient observation, and sound proofing.

(C) Service areas. The following service areas shall be provided.

(i) Soiled workroom. The workroom shall contain a work counter, a clinical sink or equivalent flushing type fixture, hand washing fixture with hands-free operable controls, waste receptacles, and soiled linen receptacles. The soiled workroom in the nursing suite may be shared with the emergency treatment room if it is located conveniently nearby.

(ii) Housekeeping room. The housekeeping room shall be located nearby.

(iii) Patient toilet [~~toilet(s)~~]. A toilet room shall be provided and located nearby.

(2) Details and finishes. Details and finishes shall be in accordance with §510.122(d)(2) [~~§134.122(d)(2)~~] of this subchapter [~~title~~] and this paragraph.

(A) Flooring used in the treatment room, secure holding area, and soiled workroom shall be of the seamless type as required by §510.122(d)(2)(B)(iii)(III) [~~§134.122(d)(2)(B)(iii)(III)~~] of this subchapter [~~title~~].

(B) Ceilings in soiled workrooms and secure holding rooms shall be of the monolithic type as required by §510.122(d)(2)(B)(vi)(III) [~~§134.122(d)(2)(B)(vi)(III)~~] of this subchapter [~~title~~].

(3) Mechanical requirements. Mechanical requirements shall be in accordance with §510.122(d)(3) [~~§134.122(d)(3)~~] of this subchapter [~~title~~] and this paragraph. Duct linings exposed to air movement shall not be used in ducts serving any treatment rooms and secure holding rooms. This requirement shall not apply to mixing boxes and acoustical traps that have special coverings over such lining.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §510.122(d)(4) [~~§134.122(d)(4)~~] of this subchapter [~~title~~]. When provided, medical gas systems shall be in accordance with §510.122(d)(4)(A)(iii) [~~§134.122(d)(4)(A)(iii)~~] of this subchapter [~~title~~].

(5) Electrical requirements. Electrical requirements shall be in accordance with §510.122(d)(5) [~~§134.122(d)(5)~~] of this subchapter [~~title~~] and this paragraph.

(A) General.

(i) Each treatment room shall have a minimum of six duplex electrical receptacles. Two duplex electrical receptacles shall be located convenient to the head of the bed.

(ii) Each work counter and table shall have access to two duplex receptacles connected to the critical branch of the emergency electrical system and be labeled with panel and circuit number.

(B) Nurses calling systems. A nurses regular calling system shall be provided for the treatment room in accordance with §510.122(d)(5)(K)(i) [~~§134.122(d)(5)(K)(i)~~] of this subchapter [~~title~~].

(f) Employees suite. Lockers, lounges, toilets, and other amenities as determined by the facility shall be provided throughout the facility for employees and volunteers. These amenities are in addition to, and separate from, those required for the medical staff and the public.

(g) Engineering suite and equipment areas.

(1) General. The following areas or rooms shall be provided:

(A) an engineer's office with file space and provisions for protected storage of facility drawings, records, manuals, etc.;

(B) a general maintenance shop [~~shop(s)~~] for repair and maintenance;

(C) a separate room [~~room(s)~~] for building maintenance supplies and equipment and storage [~~. Storage~~] of bulk solvents and flammable liquids shall be in a separate building and not within the facility building;

(D) a medical equipment room which includes provisions for the storage, repair, and testing of electronic and other medical equipment;

(E) a separate room or building for yard maintenance equipment and supplies. When a separate room is within the physical plant the room shall be located so that equipment may be moved directly to the exterior. Yard equipment or vehicles using flammable liquid fuels shall not be stored or housed within the facility building; and

(F) sufficient space in all mechanical and electrical equipment rooms for proper maintenance of equipment. Provisions shall also be made for removal and replacement of equipment.

(2) Additional areas or rooms [~~room(s)~~]. Additional areas or rooms [~~room(s)~~] for mechanical, and electrical equipment shall be provided within the physical plant or installed in separate buildings or weatherproof enclosures with the following exceptions.

(A) An area shall be provided for cooling towers and heat rejection equipment when such equipment is used.

(B) An area for the medical gas park and equipment shall be provided. For smaller medical gas systems, the equipment may be housed in a room within the physical plant in accordance with National Fire Protection Association 99, Standard for Health Care Facilities, 1999 edition (NFPA 99), Chapters 4 and 8.

(C) When provided, compactors, dumpsters, and incinerators shall be located in an area remote from public entrances.

(h) General stores.

(1) General. In addition to storage rooms in individual departments, a central storage room shall also be provided. General stores may be located in a separate building on-site with provisions for protection against inclement weather during transfer of supplies.

(2) Receiving. Central storage areas shall be provided with an off-street unloading and receiving area protected from inclement weather.

(3) General storage room. General storage room with a total area of not less than 12 square feet per inpatient bed shall be provided. The storage room may be within the facility, or separate building on-site. A portion of the storage may be provided off-site.

(4) Outpatient suite storage room. A storage room for the outpatient services shall be provided at least equal to five percent [~~5.0%~~] of the total area of the outpatient suite. This required storage room area may be combined with general stores.

(i) Geriatric, Alzheimer, and other dementia nursing suites. When geriatric, Alzheimer, or other dementia nursing suites are provided, the nursing suite shall comply with the requirements in subsection (o) of this section with the following exceptions.

(1) A patient bedroom suite shall be 120 square feet in a single patient bedroom suite and 200 square feet in multiple-bed room suites.

(2) Each patient bedroom shall have storage for extra blankets, pillows, and linen.

(3) Patient bedroom doors shall be a minimum of three feet eight inches in width.

(4) Patients shall have access to at least one bathtub in each nursing suite.

(5) A minimum of two separate social spaces, one appropriate for noisy activities and the other for quiet activities, shall be provided. The combined total area shall be not less than 30 square feet per bed space with not less than 140 square feet for each of the two spaces, whichever is greater. This space may be shared with the dining area or room.

(6) Storage space for wheelchairs shall be provided in the nursing unit.

(j) Imaging suite.

(1) Architectural requirements.

(A) General. When diagnostic imaging services are provided, the minimum the facility shall provide is a diagnostic radiographic (X-ray) room.

(i) Diagnostic radiographic (x-ray) room sizes [~~size(s)~~] shall be in compliance with manufacturer's recommendation. When portable x-ray equipment is used, the portable unit shall be stored in a secured room.

(ii) When radiation protection is required for any diagnostic imaging room, a medical physicist licensed under [~~the~~] Texas [~~Medical Physics Practice Act,~~] Occupations Code [,] Chapter 602, shall specify the type, location, and amount of radiation protection to be installed for the layout and equipment selections.

(iii) Each X-ray room shall include a shielded control alcove. The control alcove shall be provided with a view window designed to permit full view of the examination table and the patient at all times.

(iv) Warning signs capable of indicating that the equipment is in use shall be provided.

(B) Service areas. The following service areas shall be provided.

(i) Patient waiting area. The area shall be out of traffic and under direct staff visual control.

(ii) Patient toilet rooms. Toilet rooms [~~room(s)~~] with hand washing amenities shall be located convenient to the waiting area.

(iii) Patient dressing rooms. Dressing rooms shall be convenient to the waiting areas and X-ray rooms.

(iv) Hand washing facilities. A freestanding hand washing fixture with hands-free controls shall be provided in or near the entrance to each diagnostic and procedure room unless noted otherwise. Hand washing facilities shall be arranged to minimize any incidental splatter on nearby personnel or equipment.

(v) Contrast media preparation. This room shall include a work counter, a sink with hands-free operable controls, and storage. One preparation room may serve any number of rooms. When prepared media is used, this area may be omitted, but storage shall be provided for the media.

(vi) Film processing room. A darkroom shall be provided for processing film unless the processing equipment normally used does not require a darkroom for loading and transfer. When daylight processing is used, the darkroom may be minimal for emergency and special uses. Film processing shall be located convenient to the procedure rooms and to the quality control area.

(vii) Quality control area or room. An area or room for film viewing shall be located near the film processor. All view boxes shall be illuminated to provide light of the same color value and intensity.

(viii) Film storage (active). A room shall include a cabinet or shelves for filing patient film for immediate retrieval.

(ix) Film storage (inactive). A room for inactive film storage shall be provided. It may be outside the imaging suite [,] but must be under the administrative control of imaging suite personnel and be properly secured to protect films against loss or damage.

(x) Storage for unexposed film. Storage amenities for unexposed film shall include protection of film against exposure or damage.

(xi) Storage of cellulose nitrate film. When used, cellulose nitrate film shall be stored in accordance with the requirements of National Fire Protection Association 40, Standard for the Storage and Handling of Cellulose Nitrate Motion Picture Film, 1994 edition.

(xii) Housekeeping room. The room may serve multiple departments when conveniently located.

(2) Details and finishes. Details and finishes shall be in accordance with §510.122(d)(2) [~~§134.122(d)(2)~~] of this subchapter [~~title~~] and this paragraph.

(A) Details.

(i) Radiation protection shall be designed, tested, and approved by a medical physicist licensed under [~~the~~] Texas [~~Medical Physics Practice Act,~~] Occupations Code [~~,~~] Chapter 602.

(ii) The design and environmental controls associated with licensable quantities of radioactive material in laboratories, [~~and/or~~] imaging rooms, or both shall be approved by the Texas Department of State Health Services [~~Health's Bureau of~~] Radiation Control Program prior to licensed authorizations.

(iii) Where protected alcoves with view windows are required, provide a minimum of 1 foot 6 inches between the view window edge or frame [~~edge/frame~~] and the outside partition edge.

(iv) Imaging procedure rooms shall have ceiling heights not less than nine feet. Ceilings containing ceiling-mounted equipment shall be of sufficient height to accommodate the equipment of fixtures and their normal movement.

(B) Finishes.

(i) Flooring used in contrast media preparation and soiled workroom shall be of the seamless type as required by §510.122(d)(2)(B)(iii)(III) of this subchapter [~~§134.122(d)(2)(B)(iii)(III)~~].

(ii) A lay-in type ceiling is acceptable for the diagnostic room.

(3) Mechanical Requirements.

(A) Mechanical requirements shall be in accordance with §510.122(d)(3) [~~§134.122(d)(3)~~] of this subchapter [~~title~~] and this paragraph.

(B) Air handling units serving the imaging suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of §510.131(d) [~~§134.131(d)~~] of this subchapter [~~title~~].

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §510.122(d)(4) [~~§134.122(d)(4)~~] of this subchapter [~~title~~] and this paragraph. When automatic film processors are used, a receptacle of adequate size with hot and cold water for cleaning the processor racks shall be provided.

(5) Electrical requirements. Electrical requirements shall be in accordance with §510.122(d)(5) [~~§134.122(d)(5)~~] of this subchapter [~~title~~] and this paragraph.

(A) General.

(i) Each imaging procedure room shall have at least four duplex electrical receptacles.

(ii) A special grounding system in areas such as imaging procedures rooms where a patient may be treated with an internal probe or catheter shall comply with Chapter 9 of NFPA 99 [~~,~~] and Article 517 of NFPA 70.

(iii) General lighting with at least one light fixture powered from a normal circuit shall be provided in imaging procedures rooms in addition to special lighting units at the procedure or diagnostic tables.

(B) Nurses calling system.

(i) Nurses regular calling system. The nurses regular calling system shall be provided for patient dressing rooms [~~room(s)~~] in accordance with §510.122(d)(5)(K)(i) [~~§134.122(d)(5)(K)(i)~~] of this subchapter [~~title~~].

(ii) Nurses emergency calling system. In toilet rooms [~~room(s)~~] used by inpatients and outpatients, a nurses emergency call station shall be provided in accordance with §510.122(d)(5)(K)(ii) [~~§134.122(d)(5)(K)(ii)~~] of this subchapter [~~title~~].

(iii) Staff emergency assistance calling system. A staff emergency assistance calling system (code blue) shall be provided for staff to summon additional assistance for each imaging procedure room in accordance with §510.122(d)(5)(K)(iii) [~~§134.122(d)(5)(K)(iii)~~] of this subchapter [~~title~~].

(k) Laboratory suite.

(1) Architectural requirements.

(A) General. The required laboratory testing shall be performed on-site or provided through a contractual arrangement with a laboratory service.

(i) Provisions for laboratory services shall be provided within the facility for urinalysis, blood glucose and electrolytes.

(ii) Each laboratory unit shall meet the requirements of Chapter 10 of NFPA 99 [~~(relating to Laboratories),~~] and Chapter 18 of NFPA 101 [~~(relating to New Health Care Occupancies)~~].

(B) Minimum laboratory. When laboratory services are provided off-site by contract, the following minimum areas or rooms shall be provided within the facility.

(i) Laboratory work room. The laboratory workroom shall include a counter and a sink with hands-free operable controls.

(ii) General storage. Cabinets or closets shall be provided for supplies and equipment used in obtaining samples for testing. A refrigerator or other similar equipment shall be provided for specimen storage waiting for transfer to off-site testing.

(iii) Specimen collection room. A blood collection room shall be provided with a counter, space for seating, and hand washing fixture with hands-free operable controls. A toilet and lavatory with hands-free operable controls shall be provided for specimen collection. This room may be outside the laboratory suite if conveniently located.

(C) On-site laboratory. When the facility provides on-site laboratory services, the following areas or rooms shall be provided in addition to the requirements in paragraph (1)(A) and (1)(B) [~~(B)~~] of this subsection.

(i) Laboratory workrooms [~~workroom(s)~~]. The laboratory work room shall include counters [~~counter(s)~~], space appropriately designed for laboratory equipment, sinks [~~sink(s)~~] with hands-free operable controls, vacuum, gases, air, and electrical services as needed.

(ii) General storage. Storage, including refrigeration for reagents, standards, supplies, and stained specimen microscope slides, etc. shall be provided. Separate spaces shall be provided for such incompatible materials as acids and bases, and vented storage shall be provided for volatile solvents.

(iii) Chemical safety. When chemical safety is a requirement, provisions shall be made for an emergency shower and eye flushing devices.

(iv) Flammable liquids. When flammable or combustible liquids are used, the liquids shall be stored in approved containers, in accordance with National Fire Protection Association 30, Flammable and Combustible Liquids Code, 1996 edition.

(v) Radioactive materials. When radioactive materials are employed, storage amenities shall be provided.

(D) Service areas or rooms. The following service areas or rooms shall be provided.

(i) Hand washing amenities. Each laboratory room or work area shall be provided with a hand washing fixture [~~fixture(s)~~] with hands-free operable controls.

(ii) Office spaces. The scope of laboratory services shall determine the size and quantity for administrative areas including offices as well as space for clerical work, filing, and record maintenance. At a minimum, an office space shall be provided for the use of the laboratory service director.

(iii) Staff facilities. Lounge, locker, and toilet amenities shall be conveniently located for male and female laboratory staff. These may be outside the laboratory area and shared with other departments.

(iv) Housekeeping room. A housekeeping room shall be located nearby.

(2) Details and finishes. Details and finishes shall be in accordance with §510.122(d)(2) [~~§134.122(d)(2)~~] of this subchapter [~~title~~]. Floors in laboratories shall comply with the requirements of §510.122(d)(2)(B)(iii) [~~§134.122(d)(2)(B)(iii)~~] of this subchapter [~~title~~] except that carpet flooring shall not be used.

(3) Mechanical requirements. Mechanical requirements shall be in accordance with §510.122(d)(3) [~~§134.122(d)(3)~~] of this subchapter [~~title~~] and this paragraph.

(A) No air from the laboratory areas shall be recirculated to other parts of the facility. Recirculation of air within the laboratory suite is allowed.

(B) When laboratory hoods are provided, they shall meet the following general requirements.

(i) The average face velocity of each exhaust hood shall be at least 75 feet per minute.

(ii) The exhaust shall be connected to an exhaust system to the outside which is separate from the building exhaust system.

(iii) The exhaust fan shall be located at the discharge end of the system.

(iv) The exhaust duct system shall be of noncombustible and corrosion resistant material.

(C) Filtration requirements for air handling units serving the laboratory suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of §510.131(d) [~~§134.131(d)~~] of this subchapter [~~title~~].

(D) Duct linings exposed to air movement shall not be used in ducts serving any laboratory room and clean room unless terminal filters of at least 80% efficiency are installed downstream of linings. This requirement shall not apply to mixing boxes and acoustical traps that have special coverings over such lining.

(4) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §510.122(d)(4) [~~§134.122(d)(4)~~] of this subchapter [~~title~~] and this paragraph.

(A) General.

(i) Faucet spouts at lavatories and sinks shall have clearances adequate to avoid contaminating utensils and the contents of beakers, test tubes, etc.

(ii) Drain lines from sinks used for acid waste disposal shall be made of acid-resistant material.

(iii) Drain lines serving some types of automatic blood-cell counters must be of carefully selected material that will eliminate potential for undesirable chemical reactions (or [~~and/or~~] explosions) between sodium azide wastes and copper, lead, brass, and solder, etc.

(B) Medical gas systems. When provided, medical gas systems shall comply with §510.122(d)(4)(A)(iii) [~~§134.122(d)(4)(A)(iii)~~] of this subchapter [~~title~~]. The number of outlets in the laboratory for vacuum, gases, and air shall be determined by the functional program requirements.

(l) Laundry suite. Laundry amenities may be provided on-site or off-site. On-site laundry services may be within the facility or in a separate building.

(1) Architectural requirements.

(A) General. The following amenities are required for both on-site or off-site commercial laundry services.

(i) The laundry room shall be equipped and ventilated so as to minimize the dissemination of contaminants.

(ii) Soiled and clean linen processing areas shall be physically separated.

(iii) An adequate amount of hand washing fixtures shall be provided in both the soiled and clean processing areas.

(B) On-site laundry processing. When linen is processed within the facility or in a separate building located on-site, the following minimum requirements shall be provided.

(i) A receiving, holding, and sorting room for control and distribution of soiled linen shall be provided. This area may be combined with the soiled linens processing room. Discharge from soiled linen chutes may be received within this room or in a separate dedicated room.

(ii) A laundry processing room shall be provided which shall contain commercial type equipment capable of processing at least a seven-day laundry supply within the regular scheduled work week.

(iii) A clean linen processing room shall be provided and shall include built-in dryers and folding counters or tables. This area shall have provisions for inspections, folding, packing, and mending of linen.

(iv) A holding room or area for storage and issuing of clean linen shall be provided but may be combined with clean linen processing room.

(C) Off-site laundry processing. When linen is processed off the facility site, the following minimum requirements shall be provided on-site:

(i) a service entrance which shall have protection from inclement weather, for loading and unloading of linen;

(ii) control station for pickup and receiving;

(iii) soiled linen holding room;

(iv) a central clean linen storage room and issuing room in addition to linen storage required at the individual patient suites. This central holding area shall include provisions for inspecting, sorting, and mending; and

(v) cart storage areas, which [. ~~The areas~~] shall be located out of pedestrian traffic and shall be provided separately for clean and soiled linen.

(D) Service areas for on-site laundry processing. The laundry shall be separated from patient rooms, areas of food preparation and storage, and areas in which clean supplies and equipment are stored. An on-site laundry shall have the following services areas and facilities. [:]

(i) Office space. Office [~~office~~] space for director of laundry services. [;]

(ii) Equipment [~~equipment~~] layout for soiled and clean linen. The laundry equipment processing shall be arranged to permit an orderly work flow and minimize cross-traffic that might mix clean and soiled operations. [;]

(iii) Storage. [~~storage.~~] Storage space and cabinets for soaps, stain removers, and other laundry processing agents shall be located in the soiled and clean processing rooms. [;]

(iv) Cart sanitizing. Cart [~~cart~~] sanitizing shall comply with subsection (b) of this section. [;]

(v) Staff [~~staff~~] toilets. Toilets may be outside the unit but shall be convenient for staff use and shall contain hand washing fixtures with hands-free operable controls. [;]

(vi) Staff [~~staff~~] lockers. Lockers may be in laundry suite or part of a central locker area when convenient to the laundry. [; ~~and~~]

(vii) Housekeeping [~~housekeeping~~] room.

(2) Mechanical Requirements. Mechanical requirements shall be in accordance with §510.122(d)(3) [~~§134.122(d)(3)~~] of this chapter [~~title~~] and this paragraph.

(A) The ventilation system shall include adequate intake, filtration, exchange rate, and exhaust in accordance with Table 3 and Table 4 of §510.131(c) [~~§134.131(c)~~] and (d) of this subchapter [~~title~~].

(B) Filtration requirements for air handling units serving the laundry suite shall be equipped with filters having efficiencies equal to, or greater than specified in Table 4 of §510.131(d) [~~§134.131(d)~~] of this subchapter [~~title~~].

(C) Direction of air flow of the HVAC systems shall be from clean to soiled areas.

(D) The ventilation system for soiled processing area shall have negative air pressure while the clean processing area shall have positive pressure.

(m) Medical records suite. The following rooms, areas, or offices shall be provided in the medical records suite:

(1) medical records administrator or technician office;

(2) review and dictating rooms or spaces;

(3) work area which includes provisions for sorting, recording, or microfilming records; and

(4) file storage room. Rooms containing open file systems or moveable filing storage systems shall be considered as hazardous. The construction protection for the storage room or area shall comply with NFPA 101 [,] §18-3.2.

(n) Nursing suite. The nursing suite shall be designed to facilitate care of ambulatory and non-ambulatory [~~nonambulatory~~] inpatients.

(1) Physical environment. A nursing suite shall provide a safe environment for patients and staff.

(A) The environment of the unit shall be characterized by a feeling of openness with emphasis on natural light and exterior views and with the organization of various functions accessible to common spaces while not jeopardizing desirable levels of patient privacy.

(B) Interior finishes, lighting, and furnishings shall present an atmosphere which is as noninstitutional as possible, consistent with applicable fire safety requirements. Security and safety devices should not be present in a manner to attract or challenge tampering by patients.

(2) Architectural requirements. Architectural requirements shall be in accordance with §510.122(d)(1) [~~§134.122(d)(1)~~] of this subchapter [~~title~~] and this paragraph.

(A) Handicapped accessibility requirements. At least 10 percent [%]of patient room suites, bathing units and toilets, and all public and common use areas shall be designed and constructed to be handicapped accessible. These requirements shall apply in all new construction and when an existing nursing suite or a portion thereof is converted from one service to another.

(B) Patient room suites. A patient room suite shall consist of the patient room and a toilet room or bathroom. Patient room suites shall comply with the following requirements.

(i) Maximum patient room capacity. The maximum patient room capacity shall be two patients. In existing facilities where renovation work is undertaken and the present capacity is more than two patients, the maximum room capacity shall be no more than the present capacity with a maximum of four patients.

(ii) Single-bed patient room. In a single-bed patient room, the minimum clear floor area shall be 100 square feet. The minimum clear floor area in an accessible private patient room shall be 120 square feet. The minimum room dimension shall be not less than 10 feet.

(iii) Multi-bed patient room. In a multi-bed patient room, the minimum clear floor area shall be 80 square feet per bed. Minimum clear floor space in an accessible multi-bed room shall be 110 square feet per bed. Design of multi-bed patient rooms shall not restrict independent patient access to the corridor, lavatory, or bathroom.

(iv) Arrangement of patient rooms. Minor encroachments including columns and wall hung lavatories that do not interfere with functions may be ignored when determining space requirements for patient rooms.

(I) Required clear floor space in patient rooms shall be exclusive of toilet rooms, closets, lockers, built-in cabinets, wardrobes, alcoves, or vestibules.

(II) A clearance of 3 feet 8 inches shall be available at the foot of each bed in multi-bed patient rooms to permit the passage of equipment and beds. A minimum distance of three feet between a wall and the side of a bed and four feet between beds shall be provided. A minimum distance of five feet between a wall and the side of a bed and four feet between beds shall be provided in an accessible semi-private room or one intended for rehabilitation patients. Arrange-

ment of beds shall be such that sufficient space is provided for a bed and maneuvering space for a wheelchair.

(III) Sleeping areas shall have doors for privacy. Design for visual privacy in multi-bed rooms shall not restrict patient access to the room, toilet, or observation by staff.

(v) Patient bathroom. Each patient shall have access to a bathroom without having to enter the general corridor area. Each bathroom shall contain a toilet, hand washing fixtures, and storage shelf or cabinet and serve not more than four patient beds or two patient rooms. Hand washing fixtures may be located in the patient room.

(vi) Bathing rooms. One bathtub or shower shall be provided for each four patient beds or space which is not otherwise served by bathing rooms within patients' rooms. Each tub or shower shall be in an individual room or enclosure which provides space for the private use of the bathing fixture and for drying and dressing.

(vii) Patient storage. Each patient shall have a separate wardrobe, locker, or closet that is suitable for hanging full-length garments and for storing personal effects. A minimum of 12 lineal inches of hanging space shall be provided per patient.

(C) Security rooms. When security rooms are provided by the treatment program narrative, the security rooms shall be single patient suite rooms designed to minimize potential for escape, hiding, injury to self or others, or suicide. Access to toilets, showers, and wardrobes shall be restricted. The patient room suite shall be in accordance with subparagraph (B)(ii) of this paragraph. Security rooms may be centralized on one unit or decentralized among units.

(D) Seclusion suite. There shall be a seclusion suite in each nursing suite intended for short-term occupancy by a single person requiring security and protection from self or others. The seclusion suite shall consist of seclusion rooms [~~room(s)~~], an anteroom or a vestibule, a toilet, and hand washing fixtures.

(i) Each seclusion room shall be located and designed in a manner affording direct visual supervision by nursing staff and shall be constructed to prevent patient hiding, escape, injury, or suicide. There shall be a minimum of one seclusion room for each 24 beds or any portion thereof.

(I) The floor area of each seclusion room shall be not less than 60 square feet. The minimum room dimension shall be six feet.

(II) The seclusion room shall have a minimum ceiling height of nine feet.

(III) The door to each seclusion room shall have no hardware on the room side and shall open out. A vision panel shall be provided in each door to permit staff observation of the entire room while maintaining privacy from the public and other patients. The seclusion room door shall swing out.

(IV) Each seclusion room shall have natural light (skylight or window) in order to maintain a therapeutic environment. Skylight wells or windows shall be not less than 400 square inches in area.

(ii) Access to the seclusion room from any public space such as a corridor shall be through an anteroom. When the seclusion suite is directly accessible from the nurse station, a vestibule may be provided in place of an anteroom. A cased opening to the vestibule in lieu of a door may be provided as long as the arrangement assures privacy from the public and other patients.

(I) The minimum dimension of the anteroom or vestibule shall be eight feet.

(II) The door to the anteroom shall swing in.

(iii) There shall be at least one toilet room directly accessible from the anteroom or vestibule.

(I) The toilet room shall be large enough to safely manage the patient.

(II) The toilet room door shall swing out into the anteroom or vestibule.

(III) A water closet and hand washing fixtures shall be provided in the toilet room. An unbreakable wall hung mirror may be provided.

(IV) Doors for the seclusion room and anteroom shall be not less than 3 feet 8 inches in width.

(V) When the interior of the seclusion room is padded, the padding shall be a Class "A." The flame spread rating shall be 0-25 and the smoke development rating shall be 0-450 in accordance with NFPA 101 [~~,~~] Chapter 8.

(E) Airborne infection isolation suites. When an isolation suite is provided, the suite may be located within a nursing suite or in a separate isolation unit. Each airborne infection isolation suite shall consist of a work area, a patient room, and a patient bathroom.

(i) The work area may be a separately enclosed anteroom or a vestibule that is open to and is located immediately inside the door to the patient room. It shall have amenities for hand washing, gowning, and storage of clean and soiled materials. One enclosed anteroom may serve multiple isolation rooms.

(ii) Each patient room shall have a clear floor area of 120 square feet exclusive of the work area and shall contain only one bed.

(iii) Each bathroom shall be designed for the use of the handicapped and shall contain bathing fixtures, toilet fixtures and hand washing fixtures. Each bathroom shall be arranged to provide access from the patient room without entering or passing through the work area.

(iv) At least one airborne infection isolation suite with an enclosed anteroom shall be provided.

(v) Ventilation requirements for the isolation rooms shall be in accordance with Table 3 of §510.131(c) [~~§134.131(c)~~] of this subchapter [~~title~~].

(vi) Doors to airborne infection isolation rooms shall be provided with self-closing devices.

(F) Social spaces. A minimum of two separate social spaces, one appropriate for noisy activities and the other for quiet activities, shall be provided. The combined total area shall be not less than 40 square feet per bed space with not less than 160 square feet for each of the two spaces, whichever is greater. This space may be shared with the dining area or room.

(G) Group therapy room. A room for group therapy shall be included. The room shall not be less than 250 square feet. The group therapy room may be combined with the quiet space required in subparagraph (F) of this paragraph provided that a space of not less than 370 square feet is available for both the quiet activity room and group therapy activities.

(H) Activity service space. Space for activity services (e.g., music therapy, recreational therapy, art, dance, vocational therapy, educational therapy, etc.) shall be provided at the rate of 15 square feet per occupant of the room and a minimum area of not less than

375 square feet, whichever is greater. Space shall include provisions for hand washing, work counters [~~counter(s)~~], storage and displays. Where facilities contain less than 25 beds, the activity services therapy functions may be provided within the noisy activities area as required in subparagraph (F) of this paragraph if a space of not less than 485 square feet is available for both the noisy activity area and activity services area.

(I) Service areas. Service areas shall be located in, or readily available to, each nursing suite. Each service area may be arranged and located to serve more than one nursing suite[~~;~~] but at least one service area shall be provided on each nursing floor. A service area is composed of the following. [~~:~~]

(i) An [~~an~~] administrative center or nurses station with an adjacent but separate dictation space. [~~;~~]

(ii) A [~~a~~] nurses office. [~~;~~]

(iii) An [~~an~~] area for charting. The charting area shall be provided with separation needed for acoustical privacy as well as space required for the function. A view window to permit observation of the patient area by the charting nurse or physician may be used provided that it is so located that patient files cannot be read from outside the charting space. [~~;~~]

(iv) A [~~a~~] medication room, medicine alcove area, or a self-contained medicine dispensing unit under visual control of nursing staff. The room shall have a minimum area of 30 square feet under direct control of the nursing or pharmacy staff. The room, area or unit shall contain a work counter, hand washing fixture with hands-free operable controls, and refrigerator. Provisions for security against unauthorized access shall be assured. Standard cup-sinks provided in many self-contained units are not adequate for hand washing. [~~;~~]

(v) A [~~a~~] small kitchen for patient use. The room shall contain a sink, refrigerator, ice dispenser, microwave, and storage cabinets. This room is to provide nourishment for patients between scheduled meals. [~~;~~]

(vi) A [~~a~~] multipurpose room for staff and patient conferences, education and demonstrations. The room shall be conveniently accessible to each nursing suite and may serve several nursing suites or departments. The room may be located on another floor if convenient for regular use.[~~;~~]

(vii) An [~~an~~] examination or treatment room. The room shall have a minimum floor area of 120 square feet excluding space for vestibule, toilet, and closets. The minimum room dimension shall be 10 feet. The room shall contain a lavatory or sink equipped for hand washing, work counter, storage facilities, and a desk, counter, or shelf space for writing. The emergency treatment room may be used for this purpose if it is conveniently located on the same floor as the patient rooms. [~~;~~]

(viii) Patient [~~patient~~] laundry facilities. An automatic washer and an electric dryer shall be provided. This requirement may be omitted in nursing units intended only for adolescents and gero-psychiatric patients. [~~;~~]

(ix) Staff [~~staff~~] lounge with separate female and male dressing areas containing lockers, showers, toilets, and hand washing facilities. These facilities may be on another floor. [~~;~~]

(x) Securable [~~securable~~] closets or cabinet compartments for personal articles of nursing unit staff. The closets or lockers shall be located at or near the nurse station. At a minimum, these shall be large enough for purses and billfolds. Coats may be stored in closets or cabinets on each floor or in a central staff locker area. [~~;~~]

(xi) Secured [~~secured~~] storage area for patients' effects determined potentially harmful (razors, nail files, cigarette lighters, etc.). This area shall be controlled by staff. [~~;~~]

(xii) Clean [~~clean~~] workroom or clean supply room. When used for preparing patient care items, it shall contain a work counter, hand washing facilities, and storage facilities for clean and sterile supplies. When used only for storage and holding as part of a distribution system of clean and sterile supplies, the work counter and hand washing facilities may be omitted. [~~;~~]

(xiii) Clean [~~clean~~] linen storage for each nursing unit. The clean linen area shall contain a work counter and storage space for clean linen. The area shall be a part of the storage and distribution of clean linen. Minimum area for clean linen shall be three square feet of room area per patient bed space. The required area may be concentrated in one central room or divided in several rooms throughout the facility. [~~;~~]

(xiv) A [~~a~~] soiled workroom or soiled holding room. The room shall contain a clinical sink or equivalent flushing rim fixture, hand washing facilities, both with hot and cold water. The room shall have a work counter and space for separate covered containers for soiled linen and waste. Minimum area for soiled linen shall be three square feet of room area per patient bed space. [~~;~~]

(xv) An [~~an~~] equipment storage room and storage room for administrative supplies located on each floor which may serve multiple nursing suites. [~~;~~]

(xvi) An [~~an~~] emergency equipment storage room or alcove under direct visual control of the nursing staff and out of normal traffic. [~~;~~]

(xvii) A [~~a~~] housekeeping room which may also serve adjacent nursing suites. [~~;~~]

(xviii) Stretcher [~~stretcher~~] and wheelchair storage space which is located without restricting normal traffic. The space may be located outside the nursing suite. [~~;~~]

(xix) An [~~an~~] accessible public toilet with hand washing fixtures. The toilets shall be located on each floor containing a nursing suite. [~~;~~]

(xx) Staff [~~staff~~] toilet conveniently located to each nursing suite. At least one staff toilet shall be located on each patient sleeping floor. Toilet may be unisex. [~~;~~]

(xxi) An [~~an~~] ice dispensing machine for each nursing suite which is located at the nourishment station or the clean work room. [~~;~~]

(xxii) Adequate [~~adequate~~] number of drinking fountain fixtures. [~~;~~]

(xxiii) Adequate [~~adequate~~] number of telephones available for patients' private conversations. [~~;~~]

(xxiv) A [~~a~~] visitor room for patients to meet with friends or family with a minimum floor space of 100 square feet. [~~;~~]

(xxv) A [~~a~~] quiet room for a patient who needs to be alone for a short period of time but does not require a seclusion room. Each quite room shall be not less than 80 square feet. The visitor room may serve this purpose. [~~;~~]

(xxvi) Separate [~~separate~~] consultation room. The room shall have a minimum floor space of 100 square feet, and provided at a room-to-bed ratio of one consultation room for each 12 patient beds. The room(s) shall be designed for acoustical and visual privacy and constructed to achieve a level of voice privacy of 50 STC

(which in terms of vocal privacy means that some loud or raised speech is heard only by straining, but is not intelligible). [; and]

(xxvii) A [a] conference and treatment planning room for use for patient care planning. This room may be combined with the charting room or use of the multipurpose room.

(3) Details and finishes. Details and finishes shall be in accordance with §510.122(d)(2) [§134.122(d)(2)] of this chapter [title] and this paragraph.

(A) Details.

(i) Egress. Means of egress from each patient suite shall comply with the requirements of NFPA 101 [,] §18-2.

(ii) Patient bathroom and toilet room doors. Door leaves to all patient bathrooms and toilet rooms shall be at least 36 inches wide and shall swing outward or be double acting so that nursing staff may gain access to a patient. Doors lockable from the inside shall have hardware that allows staff to open the door from the outside.

(iii) Vision panels. Vision panels shall be provided in the door between an anteroom and an airborne infection isolation room.

(iv) Windows. Each patient sleeping room shall have an outside window. The windows shall be restricted. Where the operation of windows requires the use of tools or keys, the tools or keys shall be located at each nurses station, on the same floor, and easily accessible to staff. The bottom of the window opening shall not exceed 36 inches above the floor.

(v) Location of patient room windows. Windows shall be located on an outside wall. Windows may face an atrium, an inner court, or an outer court provided the following requirements are met.

(I) Atria windows. Atria onto which the required windows face shall comply with the requirements of NFPA 101 [,] §8-2.5.6.

(II) Outer courts. Outer court (not enclosed by building on one side) onto which the required windows face shall have a minimum width, at all levels, of not less than three inches for each foot, or fraction thereof, of the height (average height of enclosing walls) of such court, but in no case shall the width be less than five feet. An outer court shall have a horizontal cross sectional area not greater than four times the square of its width.

(III) Inner courts. Inner court (enclosed by building on all sides) onto which the required windows open shall have minimum width, at all levels, of not less than one foot for each foot, or fraction thereof, of the height (average height of enclosing walls) of such courts, but in no case shall the width be less than 10 feet. If operable windows are provided, a horizontal, unobstructed, and permanently open air intake or passage having a cross-sectional area of not less than 21 square feet shall be provided at or near the bottom of the court. Metal decorative grilles not effectively reducing the open area by more than five percent [5.0%] shall be permitted at the ends. Walls, partitions, floor, and floor-ceiling assemblies forming intakes or passages shall be noncombustible and shall be constructed in accordance with NFPA 101 [,] §18-3.1(b) and (c). An inner court shall have a horizontal cross sectional area of not less than one and one-half times the square of its width.

(vi) Visibility. All areas of the nursing suite, including entrances to patient rooms, shall be visible from the nurse station [station(s)]. Observation by video cameras of seclusion rooms, entrances, hallways, and activity areas shall be acceptable.

(vii) Special fixtures, hardware, and tamper-proof screws. Special fixtures, hardware, and tamper-proof screws shall be used throughout the patient nursing suites.

(I) All exposed and accessible fasteners shall be tamper-resistant.

(II) Suitable hardware shall be provided on doors to toilet rooms so that access to these rooms can be controlled by staff. Hardware shall be utilized which is appropriate to prevent patient injury.

(III) Only break-away or collapsible clothes bars in wardrobes, lockers, towel bars, and closets and shower curtain rods shall be permitted. Wire coat hangers shall not be permitted in nursing suites.

(IV) When grab bars are provided, the space between the grab bar and the wall should be filled to prevent a cord being tied around it for hanging. Bars, including those which are part of such fixtures as soap dishes, shall be sufficiently anchored to sustain a concentrated load of 250 pounds.

(viii) Detention screens.

(I) When operable windows are provided in patient sleeping rooms, it may be necessary to provide detention screens on windows or limit the amount of window operation in order to inhibit possible tendency for suicide or elopement. The type and the degree of security required shall be determined by the facility administration.

(II) When detention screens are provided, windows shall be capable of opening with the screens in place. Where glass fragments may create a hazard, safety glazing or other appropriate security features shall be incorporated.

(III) In building housing for certain types of patients, detention rooms, or a security section, the facility shall provide detention screens to confine or protect building inhabitants, when necessary.

(ix) Hand washing amenities. Hand washing amenities shall be conveniently located near the nurses station and in the medication area. One lavatory in an open medication area can meet this requirement.

(x) Elevator lobbies. Elevator lobbies shall be physically separated from the required means of egress with one hour fire rated construction which resist the passage of smoke on all floors containing patient rooms.

(B) Finishes.

(i) Seamless floors with coved wall bases described in §510.122(d)(2)(B)(iii)(III) [§134.122(d)(2)(B)(iii)(III)] of this subchapter [title] shall be provided in soiled workrooms.

(ii) Wall bases in the soiled workroom shall be made integral and coved with the floor, tightly sealed to the wall, constructed without voids that can harbor insects, retain dirt particles, and impervious to water.

(iii) Monolithic ceilings described in §510.122(d)(2)(B)(vi)(III) [§134.122(d)(2)(B)(vi)(III)] of this subchapter [title] shall be provided in airborne infection isolation rooms, seclusion rooms, and security rooms.

(iv) Ceilings of patient rooms may be acoustically treated; however, they shall be monolithic as described in §510.122(d)(2)(B)(vi)(III) [§134.122(d)(2)(B)(vi)(III)] of this subchapter [title].

(v) Acoustical ceilings shall be provided for corridors in patient areas, nurses' stations, dayrooms, recreation rooms, dining areas, and waiting areas.

(4) Mechanical requirements. Mechanical requirements shall be in accordance with §510.122(d)(3) [~~§134.122(d)(3)~~] of this subchapter [~~title~~] and this paragraph.

(A) Special consideration shall be given to the type of heating and cooling units, ventilations outlets, and appurtenances installed in patient-occupied areas of nursing suites. The following shall apply. [~~:~~]

(B) All air grilles and diffusers shall be of a type that prevents the insertion of foreign objects.

(C) All convector or HVAC enclosures exposed in the room shall be constructed with rounded corners and shall have enclosures fastened with tamper-resistant fasteners.

(D) HVAC equipment shall be of a type that minimizes the need for maintenance within the room.

(E) Outside air shall be supplied to each patient room by a central air handling unit to provide make-up air for air exhausted from the bathroom in accordance with Note 3 of Table 3 of §510.131(c) [~~§134.131(c)~~] of this subchapter [~~title~~].

(F) Each patient room bathroom shall be exhausted continuously to the exterior in accordance with Table 3 of §510.131(c) [~~§134.131(c)~~] of this subchapter [~~title~~].

(5) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §510.122(d)(4) [~~§134.122(d)(4)~~] of this subchapter [~~title~~] and this paragraph.

(A) Each patient bathroom shall contain a water closet and a lavatory. The lavatory may be located in a single bed patient room instead of in the bathroom.

(B) An additional lavatory shall be placed in each patient room proper where the bathroom serves more than two beds.

(C) Hand washing fixtures shall be located near the nurses' station and the drug distribution station. One lavatory may serve both areas.

(D) Faucet controls shall not be equipped with handles that may be easily broken off in the patient care areas.

(E) Bedpan washers are not required in patient bathrooms.

(F) Piped medical gas systems are not required unless otherwise noted.

(G) Only special, tamper proof sprinkler heads from which it is not possible to suspend any objects shall be installed.

(6) Electrical requirements. Electrical requirements shall be in accordance with §510.122(d)(5) [~~§134.122(d)(5)~~] of this subchapter [~~title~~] and this paragraph.

(A) Electric receptacles in nursing units.

(i) Each receptacle shall be grounded to the reference grounding point by means of an insulated copper grounding conductor.

(ii) Each patient bed location shall be supplied by at least two branch circuits, one from the critical branch of the emergency system as required by NFPA 99, §3-4 and one from the normal system. All branch circuits from the normal system shall originate in the same panelboard.

(iii) One duplex receptacle connected to a normal branch circuit and one duplex outlet connected to the critical branch circuit shall be located on opposite sides of the head of each bed. In addition at least one duplex outlet shall be located on each wall. A dedicated outlet shall be provided at the television location.

(iv) Each examination table shall have access to two duplex receptacles.

(v) Each work table or counter shall have access to two duplex receptacles.

(vi) One duplex receptacle shall be installed in the bathroom to permit the use of electrical appliances in front of the mirror.

(vii) Receptacles shall be protected by GFCI breakers installed in distribution panel enclosures serving the nursing suite.

(viii) Duplex receptacles shall be installed not more than 50 feet apart in corridors and within 25 feet of corridor ends.

(ix) When mobile x-ray equipment is provided, special receptacles marked for X-ray use shall be installed in corridors so that mobile equipment may be used anywhere within a patient room using a cord length of 50 feet or less. Where capacitive discharge or battery powered X-ray units are used, special X-ray receptacles will not be required in corridors.

(x) Additional duplex receptacles shall be installed as required to satisfy operational needs of the nursing unit.

(B) Nurses calling systems. When a nurses calling system is provided in a nursing suite, a nurses regular calling system, nurses emergency calling system, and a staff emergency assistance calling system shall comply with §510.122(d)(5)(K) [~~§134.122(d)(5)(K)~~] of this subchapter [~~title~~]. Provisions shall be made for easy removal of all call buttons or for covering call buttons as required for security. Pull cords shall not exceed 18 inches in length.

(i) Each patient room shall be served by at least one nurses regular calling station for two-way voice communication. Each patient bed shall be provided with a call button. Two call buttons serving adjacent beds may be served by one calling station. In rooms containing two or more calling stations, indicating lights shall be provided at each station. Nurses calling systems shall be equipped with an indicating light at each calling station which remains lighted as long as the voice circuit is operating.

(ii) A nurses emergency calling system shall be provided at each inpatient water closet, bathtub and shower in accordance with §510.122(d)(5)(K)(ii) [~~§134.122(d)(5)(K)(ii)~~] of this subchapter [~~title~~]. When conveniently located one emergency call station may serve one bathroom.

(iii) A staff emergency assistance calling system for staff to summon additional assistance shall be provided in central bathing facility rooms and exam or treatment [~~exam/treatment~~] rooms in accordance with §510.122(d)(5)(K)(iii) [~~§134.122(d)(5)(K)(iii)~~] of this subchapter [~~title~~].

(iv) All nurse call hardware shall have tamper resistant fasteners.

(v) A call system shall be provided at all seclusion anterooms.

(C) Illumination requirements.

(i) General illumination requirements. Nursing suite corridors shall have general illumination with provisions for reducing light levels at night. Illumination of corridors for egress purposes shall comply with NFPA 101 [~~,~~] §§18-2.8 and 18-2.9.

(ii) Illumination of the nurses station. Illumination of the nurses station and all nursing support areas shall be with fixtures powered from the critical branch of the emergency electrical system NFPA 99 [,] §3-4.2.2.2(c).

(iii) Patient suite lighting.

(I) Each patient room shall be provided with general lighting and night lighting. General lighting and night lighting shall be controlled at the room entrance. All controls for lighting in patient areas shall be of the quiet operating type. Control of night lighting circuits may be achieved by automatic means and in such instances control of night lighting at the room entrance shall not be required. At least one general light fixture and night lighting shall be powered from the critical branch of the essential electrical system.

(II) A reading light shall be provided for each patient. Reading light control shall be readily accessible from each patient bed. High heat producing light sources such as incandescent and halogen shall be avoided to prevent burns to patients and/or bed linen. Light sources shall be covered by a diffuser or a lens.

(III) A wall or ceiling mounted lighting fixture shall be provided above each lavatory.

(IV) A ceiling mounted fixture shall be provided in patient bathrooms where the lighting fixture above the lavatory does not provide adequate illumination of the entire bathroom. Some form of fixed illumination shall be powered from the critical branch.

(o) Pharmacy suite.

(1) Architectural requirements.

(A) General. The pharmacy room or suite shall be located for convenient access, staff control, and security for drugs and personnel.

(B) Dispensing area. The pharmacy room or suite shall include the following functional spaces and facilities:

(i) area [~~area(s)~~] for pickup, receiving, reviewing and recording;

(ii) extemporaneous compounding area with sufficient counter space for drug preparation and sink with hands-free operable controls;

(iii) work counter space for automated and manual dispensing activities;

(iv) storage or areas for temporary storage, exchange, and restocking of carts; and

(v) security provisions for drugs and personnel in the dispensing counter area.

(C) Manufacturing. The pharmacy room or suite shall provide the following functional spaces and facilities.

(i) When bulk compounding area is required, work space and counters shall be provided.

(ii) When packaging, labeling and quality control is required, an area(s) shall be provided.

(D) Storage. The following spaces shall be provided in cabinets, shelves, and/or separate rooms or closets:

(i) space for bulk storage, active storage, and refrigerated storage;

(ii) storage in a fire safety cabinet or storage room that is constructed under the requirements for protection from hazardous areas in accordance with NFPA 101 [,] Chapter 12, for alcohol or other volatile fluids, when used; and

(iii) storage space for general supplies and equipment not in use.

(E) Administrative area [~~area(s)~~]. An administrative area for the pharmacy is optional for crisis stabilization units. The following functional spaces and facilities shall be included for the administrative area. [~~area(s):~~]

(i) Office [~~office~~] area for the chief pharmacist and any other offices areas required for records, reports, accounting activities, and patients profiles. [;]

(ii) Poison [~~poison~~] control center with storage facilities for reaction data and drug information centers. [~~; and~~]

(iii) A [~~a~~] room or area for counseling and instruction when individual medication pick-up is available for inpatients or outpatients.

(F) Service areas. The following service areas and items shall be provided.

(i) Intravenous (IV) solutions area. When IV solutions are prepared in a pharmacy, a sterile work area with a laminar-flow workstation designed for product protection shall be provided.

(ii) Satellite pharmacy. When provided, the room[~~room(s)~~] shall include a work counter, a sink with hands-free operable controls, storage facilities, and refrigerator for medications.

(iii) Hand washing amenities. A hand washing fixture with hands-free operable controls shall be located in each room where open medication is handled.

(iv) Staff toilets. Toilets may be outside the suite but shall be convenient for staff use.

(2) Mechanical Requirements. Mechanical requirements shall be in accordance with §510.122(d)(3) [~~§134.122(d)(3)~~] of this subchapter [~~title~~] and this paragraph. When IV solutions are prepared, the required laminar-flow system shall include a non-hygroscopic filter rated at 99.97% (HEPA). A pressure gauge shall be installed for detection of filter leaks or defects.

(3) Piping systems and plumbing fixtures. Piping systems and plumbing fixtures shall be in accordance with §510.122(d)(4) [~~§134.122(d)(4)~~] of this subchapter [~~title~~] and this paragraph.

(A) Material used for plumbing fixtures shall be nonabsorptive and acid-resistant.

(B) Water spouts used at lavatories and sinks shall have clearances adequate to avoid contaminating utensils and the contents of carafes, etc.

(4) Electrical requirements. Electrical requirements shall be in accordance with §510.122(d)(5) [~~§134.122(d)(5)~~] of this subchapter [~~title~~] and this paragraph.

(A) Under-counter receptacles and conduits shall be arranged (raised) to not interfere with cleaning of the floor below or of the equipment.

(B) Exhaust hoods shall have an indicator light indicating that the exhaust fan is in operation.

(C) Electrical circuits [~~circuit(s)~~] to equipment in wet areas shall be provided with five milliampere GFCI.

(p) Rehabilitation therapy suite.

(1) Occupational therapy. When occupational therapy services are provided, the following shall be included:

(A) an activity room with work areas, counters and a hand washing fixture. Counters shall be wheel chair accessible;

(B) a storage room for supplies and equipment;

(C) secured storage for potential harmful supplies and equipment; and

(D) remote electrical switching for potentially harmful equipment.

(2) Physical therapy. When physical therapy services are provided, the following rooms shall be included.

(A) When services required by the narrative program for thermotherapy, diathermy, ultrasonics, and hydrotherapy, individual treatment areas shall be provided.

(B) An individual treatment area [~~area(s)~~] shall be a minimum of 70 square feet of clear floor area exclusive of four foot aisle space. Privacy screens or curtains shall be provided at each treatment station.

(C) A hand washing fixture with hands-free operable controls shall be provided in each treatment room or space [~~room/space~~]. A hand washing fixture may serve several patient stations when cubicles or open room concepts are used and when the fixture is conveniently located.

(D) An area shall be provided for exercise and may be combined with treatment areas in open plan concepts.

(E) Provisions for the collection and storage of wet and soiled linen shall be provided.

(F) A storage area or room for equipment, clean linen, and supplies shall be provided.

(G) When outpatient physical therapy services are provided, the suite shall have as a minimum patient dressing areas, showers, and lockers.

(3) Service areas. The following areas or items shall be provided in a rehabilitative therapy suite [~~,~~] but may be shared when multiple rehabilitation services are offered:

(A) patient waiting area [~~area(s)~~] with space for wheelchairs;

(B) patient toilet facilities containing hand washing fixtures with hands-free operable controls;

(C) reception and control stations [~~station(s). The reception and control station~~] shall be located to provide supervision of activities areas and the [~~. The~~] control station may be combined with office and clerical spaces;

(D) office and clerical space;

(E) wheelchair and stretcher storage room or alcove which shall be in addition to other storage requirements;

(F) lockable closets, lockers or cabinets for securing staff personal effects;

(G) staff toilets[~~. The toilets~~] may be outside the suite but shall be convenient for staff use and contain hand washing fixtures with hands-free operable controls; and

(H) housekeeping room, conveniently accessible.

§510.125. Building with Multiple Occupancies.

(a) Multiple facilities located within one building.

(1) Identifiable location. Each facility shall be in one separately identifiable location and conform with all the requirements contained in Chapter 18 of the National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 2000 edition (NFPA 101) [~~, relating to New Health Care Occupancies. All documents published by NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, Post Office Box 9101, Quincy, MA 02269-9101 or (800) 344-3555~~].

(2) Separate licensed facilities. Each facility shall provide the following separate services and amenities:

(A) a nursing suite in accordance with the requirements of §510.123(n) [~~§134.123(n)~~] of this subchapter [~~title~~] (relating to Spatial Requirements for New Construction);

(B) an administration office with an adjacent waiting room or waiting area;

(C) a medical records room which conforms with the requirements of §510.123(m) [~~§134.123(m)~~] of this subchapter [~~title~~];

(D) a pharmacy suite in accordance with §510.123(o) [~~§134.123(o)~~] of this subchapter [~~title~~];

(E) employee locker facilities which comply with requirements of §510.123(f) [~~§134.123(f)~~] of this subchapter [~~title~~];

(F) a housekeeping room in accordance with the requirements of §510.122(d)(2)(A)(xxviii) [~~§134.122(d)(2)(A)(xxviii)~~] of this subchapter [~~title~~] (relating to New Construction Requirements);

(G) an emergency treatment room as required by §510.123(e)(1)(A) [~~§134.123(e)(1)(A)~~] of this subchapter [~~title~~];

(H) external signage at the building entrance which identifies each facility; and

(I) internal signage which provides directions to each facility.

(3) Means of egress. Means of egress from the facility shall not be through another facility or other areas subject to locking.

(4) Additional services and amenities. Additional services and amenities when required in each licensed facility may be provided by contractual agreement with the other facility when the services and amenities comply with the specific requirements of §510.41 [~~§134.41~~] of this chapter [~~title~~] (relating to Facility Functions and Services) and §510.123 [~~§134.123~~] of this subchapter [~~title~~]. Some services may be provided by contractual agreement with a commercial contractor; however, the following minimal services and amenities shall be provided on site:

(A) dietary services and dietary suite which comply with §510.41(b) [~~§134.41(b)~~] of this chapter [~~title~~] and §510.123(d) [~~§134.123(d)~~] of this subchapter [~~title~~] respectively;

(B) cart cleaning and sanitizing services and facilities which comply with §510.123(b) [~~§134.123(b)~~] of this subchapter [~~title~~];

(C) general stores services and facilities which comply with §510.123(h) [~~§134.123(h)~~] of this subchapter [~~title~~];

(D) laboratory services and a laboratory suite which comply with §510.41(e) [~~§134.41(e)~~] of this chapter [~~title~~], and §510.123(k) [~~§134.123(k)~~] of this subchapter, [~~title~~] respectively;

(E) housekeeping rooms as required in §510.122(d)(2)(A)(xxviii) [§134.122(d)(2)(xxviii)] of this subchapter [title];

(F) parking, in accordance with §510.122(c)(2) [§134.122(c)(2)] of this subchapter [title];

(G) physical therapy services and amenities, [and/or] occupational therapy services and amenities, or both in accordance with §510.123(p) [§134.123(p)] of this subchapter [title];

(H) imaging services in accordance with §510.123(j) [§134.123(j)] of this subchapter [title];

(I) central sterile supply which complies with §510.123(c) [§134.123(c)] of this subchapter [title]; and

(J) waste and waste disposal services, and waste processing and storage units shall comply with §510.41(o) [§134.41(o)] of this chapter [title].

(5) Building systems and equipment.

(A) The following systems shall be provided separately in each facility.

(i) Nurses calling systems shall be provided separately in each facility in accordance with §510.122(d)(5)(K) of this subchapter [§134.122(d)(5)(K)].

(ii) When medical gas systems are provided, medical gas alarms shall be provided in each facility.

(iii) A fire alarm system in accordance with §510.122(d)(5)(M) of this subchapter [§134.122(d)(5)(M)] shall be provided.

(B) Where applicable, the following systems may serve more than one facility provided the systems meet the new construction requirements of §510.122 [§134.122] of this subchapter [title]:

(i) air-conditioning, heating and ventilating systems;

(ii) drainage systems;

(iii) elevators;

(iv) fire sprinkler systems;

(v) medical piping systems;

(vi) stand pipe systems;

(vii) steam systems;

(viii) water supply systems, hot and cold (including emergency water storage); and

(ix) electrical service and equipment.

(I) Where applicable, the building electrical service, lighting, essential electrical system, and fire alarm system, may be a part of or extension of those in the existing host facility, provided the existing systems meet these requirements. Power and lighting distribution panels shall be within the facility served and comply with the requirements of §510.122(d)(5)(E) of this subchapter [§134.122(d)(5)(E)]. Electrical installation details shall conform with all requirements contained in §510.122(d)(5)(A) of this subchapter [§134.(d)(5)(A)].

(II) When the existing essential electrical system is non-conforming, the following options are available:

(-a-) a separate conforming essential electrical system shall be provided in the new facility; or

(-b-) separate transfer switches connected to the existing on-site generator(s) shall be provided when adequate capacity is available and the existing non-conforming system shall be corrected. Corrections shall be made in accordance with a plan of correction approved by HHSC [the department].

(b) Facilities located in buildings with hospitals licensed under Texas Health and Safety Code [,] Chapter 241. Before a facility is licensed in a building containing a hospital licensed under Texas Health and Safety Code [,] Chapter 241 (241 hospital), the following requirements shall be met.

(1) The facility shall be in one identifiable location and shall be separated (vertically and horizontally) with two-hour fire rated noncombustible construction from the 241 hospital and comply with the requirements of this chapter.

(A) Access to the facility shall be directly from a main lobby or an elevator lobby, if on an upper floor. The required means of egress from the facility shall not be through the 241 hospital.

(i) Each facility and 241 hospital shall be identified with external signage at the building entrance.

(ii) Internal signage shall provide direction to the facility and to the 241 hospital.

(B) Common use of services and amenities using time-sharing concepts may be permitted on a case by case basis when the 241 hospital complies with the requirements contained in NFPA 101 [,] Chapter 18, and §510.123 [§134.123] of this subchapter [title], and provided this chapter and the 241 hospital licensing rules allow.

(2) The facility and the 241 hospital shall provide services and amenities in accordance with their respective licensing requirements.

(3) Additional services and amenities when required in the facility or 241 hospital may be provided by contractual agreement with either entity. Shared services and amenities shall meet the most stringent entity licensing standard or rule. Some services may be provided by contractual agreement with a commercial contractor; however, the following minimal services and amenities shall be provided on-site:

(A) dietary services and dietary suite, including staff dining amenities;

(B) cart cleaning and sanitizing services;

(C) general stores services;

(D) laboratory services and a laboratory suite;

(E) housekeeping rooms;

(F) parking;

(G) physical or occupational therapy services and amenities;

(H) imaging and other diagnostic services and amenities;

(I) respiratory care services and respiratory therapy suite;

(J) body holding room;

(K) central sterile supply; and

(L) waste and waste disposal services, and waste processing and storage units.

(4) The equipment and systems required in the facility or 241 hospital may be provided exclusively for the facility or by contrac-

tual agreement with a 241 hospital. Equipment and systems provided shall be in accordance with the most stringent entity standard or rule.

(A) The following equipment and systems shall be provided for the exclusive use of the facility:

(i) a fire alarm system; and

(ii) nurses calling systems.

(B) Where applicable, the following systems may serve more than one facility or 241 hospital:

(i) air-conditioning, heating, and ventilating systems;

(ii) drainage systems;

(iii) elevators;

(iv) fire sprinkler systems.

(v) medical piping systems;

(vi) stand pipe systems;

(vii) steam systems;

(viii) water supply systems, hot and cold (including emergency water storage); and

(ix) electrical service and equipment.

(I) Where applicable, the building electrical service, lighting, essential electrical system, and fire alarm system, may be a part of or extension of those in the existing 241 hospital, provided the existing systems meet these requirements. Power and lighting distribution panels shall be within the facility served and comply with the requirements of §510.122(d)(5)(E) of this subchapter [~~§134.122(d)(5)(E)~~]. Electrical installation details shall conform with all requirements contained in §510.122(d)(5)(A) of this subchapter [~~§134.122(d)(5)(A)~~].

(II) When the existing essential electrical system is [~~in~~] nonconforming, the following options are available:

(-a-) a separate conforming essential electrical system shall be provided in the new facility; or

(-b-) separate transfer switches connected to the existing on-site generator [~~generator(s)~~] shall be provided when adequate capacity is available and the existing nonconforming system shall be corrected. Corrections shall be made in accordance with a plan of correction approved by the department.

(c) Facilities located in buildings with other licensed health care entities.

(1) Before a facility is licensed in a building containing other licensed health care entities, the following requirements shall be met.

(A) The facility shall be in one identifiable location and shall be separated (vertically and horizontally) with two-hour fire rated noncombustible construction from the other licensed health care entity and comply with the requirements of this chapter.

(i) Access to the facility shall be directly from a main lobby or an elevator lobby, if on an upper floor. The required means of egress from the facility shall not be through the other licensed health care entity.

(I) Each facility and licensed entity shall be identified with external signage at the building entrance.

(II) Internal signage shall provide direction to the facility and to the licensed entity.

(ii) The facility shall have services and amenities separate from the other health care entity. The required services and amenities shall be located within the proposed facility.

(iii) Common use of services and amenities using time-sharing concepts may be permitted on a case-by-case [~~case by case~~] basis when the other health care entities comply with the requirements contained in NFPA 101 [~~,~~] Chapter 18, and §510.123 [~~§134.123~~] of this subchapter [~~title~~], and provided this chapter and the other health care entity licensing rules allow.

(B) The equipment and systems required in each facility may be provided exclusively for the facility or by contractual agreement with a licensed health care entity. The equipment and systems provided shall be in accordance with §510.122 [~~§134.122~~] of this subchapter [~~title~~].

(i) The following equipment and systems shall be provided for the exclusive use of the facility:

(I) electrical service for power and lighting and the essential electrical system;

(II) emergency water storage located with the facility;

(III) a fire alarm system; [~~and~~]

(IV) air-conditioning, heating and ventilating systems;

(V) medical piping systems with alarm; and

(VI) nurses calling systems.

(ii) Where applicable, the following systems may be a part or extension of those in the existing licensed health care entity, provided the existing systems meet the requirements of this chapter for new construction:

(I) drainage systems;

(II) elevators;

(III) fire sprinkler systems.

(IV) stand pipe systems; [~~and~~]

(V) steam systems; and

(VI) water supply systems, hot and cold.

(2) When a facility and other licensed health care entities share one building, the building systems and equipment may be shared in accordance with subsection (a)(5)(B) of this section [~~,~~] or be provided separately. The shared systems and equipment shall meet the requirements of this subchapter and be under the control of the licensed health care entity.

(d) Facilities in buildings with non-health [~~non health~~] care occupancies. Before a facility is licensed in a building also containing occupancies other than health care occupancies, all requirements of this chapter and the following requirements shall be met.

(1) Construction. Construction of the building shall conform to the requirements of NFPA 101 [~~,~~] Chapter 18 [~~,~~] and the facility shall be in one identifiable location.

(A) The facility shall be in one identifiable location and shall be separated (vertically and horizontally) with two-hour fire rated noncombustible construction from the other non-health [~~non health~~] care occupancies and comply with the requirements of this chapter.

(B) Access to the facility shall be through a dedicated facility lobby or from the building's main lobby. The building's main

lobby shall be part of the facility and shall comply with the requirements of §510.122 [§134.122] of this subchapter [title].

(C) The required means of egress from the facility shall be independent of and shall not traverse through the other occupancies.

(2) Services and amenities. Services and amenities shall be provided exclusively for the facility in accordance with Subchapters [subchapters] C, F, and G of this chapter [title] (relating to Operational Requirements, Fire Prevention and Safety Requirements, and Physical Plant and Construction Requirements, respectively). Required services and amenities shall not be shared with the other occupancies.

(3) Building equipment and amenities. The equipment and amenities shall be provided for the exclusive use of a facility in accordance with this subchapter.

§510.127. Preparation, Submittal, Review and Approval of Plans.

(a) General.

(1) Facility owners or operators may not begin construction of a new building or additions to or renovations or conversions of existing buildings until final construction documents are reviewed and approved by the Texas Health and Human Services Commission (HHSC) [department].

(2) Plans and specifications describing the construction of new buildings and additions to or renovations and conversions of existing buildings shall be prepared by registered architects, [and/or] licensed professional engineers, or both.

(3) Preliminary plans shall be prepared and submitted in accordance with subsection (b) of this section.

(4) Final plans and specifications shall be prepared and submitted in accordance with subsection (c) of this section.

(b) Preliminary documents. Preliminary documents shall consist of a functional program narrative, preliminary plans, and outline specifications. These documents shall contain sufficient information to establish the project scope, description of functions to be performed, project location, required fire safety and exiting requirements, building construction type, compartmentation showing fire and smoke barriers, bed count and services, and the usage of all spaces, areas, and rooms on every floor level.

(1) Preparation of preliminary plans. Preliminary plans shall be of a sufficiently large scale to clearly illustrate the proposed design but not less than one-eighth inch equals one foot. Preliminary plans shall provide the following information.

(A) Floor area and bed distribution. The total floor area on each level involved in construction, together with the proposed bed distribution, shall be shown on the drawings.

(B) Floor plan. Each floor plan shall indicate and identify all individual spaces, doors, windows and means of egress.

(C) Existing floor plan. An overall floor plan showing existing spaces, smoke partitions, smoke compartments, and exits and their relationship to the new construction shall be submitted on all renovations or additions to an existing facility. Plans for remodeling of spaces above or below the level of discharge shall include the level of discharge floor plan, showing all exits at that level. When there are two different levels of discharge, plans for both levels shall be submitted.

(D) Construction type and fire rating. Building sections shall be provided to illustrate construction type and fire protection rating. Sections [Section(s)] shall be drawn at a scale sufficiently large to clearly present the proposed construction system.

(E) Area map. A map of the area within a two-mile [two mile] radius of the facility site shall be provided and any hazardous and undesirable location noted in §510.122(a) [§134.122(a)] of this subchapter [title] (relating to New Construction Requirements) shall be identified.

(F) Site plan. A site plan shall be submitted and shall indicate the location of the proposed buildings [building(s)] in relation to property lines, existing buildings or structures, access and approach roads, and parking areas and drives. Any overhead or underground utilities or service lines shall also be indicated.

(G) Outline specifications. Outline specifications shall provide a general description of the construction, materials, and finishes that are not shown on the drawings.

(2) Functional program narrative. The facility shall provide a functional program narrative presented on facility letterhead and signed by facility administration. The narrative program shall be submitted to HHSC [the department] at the preliminary plan (stage 1) review[,] and be approved by HHSC [the department]. The narrative shall include the functional description of each space and the following:

(A) departmental relationships, number of patient beds in each category, and other basic information relating to the fulfillment of the facility's objectives;

(B) a description of each function to be performed, approximate space needed for these functions, occupants of the various spaces, types of equipment required, interrelationship of various functions and spaces;

(C) energy conservation measures, included in building, mechanical, and electrical designs; and

(D) the type of construction (existing or proposed) as stated in Table 18-1.6.2 of National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 2000 edition (NFPA 101), published by the National Fire Protection Association. [All documents published by the NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address and telephone number: Post Office Box 9101, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, (800) 344-3555.]

(3) Submission of preliminary plans. One set of preliminary plans, outline specifications covering the construction of new buildings or alterations, additions, conversions, modernizations, or renovations to existing buildings, a functional program narrative, a completed and signed Application for Plan Review, and the applicable plan review fee in accordance with §510.26(c) [§134.26(c)] of this chapter [title] (relating to Fees) shall be submitted to HHSC [the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756] for review and approval. For convenience, preliminary plans may be reduced for preliminary submittal. The cost of submitting plans and specifications shall be borne by the sender.

(4) Preliminary plan review. All deficiencies noted in the preliminary plan review shall be satisfactorily resolved. Written HHSC [department] approval of preliminary plans must be obtained prior to proceeding with final plans and specifications. This requirement also applies to fast-track projects.

(c) Construction documents. Construction documents or final plans and specifications shall be submitted to HHSC [the department] for review and approval prior to start of construction. All final plans and specifications shall be appropriately sealed and signed by a registered architect and a professional engineer licensed by the State of Texas.

(1) Preparation of construction documents. Construction documents shall be well prepared so that clear and distinct prints may be obtained, shall be accurately and adequately dimensioned, and shall include all necessary explanatory notes, schedules, and legends and shall be adequate for contract purposes. Compliance with model building codes and this chapter shall be indicated. The type of construction, as classified by National Fire Protection Association 220, Standard on Types of Building Construction, 1999 edition, shall be provided for existing and new facilities. Final plans shall be drawn to a sufficiently large scale to clearly illustrate the proposed design but not less than one-eighth inch equals one foot. All rooms shall be identified by usage on all plans (architectural, fire safety, mechanical, electrical, etc.) submitted. Separate drawings shall be prepared for each of the following branches of work.

(A) Architectural plans. Architectural drawings shall include the following:

(i) site plan showing all new topography, newly established levels and grades, existing structures on the site (if any), new buildings and structures, roadways, walks, and the extent of the areas to be landscaped. All structures which are to be removed under the construction contract and improvements shall be shown. A general description of the immediate area surrounding the site shall be provided, which includes a: [;]

(ii) plan of each floor and roof to include fire and smoke separation, means of egress, and identification of all spaces;

(iii) schedules of doors, windows, and finishes;

(iv) elevations of each facade;

(v) sections through building; and

(vi) scaled details as necessary.

(B) Fire safety plans. These drawings shall be provided for all newly constructed buildings, conversions of existing buildings for facilities, additions to existing licensed facilities, and remodeled portions of existing buildings containing licensed facilities. Fire safety plans shall be of a sufficiently large scale to clearly illustrate the proposed design but not less than one-sixteenth inch equals one foot and shall include the following information:

(i) separate fire safety plans (preferably one floor plan per sheet) shall indicate location of fire protection rated walls and partitions, location and fire resistance rating of each fire damper, and the required means of egress (corridors, stairs, exits, exit passageways); [and]

(I) when a new building is to contain a proposed facility, when an existing building is converted to a facility, or when an addition is made to an existing facility building, plans of each floor and roof shall be provided; and

(II) when a portion of a building is remodeled or when a new service is added, only the plan of the floor where the remodeling will take place or new service will be introduced and the plan of the floor of discharge shall be provided;

(ii) designated smoke compartments with floor areas of each compartment, location and fire resistance rating (one or two hour) of each smoke partition, location, type and fire resistance rating of each smoke damper;

(iii) location of all required fire alarm devices, including all fire alarm control panels, manual pull stations, audible and visual fire alarm signaling devices, smoke detectors (ceiling and duct mounted), fire alarm annunciators, fire alarm transmission devices, fire sprinkler flow switches and control valve supervisory switches on each of the floor plans; and

(iv) areas protected with fire sprinkler systems (pendant, sidewall or upright, normal or quick response, and temperature rating shall be indicated), stand pipe system risers and sizes with valves and inside and outside fire department connections, fire sprinkler risers and sizes, location and type of portable fire extinguishers.

(C) Equipment drawings. Equipment drawings shall include the following:

(i) all equipment necessary for the operation of the facility as planned, and the [. The] design shall indicate provisions for the installation of large and special items of equipment and for service accessibility;

(ii) fixed equipment (equipment which is permanently affixed to the building or which must be permanently connected to a service distribution system designed and installed during construction for the specific use of the equipment), which [. The term "fixed equipment"] includes items such as laundry extractors, walk-in refrigerators, communication systems, and built-in casework (cabinets);

(iii) movable equipment (equipment not described in clause (ii) of this subparagraph as fixed), which [. The term "moveable equipment"] includes wheeled equipment, plug-in type monitoring equipment, and relocatable items; and

(iv) equipment which is not included in the construction contract but which requires mechanical or electrical service connections or construction modifications, and this [. The equipment described in this clause] shall be identified on the drawings to ensure its coordination with the architectural, mechanical, and electrical phases of construction.

(D) Structural drawings. Structural drawings shall include:

(i) plans for foundations, floors, roofs, and all intermediate levels;

(ii) a complete design with sizes, sections, and the relative location of the various members;

(iii) a schedule of beams, girders, and columns;

(iv) dimensioned floor levels, column centers, and offsets;

(v) details of all special connections, assemblies, and expansion joints; and

(vi) special openings and pipe sleeves dimensioned or otherwise noted for easy reference.

(E) Mechanical drawings. Documentation for selection of the type of heating and cooling system based on requirements contained in §510.122(d)(3)(A) [§134.122(d)(3)(A)] of this subchapter [title] shall be included with the mechanical plans. Mechanical drawings shall include:

(i) complete ventilation systems (supply, return, exhaust), all fire and smoke partitions, locations of all dampers, registers, and grilles, air volume flow at each device, and identification of all spaces (e.g. corridor, patient room, operating room);

(ii) boilers, chillers, heating and cooling piping systems (steam piping, hot water, chilled water), and associated pumps;

(iii) cold and warm water supply systems, water heaters, storage tanks, circulating pumps, plumbing fixtures, emer-

gency water storage tank(s) (if provided), and special piping systems such as for deionized water;

(iv) non-flammable medical gas piping (oxygen, compressed medical air, vacuum systems, nitrous oxide), emergency shut-off valves, pressure gages, alarm modules, gas outlets;

(v) drain piping systems (waste and soiled piping systems, laboratory drain systems, roof drain systems);

(vi) fire protection piping systems (sprinkler piping systems, fire standpipe systems, water or chemical extinguisher piping system for cooking equipment);

(vii) piping riser diagrams, equipment schedules, control diagrams or narrative description of controls, filters, and location of all duct mounted smoke detectors; and

(viii) laboratory exhaust and safety cabinets.

(F) Electrical drawings. Electrical drawings shall include:

(i) electrical service entrance with service switches, service feeders to the public service feeders, and characteristics of the light and power current including transformers and their connections;

(ii) location of all normal electrical system and essential electrical system conduits, wiring, receptacles, light fixtures, switches and equipment which require permanent electrical connections, on plans of each building level:

(I) light fixtures marked distinctly to indicate connection to critical or life safety branch circuits or to normal lighting circuits; and

(II) outlets marked distinctly to indicate connection to critical, life safety or normal power circuits; [.]

(iii) telephone and communication, fixed computers, terminals, connections, outlets, and equipment;

(iv) nurses calling system showing all stations, signals, and annunciators on the plans;

(v) in addition to electrical plans, single line diagrams prepared for:

(I) complete electrical system consisting of the normal electrical system and the essential electrical system including the on-site generators [~~generator(s)~~], transfer switches [~~switch(es)~~], emergency system (life safety branch and critical branch), equipment system, panels, subpanels, transformers, conduit, wire sizes, main switchboard, power panels, light panels, and equipment for additions to existing buildings, proposed new facilities, and remodeled portions of existing facilities, and feeder [~~. Feeder~~] and conduit sizes shall be shown with schedule of feeder breakers or switches;

(II) complete nurses calling system with all stations, signals, annunciators, etc. with room number noted by each device and indicating the type of system (nurses regular calling system, nurses emergency calling system, or staff emergency assistance calling system); and

(III) a single line diagram of the complete fire alarm system showing all control panels, signaling and detection devices and the room number where each device is located; and

(vi) schedules of all panels indicating connection to life safety branch, critical branch, equipment system or normal system, and connected load at each panel.

(2) Final plan review. All deficiencies noted in the final plan review shall be satisfactorily resolved before approval of project for construction will be granted.

(3) Construction approval. Construction shall not begin until written approval by HHSC [~~the department~~] is received by the owner of the facility.

(4) Construction document changes. Any changes to construction documents which affect or change the function, design, or designated use of an area shall be submitted to HHSC [~~the department~~] for approval prior to authorization of the modifications.

(d) Special submittals.

(1) Designer certified construction documents. In an effort to shorten the plan review and approval process, design professionals may submit, at the discretion of HHSC [~~the department~~], a set of final construction documents, HHSC's [~~the department's~~] completed checklist of licensing requirements and a certification letter which states that the plans and specifications, based on HHSC's [~~the department's~~] checklist comply with the requirements of this chapter. Project certification forms shall be signed by the licensee or applicant and all [~~the~~] architects [~~architect(s)~~] and engineers [~~engineer(s)~~] of record.

(2) Fast-track projects. Submittal of fast-track projects shall be at the discretion of HHSC [~~the department~~] and shall be submitted in not more than three separate packages.

(A) First package. The first package shall include:

(i) a map showing the location of the proposed facility site and adjacent surrounding area at least two miles in radius identifying any hazardous and undesirable location noted in §510.122(a) [~~§134.122(a)~~] of this subchapter [~~title~~];

(ii) preliminary architectural plans and a detailed building site plan showing all adjacent streets, site work, underslab mechanical, electrical, and plumbing work, and related specifications; and

(iii) foundation and structural plans.

(B) Second package. The second package shall include complete architectural plans and details with specifications and fire safety plans as described in subsection (c) of this section.

(C) Third package. The third package shall include complete mechanical, electrical, equipment and furnishings, and plumbing plans and specifications, as described in subsection (c) of this section.

(3) Fire sprinkler systems. Fire sprinkler systems shall comply with the requirements of National Fire Protection Association 13, Standard for the Installation of Sprinkler systems, 1999 edition (NFPA 13). Fire sprinkler systems shall be designed or reviewed by an engineer who is registered by the Texas [~~State~~] Board of [~~Registration for~~] Professional Engineers in fire protection specialty or is experienced in hydraulic design and fire sprinkler system installation. A short resume shall be submitted if registration is not in fire protection specialty.

(A) Fire sprinkler working plans, complete hydraulic calculations and water supply information shall be prepared in accordance with NFPA 13 [;] §§8-1, 8-2 and 8-3, for new fire sprinkler systems, alterations of and additions to existing ones.

(B) Certification of changes in an existing system is not required when relocation of not more than twenty sprinkler heads is involved.

(C) One set of fire sprinkler working plans (sealed by the engineer), calculations and water supply information shall be forwarded to HHSC [~~the department~~] together with the engineer's certification letter stating that the sprinkler system design complies with the requirements of NFPA 13. Certification of the fire sprinkler system shall be submitted prior to system installation.

(D) Upon completion of the fire sprinkler system installation and any required corrections, written certification by the engineer, stating that the fire sprinkler system is installed in accordance with NFPA 13 requirements, shall be submitted prior to or with the written request for the final construction inspection of the project.

(e) Resubmittal of construction documents. When construction is delayed for longer than one year from the plan approval date, construction documents shall be resubmitted to HHSC [~~the department~~] for review and approval. The plans shall be accompanied by a new Application for Plan Review and a plan review fee.

(f) Project delay or cancellation. The licensee or owner shall provide written notification to HHSC [~~the department~~] when a project has been placed on hold, canceled or abandoned.

(g) On-hold projects. HHSC [~~The department~~] may close a project file after one year of its receipt of an Application for Plan Review for projects that have been placed on hold.

§510.128. Construction, Surveys, and Approval of Project.

(a) Construction.

(1) Major construction. Construction, of other than minor alterations, shall not commence until the final plan review deficiencies have been satisfactorily resolved, the appropriate plan review fee according to the plan review schedule in §510.26 [~~§134.26~~] of this chapter [~~title~~] (relating to Fees) has been paid, and the Texas Health and Human Services Commission (HHSC) [~~department~~] has issued a letter granting approval to begin construction. Such authorization does not constitute release from the requirements contained in this chapter. If the construction takes place in or near occupied areas, adequate provision shall be made for the safety and comfort of occupants.

(2) Construction commencement notification. The architect of record or the licensee or applicant shall provide written notification to HHSC [~~the department~~] when construction will commence. HHSC [~~The department~~] shall be notified in writing of any change in the completion schedules.

(3) Completion. Construction shall be completed in compliance with the construction documents including all addenda or modifications approved for the project.

(b) Construction surveys. All facilities including those which maintain certification under Title XVIII of the Social Security Act (42 United States Code [~~,~~] §1395 et seq.), [~~seq),~~] and those which maintain accreditation by the Joint Commission [~~on Accreditation of Healthcare Organizations (JCAHO)~~], or by the American Osteopathic Association (AOA) are subject to construction surveys.

(1) Number of construction surveys. A minimum of two construction surveys of the project is generally required for the purpose of verifying compliance with Subchapters [~~subchapters~~] F and G of this chapter and the approved plans and specifications. The final plan approval letter will inform the architect of record and the owner as to the minimum number of surveys required for the project.

(2) Requesting a survey. The architect of record or the licensee shall request a survey by submitting an Application for Survey and the construction survey fee in accordance with §510.26(d) [~~§134.26(d)~~] of this chapter [~~title~~] for each intermediate survey, final survey, and resurvey requested. Survey requests by contractors will not be honored.

(A) The architect of record or the licensee shall request an intermediate construction survey to occur at approximately 80% completion. All major work above the ceiling shall be completed at the time of the intermediate survey, however ceilings should not be installed.

(B) The architect of record or the licensee shall request a final construction survey at 100 percent [~~%~~]completion. One-hundred percent completion means that the project is completed to the extent that all equipment is operating in accordance with specifications, all necessary furnishings are in place, and patients could be admitted and treated in all areas of the project.

(3) Resurveys. Depending upon the number and nature of the deficiencies cited during the final inspection, the surveyor may require that a resurvey be conducted to confirm correction of all deficiencies cited. The request for resurvey shall be submitted in accordance with paragraph (2) of this subsection.

(c) Approval of project. Patients shall not occupy a new structure or remodeled or renovated space until approval has been received from the local building and fire authorities and HHSC [~~the department~~].

(1) Documentation requirements. The licensee shall submit the following documents to HHSC [~~the department~~] before the project will be approved:

(A) written approval of the project by the fire authority;

(B) a certificate of occupancy for the project issued by the local building authority;

(C) written certification by the engineer, stating that the fire sprinkler system is installed in accordance with the requirements of NFPA 13, Standard for the Installation of Sprinkler Systems, 1999 edition, if applicable;

(D) fire alarm system certification (form FML-009 040392 of the Office of the State Fire Marshal), if applicable;

(E) a copy of a letter from a qualified certification agency for the piped-in medical gas system installed in the project, if applicable; [~~.~~]

(F) a written plan of correction signed by the licensee for any deficiencies noted during the final inspection;

(G) a copy of a letter from a registered electrical engineer stating the electrical system was tested and complies with the standards of NFPA 99, Health Care Facilities, 1999 edition, §3-3.2.1.2(e) (Special Grounding) and §3-3.3.2.1 (Grounding System Testing), if applicable to the project;

(H) a copy of documentation indicating the flame spread rating and the smoke development rating of any wall covering installed in this project, including [~~. Provide~~] a signed letter or statement corroborating the installation of the product in the project;

(I) a copy of documentation indicating that draperies, curtains (including cubicle curtains), and other similar loosely hanging furnishings and decorations are flame resistant as demonstrated by passing both the small and large-scale tests of NFPA 701, Standard Methods of Fire Tests for Flame-Resistant Textiles and Films, 1999 edition as required by NFPA 101 [~~,~~] §18-7.5, and provide a signed letter or statement corroborating the installation of the product in the project;

(J) a Final Construction Approval form signed by the licensee; and

(K) any other documentation or information required due to the type of the project.

(2) Verbal occupancy approval.

(A) If, during the final survey, the surveyor finds only a few minor deficiencies that do not jeopardize patient health, safety and welfare, the surveyor may grant verbal approval for occupancy contingent upon the documents listed in paragraph (1)(A)-(E) of this subsection being provided to and approved by the surveyor at the time of the final survey.

(B) Verbal occupancy approval allows the licensee to occupy the project. However, the licensee must submit the documents required in paragraph (1)(F)-(K) before the project receives final approval.

(3) Final approval. Upon its receipt and acceptance of the documents required in paragraph (1) of this subsection, HHSC [~~the department~~] will issue final approval of the project.

§510.129. Waiver Requests.

(a) Request for a waiver. A facility may submit a written request to the Texas [~~Hospital Licensing Director,~~] Health [~~Facility Licensing~~] and Human Services Commission (HHSC) [~~Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756~~] for a waiver or modification of a particular provision of §510.122 [~~§134.122~~] or §510.123 [~~§134.123~~] of this subchapter [~~title~~] (relating to New Construction Requirements and Spatial Requirements for New Construction). Waivers will not be granted for fire safety requirements required by the National Fire Protection Association (NFPA). The written request shall specify the specific provision for which a waiver is requested.

(b) Consideration. In considering the waiver or modification request, HHSC [~~the Hospital Licensing Director (HL director)~~] shall consider whether the waiver or modification:

(1) will adversely affect the health and safety of the facility patients, employees, or the general public;

(2) will adversely impact the hospital's participation in the federal Medicare program or accreditation by the Joint Commission [~~on Accreditation of Healthcare Organizations~~] or the American Osteopathic Association;

(3) if not granted, would impose an unreasonable hardship on the facility in providing adequate care for patients;

(4) will facilitate the creation or operation of the facility; and

(5) is appropriate when balanced against the best interests of the individuals served or to be served by the facility.

(c) Supporting documentation. HHSC [~~The HL director~~] may request written documentation from the facility to support the waiver or modification, including[~~, but not limited to~~]:

(1) a statement addressing each of the criteria in subsection (b) of this section;

(2) evidence of approval by the local building and fire authorities;

(3) evidence of provisions in Texas Health and Safety Code Chapter 577 [~~the Act~~] or this chapter which will mitigate any adverse effect of the waiver or modification; and

(4) evidence of any mitigating act in excess of the Act or this chapter which will be used by the hospital to offset any adverse effect of the waiver or modification.

(d) Written recommendation. HHSC [~~The HL director~~] shall submit a [~~his~~] written recommendation for granting or denying the waiver to the executive commissioner [~~of health (commissioner). The HL director's~~]. The recommendation shall address each of the criteria in subsection (b) of this section.

(e) Granting order. If HHSC [~~the HL director~~] recommends that the waiver or modification be granted, the executive commissioner may issue a written order granting the waiver or modification.

(f) Denial of order. If HHSC [~~the HL director~~] recommends that the waiver or modification be denied, the executive commissioner may issue a written order denying the waiver or modification.

(g) File documentation. The licensing file for the facility maintained by HHSC [~~the Texas Department of Health~~] shall contain a copy of the request, the documents requested in subsection (c) of this section (if applicable), HHSC's [~~the~~] written recommendation [~~of the HL director~~], and the order.

§510.131. Tables.

(a) Table 1. Sound transmission limitations in facilities.
Figure: 26 TAC §510.131(a)
[~~Figure: 25 TAC §134.131(a)~~]

(b) Table 2. Flame spread and smoke production limitations for interior finishes.
Figure: 26 TAC §510.131(b)
[~~Figure: 25 TAC §134.131(b)~~]

(c) Table 3. Ventilation requirements for facilities.
Figure: 26 TAC §510.131(c)
[~~Figure: 25 TAC §134.131(c)~~]

(d) Table 4. Filter efficiencies for central ventilation and air conditioning systems.
Figure: 26 TAC §510.131(d)
[~~Figure: 25 TAC §134.131(d)~~]

(e) Table 5. Hot water use.
Figure: 26 TAC §510.131(e)
[~~Figure: 25 TAC §134.131(e)~~]

(f) Table 6. Station outlets for oxygen, vacuum, and medical air systems.
Figure: 26 TAC §510.131(f)
[~~Figure: 25 TAC §134.131(f)~~]

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

Filed with the Office of the Secretary of State on April 29, 2024.

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Karen Ray
Chief Counsel
Health and Human Services Commission
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For further information, please call: (512) 834-4591

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SUBCHAPTER E. ENFORCEMENT

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes the repeal of §§510.81, concerning Survey and Investigation Procedures; 510.82, concerning Complaint Against a Texas Department of Health Representative; and 510.83, concerning Enforcement;

and new §§510.81, concerning Integrity of Inspections and Investigations; 510.82, concerning Inspections; 510.83, concerning Complaint Investigations; 510.84, concerning Notice; 510.85, concerning Professional Conduct; 510.86, concerning Complaint Against an HHSC Representative; and 510.87, concerning Enforcement.

BACKGROUND AND PURPOSE

The proposal is necessary to implement House Bill (H.B.) 49, 88th Legislature, Regular Session, 2023. H.B. 49 amended Texas Health and Safety Code (HSC) §577.013 to make certain information related to facility investigations subject to disclosure and create a requirement for HHSC to post certain information related to hospital investigations on the HHSC website.

The proposal is also necessary to update the inspection, complaint investigation, and enforcement procedures for private psychiatric hospitals and crisis stabilization units (PPHCSUs). These updates are necessary to hold PPHCSUs accountable during the inspection and investigation processes and ensure PPHCSUs provide necessary documentation in a timely manner to HHSC representatives. The proposal revises enforcement procedures to ensure accuracy with current practices and conform to statute. These updates also ensure consistent practices across HHSC Health Care Regulation rulesets and correct outdated language and contact information, and reflect the transition of regulatory authority for PPHCSUs from the Department of State Health Services to HHSC.

A previous version of these repeals and new sections was proposed by HHSC in the July 9, 2021, issue of the *Texas Register* (46 TexReg 4122) and expired without being adopted. This version of the proposal considers comments HHSC received during the previous informal and public comment periods.

SECTION-BY-SECTION SUMMARY

The proposed repeal of §510.81, Survey and Investigation Procedures, deletes the rule as it is no longer necessary. The content of the rule has been added to proposed new §§510.82 - 510.84.

Proposed new §510.81, Integrity of Inspections and Investigations, places limits on a facility's authority to record HHSC interviews and internal discussions.

The proposed repeal of §510.82, Complaint Against a Texas Department of Health Representative, deletes the rule as it is no longer necessary. The content of the rule has been added to proposed new §510.86.

Proposed new §510.82, Inspections, implements HSC §577.013 and makes necessary updates to PPHCSU inspection requirements.

The proposed repeal of §510.83, Enforcement, deletes the rule as it is as no longer necessary. The content of the rule has been added to proposed new §510.87.

Proposed new §510.83, Complaint Investigations, implements HSC §577.013 and makes necessary updates to PPHCSU complaint investigation requirements.

Proposed new §510.84, Notice, informs facilities of the required timeframes regarding responding to a written Statement of Deficiencies by returning a written Plan of Correction, together with any additional evidence of compliance.

Proposed new §510.85, Professional Conduct, informs providers that HHSC reports to the appropriate licensing authorities any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

Proposed new §510.86, Complaint Against an HHSC Representative, informs a facility about registering a complaint against an HHSC inspector or investigator.

Proposed new §510.87, Enforcement, creates consistency between this ruleset for PPHCSUs and other HHSC facility types regarding enforcement procedures and makes necessary corrections and updates to this section to reflect current practices and conform with statute.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

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

(6) the proposed rules will expand and repeal existing regulations;

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

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas; do not impose a cost on regulated persons; and because they are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Stephen Pahl, Deputy Executive Commissioner for Regulatory Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be greater clarity, consistency, and accountability in the inspection and investigation of PPHCSUs. The public and the patients in these facilities

will benefit from a more robust system for the investigation of complaints, especially those related to patient safety.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the rules do not impose any additional costs or fees on persons required to comply with the rules.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to the Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HCR_PRU@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 22R101" in the subject line.

26 TAC §§510.81 - 510.83

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The repeals implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapters 571 through 578.

§510.81. Survey and Investigation Procedures.

§510.82. Complaint Against a Texas Department of Health Representative.

§510.83. Enforcement.

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

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Karen Ray
Chief Counsel
Health and Human Services Commission
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26 TAC §§510.81 - 510.87

STATUTORY AUTHORITY

The new sections are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §577.010, which requires HHSC to adopt rules and standards necessary and appropriate to ensure the proper care and treatment of patients in a private mental hospital or mental health facility.

The new sections implement Texas Government Code §531.0055 and Texas Health and Safety Code Chapters 571 through 578.

§510.81. Integrity of Inspections and Investigations.

(a) In order to preserve the integrity of the Texas Health and Human Services Commission's (HHSC's) inspection and investigation process, a facility:

(1) may not record, listen to, or eavesdrop on any HHSC interview with facility staff or patients that the facility staff knows HHSC intends to keep confidential as evidenced by HHSC taking reasonable measures to prevent from being overheard; and

(2) may not record, listen to, or eavesdrop on any HHSC internal discussions outside the presence of facility staff when HHSC has requested a private room or office or distanced themselves from facility staff and the facility obtains HHSC's written approval before beginning to record or listen to the discussion.

(b) A facility shall inform HHSC when security cameras or other existing recording devices in the facility are in operation during any internal discussion by or among HHSC staff.

(c) When HHSC by words or actions permits facility staff to be present, an interview or conversation for which facility staff are present does not constitute a violation of this rule.

(d) This section does not prohibit an individual from recording an HHSC interview with the individual.

§510.82. Inspections.

(a) The Texas Health and Human Services Commission (HHSC) may conduct an inspection of a facility prior to the issuance or renewal of a license.

(1) A hospital is not subject to additional annual licensing inspections subsequent to the issuance of the initial license while the hospital maintains:

(A) certification under Title XVIII of the Social Security Act, 42 United States Code (USC) §1395 et seq.; or

(B) accreditation from The Joint Commission, the American Osteopathic Association, or other national accreditation organization for the offered services.

(2) HHSC may conduct an inspection of a hospital exempt from an annual licensing inspection under paragraph (1) of this subsection before issuing a renewal license to the hospital if the certification or accreditation body has not conducted an on-site inspection of the hospital in the preceding three years and HHSC determines that an inspection of the hospital by the certification or accreditation body is not scheduled within 60 days of the license expiration date.

(b) HHSC may conduct an unannounced, on-site inspection of a facility at any reasonable time, including when treatment services are provided, to inspect, investigate, or evaluate compliance with or prevent a violation of:

(1) any applicable statute or rule;

(2) a facility's plan of correction;

(3) an order or special order of the HHSC executive commissioner or the executive commissioner's designee;

(4) a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(c) An applicant or licensee, by applying for or holding a license, consents to entry and inspection of any of its facilities by HHSC.

(d) HHSC inspections to evaluate a facility's compliance may include:

(1) initial, change of ownership, or relocation inspections for the issuance of a new license;

(2) inspections related to changes in status, such as new construction or changes in services, designs, or bed numbers;

(3) routine inspections, which may be conducted without notice and at HHSC's discretion, or prior to renewal;

(4) follow-up on-site inspections, conducted to evaluate implementation of a plan of correction for previously cited deficiencies;

(5) inspections to determine if an unlicensed facility is offering or providing, or purporting to offer or provide, treatment; and

(6) entry in conjunction with any other federal, state, or local agency's entry.

(e) A facility shall cooperate with any HHSC inspection and shall permit HHSC to examine the facility's grounds, buildings, books, records, and other documents and information maintained by or on behalf of the facility, unless prohibited by law.

(f) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients, including the opportunity to request a written statement.

(g) A facility shall permit HHSC to inspect and copy any requested information, unless prohibited by law. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(h) Upon entry, HHSC holds an entrance conference with the facility's designated representative to explain the nature, scope, and estimated duration of the inspection.

(i) During the inspection, the HHSC representative gives the facility representative an opportunity to submit information and evidence relevant to matters of compliance being evaluated.

(j) When an inspection is complete, the HHSC representative holds an exit conference with the facility representative to inform the facility representative of any preliminary findings of the inspection, including any possible health and safety concerns. The facility may provide any final documentation regarding compliance during the exit conference.

(k) HHSC shall maintain the confidentiality of facility records as applicable under state or federal law. Except as provided by subsection (l) of this section, all information and materials in the possession of or obtained or compiled by HHSC in connection with an inspection are confidential and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than HHSC or its employees or agents involved in the enforcement action except that this information may be disclosed to:

(1) persons involved with HHSC in the enforcement action against the facility;

(2) the facility that is the subject of the enforcement action, or the facility's authorized representative;

(3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate licensed mental health facility services;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information and information identifying the facility has been deleted.

(l) The following information is subject to disclosure in accordance with Texas Government Code Chapter 552, only to the extent that all personally identifiable information of a patient or health care provider is omitted from the information:

(1) a notice of the facility's alleged violation, which must include the provisions of law the facility is alleged to have violated, and a general statement of the nature of the alleged violation;

(2) the number of investigations HHSC conducted of the facility;

(3) the pleadings in any administrative proceeding to impose a penalty against the facility for the alleged violation;

(4) the outcome of each investigation HHSC conducted of the facility, including:

(A) reprimand issuance;

(B) license denial or revocation;

(C) corrective action plan adoption; or

(D) administrative penalty imposition and the penalty amount;

(5) a final decision, investigative report, or order issued by HHSC to address the alleged violation; and

(6) any other information required by law to be disclosed under public information request laws.

(m) Within 90 days after the date HHSC issues a final decision, investigative report, or order to address a facility's alleged violation, HHSC posts certain information on the HHSC website in accordance with Texas Health and Safety Code §577.013.

§510.83. Complaint Investigations.

(a) A facility shall provide each patient and applicable legally authorized representative at the time of admission with a written statement identifying the Texas Health and Human Services Commission (HHSC) as the agency responsible for investigating complaints against the facility.

(1) The statement shall inform persons that they may direct a complaint to HHSC Complaint and Incident Intake (CII) and include current CII contact information, as specified by HHSC.

(2) The facility shall prominently and conspicuously post this statement in patient common areas and in visitor's areas and waiting rooms so that it is readily visible to patients, employees, and visitors. The information shall be in English and in a second language appropriate to the demographic makeup of the community served.

(b) HHSC evaluates all complaints. A complaint must be submitted using HHSC's current CII contact information for that purpose, as described in subsection (a) of this section.

(c) HHSC documents, evaluates, and prioritizes complaints directed to HHSC CII based on the seriousness of the alleged violation and the level of risk to patients, personnel, and the public.

(1) Allegations determined to be within HHSC's regulatory jurisdiction relating to health care facilities may be investigated under this chapter.

(2) HHSC may refer complaints outside HHSC's jurisdiction to an appropriate agency, as applicable.

(d) HHSC conducts investigations to evaluate a facility's compliance following a complaint of abuse, neglect, or exploitation; or a complaint related to the health and safety of patients. Complaint investigations may be coordinated with the federal Centers for Medicare & Medicaid Services and its agents responsible for the inspection of hospitals to determine compliance with the Conditions of Participation under Title XVIII of the Social Security Act, (42 USC, §1395 et seq.), so as to avoid duplicate investigations.

(e) HHSC may conduct an unannounced, on-site investigation of a facility at any reasonable time, including when treatment services are provided, to inspect or investigate:

(1) a facility's compliance with any applicable statute or rule;

(2) a facility's plan of correction;

(3) a facility's compliance with an order of the HHSC executive commissioner or the executive commissioner's designee;

(4) a facility's compliance with a court order granting injunctive relief; or

(5) for other purposes relating to regulation of the facility.

(f) An applicant or licensee, by applying for or holding a license, consents to entry and investigation of any of its facilities by HHSC.

(g) A facility shall cooperate with any HHSC investigation and shall permit HHSC to examine the facility's grounds, buildings, books, records, and other documents and information maintained by, or on behalf of, the facility, unless prohibited by law.

(h) A facility shall permit HHSC access to interview members of the governing body, personnel, and patients, including the opportunity to request a written statement.

(i) A facility shall permit HHSC to inspect and copy any requested information, unless prohibited by law. If it is necessary for HHSC to remove documents or other records from the facility, HHSC provides a written description of the information being removed and when it is expected to be returned. HHSC makes a reasonable effort, consistent with the circumstances, to return any records removed in a timely manner.

(j) Upon entry, the HHSC representative holds an entrance conference with the facility's designated representative to explain the nature, scope, and estimated duration of the investigation.

(k) The HHSC representative holds an exit conference with the facility representative to inform the facility representative of any preliminary findings of the investigation. The facility may provide any final documentation regarding compliance during the exit conference.

(l) Once an investigation is complete, HHSC reviews the evidence from the investigation to evaluate whether there is a preponderance of evidence supporting the allegations contained in the complaint.

(m) HHSC shall maintain the confidentiality of facility records as applicable under state or federal law. Except as provided by (n) of this subsection, all information and materials in the possession of or obtained or compiled by HHSC in connection with an investigation are confidential and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than HHSC or its employees or agents involved in the enforcement action except that this information may be disclosed to:

(1) persons involved with HHSC in the enforcement action against the facility;

(2) the facility that is the subject of the enforcement action, or the facility's authorized representative;

(3) appropriate state or federal agencies that are authorized to inspect, survey, or investigate licensed mental health facility services;

(4) law enforcement agencies; and

(5) persons engaged in bona fide research, if all individual-identifying information and information identifying the facility has been deleted.

(n) The following information is subject to disclosure in accordance with Texas Government Code Chapter 552, only to the extent that all personally identifiable information of a patient or health care provider is omitted from the information:

(1) a notice of the facility's alleged violation, which must include the provisions of law the facility is alleged to have violated, and a general statement of the nature of the alleged violation;

(2) the number of investigations HHSC has conducted of the facility;

(3) the pleadings in any administrative proceeding to impose a penalty against the facility for the alleged violation;

(4) the outcome of each investigation HHSC conducted of the facility, including:

(A) reprimand issuance;

(B) license denial or revocation;

(C) corrective action plan adoption; or

(D) administrative penalty imposition and the penalty amount;

(5) a final decision investigative report, or order issued by HHSC to address the alleged violation; and

(6) any other information required by law to be disclosed under public information request laws.

(o) Within 90 days after the date HHSC issues a final decision, investigative report, or order to address a facility's alleged violation, HHSC posts certain information on the HHSC website in accordance with Texas Health and Safety Code §577.013.

§510.84. Notice.

(a) A facility is deemed to have received any Texas Health and Human Services Commission (HHSC) correspondence on the date of receipt, or three business days after mailing, whichever is earlier.

(b) When HHSC finds deficiencies:

(1) HHSC provides the facility with a written Statement of Deficiencies (SOD) within 10 business days after the exit conference via U.S. Postal Service or electronic mail.

(2) Within 10 calendar days after the facility's receipt of the SOD, the facility shall return to HHSC a written Plan of Correction (POC) that addresses each cited deficiency, including timeframes for corrections, together with any additional evidence of compliance.

(A) HHSC determines if a POC and proposed timeframes are acceptable, and, if accepted, notifies the facility in writing.

(B) If HHSC does not accept the POC, HHSC notifies the facility in writing and requests the facility submit a modified POC and any additional evidence of compliance no later than 10 business days after HHSC notifies the facility in writing.

(C) The facility shall correct the identified deficiencies and submit to HHSC evidence verifying implementation of corrective action within the timeframes set forth in the POC, or as otherwise specified by HHSC.

(3) Regardless of a facility's compliance with this subsection or HHSC's acceptance of a facility's POC, HHSC may, at any time, propose to take enforcement action as appropriate under this chapter.

§510.85. Professional Conduct.

In addition to any enforcement action under this chapter, the Texas Health and Human Services Commission reports, in writing, to the appropriate licensing board any issue or complaint relating to the conduct of a licensed professional, intern, or applicant for professional licensure.

§510.86. Complaint Against an HHSC Representative.

A facility may register a complaint against a Texas Health and Human Services Commission (HHSC) representative who conducts an inspection or investigation under this subchapter by following the procedure listed on the HHSC website.

§510.87. Enforcement.

Enforcement is a process by which a sanction is proposed, and if warranted, imposed on an applicant or licensee regulated by the Texas Health and Human Services Commission (HHSC) for failure to comply with applicable statutes, rules, and orders.

(1) Denial, suspension or revocation of a license or imposition of an administrative penalty. HHSC has jurisdiction to enforce violations of Texas Health and Safety Code (HSC) Chapters 571 through 578 or the rules adopted under these chapters. HHSC may deny, suspend, or revoke a license or impose an administrative penalty for:

(A) failure to comply with any applicable provision of the HSC, including Chapters 571 through 578;

(B) failure to comply with any provision of this chapter or any other applicable laws;

(C) the facility, or any of its employees, committing an act which causes actual harm or risk of harm to the health or safety of a patient;

(D) the facility, or any of its employees, materially altering any license issued by HHSC;

(E) failure to comply with minimum standards for licensure;

(F) failure to provide a complete license application;

(G) failure to comply with an order of the executive commissioner or another enforcement procedure under HSC Chapters 571 through 578;

(H) a history of failure to comply with the applicable rules relating to patient environment, health, safety, and rights;

(I) the facility aiding, committing, abetting, or permitting the commission of an illegal act;

(J) the facility, or any of its employees, committing fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to HHSC or required to be maintained by the facility pursuant to HSC Chapters 571 through 578 and the provisions of this chapter;

(K) failure to timely pay an assessed administrative penalty as required by HHSC;

(L) failure to submit an acceptable plan of correction for cited deficiencies within the timeframe required by HHSC;

(M) failure to timely implement plans of corrections to deficiencies cited by HHSC within the dates designated in the plan of correction;

(N) failure to comply with applicable requirements within a designated probation period; or

(O) the hospital terminating the facility's Medicare provider agreement if the facility is certified under Title XVIII of the Social Security Act, 42 United States Code (USC), §1395 et seq.

(2) Denial of a license. HHSC has jurisdiction to enforce violations of HSC Chapters 571 through 578 or the rules adopted under this chapter. HHSC may deny a license if the applicant:

(A) fails to provide timely and sufficient information required by HHSC that is directly related to the license application; or

(B) has had the following actions taken against the applicant within the two-year period preceding the license application:

(i) decertification or cancellation of its contract under the Medicare or Medicaid program in any state;

(ii) federal Medicare or state Medicaid sanctions or penalties;

(iii) unsatisfied federal or state tax liens;

(iv) unsatisfied final judgments;

(v) eviction involving any property or space used as a hospital in any state;

(vi) unresolved federal Medicare or state Medicaid audit exceptions;

(vii) denial, suspension, or revocation of a hospital license, a private psychiatric hospital license, or a license for any health care facility in any state; or

(viii) a court injunction prohibiting ownership or operation of a facility.

(3) Order for immediate license suspension. HHSC may suspend a license for 10 days pending a hearing if after an investigation HHSC finds that there is an immediate threat to the health or safety of the patients or employees of a licensed facility. HHSC may issue necessary orders for the patients' welfare.

(4) Probation. In lieu of denying, suspending, or revoking a license, HHSC may place a facility on probation for a period of not less than 30 days, if HHSC finds that the facility is in repeated noncompliance with this chapter or HSC Chapters 571 through 578 and the facility's noncompliance does not endanger the public's health and safety.

(A) HHSC shall provide notice to the facility of the probation and of the items of noncompliance not later than the 10th day before the date the probation period begins.

(B) During the probation period, the facility shall correct the items of noncompliance and report the corrections to HHSC for approval.

(5) Administrative penalty. HHSC has jurisdiction to impose an administrative penalty against a person licensed or regulated under this chapter for violations of applicable chapters of the HSC or this chapter. The imposition of an administrative penalty shall be in accordance with the provisions of HSC §571.025.

(6) Licensure of persons or entities with criminal backgrounds. HHSC may deny a person or entity a license or suspend or revoke an existing license on the grounds that the person or entity has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of the ownership or operation of a facility. HHSC shall apply the requirements of Texas Occupations Code Chapter 53.

(A) HHSC is entitled under Texas Government Code Chapter 411 to obtain criminal history information maintained by the Texas Department of Public Safety, the Federal Bureau of Investigation, or any other law enforcement agency to investigate the eligibility of an applicant for an initial or renewal license and to investigate the continued eligibility of a licensee.

(B) In determining whether a criminal conviction directly relates, HHSC shall apply the requirements and consider the provisions of Texas Occupations Code Chapter 53 (relating to Consequences of Criminal Conviction).

(C) The following felonies and misdemeanors directly relate to the duties and responsibilities of the ownership or operation of a health care facility because these criminal offenses indicate an ability or a tendency for the person to be unable to own or operate a facility:

(i) a misdemeanor violation of HSC Chapter 571;

(ii) a misdemeanor or felony involving moral turpitude;

(iii) a misdemeanor or felony relating to deceptive business practices;

(iv) a misdemeanor or felony of practicing any health-related profession without a required license;

(v) a misdemeanor or felony under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(vi) a misdemeanor or felony under Texas Penal Code (TPC), Title 5, involving a patient or a client of any health care facility, a home and community support services agency, or a health care professional; or

(vii) a misdemeanor or felony under TPC:

(I) Title 4;

(II) Title 5;

(III) Title 7;

(IV) Title 8;

(V) Title 9;

(VI) Title 10; or

(VII) Title 11.

(7) Offenses listed in paragraph (6)(C) of this section are not exclusive in that HHSC may consider similar criminal convictions from other state, federal, foreign or military jurisdictions that indicate an inability or tendency for the person or entity to be unable to own or operate a facility.

(8) HHSC shall revoke a license on the licensee's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision.

(9) Notice. If HHSC proposes to deny, suspend, or revoke a license, or impose an administrative penalty, HHSC shall send a notice of the proposed action by certified mail, return receipt requested, at the address shown in the current records of HHSC or HHSC may personally deliver the notice. The notice to deny, suspend, or revoke a license, or impose an administrative penalty, shall state the alleged facts or conduct to warrant the proposed action, provide an opportunity to demonstrate or achieve compliance, and shall state that the applicant or license holder has an opportunity for a hearing before taking the action.

(10) Acceptance. Within 20 calendar days after receipt of the notice described in paragraph (9) of this section, the applicant or licensee shall notify HHSC, in writing, of acceptance of HHSC's determination or request a hearing.

(11) Hearing request.

(A) A request for a hearing by the applicant or licensee shall be in writing and submitted to HHSC within 20 calendar days after receipt of the notice described in paragraph (9) of this section. Receipt of the notice is presumed to occur on the third day after the date HHSC mails the notice to the last known address of the applicant or licensee.

(B) A hearing shall be conducted pursuant to Texas Government Code Chapter 2001, and Texas Administrative Code Title 1 Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act).

(12) No response to notice. If an applicant or licensee does not request a hearing in writing within 20 calendar days after receiving notice of the proposed action, the applicant or licensee is deemed to have waived the opportunity for a hearing and HHSC takes the proposed action.

(13) Notification of HHSC's final decision. HHSC shall send the licensee or applicant a copy of HHSC's decision for denial, suspension or revocation of license or imposition of an administrative penalty by certified mail, which shall include the findings of fact and conclusions of law on which HHSC based its decision.

(14) Admission of new patients upon suspension or revocation. Upon HHSC's determination to suspend or revoke a license, the license holder may not admit new patients until the license is reissued.

(15) Decision to suspend or revoke. When HHSC's decision to suspend or revoke a license is final, the licensee must immediately cease operation, unless a stay of such action is issued by the district court.

(16) Return of original license. Upon suspension, revocation or non-renewal of the license, the original license shall be returned to HHSC within 30 calendar days of HHSC's notification.

(17) Reapplication following denial or revocation.

(A) One year after HHSC's decision to deny or revoke, or the voluntary surrender of a license by a facility while enforcement action is pending, a facility may petition HHSC, in writing, for a license. Expiration of a license prior to HHSC's decision becoming final

shall not affect the one-year waiting period required before a petition can be submitted.

(B) HHSC may allow a reapplication for licensure if there is proof that the reasons for the original action no longer exist.

(C) HHSC may deny reapplication for licensure if HHSC determines that:

(i) the reasons for the original action continues;

(ii) the petitioner has failed to offer sufficient proof that conditions have changed; or

(iii) the petitioner has demonstrated a repeated history of failure to provide patients a safe environment or has violated patient rights.

(D) If HHSC allows a reapplication for licensure, the petitioner shall be required to meet the requirements as described in §510.22 of this chapter (relating to Application and Issuance of Initial License).

(18) Expiration of a license during suspension. A facility whose license expires during a suspension period may not reapply for license renewal until the end of the suspension period.

(19) Surrender of a license. In the event that enforcement, as defined in this subsection, is pending or reasonably imminent, the surrender of a facility license shall not deprive HHSC of jurisdiction in regard to enforcement against the facility.

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

Filed with the Office of the Secretary of State on April 29, 2024.

TRD-202401882
Karen Ray
Chief Counsel
Health and Human Services Commission
Earliest possible date of adoption: June 9, 2024
For further information, please call: (512) 834-4591

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 155. REPORTS AND INFORMATION GATHERING
SUBCHAPTER B. SITE SELECTION AND FACILITY NAMES

37 TAC §155.23

The Texas Board of Criminal Justice (board) proposes amendments to §155.23, concerning Site Selection Process for the Location of Additional Facilities. The proposed amendments revise offender to inmate throughout; remove references to transfer facilities and the Prison Management Act; and reorganize language for clarity.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required.

The anticipated public benefit, as a result of enforcing the proposed amendments, will be to reflect current practices and enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, *ogccomments@tdcj.texas.gov.* Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; and §496.007, which requires the board to evaluate the advantages and disadvantages of a proposed location before determination.

Cross Reference to Statutes: None.

§155.23. Site Selection Process for the Location of Additional Facilities.

(a) Purpose. This rule establishes procedures for determining the location of new Texas Department of Criminal Justice (TDCJ) facilities in a manner that is fair and open, cost-effective for construction and operations, and sensitive to the ultimate mission of the facilities sited. Determining the location of a new facility designed to house inmates [~~offenders~~] is a multi-factor process that assesses cost-effectiveness, logistical support requirements, operational concerns, and legal mandates.

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

(1) Facility is a substantially self-contained, permanently constructed correctional facility for housing inmates [~~offenders~~]. This includes prison units, state jails, [~~transfer facilities,~~] and substance abuse felony punishment (SAFP) facilities, but does not include community corrections facilities, as defined by Texas Government Code §509.001, or parole facilities defined in Texas Government Code §§508.118, 508.119, or 508.320.

(2) Prison unit includes a private prison under Texas Government Code Chapter 495, Subchapter A (Contracts with Private Vendors and Commissioners Courts), a psychiatric unit, and a unit whose capacity is determined by Texas Government Code Chapter

499, Subchapter [~~Subchapters B (Population Management) and~~] E (Unit and System Capacity).

(3) SAFP facility is a substance abuse felony punishment facility authorized by Texas Government Code §493.009.

(4) State jail is a state jail felony facility authorized by Texas Government Code Chapter 507.

[~~(5) Transfer facility is a facility authorized by Texas Government Code Chapter 499, Subchapter G (Transfer Facilities).~~]

(c) Procedures.

(1) The Legislative Budget Board is responsible for projecting the demand for prison unit, state jail, and SAFP facility[~~, and transfer facility~~] beds. Based on these projections, a plan shall be developed by TDCJ staff and adopted by the Texas Board of Criminal Justice (TBCJ) that details how any additional bed needs shall be met. This plan shall be presented to the legislature with a request for appropriations. The plan shall include any recommendations for re-designation and renovation of existing facilities. With respect to new facilities requiring the selection of a site, the plan adopted by the TBCJ shall include:

(A) Recommendations for specific types of facilities needed by the TDCJ, the approximate size of each facility, and any [~~the~~] regional distribution planned by facility type;

(B) A description of each facility's mission; and

(C) A description of the type of inmates [~~offenders~~] to be housed in each facility and the programming requirements for that population. [~~; and~~]

[~~(D) Any recommendations for re-designation and renovation of existing facilities.~~]

(2) Site selections shall be made in accordance with and through a Request for Proposals (RFP) process, unless the TBCJ determines that land currently owned by the state shall be used as the site for the location of additional facilities, in which case an [~~a~~] RFP process shall not be required. The RFP shall be based on the array of facilities authorized by the legislature. For each round of site selections, the RFP shall specify:

(A) Types of facilities needed;

(B) Minimum acreage and site characteristics required for each facility type;

(C) Requirements for geotechnical information based on drilling matrix and site preparation requirements;

(D) Requirements for verified documentation of the absence of any environmental problems and historical preservation conditions;

(E) Requirements for supporting information such as easement, utility, and topographical maps;

(F) Requirements for description of land values, transferability of mineral rights, surface leases, easements, title report, warranty deed, aerial photographs, and other issues affecting the timely transferability of a site;

(G) Transportation and utility requirements; and

(H) Requirements for soliciting citizen input and state and local elected official input regarding a specific site.

(3) Under the direction of the TDCJ executive director, the Facilities Division shall coordinate the site selection process. In accordance with the TBCJ approved criteria and process, TDCJ staff shall be responsible for the development of the RFP, devising and completing scoring instruments, as well as cost analysis for TBCJ review and action. Information presented to the TBCJ shall:

(A) Be structured in a uniform format as illustrated in the Facilities Division policies and procedures;

(B) Include data from a weighted scoring evaluation system that objectively assesses each site based on the proposal requirements, the site visit, and supporting information developed before any review, based on the Facilities Division policies and procedures and on the requirements outlined in the RFP;

(C) Include life-cycle cost calculations for a specific time period for each responsive proposal;

(D) Include information relating to the workforce available in the area surrounding each proposed site from which the TDCJ would recruit correctional staff; and

(E) Identify and explain any deviations from the TBCJ approved process.

(4) Any selection process shall take into consideration the intent of the legislature to locate each facility:

(A) In close proximity to a county with 100,000 or more inhabitants to provide services and other resources provided in such a county;

(B) Cost-effectively with respect to its proximity to other TDCJ facilities;

(C) In close proximity to an area that would facilitate release of inmates [~~offenders~~] or persons to their area of residence; and

(D) In close proximity to an area that provides adequate educational opportunities and medical care.

(5) The TBCJ shall be responsible for site selection, but may request that TDCJ staff provide a short list of recommended sites or a preference ranking of sites with an explanation for the recommendation or ranking. Staff recommendations shall be determined through the scoring of information contained in each submitted proposal based on RFP requirements, actual site assessment, and information obtained from external and internal sources for each site. Staff recommendations may include, and the TBCJ may select, a site other than one contained in the submitted proposals if the site is on state-owned land.

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

Filed with the Office of the Secretary of State on April 29, 2024.

TRD-202401871
Jennifer Childress
Chief Deputy General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: June 9, 2024
For further information, please call: (512) 463-9899

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CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.42

The Texas Board of Criminal Justice (board) proposes amendments to §163.42, concerning Substantial Noncompliance. The

proposed amendments reflect the Office of Internal Audit as independent of the TDCJ.

Ron Steffa, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the proposed amendments will be in effect, enforcing or administering the proposed amendments will not have foreseeable implications related to costs or revenues for state or local government because the proposed amendments merely clarify existing procedures.

Mr. Steffa has also determined that for each year of the first five-year period, there will not be an economic impact on persons required to comply with the rules because the proposed amendments merely clarify existing procedures. There will not be an adverse economic impact on small or micro businesses or on rural communities. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the proposed amendments, will be to enhance clarity and public understanding. No cost will be imposed on regulated persons.

The proposed amendments will have no impact on government growth; no impact on local employment; no creation or elimination of a government program; no creation or elimination of employee positions; no increase or decrease in future legislative appropriations to the TDCJ; no increase or decrease in fees paid to the TDCJ; no new regulation and no effect on an existing regulation; no increase or decrease in the number of individuals subject to the rule; and no effect upon the economy. The proposed amendments will not constitute a taking.

Comments should be directed to the Office of the General Counsel, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342, *ogccomments@tdcj.texas.gov.* Written comments from the general public must be received within 30 days of the publication of this rule in the *Texas Register.*

The amendments are proposed under Texas Government Code §492.013, which authorizes the board to adopt rules; and §509.003, which authorizes the board to adopt reasonable rules establishing standards and procedures for the TDCJ Community Justice Assistance Division.

Cross Reference to Statutes: None.

§163.42. Substantial Noncompliance.

(a) Definition. Substantial noncompliance with the Texas Department of Criminal Justice Community Justice Assistance Division (TDCJ CJAD) standards, for purposes of Texas Government Code §509.012, is defined as:

(1) intentional diversion, theft, or misapplication of TDCJ CJAD funding or grants for purposes other than the state funding award or allocation;

(2) violations of laws, regulations, or official manuals specific to the operations of the community supervision and corrections departments (CSCDs);

(3) intentional refusal to implement a TDCJ CJAD approved action plan that is a result of audits, reviews, or inspections;

(4) for purposes of qualifying for state aid under 37 Texas Administrative Code §163.43(a)(1)(F), relating to Funding and Financial Management, failure to hold the meeting to finalize the CSCD budget as required by Texas Local Government Code §140.004; and

(5) interference, obstruction, or hindrance with any efforts by the Texas Comptroller of Public Accounts, county auditor of the county that manages the CSCD's funds, TDCJ CJAD, Texas Board of Criminal Justice Office of [~~TDCJ~~] Internal Audit [~~Division~~], Legislative Budget Board, Texas State Auditor's Office, or Texas Sunset Advisory Commission to examine or audit the records, transactions, and performance of the CSCD or facilities.

(b) Imposing Sanctions. Sanctions imposed for substantial noncompliance shall be in accordance with the provisions outlined in 37 Texas Administrative Code §163.47, relating to Contested Matters.

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

Filed with the Office of the Secretary of State on April 29, 2024.

TRD-202401872
Jennifer Childress
Chief Deputy General Counsel
Texas Department of Criminal Justice
Earliest possible date of adoption: June 9, 2024
For further information, please call: (512) 463-9899

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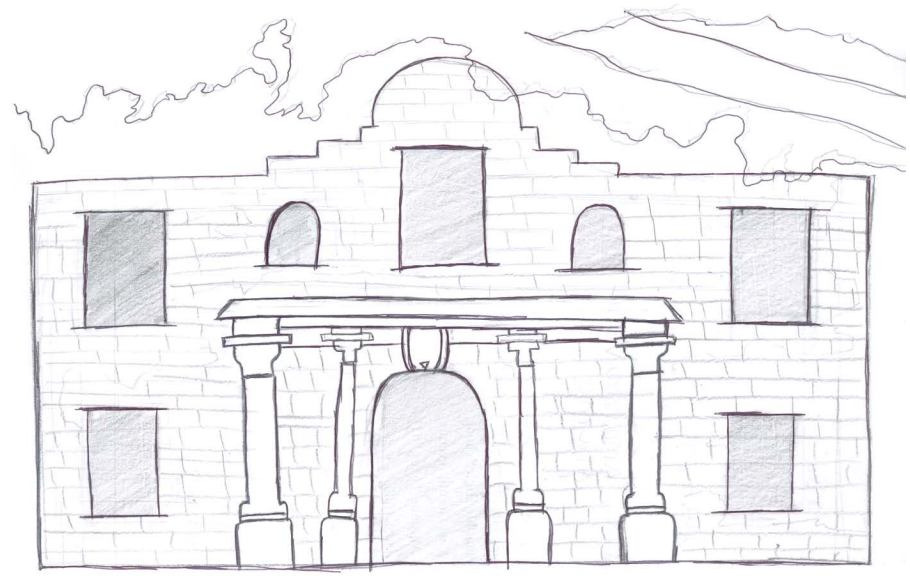

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 157. EMERGENCY MEDICAL CARE

SUBCHAPTER A. EMERGENCY MEDICAL SERVICES - PART A

25 TAC §157.2

The Department of State Health Services withdraws proposed amendments to 25 TAC §157.2 which appeared in the January 19, 2024, issue of the *Texas Register* (49 TexReg 199).

Filed with the Office of the Secretary of State on April 25, 2024.

TRD-202401759
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: April 25, 2024
For further information, please call: (512) 535-8538

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SUBCHAPTER G. EMERGENCY MEDICAL SERVICES TRAUMA SYSTEMS

25 TAC §§157.123, 157.125, 157.130, 157.131

The Department of State Health Services withdraws the proposed repeal of 25 TAC §§157.123, 157.125, 157.130, and 157.131, which appeared in the January 19, 2024, issue of the *Texas Register* (49 TexReg 199).

Filed with the Office of the Secretary of State on April 25, 2024.

TRD-202401760
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: April 25, 2024
For further information, please call: (512) 535-8538

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25 TAC §§157.123, 157.125, 157.128, 157.130

The Department of State Health Services withdraws proposed new and amended 25 TAC §§157.123, 157.125, 157.128, and 157.130, which appeared in the January 19, 2024, issue of the *Texas Register* (49 TexReg 199).

Filed with the Office of the Secretary of State on April 25, 2024.

TRD-202401761
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: April 25, 2024
For further information, please call: (512) 535-8538

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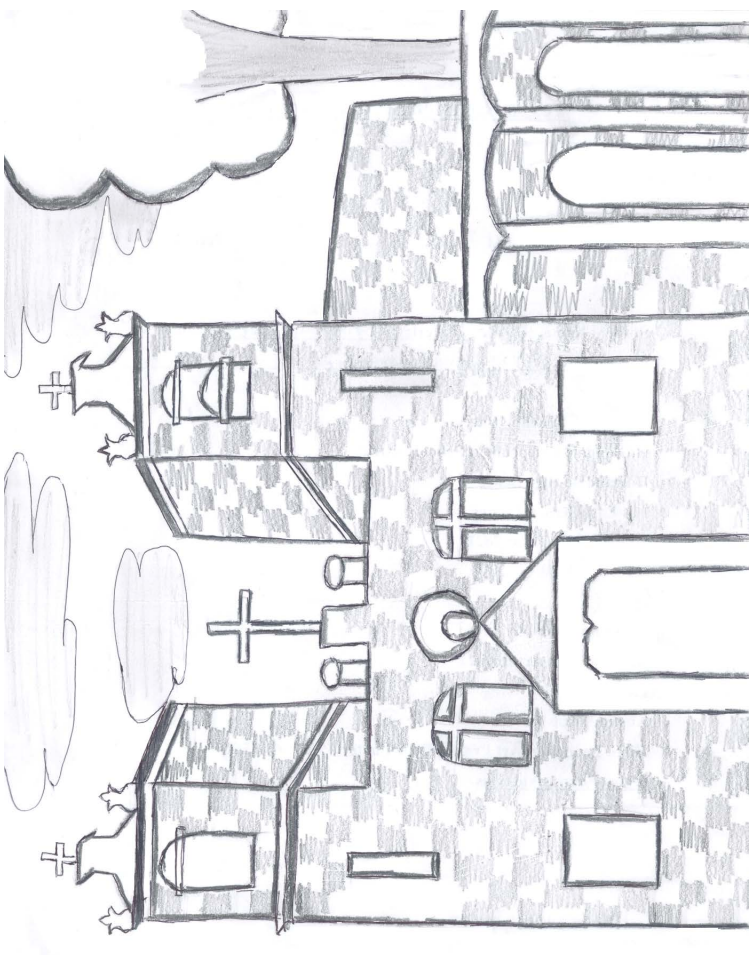

ADOPTED RULES

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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 382. WOMEN'S HEALTH SERVICES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §382.1, concerning Introduction; §382.5, concerning Definitions; §382.7, concerning Client Eligibility; §382.9, concerning Application and Renewal Procedures; §382.15, concerning Covered and Non-covered Services; §382.17, concerning Health-Care Providers; §382.101, concerning Introduction; §382.105, concerning Definitions; §382.107, concerning Client Eligibility; §382.109, concerning Financial Eligibility Requirements; §382.113, concerning Covered and Non-covered Services; §382.115, concerning Family Planning Program Providers; §382.119, concerning Reimbursement; §382.121, concerning Provider's Request for Review of Claim Denial; §382.123, concerning Record Retention; §382.125, concerning Confidentiality and Consent; and §382.127, concerning FPP Services for Minors; and adopts the repeal of §382.3, concerning Non-entitlement and Availability; and §382.11, concerning Financial Eligibility Requirements.

The amendments to §§382.1, 382.5, 382.7, 382.9, 382.15, 382.17, 382.101, 382.105, 382.107, 382.109, 382.113, 382.115, 382.119, 382.121, 382.123, 382.125, and 382.127; and the repeal of §382.3 and §382.11 are adopted without changes to the proposed text as published in the March 8, 2024, issue of the *Texas Register* (49 TexReg 1360). Therefore, the rules will not be republished.

BACKGROUND AND JUSTIFICATION

The primary purpose of the adopted rules is to update eligibility and other Medicaid requirements in the Healthy Texas Women (HTW) program to describe the agency's compliance with the HTW Section 1115 Demonstration that was approved by the Centers for Medicare and Medicaid Services on January 22, 2020, and transitioned the majority of the program into Medicaid. For eligible minors, the HTW program remains fully funded by state general revenue.

Another purpose of the adopted rules is to comply with Texas Health and Safety Code §32.102, added by Senate Bill (S.B.) 750, 86th Legislature, Regular Session, 2019, which requires HHSC to provide enhanced postpartum care services, called HTW Plus, to eligible clients. HHSC made HTW Plus available to eligible clients enrolled in the HTW program beginning September 1, 2020.

Another purpose of the adopted rules is to comply with Texas Health and Safety Code §31.018, also added by S.B. 750, to include a requirement for women in HTW to receive referrals to the Primary Health Care Services Program.

Another purpose of the adopted rules is to make conforming amendments to the Family Planning Program (FPP) rules where necessary and update covered and non-covered services for HTW and FPP.

Other non-substantive clarifying changes were made throughout the rules.

COMMENTS

The 31-day comment period ended April 8, 2024.

During this period, HHSC received comments regarding the proposed rules from five commenters, including Every Body Texas, Texas Association of Community Health Centers, Texans Care for Children, Teaching Hospitals of Texas, and Texas Women's Healthcare Coalition. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Several commenters supported the inclusion of HTW Plus in these rules, specifically in §382.5 by adding a definition for and references to HTW Plus, §382.7 by including the requirements for HTW clients to qualify for HTW Plus services, and §382.15 by incorporating HTW Plus covered services.

Response: HHSC appreciates the comment.

Comment: Several commenters supported changes in §382.7 to update the HTW income eligibility requirements from 200% of the federal poverty level (FPL) to 204.2% of the FPL.

Response: HHSC appreciates the comment.

Comment: Several commenters supported changes in §382.7 to specify that clients in Medicaid or CHIP will automatically be tested for HTW eligibility if they are no longer eligible for Medicaid or CHIP. The commenters recommended that in addition to automatically testing, HHSC also automatically enroll eligible women into HTW to increase enrollment into the HTW program and reduce administrative burden for HHSC staff, clients and providers.

Response: HHSC appreciates the comments but declines to revise the rule in response to these comments. To comply with the terms and conditions of the HTW Section 1115 Demonstration, HHSC no longer automatically enrolls eligible women into HTW when their Medicaid or CHIP coverage ends. However, HHSC automatically tests women for HTW eligibility and certifies eligible women for the HTW program.

Comment: A commenter supported the change in §382.7 to require HTW providers to refer women in HTW to other HHSC programs such as the Primary Health Care (PHC) Services Program. The commenter also recommended HHSC request ad-

ditional funding for PHC services in the next legislative cycle to support increased demands.

Response: HHSC appreciates the comment.

Comment: Several commenters supported changes in §382.15 and §382.113 to allow for the coverage of emergency contraception in HTW and FPP.

Response: HHSC appreciates the comment.

Comment: A commenter supported women in Texas having access to all birth control options approved by the Federal Drug Administration.

Response: HHSC appreciates the comment.

Comment: A commenter requested HHSC follow best practices for "administration of emergency contraception in clinical settings, including counseling on use of emergency contraception, advanced provision, and counseling and provision of prescription only methods."

Response: HHSC appreciates the comment and acknowledges the importance of best practices.

Comment: A commenter requested HHSC develop HTW billing processes for over-the-counter drugs for contraception such as emergency contraception.

Response: HHSC appreciates the comment. The HTW billing process for covered services includes certain over-the-counter contraception.

Comment: A commenter supported the proposed rule changes for HTW and FPP and noted that this change will give these women the opportunity to plan for and space their pregnancies.

Response: HHSC appreciates the comment.

SUBCHAPTER A. HEALTHY TEXAS WOMEN

1 TAC §§382.1, 382.5, 382.7, 382.9, 382.15, 382.17

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

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 April 26, 2024.

TRD-202401848
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 16, 2024
Proposal publication date: March 8, 2024
For further information, please call: (512) 815-1887

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1 TAC §382.3, §382.11

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

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. FAMILY PLANNING PROGRAM

1 TAC §§382.101, 382.105, 382.107, 382.109, 382.113, 382.115, 382.119, 382.121, 382.123, 382.125, 382.127

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules as necessary to carry out the commission's duties; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which authorize HHSC to administer the federal medical assistance (Medicaid) program.

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

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TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 6. STATE RECORDS

SUBCHAPTER A. RECORDS RETENTION SCHEDULING

13 TAC §6.10

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 13 TAC §6.10 is not included in the print version of the Texas Register. The figure is available in the on-line version of the May 10, 2024, issue of the Texas Register.)

The Texas State Library and Archives Commission (commission) adopts amendments to 13 Texas Administrative Code §6.10, Texas State Records Retention Schedules. The amendments are adopted with changes to the proposed text as published in the March 1, 2024, issue of the *Texas Register* (49 TexReg 1178). The rule will be republished.

EXPLANATION OF ADOPTED AMENDMENTS. The purpose of the amendments to the noted "Archives" and "Caution" notes in the State Records Retention Schedule (the "schedule") is to align archival requirements with requirements of the State Publications Depository Program (the "program") and ensure records appropriate for the program are not unnecessarily transferred to the State Archives as well. The amendments also add or correct legal citations in three records series related to agendas and minutes of open meetings and agendas, minutes, and recordings of closed meetings.

After proposal, the commission noticed a minor, non-substantive error to the title page of the schedule. The proposed version read "5th Edition, 1st Revision." Because the commission was proposing changes to the schedule, it should have read "5th Edition, 2nd Revision." The commission adopts the schedule with this change. There are no other changes on adoption.

The amendment to the Archives Note for record series 1.1.074, Sunset Review Report and Related Documentation, deletes an agency's Sunset Self-Evaluation Report from the list of related documentation, as the Self-Evaluation Report is a state publication required to be submitted to the depository program.

The amendment to the Caution Note for record series 4.5.003, Annual Financial Reports, deletes language requiring archival review for the reports. Instead, the archival requirement for these reports when a biennial or annual narrative report is not produced is met by sending the required copies to the depository program.

The amendment to the Archives Note for record series 1.1.058, Meetings, Agendas and Minutes of Open, adds a reference to Government Code, §324.008(d), which requires the governing body of a state agency to deliver to both the Legislative Reference Library and the commission a certified copy of the minutes of any meeting of the governing body.

The amendment to the legal citations for record series 1.1.059, Meetings, Agendas and Minutes or Audiovisual Recordings of Closed, and record series 1.1.060, Meetings, Agendas and Minutes or Audiovisual Recordings of Closed, corrects an error by moving the reference to Government Code, §551.104(a) from record series 1.1.060 to record series 1.1.059.

SUMMARY OF COMMENTS. The commission did not receive any comments on the proposed amendments.

STATUTORY AUTHORITY. The amendments are adopted under Government Code, §441.185, which authorizes the commission to prescribe by rule a minimum retention period for any state record unless a minimum retention period for the record is prescribed by another federal or state law, regulation, or rule of court; Government Code, §441.199, which authorizes the commission to adopt rules it determines necessary for cost reduction and efficiency of recordkeeping by state agencies and for the state's management and preservation of records; Government Code, §441.190, which authorizes the commission to adopt rules establishing standards and procedures for the protection, maintenance, and storage of state records, paying particular attention to the maintenance, storage, and protection of archival and vital state records; Government Code, §441.103, which requires a state agency to furnish copies of its state publications that exist in a physical format to the Texas State Library in the number specified by commission rules; and Government Code, §441.104, which directs the commission to establish a program for the preservation and management of state publications.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 441.

§6.10. Texas State Records Retention Schedules.

(a) A record listed in the Texas State Records Retention Schedule (Revised 5th Edition) must be retained for the minimum retention period indicated by any state agency that maintains a record of the type described.

Figure: 13 TAC §6.10(a)

(b) A record listed in the Texas State University Records Retention Schedule (2nd Edition) must be retained for the minimum retention period indicated by any university or institution of higher education.

Figure: 13 TAC §6.10(b) (No change.)

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 April 23, 2024.

TRD-202401710
Sarah Swanson
General Counsel
Texas State Library and Archives Commission
Effective date: May 13, 2024
Proposal publication date: March 1, 2024
For further information, please call: (512) 463-5460

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 22. PROCEDURAL RULES

SUBCHAPTER F. PARTIES

16 TAC §22.104

The Public Utility Commission of Texas (commission) adopts 16 Texas Administrative Code (TAC) §22.104, relating to Motions

to Intervene. The commission adopts the rule with no changes to the proposed text as published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1803). The amended rule facilitates the implementation of PURA §37.057, as amended by Senate Bill (SB) 1076, enacted by the 88th Texas Legislature (R.S.), which reduced the time for the commission to approve new transmission facility certificate of convenience and necessity (CCN) to 180 days. Specifically, amended §22.104 changes the intervention deadline from 45 days to 30 days after the date an application is filed in a proceeding involving an application for a CCN for a new transmission facility that is subject to PURA §37.057. The amended rule also makes minor clerical and grammatical changes. The rule is adopted in Project No. 56253. The rule will not be republished.

The commission received comments on the proposed rule from the Lower Colorado River Authority (LCRA), Oncor Electric Delivery Company LLC (Oncor), and the Office of Public Utility Counsel (OPUC).

§22.104(b)

Proposed §22.104(b) reduced the intervention deadline from 45 to 30 days from the date an application is filed for a CCN application for a new transmission facility subject to PURA §37.057.

OPUC opposed changing the intervention deadline from 45 days to 30 days for CCN applications for a new transmission facility subject to PURA §37.057. Oncor and LCRA supported changing the intervention deadline as proposed.

OPUC opposed the proposed rule and recommended the commission retain the existing 45-day deadline for intervention in new transmission facility CCN proceedings. For consistency, OPUC also recommended making a corresponding revision to §22.52(a), relating to Notice in Licensing Proceedings, that would revert to a preexisting version of the rule that required notice of a 45-day intervention deadline in these proceedings. OPUC commented that while SB 1076 reduced the timeline for CCN applications from 360 days to 180 days, a corresponding reduction to the intervention deadline is unnecessary and unsupported by statute. Specifically, the timeline reduction would undermine the ability of affected persons and other stakeholders to intervene in new transmission CCN cases. OPUC emphasized that no evidence was presented, in this rulemaking or in other rulemakings implementing SB 1076, to indicate that any internal review processes are adversely affected by the existing 45-day intervention period or would otherwise become more efficient from the proposed reduction. OPUC commented that the intervention deadline reduction would reduce a landowner's capability to defend its property rights in proposed CCN cases. OPUC highlighted that requests for intervention in commission proceedings frequently require professional assistance if the interested party is unfamiliar with the process. OPUC remarked that there are numerous ordinary and foreseeable circumstances that may delay a potentially interested party from checking the mail or responding to a mailed CCN notice that renders the shortened timeframe even more impractical for intervention.

Oncor and LCRA, by contrast, supported the proposed rule and commented that it provides essential clarity regarding the intervention period. These commenters also emphasized that a revised intervention period is necessary to facilitate transmission line CCN applications within the 180-day period required by SB 1076.

Commission Response

The commission declines to modify the rule to retain the existing 45-day deadline for intervention in new transmission facility CCN proceedings as recommended by OPUC. The commission agrees with Oncor and LCRA that the revised intervention period is required to enable the commission to review new facility transmission line CCN applications within the condensed 180-day statutory timeline for such proceedings. This modification is also, as noted by OPUC, consistent with the commission's modifications to §22.52(a).

The commission does not agree with OPUC that a 45-day intervention deadline is necessary to protect a landowner's capability to defend its property rights in proposed CCN cases. The commission is updating the landowner brochure for CCN proceedings under project no. 55648 to ensure landowners are provided with accurate information about these proceedings. Moreover, the commission has recently established its Office of Public Engagement to assist members of the public when engaging with the commission, including individuals affected by CCN proceedings. Finally, when appropriate, the presiding officer has the ability to grant late intervention in CCN proceedings.

The amended rule is adopted under the following provisions of PURA: §14.002 and §14.052, which provide the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and §37.057 which requires the commission to approve or deny an application for a certificate for a new transmission facilities not later than the 180th day after the date the application is filed.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.052; 37.057.

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 April 25, 2024.

TRD-202401755
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: May 15, 2024
Proposal publication date: March 22, 2024
For further information, please call: (512) 936-7322

SUBCHAPTER M. PROCEDURES AND FILING REQUIREMENTS IN PARTICULAR COMMISSION PROCEEDINGS

16 TAC §22.246

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §22.246, relating to Administrative Penalties with changes to the proposed text as published in the February 2, 2024, issue of the *Texas Register* (49 TexReg 459) and will be republished. The rule is adopted under Project Number 55955. The changes to the proposed text are limited to the correction of typographical and minor grammatical errors in the proposed text. The amended rule partially implements Public Utility Regulatory Act (PURA) §15.023 as revised by House Bill (HB) 1500 during the Texas 88th Regular Legislative Session. Specifically, the amended rule

adds whether a person complied with a voluntary mitigation plan as a factor for the commission to consider when determining the amount of an administrative penalty. The amended rule also removes redundant provisions and replaces them with a reference to §25.8 of this title (relating to Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers).

The commission received comments on the proposed rule from: the Steering Committee of Cities served by Oncor and the Texas Coalition for Affordable Power (OCSC and TCAP) and Texas Competitive Power Advocates (TCPA).

Each of the filed comments was in support of the proposed rule. Specifically, OCSC and TCAP supported applying the $1,000,000 penalty authority to VMP violations and adding VMP compliance as a factor for the commission to consider for purposes of administrative penalties, citing a benefit of allowing the commission to issue effective penalties to disincentivize market abuse behavior. TCPA argued that the proposed amendments establish an appropriate framework to implement the statutory changes made to PURA §15.023(b-1) and PURA §15.023(f). TCPA also emphasized the importance of the generation entity, the commission, and the independent market monitor mutually understanding the function of a voluntary mitigation plan and that the proposed rule provides such clarity.

The filed comments did not include any suggested modifications to the proposed rule.

The amended rule is adopted under the following provisions of the Public Utility Regulatory Act (PURA): §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052 which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure. The amended rule is also adopted under §15.023(b-1) which establishes that the penalty for a violation of a provision of a voluntary mitigation plan entered into under PURA §15.023(f) may be in an amount not to exceed $1,000,000 for a violation and that each day a violation continues is a separate violation for purposes of imposing a penalty; PURA §15.023(f) which authorizes the commission and a person to develop and enter into a voluntary mitigation plan relating to a violation of Section 39.157 or rules adopted by the commission under that section only if the plan is in the public interest; and PURA §15.024, which authorizes the commission to impose an administrative penalty when the commission finds that a violation has occurred.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, §15.023(b-1); §15.023(f); §15.024.

§22.246. Administrative Penalties.

(a) Scope. This section addresses enforcement actions related to administrative penalties or disgorgement of excess revenues only and does not apply to any other enforcement actions that may be undertaken by the commission or the commission staff.

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

(1) Affected wholesale electric market participant--An entity, including a retail electric provider (REP), municipally owned utility (MOU), or electric cooperative, that sells energy to retail customers and served load during the period of the violation.

(2) Excess revenue--As defined in §25.503 of this title (relating to Oversight of Wholesale Market Participants).

(3) Executive director--The executive director of the commission or the executive director's designee.

(4) Person--Includes a natural person, partnership of two or more persons having a joint or common interest, mutual or cooperative association, and corporation.

(5) Violation--Any activity or conduct prohibited by the Public Utility Regulatory Act (PURA), the Texas Water Code (TWC), commission rule, or commission order.

(6) Continuing violation--Except for a violation of PURA chapter 17, 55, or 64, and commission rules or commission orders adopted or issued under those chapters, any instance in which the person alleged to have committed a violation attests that a violation has been remedied and was accidental or inadvertent and subsequent investigation reveals that the violation has not been remedied or was not accidental or inadvertent.

(c) Amount of administrative penalty for violations of PURA or a rule or order adopted under PURA.

(1) Each day a violation continues or occurs is a separate violation for which an administrative penalty can be levied, regardless of the status of any administrative procedures that are initiated under this subsection.

(2) The administrative penalty for each separate violation of PURA or of a rule or order adopted under PURA may not exceed the limits established by §25.8 of this title (relating to Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers).

(3) The amount of the administrative penalty must be based on:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(B) the economic harm to property or the environment caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter future violations;

(E) efforts to correct the violation;

(F) adherence to an applicable voluntary mitigation plan approved by the commission under §25.504 of this title (relating to Wholesale Market Power in the Electric Reliability Council of Texas Power Region); and

(G) any other matter that justice may require, including, but not limited to, the respondent's timely compliance with requests for information, completeness of responses, and the manner in which the respondent has cooperated with the commission during the investigation of the alleged violation.

(d) Amount of administrative penalty for violations of the TWC or a rule or order adopted under chapter 13 of the TWC.

(1) Each day a violation continues may be considered a separate violation for which an administrative penalty can be levied,

regardless of the status of any administrative procedures that are initiated under this subsection.

(2) The administrative penalty for each separate violation may be in an amount not to exceed $5,000 per day.

(3) The amount of the penalty must be based on:

(A) the nature, circumstances, extent, duration, and gravity of the prohibited acts or omissions;

(B) the degree of culpability, including whether the violation was attributable to mechanical or electrical failures and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the person, affiliated interest, or entity to correct the cause of the violation;

(D) any economic benefit gained through the violations;

(E) the amount necessary to deter future violations; and

(F) any other matters that justice requires.

(e) Initiation of investigation. Upon receiving an allegation of a violation or of a continuing violation, the executive director will determine whether an investigation should be initiated.

(f) Report of violation or continuing violation. If, based on the investigation undertaken in accordance with subsection (e) of this section, the executive director determines that a violation or a continuing violation has occurred, the executive director may issue a report to the commission.

(1) Contents of the report. The report must state the facts on which the determination is based and a recommendation on the imposition of an administrative penalty, including a recommendation on the amount of the administrative penalty and, if applicable under §25.503 of this title, a recommendation that excess revenue be disgorged.

(2) Notice of report.

(A) Within 14 days after the report is issued, the executive director will give written notice of the report to the person who is alleged to have committed the violation or continuing violation which is the subject of the report. The notice may be given by regular or certified mail.

(B) For violations of the TWC or a rule or order adopted under chapter 13 of the TWC, within ten days after the report is issued, the executive director will, by certified mail, return receipt requested, give written notice of the report to the person who is alleged to have committed the violation or continuing violation which is the subject of the report.

(C) The notice must include:

(i) a brief summary of the alleged violation or continuing violation;

(ii) a statement of the amount of the recommended administrative penalty;

(iii) a statement recommending disgorgement of excess revenue, if applicable, under §25.503 of this title;

(iv) a statement that the person who is alleged to have committed the violation or continuing violation has a right to a hearing on the occurrence of the violation or continuing violation, the amount of the administrative penalty, or both the occurrence of the violation or continuing violation and the amount of the administrative penalty;

(v) a copy of the report issued to the commission under this subsection; and

(vi) a copy of this section, §22.246 of this title (relating to Administrative Penalties).

(D) If the commission sends written notice to a person by mail addressed to the person's mailing address as maintained in the commission's records, the person is deemed to have received notice:

(i) on the fifth day after the date that the commission sent the written notice, for notice sent by regular mail; or

(ii) on the date the written notice is received or delivery is refused, for notice sent by certified mail.

(g) Options for response to notice of violation or continuing violation.

(1) Opportunity to remedy.

(A) This paragraph does not apply to a violation of PURA chapters 17, 55, or 64; PURA §35.0021 or §38.075; or chapter 13 of the TWC; or of a commission rule or commission order adopted or issued under those chapters or sections.

(B) Within 40 days of the date of receipt of a notice of violation set out in subsection (f)(2) of this section, the person against whom the administrative penalty or disgorgement may be assessed may file with the commission proof that the alleged violation has been remedied and that the alleged violation was accidental or inadvertent. A person who claims to have remedied an alleged violation has the burden of proving to the commission both that an alleged violation was remedied before the 31st day after the date the person received the report of violation and that the alleged violation was accidental or inadvertent. Proof that an alleged violation has been remedied and that the alleged violation was accidental or inadvertent must be evidenced in writing, under oath, and supported by necessary documentation.

(C) If the executive director determines that the alleged violation has been remedied, was remedied within 30 days, and that the alleged violation was accidental or inadvertent, no administrative penalty will be assessed against the person who is alleged to have committed the violation.

(D) If the executive director determines that the alleged violation was not remedied or was not accidental or inadvertent, the executive director will make a determination as to what further proceedings are necessary.

(E) If the executive director determines that the alleged violation is a continuing violation, the executive director will institute further proceedings, including referral of the matter for hearing under subsection (i) of this section.

(2) Payment of administrative penalty, disgorged excess revenue, or both. Within 20 days after the date the person receives the notice set out in subsection (f)(2) of this section, the person may accept the determination and recommended administrative penalty and, if applicable, the recommended excess revenue to be disgorged through a written statement sent to the executive director. If this option is selected, the person must take all corrective action required by the commission. The commission by written order will approve the determination and impose the recommended administrative penalty and, if applicable, recommended disgorged excess revenue or order a hearing on the determination and the recommended penalty.

(3) Request for hearing. Not later than the 20th day after the date the person receives the notice set out in subsection (f)(2) of this section, the person may submit to the executive director a written request for a hearing on any or all of the following:

(A) the occurrence of the violation or continuing violation;

(B) the amount of the administrative penalty; and

(C) the amount of disgorged excess revenue, if applicable.

(4) Failure to respond. If the person fails to timely respond to the notice set out in subsection (f)(2) of this section, the commission by order will approve the determination and impose the recommended penalty or order a hearing on the determination and the recommended penalty.

(5) Opportunity to remedy a weather preparedness violation.

(A) This paragraph applies to a violation of PURA §35.0021, §38.075, or a commission rule or order adopted or issued under those sections.

(B) PURA §15.024(c), as written, does not apply to a violation of PURA §35.0021, §38.075, or a commission rule or order adopted or issued under those sections. This paragraph implements PURA §15.024(c), as modified by PURA §15.023(a), §35.0021(g), and §38.075(d), for violations of PURA §35.0021, §38.075, or a commission rule or order adopted or issued under those sections.

(C) The commission may impose an administrative penalty against an entity regulated under PURA §35.0021 or §38.075 that violates those sections, or a commission rule or order adopted under those sections, except:

(i) the commission will assess a penalty for a violation of PURA §35.0021, §38.075, or a commission rule adopted under those sections if the entity against which the penalty may be assessed does not remedy the violation within a reasonable amount of time; and,

(ii) the commission will not assess a penalty for a violation of PURA §35.0021, §38.075, or a commission rule or order adopted or issued under those sections if the violation was accidental or inadvertent, and the entity against which the penalty may be assessed remedies the violation within a reasonable period of time.

(D) For purposes of this paragraph, the following provisions apply unless a provision conflicts with a commission rule or order adopted under PURA §35.0021 or §38.075, in which case, the commission rule or order applies.

(i) Not all violations to which this paragraph applies can be remedied. Subparagraph (C)(i) and (ii) of this paragraph do not apply to a violation that cannot be remedied.

(ii) For purposes of subparagraph (C)(i) and (ii) of this paragraph, an entity that claims to have remedied an alleged violation and, if applicable, that the alleged violation was accidental or inadvertent has the burden of proving its claim to the commission. Proof that an alleged violation has been remedied and, if applicable, that the alleged violation was accidental or inadvertent must be evidenced in writing, under oath, and supported by necessary documentation.

(iii) An entity that remedies a violation that is discovered during an inspection by the independent organization certified under PURA §39.151 for the ERCOT power region prior to the deadline provided to that entity by the independent organization in accordance with PURA §35.0021 or §38.075 is deemed to have remedied that violation in a reasonable period of time.

(iv) If the independent organization certified under PURA §39.151 has not provided an entity with a deadline, the executive director will determine whether the deadline can be remedied and, if so, the deadline for remedying a violation within a reasonable period of time. The executive director will provide the entity with written notice of the violation and the deadline for remedying the violation within a reasonable period of time. This notice does not constitute notice under subsection (f)(2) of this section unless it fulfills the other requirements of that subsection. However, the provisions of subsection (f)(2)(D) of this section apply to notice under this clause.

(v) The executive director will determine if and when a report should be issued to the commission under subsection (f) of this section and will make a determination as to what further proceedings are necessary.

(vi) If the executive director determines that the alleged violation was not remedied within a reasonable period of time or is a continuing violation, the executive director will issue a report to the commission under subsection (f) of this section and will institute further proceedings, including referral of the matter for hearing under subsection (i) of this section.

(vii) If the commission determines that the deadline for remedying a violation provided by the independent organization certified under PURA §39.151 or determined by the executive director is unreasonable, the commission will determine what the deadline should have been. The commission will use this updated deadline to determine the applicability of subparagraph (C)(i) and (ii) of this paragraph and, if appropriate, as a factor in determining the magnitude of administrative penalty to impose against the entity for the violation.

(h) Settlement conference. A settlement conference may be requested by any party to discuss the occurrence of the violation or continuing violation, the amount of the administrative penalty, disgorged excess revenue if applicable, and the possibility of reaching a settlement prior to hearing. A settlement conference is not subject to the Texas Rules of Evidence or the Texas Rules of Civil Procedure; however, the discussions are subject to Texas Rules of Civil Evidence 408, concerning compromise and offers to compromise.

(1) If a settlement is reached:

(A) the parties must file a report with the executive director setting forth the factual basis for the settlement;

(B) the executive director will issue the report of settlement to the commission; and

(C) the commission by written order will approve the settlement.

(2) If a settlement is reached after the matter has been referred to the State Office of Administrative Hearings, the matter will be returned to the commission. If the settlement is approved, the commission will issue an order memorializing commission approval and setting forth commission orders associated with the settlement agreement.

(i) Hearing. If a person requests a hearing under subsection (g)(3) of this section, or the commission orders a hearing under subsection (g)(4) of this section, the commission will refer the case to SOAH under §22.207 of this title (relating to Referral to State Office of Administrative Hearings) and give notice of the referral to the person. For violations of the TWC or a rule or order adopted under chapter 13 of the TWC, if the person charged with the violation fails to timely respond to the notice, the commission by order will assess the recommended penalty or order a hearing to be held on the findings and recommendations in the report. If the commission orders a hearing, the case will then proceed as set forth in paragraphs (1) - (5) of this subsection.

(1) The commission will provide the SOAH administrative law judge a list of issues or areas that must be addressed.

(2) The hearing must be conducted in accordance with the provisions of this chapter and notice of the hearing must be provided in accordance with the Administrative Procedure Act.

(3) The SOAH administrative law judge will promptly issue to the commission a proposal for decision, including findings of fact and conclusions of law, about:

(A) the occurrence of the alleged violation or continuing violation;

(B) whether the alleged violation was cured and was accidental or inadvertent for a violation of any chapter other than PURA chapters 17, 55, or 64; of a commission rule or commission order adopted or issued under those chapters; or of chapter 13 of the TWC; and

(C) the amount of the proposed administrative penalty and, if applicable, disgorged excess revenue.

(4) Based on the SOAH administrative law judge's proposal for decision, the commission may:

(A) determine that a violation or continuing violation has occurred and impose an administrative penalty and, if applicable, disgorged excess revenue;

(B) if applicable, determine that a violation occurred but that, as permitted by subsection (g)(1) of this section, the person remedied the violation within 30 days and proved that the violation was accidental or inadvertent, and that no administrative penalty will be imposed; or

(C) determine that no violation or continuing violation has occurred.

(5) Notice of the commission's order issued under paragraph (4) of this subsection must be provided under the Government Code, chapter 2001 and §22.263 of this title (relating to Final Orders) and must include a statement that the person has a right to judicial review of the order.

(j) Parties to a proceeding. The parties to a proceeding under chapter 15 of PURA relating to administrative penalties or disgorgement of excess revenue will be limited to the person who is alleged to have committed the violation or continuing violation and the commission, including the independent market monitor. This does not apply to a subsequent proceeding under subsection (k) of this section.

(k) Distribution of Disgorged Excess Revenues. Disgorged excess revenues must be remitted to an independent organization, as defined in PURA §39.151. The independent organization must distribute the excess revenue to affected wholesale electric market participants in proportion to their load during the intervals when the violation occurred to be used to reduce costs or fees incurred by retail electric customers. The load of any market participants that are no longer active at the time of the distribution will be removed prior to calculating the load proportions of the affected wholesale electric market participants that are still active. However, if the commission determines other wholesale electric market participants are affected or a different distribution method is appropriate, the commission may direct commission staff to open a subsequent proceeding to address those issues.

(1) No later than 90 days after the disgorged excess revenues are remitted to the independent organization, the monies must be distributed to affected wholesale electric market participants active at the time of distribution, or the independent organization must, by that date, notify the commission of the date by which the funds will be distributed. The independent organization must include with the distributed monies a communication that explains the docket number in which the commission ordered the disgorged excess revenues, an instruction that the monies must be used to reduce costs or fees incurred by retail electric customers, and any other information the commission orders.

(2) The commission may require any affected wholesale electric market participants receiving disgorged funds to demonstrate how the funds were used to reduce the costs or fees incurred by retail electric customers.

(3) Any affected wholesale electric market participant receiving disgorged funds that is affiliated with the person from whom the excess revenue is disgorged must distribute all of the disgorged excess revenues directly to its retail customers and must provide certification under oath to the commission.

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

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Adriana Gonzales
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CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §25.8

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §25.8, relating to Classification System for Violations of Statutes, Rules, and Orders Applicable to Electric Service Providers with no changes to the proposed text as published in the February 2, 2024, issue of the *Texas Register* (49 TexReg 461). The rule is adopted under Project Number 55955. The amended rule partially implements Public Utility Regulatory Act (PURA) §15.023 as revised by House Bill (HB) 1500 during the Texas 88th Regular Legislative Session. Specifically, the amended rule increases the authorized penalty for violations of market power abuse regulations in conjunction with not adhering to an applicable voluntary mitigation plan to be up to $1,000,000 per violation per day. The amended rule also aligns violation definitions across classifications, consolidates violation descriptions, and adds a new description for "special violations." The rule will not be republished.

The commission received comments on the proposed rule from the Steering Committee of Cities served by Oncor and the Texas Coalition for Affordable Power (OCSC and TCAP).

Each of the filed comments was in support of the proposed rule. Specifically, OCSC and TCAP supported applying the $1,000,000 penalty authority to VMP violations, noting the intent of the Legislature to disincentivize market abuse behavior by enacting HB 1500 §7.

The filed comments did not include any suggested modifications to the proposed rule.

The amended rule is adopted under the following provisions of the Public Utility Regulatory Act (PURA): §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; and §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The amended rule is also adopted under §15.023(b-1) which establishes that the penalty for a violation of a provision of a voluntary mitigation plan entered into under PURA §15.023(f) may be in an amount not to exceed $1,000,000 for a violation and that each day a violation continues is a separate violation for purposes of imposing a penalty; PURA §15.023(f) which authorizes the commission and a person to develop and enter into a voluntary mitigation plan relating to a violation of Section 39.157 or rules adopted by the commission under that section only if the plan is in the public interest; and PURA §15.024, which authorizes the commission to impose an administrative penalty when the commission finds that a violation has occurred.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, §15.023(b-1); §15.023(f); §15.024.

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 S. WHOLESALE MARKETS

16 TAC §25.504

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §25.504, relating to Wholesale Market Power in the Electric Reliability Council of Texas Power Region with changes to the proposed text as published in the February 2, 2024, issue of the *Texas Register* (49 TexReg 462). The rule will be republished. The rule is adopted under Project Number 55948. The amended rule will partially implement Public Utility Regulatory Act (PURA) §15.023 as revised by House Bill (HB) 1500 by the 88th Texas Legislature (R.S.). Specifically, the amended rule revises the standards, processes, and timelines under which voluntary mitigation plans are approved, reviewed, and terminated by the commission. The amended rule also clarifies that adherence to a commission-approved voluntary mitigation plan must be considered in a proceeding to determine whether a generation entity engaged in market power abuse and, if so, the appropriate administrative penalty to be assessed for the violation.

The commission received comments on the proposed rule from the Steering Committee of Cities served by Oncor and the Texas Coalition for Affordable Power (OCSC and TCAP); Texas Electric Cooperatives, Inc. (TEC); Texas Competitive Power Advocates (TCPA); and Texas Public Power AssociationDefinition of "wholesale market design change" PURA §15.023(f) requires the commission to review each voluntary mitigation plan to ensure it remains in the public interest 90 days after the implementation of a wholesale market design change. The commission requested comment on whether the proposed rule should define "wholesale market design change" and if so, how the term should be defined.

All commenters recommended the commission define "wholesale market design change" in the adopted rule. OCSC and TCAP recommended the term "wholesale market design change" be defined to provide clarity to VMP applicants and market participants regarding when the commission will review a VMP and cited the 90-day commission review period required by HB 1500, §7. OCSC and TCAP further recommended a sufficiently broad definition be adopted that requires more frequent VMP review by the commission which would include "ancillary service procurement modifications, market product additions and modifications, and system-wide offer cap adjustments."

TEC recommended the commission define "wholesale market design change" only for the limited purpose of §25.504 to avoid confusion with similar terms used by market participants in certain contracts such as operations and maintenance agreements. TEC also recommended that, per PURA §15.023(f), such a definition encompass "(a)ny market design change that could enable an entity to exercise market power abuse" and result in Commission review of VMPs pursuant to statute." Specifically, TEC recommended that the definition of wholesale market design change "include any change that alters administrative pricing or that introduces new or substantially modified ancillary services."

TPPA indicated that it reviewed recent and upcoming wholesale market design changes, including the 2022 market design blueprint, and recommended wholesale market design change be defined as the "addition of a new or material modification of an existing market product or process, a material increase in the amount of ancillary service capacity procured by ERCOT, a change in any system-wide offer cap, or a change in how price adders or ancillary service prices are calculated."

TCPA recommended the commission define "wholesale market design change" and that such a change must be "something" material that has the substantial likelihood to modify wholesale market commercial operations in a substantial way" which could include the offering, award, or compensation of energy, ancillary, or reliability services. TCPA stated that otherwise any NPRR could be construed to be a "wholesale market design change" without further elaboration or context. TCPA also emphasized the importance of issuing a market notice as soon as possible, including ahead of the wholesale market design change. TCPA stated that this is necessary to clearly indicate the date by which the change is considered (to be) in effect and include the date by which the mitigation plans must be reviewed by the commission. TCPA provided draft language to amend proposed §25.504(f)(1) to incorporate a definition of "wholesale market design change consistent with its recommendation.

Commission Response

The commission declines to modify the proposed rule to include "wholesale market design change" as a defined term. Instead, the commission modifies the rule to clarify that in determining

whether a change in a commission or ERCOT regulation constitutes a wholesale market design change for purposes of this section, commission staff and the independent market monitor will consider whether the change could materially increase the ability of a generation entity with an existing voluntary mitigation plan to exercise market power. The commission also modifies the rule to clarify that the commission, on its own motion, may determine that a change in a commission or ERCOT regulation constitutes a wholesale market design change.

As noted by TCPA, any revision of ERCOT's protocols could be considered a wholesale market design change, and as noted by OCSC and TCAP, the term may appropriately apply to a broad range of policy changes, such as ancillary service procurement modifications, market product additions, and system-wide offer cap adjustments. This broad range of possible wholesale market design changes could lead to frequent reviews of voluntary mitigation plans, creating uncertainty for market participants and administrative burdens for the commission, commission staff, and the independent market monitor. The commission also agrees with TEC that the rule should focus on market changes that could enable a generation entity to exercise market power abuse, and that any construal of wholesale market design change should be limited in its application to this section.

The adopted rule addresses these stakeholder concerns by including a wide range of possible change types - any change in a commission or ERCOT regulation - but only requiring a VMP review when a change has the potential to materially increase market power abuse. The rule also, appropriately, entrusts the primary responsibility of determining when a change as the potential to materially increase market power abuse with commission staff and the independent market monitor. Under PURA §39.1515(a), the independent market monitor is specifically charged with "detect(ing) and prevent(ing) market manipulation strategies" and provid(ing) independent analysis of any material changes proposed to the wholesale market." Further, allowing commission staff to initiate VMP reviews without formal commission action is consistent with the limited 90-day statutory deadline for completing these reviews.

The commission declines to require the issuance of a market notice when it initiates a review of voluntary mitigation plans in response to a wholesale market design change, as requested by TCPA. Instead, the commission modifies the rule to require commission staff to provide notice to each generation entity with an existing plan when that entity's plan is under review. This notice must be provided no later than the date commission staff files its recommendation on whether the voluntary mitigation plan remains in the public interest. In most cases, commission staff will be in contact with an affected generation entity sooner than this required date, but as noted by TCPA, a voluntary mitigation plan can be terminated by the commission or the generation entity with only a few days' notice. Requiring a significant period of advanced notice for a mere review of a plan would be inconsistent with allowing these short-notice terminations.

However, the commission also modifies the rule to clarify that commission staff may, if it has already made its determination, indicate whether a proposed change in a commission or ERCOT regulation is a wholesale market design change for purposes of this section with its filings addressing that proposed change. For example, commission staff may signal an upcoming wholesale market design change in its memo addressing a proposed revision to the ERCOT protocols or in its memo recommending approval of an adoption order in a commission rulemaking.

Proposed §25.504(c) - Exemption based on installed generation capacity Under existing §25.504(c), a single generation entity that controls less than five percent of the installed generation capacity in ERCOT, is deemed not to have ERCOT-wide market power. This provision is commonly referred to as the "small fish exemption." OCSC and TCAP recommended the commission remove the small fish exemption under proposed §25.504(c) because the exemption is "obsolete and no longer necessary due to recent market mechanisms including the nodal market and Operating Reserve Demand Curve." OCSC and TCAP remarked that the provision is based on the incorrect assumption that generators that control less than 5% of installed ERCOT generation capacity do not possess market power and therefore needlessly exposes consumers to abusive market behavior.

Commission Response

The commission declines to remove §25.504(c) from the rule, as recommended by OCSC and TCAP. Modifications to this provision were not noticed in the proposal for publication and are, therefore, beyond the scope of this rulemaking proceeding.

Proposed §25.504(e) - Voluntary mitigation plan Proposed §25.504(e) provides that any generation entity may submit to the commission a mitigation plan relating to compliance with §25.503(g)(7), relating to Oversight of Wholesale Market Participants, or PURA §39.157.

Proposed §25.504(e) also requires that a commission-approved voluntary mitigation plan be considered in a proceeding to determine whether the generation entity violated PURA 439.157 or §25.503(g)(7) and, if so, the amount of the administrative penalty to be assessed for the violation. OCSC and TCAP agreed that a VMP, by itself, should not constitute an absolute defense against market abuse allegations. OSAC and TCAP supported the proposed rule providing the commission with discretion to assess VMP compliance and the associated administrative penalty from a variety of factors including the severity of the violation, history of previous violations, and any efforts to correct the violation. Commission Response. The commission declines to modify the proposed rule in response to these comments, because no modifications were requested.

Proposed §25.504(e)(2) and (3) - Amendment or termination of voluntary mitigation plan. Proposed §25.504(e)(2) states that a generation entity or commission staff may apply to amend or terminate a voluntary mitigation plan that applies to the generation entity.

Proposed §25.504(e)(3) limits the parties to a proceeding related to the approval or amendment of a voluntary mitigation plan to the generation entity applying for the mitigation plan, commission staff, and the independent market monitor. TCPA opposed the proposed requirement for a generation entity to "apply to amend or terminate" its VMP because it is inconsistent with historical practice and is not supported by statute. TCPA explained that if a generator is required to apply and wait for action by the commission to terminate its VMP, then such a plan is no longer "voluntary." TCPA recommended that the rule be revised to ensure a generator may terminate such a plan upon notice to the Commission of its intent to terminate and the date on which the termination becomes effective" which is the same termination right the commission possesses under the proposed rule. TCPA also recommended that the requirement to provide notice of an intent to terminate should also include an administrative step ensuring public notice of the generator's decision. TCPA provided draft language consistent with its recommendation.

Commission Response

The commission agrees with TCPA that a generation entity should be able to terminate its VMP unilaterally after providing notice of the termination to the commission and modifies the rule accordingly. Specifically, the commission modifies the rule to require the generation entity to provide notice to the executive director or executive director's designee and file a notice of termination with the commission three working days prior to the effective termination date. This three-day notice period is in line with historical practice and consistent with the provisions of existing plans. Additionally, the commission further modifies the rule to allow the generation entity or executive director to withdraw a notice of termination at any point before the effective date of the termination.

The amended rule is adopted under the following provisions of the Public Utility Regulatory Act (PURA): §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002, which authorizes the commission to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction. The amended rule is also adopted under §39.154 which, after the introduction of customer choice, prohibits a power generation company from owning or controlling more than 20 percent of the installed generation capacity located in, or is capable of delivering electricity to, a power region; and §39.157 which requires the commission to monitor market power associated with the generation, transmission, distribution, and sale of electricity in the State of Texas and authorizes the commission to require reasonable mitigation of the market power.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 39.154, and 39.157

§25.504. Wholesale Market Power in the Electric Reliability Council of Texas Power Region.

(a) Application. This section applies to all generation entities in the Electric Reliability Council of Texas (ERCOT). This section defines the term "market power," as that term is used in §25.503 of this title (relating to Oversight of Wholesale Market Participants).

(b) Definitions. The following terms, when used in this section, shall have the following meanings, unless the context or specific language of a section indicates otherwise:

(1) Generation entity--An entity that controls a generation resource. An entity affiliated with a generation entity shall be considered part of that generation entity.

(2) Market power--The ability to control prices or exclude competition in a relevant market.

(3) Market power abuse--Practices by persons possessing market power that are unreasonably discriminatory or tend to unreasonably restrict, impair, or reduce the level of competition, including practices that tie unregulated products or services to regulated products or services or unreasonably discriminate in the provision of regulated services. Market power abuses include predatory pricing, withholding of production, precluding entry, and collusion.

(c) Exemption based on installed generation capacity. A single generation entity that controls less than 5% of the installed generation capacity in ERCOT, as the term "installed generation capacity" is defined in §25.5 of this title (relating to Definitions), excluding uncontrollable renewable resources, is deemed not to have ERCOT-wide market power. Controlling 5% or more of the installed generation capacity in ERCOT does not, of itself, mean that a generating entity has market power.

(d) Withholding of production. Prices offered by a generation entity with market power may be a factor in determining whether the entity has withheld production. A generation entity with market power that prices its services substantially above its marginal cost may be found to be withholding production; offering prices that are not substantially above marginal cost does not constitute withholding of production.

(e) Voluntary mitigation plan. Any generation entity may submit to the commission a voluntary mitigation plan relating to compliance with §25.503(g)(7) of this title or with the Public Utility Regulatory Act (PURA) §39.157(a). Adherence to a commission-approved voluntary mitigation plan must be considered in a proceeding to determine whether the generation entity violated PURA §39.157 or §25.503(g)(7) of this title and, if so, the amount of the administrative penalty to be assessed for the violation.

(1) The commission will approve the voluntary mitigation plan only if it finds that the plan is in the public interest.

(2) A generation entity or commission staff may apply to amend a voluntary mitigation plan that applies to the generation entity.

(3) The parties to a proceeding related to the approval or amendment of a voluntary mitigation plan are limited to the generation entity applying for the mitigation plan, commission staff, and the independent market monitor.

(4) Termination of voluntary mitigation plan.

(A) The commission, on its own motion, may terminate, in whole or in part, a voluntary mitigation plan approved under this subsection. The executive director or the executive director's designee may also terminate a voluntary mitigation plan, in whole or in part, under the following conditions:

(i) The executive director or the executive director's designee must determine that continuation of the plan is no longer in the public interest.

(ii) The executive director or the executive director's designee must provide notice of the termination to the applicable generation entity and file a notice of termination in the same control number in which the plan was approved at least three working days prior to the effective date of the termination. The executive director or the executive director's designee may withdraw the notice of termination at any point prior to the effective date of the termination.

(iii) The commission must affirm or set aside the executive director or the executive director's designee's termination of a voluntary mitigation plan as soon as practicable after the effective date of the termination.

(B) A generation entity with a commission-approved voluntary mitigation plan may terminate the plan. The generation entity must provide the executive director or executive director's designee notice of the termination and file a notice of termination in the same control number in which the plan was approved at least three working days prior to the effective date of the termination. The generation entity may withdraw its notice of termination at any point prior to the effective date of the termination.

(f) Review of voluntary mitigation plans.

(1) The commission will review each effective voluntary mitigation plan adopted under subsection (e) of this section to determine whether the plan remains in the public interest at least once every two years and not later than 90 days after the implementation date of

a wholesale market design change. Commission staff, in consultation with the independent market monitor, will determine when a wholesale market design change requiring the review of voluntary mitigation plans has occurred.

(A) In determining whether a change in a commission or ERCOT regulation constitutes a wholesale market design change for purposes of this subsection, commission staff and the independent market monitor must consider whether the change could materially increase the ability of a generation entity with an existing voluntary mitigation plan to exercise market power.

(B) If, at the time a proposed change in a commission or ERCOT regulation is being considered for approval by the commission, commission staff has determined that the proposed change would, if implemented, constitute a wholesale market design change, commission staff may include its determination in a filing addressing the proposed change (e.g. as part of a staff memo recommending commission approval of a change in the ERCOT protocols).

(C) Commission staff must provide notice, using a reasonable method of notice, to a generation entity with an existing voluntary mitigation plan when its voluntary mitigation plan is under review. This notice must be provided no later than the date commission staff files its recommendation under paragraph (2) of this subsection.

(D) Nothing in this paragraph prevents the commission, on its own motion, from determining that a change in a commission or ERCOT regulation constitutes a wholesale market design change for purposes of this subsection and directing commission staff, in consultation with the independent market monitor, to provide a recommendation on whether each existing voluntary mitigation plan remains in the public interest.

(2) At least 40 days prior to a deadline established by paragraph (1) of this subsection, commission staff must file a recommendation and draft order addressing whether each voluntary mitigation plan remains in the public interest. Commission staff's recommendation must include the date of the deadline established by paragraph (1) of this subsection and, if applicable, the details and implementation date of the applicable wholesale market design change. As part of its recommendation, for each voluntary mitigation plan adopted prior to September 1, 2023, commission staff must also address whether the plan complies with PURA §15.023(f) and this section.

(3) If the commission determines that all or a part of the plan is no longer in the public interest, the commission will terminate any part of the plan that it determines is no longer in the public interest. The generation entity may propose an amended plan for the commission's consideration.

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

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16 TAC §25.511

The Public Utility Commission of Texas (commission) adopts new 16 Texas Administrative Code (TAC) §25.511, relating to the Texas Energy Fund (TEF) Completion Bonus Grant Program. The commission adopts this rule with changes to the proposed text as published in the December 15, 2023, issue of the *Texas Register* (48 TexReg 7272). The rule will be republished. New §25.511 implements Public Utility Regulatory Act (PURA) §34.0105 and §34.0106, enacted as part of Senate Bill (SB) 2627 during the 88th Texas Legislature (R.S.). The new rule will establish procedures for applying for a completion bonus grant award and terms for each annual grant payment. The new rule also specifies performance standards that an electric generating facility must achieve to obtain a completion bonus grant payment. The rule is adopted in Project No. 55812.

The commission received comments on the proposed rule from Calpine Corporation (Calpine), Drax Group, Electric Reliability Council of Texas Inc. (ERCOT), Golden Spread Electric Cooperative Inc. (Golden Spread), Grid Resilience in Texas (GRIT), Hunt Energy Network LLC (HEN), Lower Colorado River Authority (LCRA), LS Power Development LLC (LSP), NRG Energy Inc. (NRG), Sierra Club, Targa Resources LLC (Targa), Texas Competitive Power Advocates (TCPA), Texas Electric Cooperatives Inc. (TEC), Texas Public Power Association (TPPA), Texas Industrial Energy Consumers (TIEC), USA Compression Partners LLC (USA Compression), Vistra Corp. (Vistra), and WattBridge Texas LLC (WattBridge).

Note on Definition of Entities

The following terms are used in this order. "Applicant" refers to the entity applying to the Completion Bonus Grant Program under §25.511. "Eligible applicant" refers to an entity whose application to the completion bonus grant program has been approved and that is eligible to receive a completion bonus grant, subject to performance in each of the ten successive years following its interconnection date. "Corporate sponsor" refers to the corporate parent entity of an applicant. Use of this term accommodates a scenario in which a project-specific corporate entity is established to own a newly built facility after the grant application process. If a project entity is formed just prior to the grant application process and therefore lacks history, the credit and experience of the corporate sponsor may be considered. "TEF administrator" refers to the individuals responsible for administering the TEF programs. The term may apply to commission staff or to a contractor hired to assist with certain program functions. The specific duties and responsibilities of any contractor hired to assist with the administration of the TEF programs are defined by the terms of the commission's contract with that entity, which will be publicly available on the commission's website. Decisions of the TEF administrator are subject to the oversight of the commission.

Duties of TEF Administrator and Commission Staff

The commission will evaluate applications for TEF funding with the assistance of commission staff and the contractor hired to perform duties assigned to the commission's TEF administrator. The contractor will be responsible for assessing each application for completeness and providing commission staff with recommendations for funding according to the requirements of PURA §§34.0105 and 34.0106 and the evaluation criteria listed in §25.511. Commission staff will review the contractor's recommendations and provide recommendations for approval to the commission. The commission will approve an application in consideration of these recommendations, the statutory requirements, and the criteria listed in §25.511.

Performance Reliability Factor (PRF)

The North American Electric Reliability Corporation (NERC) Generating Availability Data System (GADS)-based data necessary to calculate the proposed equivalent availability factor (EAF) presents challenges in computing performance. Specifically, the statute requires that each eligible facility's performance be measured annually against the median and optimal performance of a reference group of similar facilities. Using NERC GADS data would result in delays in payment because this data is proprietary, and the data available from NERC GADS may not be in the appropriate format to allow the commission or ERCOT to measure facilities' performance uniformly or at the level of detail required by the statute. The adopted rule instead uses a new metric, the performance reliability factor (PRF), that is based on ERCOT data.

Public Comments

The commission invited interested parties to address three questions related to eligibility requirements of the proposed rule.

1. Should the rule require registration as a power generation company (PGC) with the commission as a condition for eligibility to receive a completion bonus grant award? Why or why not?

Sierra Club suggested requiring registration as a PGC as a condition for eligibility to receive a completion bonus grant award.

WattBridge, HEN, Drax Group, NRG, LSP, and TCPA suggested requiring registration as a PGC prior to completion bonus grant disbursement but were against requiring registration at the time of application for a completion bonus grant award.

HEN, NRG, LSP, Calpine and TCPA suggested registration should be completed by the commercial operations date (COD) per §25.109, relating to Registration by Power Generation Companies and Self-Generators, and timeframes of the ERCOT protocols, and continuously maintained for eligibility.

TEC, GRIT, Targa, and LCRA opposed the requirement to register as a PGC, because this would exclude municipally owned electric utilities (MOUs) and cooperatives. LCRA commented that it would also exclude river authorities. TPPA supported the requirement to register so long as MOUs and cooperatives are excluded from the requirement. Targa did not oppose a PGC registration requirement if the commission desires applicants for the completion bonus grant program to be subject to the regulatory requirements for PGCs. GRIT stated that SB 2627 does not include such a requirement and applying it now would potentially discriminate against certain generating facilities without regard for the facilities' potential contributions to the reliable provision of service to the ERCOT region.

TIEC suggested that registration need not be addressed in the rules because any completion bonus grant recipient would be required to register prior to generating energy as required by PURA and commission rules.

Commission Response

The commission agrees with commenters that recommended requiring an applicant to register as a PGC prior to receiving a completion bonus grant payment. PURA §39.351 requires an entity to register as a PGC prior to generating electricity in the ERCOT region. Therefore, it is appropriate to require PGC registration for awarded entities. A requirement of registration as a condition of application would be premature, given that a proposed project may not ultimately be approved for a grant.

The commission also agrees with comments concluding that requiring an applicant to register as a PGC would exclude MOUs, electric cooperatives, and river authorities. The commission does not intend such a result.

Therefore, the commission modifies the rule to include the registration requirement with an exception for those three types of entities.

2. Should the rule require registration as a Generation Resource (GR) with ERCOT as a condition for eligibility to receive a completion bonus grant award? Why or why not?

Sierra Club, Vistra, LCRA, and TPPA agreed with requiring GR registration as a condition for eligibility to receive a completion bonus grant award. WattBridge, TEC, HEN, Drax Group, NRG, LSP, TCPA, GRIT, and Targa disagreed with requiring registration as a GR with ERCOT at the time of application. Calpine, WattBridge, HEN, NRG, LSP, and TCPA suggested that registration timeline requirements should be consistent with existing ERCOT protocols. Drax Group commented that the completion bonus grant recipient would ultimately register with ERCOT as a GR but suggested that such registration should not be a condition to receive a completion bonus grant. Targa did not oppose a GR registration requirement if the commission intends to make grantees subject to ERCOT's resource requirements. However, Targa commented that the commission should recognize that a GR that serves critical natural gas infrastructure may need to remain available to serve co-located critical load during an energy emergency, consistent with existing requirements, House Bill (HB) 3648, and SB 3.

GRIT opposed the requirement for GR registration with ERCOT as a condition for eligibility and commented that it is improperly narrow given the much broader eligibility criteria in the statute. GRIT suggested that resources that are registered as Settlement Only Distribution Generators (SODGs), Private Use Networks (PUNs) with dispatchable generation, or GRs with ERCOT all should be eligible to receive a completion bonus grant under the TEF program.

TIEC suggested that a registration requirement is unnecessary because all generators are required to register before commercial operation begins. TIEC also commented that self-generators should not be eligible because they cannot apply as a GR.

Commission Response

The commission agrees with Sierra Club, Vistra, and TPPA, who recommended requiring GR registration with ERCOT as a condition for eligibility to receive a completion bonus grant award. The commission also agrees with the commenters who recommended that the registration timeline should be consistent with existing ERCOT protocols. The commission disagrees that all SODGs and PUNs with dispatchable generation should be eligible to receive a completion bonus grant.

For a generation facility to provide energy and ancillary services to the ERCOT system, be available for reliability unit commitment, and make energy offers, the resources in a facility must be registered with ERCOT as GRs. Because PURA §34.0104(a) and §34.0106(b)(1) describe grant-eligible projects as both dispatchable and primarily in service of the ERCOT system, the most appropriate ERCOT asset registration type is GR. Therefore, to receive a completion bonus grant, a facility must register its resources as GRs in the normal course of the ERCOT commissioning process. The commission amends subsection (d) of the rule to include this requirement.

3. How should the commission evaluate PURA §34.0106(b)'s prohibition against providing a completion bonus grant award to an electric generating facility that will be used primarily to serve an industrial load or PUN?

TIEC recommended that eligibility of a "facility" under PURA §34.0106 should be determined by comparing the industrial site's net dependable capacity of generation to the maximum non-coincident peak (NCP) demand of the co-located load. TIEC suggested that any new, excess capacity of 100 MW or more should be eligible participation in the TEF programs on a pro-rata basis.

Drax Group and LCRA commented that serving additional load behind the meter should not preclude eligibility for the completion bonus grant provided that the 100 MW capacity requirement for ERCOT is met.

GRIT recommended allowing proposals for excess dispatchable generation capacity within PUNs and resources behind an industrial customer's meter to participate in the completion bonus grant program, provided that the dispatchable generation is primarily available for delivery to the ERCOT grid. GRIT also supported TIEC's comments filed under Project No. 54999, in advance of the September 21, 2023, workshop, which stated that there are large industrial companies that are considering building on-site dispatchable generating facilities and may oversize those facilities if the excess capacity were eligible for the completion bonus grant.

Sierra Club commented that the commission should focus primarily on resources intended to serve the ERCOT wholesale market and not to allow taxpayer funds to be used for PUNs or industrial load facilities that, for the most part, are intended to self-provide energy to industrial loads.

TEC commented that it does not oppose the funding of facilities that have a split usage between the bulk power system and private use. TEC recommended that the commission require that any entity submitting a completion bonus grant application for a facility that will serve a PUN or industrial load provide supporting documentation as to how the facility will support the ERCOT grid.

TCPA submitted comments on behalf of TCPA, NRG, and LSP. TCPA recommended that the commission interpret the language to mean that TEF program funds should not be used to subsidize private, behind the meter generation.

TPPA did not oppose split usage facilities being eligible for the completion bonus grant but recommended that the commission develop factors for evaluation. TPPA provided a non-exhaustive list of seven factors to evaluate.

Calpine recommended the commission give preference to applicants whose new capacity will not be part of an industrial load or a PUN. Calpine remarked that the commission should typically not consider applicants who are or will be part of an industrial load or PUN because these generators do not primarily participate in the wholesale market.

Calpine commented that for a generator serving industrial load or within a PUN to qualify, it must always have 100 MW of capacity available for ERCOT wholesale markets, according to PURA §34.0104(a). However, Calpine argued that this requirement is not typically met by most PUN arrangements in ERCOT because excess capacity is mainly used for contingency reserves to prevent interruption to industrial steam and power loads during turbine outages.

Calpine commented that allowing industrial load or PUN generation in the eligible pool of applicants potentially increases administrative costs and tasks to ensure the generation project is truly separated from the host load such that the load does not benefit from public funding and to ensure that the generation is primarily available for the ERCOT market. Calpine suggested an exception for facilities that export full capacity to ERCOT but is also party to an "offtake" agreement with an industrial load or is located behind a common meter with an industrial load.

Targa requested clarification on whether a facility may be eligible if the facility has 100 MW of nameplate capacity that either serves critical gas suppliers or critical customers or provides excess energy generation to the grid.

Commission Response

The adopted rule's definition of "primarily" improves precision and alignment with the goals outlined in PURA §34.0105 and the approach to "primarily" in §25.510.

The adopted rule requires a facility that serves an industrial load or PUN to provide less than 50 percent of the facility's total nameplate capacity to the industrial load or PUN, and the remaining facility capacity serving the ERCOT market must be greater than 100 MW. This requirement aligns the rule's eligibility criteria with the commission's goal to promote the development of dispatchable generation and increased generating capacity for the ERCOT grid. PURA §34.0105(b) states that the amount of a completion bonus grant must be based on the MW of capacity provided to the ERCOT power region by the facility, and this requirement is reflected in subsection (c) of the adopted rule.

To determine whether an electric generating facility will be used primarily to serve an industrial load or PUN, the adopted rule relies upon a calculation of excess dispatchable capacity. The portion of the nameplate capacity that will be expected to serve the industrial load or PUN must be less than 50 percent of the facility's total nameplate capacity. This determination will be based on a comparison between the total nameplate capacity of the new facility and the maximum non-coincident peak (NCP) demand of the associated industrial load or PUN. For example, a 300 MW co-located facility that serves a 140 MW NCP demand has dedicated 160 MW to the ERCOT region and will be deemed to primarily serve the ERCOT region. However, a 300 MW co-located facility that serves a 160 MW NCP demand and dedicates 140 MW to the ERCOT region will be considered to primarily serve the associated industrial load or PUN. In addition, the combined total nameplate capacity of a new facility will be evaluated, not just the capacity dedicated to ERCOT, and it must provide greater than 100 MW to the ERCOT region. Accordingly, the entire facility must not primarily serve an industrial load or PUN. The commission declines to adopt additional factors as recommended by TPPA because the two factors provide a clear and replicable calculation that determines eligibility.

In response to Targa's request for clarification, whether capacity is used to serve critical gas suppliers or critical customers is not a factor in determining if a facility primarily serves an industrial load or PUN.

3.a. Should the commission prescribe a percentage of total energy output that an electric generating facility must achieve to be eligible for a completion bonus grant award? If so, what percentage should the commission prescribe?

Vistra recommended that a simple majority (greater than 50 percent) threshold would be insufficient and suggested increasing

the threshold. Vistra also recommended completion bonus grant award amounts awarded to facilities serving an industrial load or PUN be discounted on a pro rata basis.

Sierra Club recommended that to the extent funding is available, at least 50.1 percent of the energy from a PUN or industrial load should be intended for the ERCOT wholesale electricity market and that the commission should only consider the part of the generation serving the larger market when awarding completion bonus grants.

TCPA recommended that if the commission is to permit PUNs to qualify for the TEF programs it should prescribe a percentage of no less than 51 percent of total facility net output in the ERCOT wholesale market to be eligible for the completion bonus grant. NRG and LSP joined the comments of TCPA.

GRIT, LCRA, and TIEC recommended that the threshold should be a minimum of 100 MW of new capacity dedicated to serving and participating in the ERCOT wholesale market. Additionally, LCRA suggested this in conjunction with (1) requiring appropriate facility configurations, and (2) metering schemes at the outset and an affidavit from the applicant committing that no less than 100 MW of capacity will be dedicated to serving the grid. LCRA commented that the 100 MW of capacity requirement minimum avoids needless complexity and the policing of meter data during a historical look-back period to determine whether the energy output of the facility met the statutory requirements. GRIT recommended that, if percentage of output is used, an eligibility threshold of greater than 90 percent of the total potential annual energy output from the electric generating facility must be supplied to the ERCOT grid via dispatchable load reduction or export.

TPPA provided seven factors for evaluating the eligibility of split usage facilities. One of the factors provided was the percentage of total nameplate capacity that would be expected to serve the load of the PUN at any time, as well as under seasonal net capacities for peak load seasons. Similarly, TEC recommended that the commission develop factors for evaluation, including but not limited to the percent of time power flows to ERCOT, ERCOT's functional control of the facility, regular use of the unit, and percentage of output used by ERCOT versus the industrial load or PUN. TEC did not recommend a specific qualifying threshold.

Commission Response

The eligibility threshold for a project will be measured by nameplate capacity, rather than energy output. Whether a given facility is dispatched can be outside a generation entity's control and could affect the amount of its energy output that is exported to the grid. Therefore, it is appropriate to rely on nameplate capacity rather than energy output measured over a period of time as a criterion for project eligibility. The commission declines to adopt additional factors as recommended by TPPA and TEC because the single factor provides a clear and replicable calculation that determines eligibility.

3.b. Should the commission employ another method to ensure that an electric generating facility primarily serves the ERCOT grid? If so, what method is appropriate and why?

TEC recommended that the commission develop factors for evaluation, including but not limited to ERCOT's functional control of the facility and regular use of the unit.

TCPA recommended that the commission use North American Electric Reliability Corporation (NERC) Generating Availability Data System (GADS) definitions for "availability," based on Equivalent Unplanned Outage Factor (EUOF), and that performance should be calculated on a rolling average of at least 12 months as opposed to hourly. TCPA commented that the commission should specify a methodology that does not allow a facility to allocate less equivalent outage hours to the portion of the facility serving ERCOT load.

TPPA recommended that prior to each grant payment over the 10-year period, the commission should review 1) an annual affidavit from the industrial load or PUN as to its activities in the ERCOT wholesale market, and 2) an independent analysis of facility market offering behaviors. TPPA also recommended that the rule include clawback provisions for facilities whose market behaviors did not align with the description in the initial application.

Commission Response

The commission clarifies the references to "primarily" in subsections (c) and (d) to better align with PURA §34.0105.

An electric generating facility that will serve an industrial load or a PUN is eligible to apply for a completion bonus grant if it fulfills the eligibility conditions described under subsection(c). Specifically, the combined total nameplate capacity of a new facility will be evaluated for purposes of determining if it primarily serves an industrial load or a PUN, as part of the eligibility determination. Whether the entire facility primarily serves an industrial load or PUN will be based on a comparison between the nameplate capacity of the new facility and the maximum NCP demand of the associated industrial load or PUN. However, for purposes of determining the completion bonus grant amount, for an electric generating facility that will not provide its entire nameplate capacity exclusively to the ERCOT region, only the capacity that exclusively serves the ERCOT region will be considered and will be awarded accordingly. The commission modifies subsections (c) and (e) of the rule accordingly.

The commission disagrees with TEC's recommendation for the rule to require calculation of factors using ERCOT performance data. Whether a facility that will serve an industrial load or PUN is primarily serving that load is based on the comparison described above. The commission declines to implement TCPA's recommendations to use NERC GADS' definition of availability and to evaluate performance over a rolling 12-month performance year. The completion bonus grant payment will be based on a facility's PRF and ARF during the assessed hours, as defined in subsection (b) of the rule. "Assessed hours" is defined as the 100 hours with the least quantity of operating reserves, as defined by the highest values of peak net load, where peak net load is calculated as gross load minus wind, solar, and storage injection.

The commission disagrees that it is necessary to further detail the procedures determining grant payments, as recommended by TPPA. The adopted rule has sufficient guidance in subsection (f) of the rule, which will govern specific procedures.

General Comments

Prohibition of Completion Bonus Grant for Backup Power Facilities

TPPA recommended an express exclusion of a completion bonus grant for a backup power package facility. Specifically, such facilities would be used to isolate a facility from the grid for at least 48 continuous hours and must be 2.5 megawatts (MW) or less of load and therefore would be inconsistent with the eligibility criteria for receipt of a completion bonus grant.

Commission Response

The commission declines to modify the rule as recommended by TPPA to explicitly prohibit backup power packages from receiving completion bonus grants. Backup power packages are ineligible for completion bonus grants. Completion bonus grants only apply to facilities providing at least 100 MW of capacity for the ERCOT grid, while Texas Backup Power Packages will only provide a maximum of 2.5 MW of generation capacity.

Proposed Ineligibility for Performance Bonus During Environmental Noncompliance

Sierra Club recommended that facilities that are in substantial noncompliance with environmental permits should not be eligible for a performance bonus for any year in which they are in substantial noncompliance.

Commission Response

The commission declines to modify the rule to include compliance with environmental permits as an annual eligibility criterion for receipt of a grant as recommended by Sierra Club. The commission does not have access to data verifying compliance with environmental permits, and such compliance is unrelated to a facility's availability during the assessed hours, which is what PURA §34.0105 and the proposed rule require.

Fund Allocation Across TEF Programs

LSP recommended that the rule explicitly require the fund administrator to "earmark and set aside funds sufficient to cover known grant payment obligations through the entire distribution period" to incentivize developers to make incremental investments for reliability purposes.

Commission Response

The commission declines to amend the rule to require that funds be earmarked to cover grant payment obligations through the entire disbursement period because it is unnecessary. The commission and the Texas Treasury Safekeeping Trust Company will monitor future award payments and other TEF obligations as they occur under PURA §34.0107(b) and (g).

Request for Guidance on Allocation of State Funds for TEF Programs

TPPA requested guidance from the commission as to how the $7.2 billion of state funds allocated for the TEF will be divided between the generation loan and completion bonus grant programs. TPPA also requested that the commission provide guidance as to how the larger $10 billion of appropriations, of which $1.8 billion is for the Backup Power Package program and another $1 billion is for grants to non-ERCOT entities, will be assigned among all programs given that only $5 billion was allocated by the 88th Legislature. Specifically, TPPA requested information on whether the limited biennium allocation would impact award amounts between the different programs.

Commission Response

The commission declines to specify how the TEF funds will be specifically allocated across programs, as requested by TPPA. PURA Chapter 34 provides independent eligibility and evaluation criteria for each TEF program. While PURA §34.0106(e)(2) allocates an aggregated maximum of $7.2 billion from the TEF to both the In-ERCOT Generation Loan Program and completion bonus grant programs, applicants, or projects for each of the two programs need not be related and cannot be known in advance. Each TEF program is independent with respect to eligibility and evaluation criteria. Therefore, it is unnecessary to modify the rule to refer to other TEF programs.

Specific allocations for the completion bonus grant and the In-ERCOT Generation Loan Program cannot be determined in advance. The distinct characteristics and financial implications of each program, including differences in potential loan sizes, disbursement periods, and repayment expectations, complicate preset funding distributions. Furthermore, the varying timelines-loans spanning 20 years with a 2025 deadline to start disbursements and grants spanning ten years available until 2029-render impracticable the concept of establishing fixed allocations before receiving any applications.

Public Reporting

Sierra Club recommended that a provision be added to the rule that would require the commission to create an Interchange project where public information on any project application for a completion bonus grant award will be made available. Sierra Club also recommended another provision be added that would require the commission to create a quarterly report on any applications received or any grants approved or denied, to keep policymakers and the public informed as to whether the program will successfully incentivize the new construction of dispatchable generation.

TPPA requested clarification on whether filings required under §25.511(d)(4) and §25.511(d)(2) will be considered confidential and not subject to disclosure under Chapter 552 of the Texas Government Code.

Commission Response

The commission declines to add a provision to the rule to require public filings in addition to those already part of proposed §25.511, as recommended by Sierra Club. Under proposed §25.511(d)(3), information as part of applications for completion bonus grants is confidential and not subject to disclosure under Chapter 552 of the Texas Government code. However, proposed subsection (d)(4) requires the submission of a separate statement that will not be treated as confidential. Commission filings giving applicants a notice of eligibility will also not be confidential.

The commission may require public reporting on the TEF at open meetings, but any such specific requirement is beyond the scope of this rulemaking.

Proposed §25.511(b)(1)-Definition of "Commercial Operations Date"

Proposed §25.511(b)(1) defines "commercial operations date" as the date on which the electric generating facility completes ERCOT's commissioning process and is approved for participation in the ERCOT market, as identified by ERCOT in the applicable monthly generator interconnection status (GIS) report.

WattBridge recommended inserting "under Part 3 approval" to the definition of "commercial operations date" to accurately capture the date the grant payment request and performance standard is dependent upon. WattBridge commented that "system checks and testing occur between Part 2 and 3 approvals and therefore referencing Part 3 approval in the definition is the appropriate commercial operations date for the performance standard."

Conversely, HEN commented that the defined term "commercial operations date" is ambiguous and should be revised to reference Part 2 of the ERCOT New Generator Commission-

ing Checklist. HEN commented that the phrase "approved for participation in the ERCOT market" in the proposed definition of "commercial operations date" coupled with the reference to the monthly interconnection status report is ambiguous. Specifically, the proposed definition suggests that a generator must wait until the monthly report is issued before it can demonstrate is has met the commercial operations milestone. HEN commented that referencing Part 2 of the ERCOT checklist would be a clear, preferable alternative to the current language because, upon receiving approval for Part 2, a generation resource is synchronized to the grid and can begin to schedule energy. HEN further commented that it is standard practice in loan agreements to link the definition of "commercial operation date" with receiving Part 2 Checklist approval.

Vistra recommended "commercial operations date" be revised to not solely rely on the ERCOT GIS report because that report shows both projected and actual commercial operations dates and could therefore introduce ambiguity.

TPPA and Calpine recommended the proposed definition of "commercial operations date" under §25.511(b)(1) be revised to be made consistent with the same definition in §25.510, the proposed loan program rule. TPPA added that the definition should also be consistent with the ERCOT Protocols.

Commission Response

The commission modifies the rule to remove the term "COD" from the rule and replace it with "interconnection date," which is defined as "the resource commissioning date, as defined in the ERCOT protocols, for the last generation resource in an electric generating facility for which an applicant seeks a completion bonus grant award. The new electric generating facility or new generation resources at an existing electric generating facility must meet the eligibility criteria described in subsection (c) of this section." The resource commissioning date represents the conclusion of the commissioning process and indicates a GR's fully interconnected status with the ERCOT power region. In addition, the meaning of "interconnection date" in §25.510 is the resource commissioning date, and this meaning will remain consistent across rules related to the suite of Texas Energy Fund programs. Alignment of the COD and interconnection date simplifies and streamlines the rule by removing duplicative terminology.

In addition, the added definition of "interconnection date" allows for construction of new generation resources at an existing electric generating facility. The commission interprets PURA §34.0105 to allow for the construction of new generation resources, even if they will be added to an existing electric generating facility, because the overall intent of the Texas Energy Fund is to increase the availability of reliable, dispatchable electricity in the ERCOT power region. The commission makes other conforming modifications throughout the rule to allow for new generation resources at existing electric generating facilities to be eligible for completion bonus grants.

Proposed §25.511(b)(2)-Definition of "Performance Year"

Proposed §25.511(b)(2) defines "performance year" as the one-year period that ends on an electric generating facility' s most recent anniversary of its commercial operations date.

LCRA and Calpine both commented that the "performance year" should not be tied to a facility's commercial operation date. Calpine further argued that tying the performance year to the facility's COD would create different performance periods for each grant recipient, which could be burdensome to account for and track. LCRA recommended the definition of "performance year" be revised to a uniform lookback period comprised of a rolling twelve months beginning from the date the commission begins awarding completion bonus grants until the expiration of the program. LCRA commented that, as proposed, the definition of "performance year" could result in a facility that began commercial operations prior to a weather emergency being evaluated under a completely different 100-hour compliance period than a facility that became commercially operational only a few days later. LCRA also commented that SB 2627 only requires that grant disbursements be provided on the first anniversary of the commercial operations date of a facility, but that requirement does not extend to the performance standards. LCRA further commented that the commission has authority under PURA §34.0105(i) to determine the performance year. As an alternative, LCRA proposed "performance year" be defined on a calendar year basis. Specifically, a generator could be required to operate for a full performance year to be eligible for a grant award or have its performance evaluated during only the portion of the 100 hours when the facility is commercially operational.

Commission Response

The commission agrees with LCRA and Calpine that defining the performance year in reference to the COD could result in different measurement hours and increase the computational and data requirements. Having a common performance year, rather than one based on COD, will result in simpler and faster calculations. For this reason, the commission modifies subsection (b) of the rule to delete the definition of "performance year." Rather than including a definition for "performance year," the commission modifies subsection (d) of the rule to state that an eligible facility's performance will be measured against the test period for ten successive test periods, beginning in the first test period following each facility's or new GRs' interconnection date. The commission also modifies the rule to add a definition for "test period": the one-year (12-month) period from June 1 to May 31, to align with the June 1 date used in PURA §§34.0105(c)(2), 34.0105(f)(1), and 34.0105(f)(2). This test period will contain the 100 hours with the least quantity of operating reserves. For ease of administration, the commission also adds a definition for "assessed hours" to mean the 100 hours with the least quantity of operating reserves.

Proposed §25.511(b)-Definitions

Proposed §25.511(b) defines certain terms used in the rule.

TIEC recommended the terms "EAF," "median EAF," and "test period" be defined. Vistra recommended the term "equivalent unplanned outage factor" be defined.

Commission Response

The EAF metric used in the proposed rule relies on confidential NERC GADS data that is not readily available to ERCOT or the commission, and has been replaced in the adopted rule by a new metric, the PRF. Therefore, the recommendation to define EAF-related terms is moot. The commission adds a definition for the term "test period" to subsection (b) as described above.

HEN recommended defining the terms "interconnected" as the date on which a new generator has received approval from ERCOT of Part 1 of the new generator commissioning checklist and offered a definition of "new generator commissioning checklist" to accompany the definition of "interconnected."

Commission Response

The commission declines to define "interconnected" as the date on which a new generator has received approval from ERCOT of Part 1 of the new generator commissioning checklist as recommended by HEN. The meaning of "interconnection" in §25.510 is the resource commissioning date, and this meaning will remain consistent across rules related to the suite of Texas Energy Fund programs. Further, the resource commissioning date represents the conclusion of the commissioning process and indicates a generation resource's fully interconnected status with the ERCOT power region. Accordingly, the commission adds a definition of "interconnection date" as described above.

The commission also declines to define "new generator commissioning checklist" because this term is not used in the rule.

TIEC recommended a new definition for the term "electric generating facility" to specify an entire generation unit or specific portions of a generation unit's capacity such that co-located generation facilities may be eligible for a completion bonus grant.

Commission Response

The commission declines to define "electric generating facility" in the rule because the term is defined in §25.5.

The commission modifies subsection (c) of the rule to clarify that, to be eligible, an electric generating facility must consist of one or more GRs physically capable of interconnecting to the ERCOT power region through a single point of interconnection.

Proposed §25.511(b) and §25.511(e)(1)-Definition of "Capacity" and Completion Bonus Grant Award Amount

Proposed §25.511(b) defines terms used in the rule language. Proposed §25.511(e)(1) specifies the maximum completion bonus grant amount that the commission is allowed to award eligible applicants based on the capacity and interconnection date of the facility.

HEN recommended that capacity measurement be defined in the rule based on nameplate capacity because that is the measurement used in the ERCOT interconnection process. HEN commented that defining the term is essential for determining the bonus payment under proposed §25.511(e)(1)(A) and (B) and the term can be defined in different ways, such as nameplate capacity or summer net dependable capacity.

Alternatively, Calpine recommended that "capacity" under proposed §25.511(e)(1) be measured as a generating facility's High Sustained Limit (HSL). Specifically, "as the generating facility's average [HSL] or expected average HSL, following construction completion" and not as a facility's installed capacity. Calpine commented that the HSL is a capacity value that describes the maximum sustained energy production capability of the facility, but the installed capacity rating only measures a generating unit's maximum power. Calpine recommended the HSL as a more suitable measure for the completion bonus grant award amount because it is "the maximum sustained energy production capability of the facility," and therefore is most accurately reflective of actual generation capability.

Commission Response

The commission disagrees with Calpine's recommendation to measure capacity as a generating facility's HSL because HSL is subject to change and less readily identified early in the development process. Instead, the commission modifies the rule to use the term "nameplate capacity" throughout, where it is called for; therefore, a definition for the term "capacity," as suggested by HEN and Calpine, is unnecessary.

Proposed §25.511(b), §25.511(e)(1), and §25.511(e)(1)(A) Interconnection Date and Completion Bonus Grant Award Amount

Proposed §25.511(b) defines terms used in the rule language. Proposed §25.511(e)(1) specifies the maximum completion bonus grant amount that the commission is allowed to award eligible applicants based on the capacity and interconnection date of the facility. Proposed §25.511(e)(1)(A) states an award amount may not exceed $120,000 per MW of capacity for an electric generating facility that is interconnected to the ERCOT region before June 1, 2026.

WattBridge and Calpine both recommended that "interconnection date" reference Part 1 of the ERCOT new generator commissioning checklist approval because that stage in the ERCOT commissioning process is "the first instance of a generation project connecting to the ERCOT grid and back feeding power."

HEN recommended that the term "interconnected" be defined as it is critical to determining if completion bonus grant eligibility requirements have been met. HEN recommended adding a definition for "interconnected" in section (b) of the rules and defining it as the date on or after which the generator receives ERCOT's approval of a Part 1, Request for Energization per the ERCOT new generator commissioning checklist.

Commission Response

The commission declines to modify the rule to reference Part 1 of the ERCOT new generator commissioning checklist to define interconnection, as recommended by WattBridge, Calpine, and HEN. As described above, the commission defines "interconnection date" to align with the resource commissioning date as defined in the ERCOT protocols. The resource commissioning date represents the conclusion of the commissioning process and indicates a generation resource's fully interconnected status with the ERCOT power region. This definition also aligns with the commission's use of the term "interconnection date" in §25.510.

"Primarily" Serving ERCOT

Proposed §25.511(c)(6), §25.511(d)(1)(E), and §25.511(f)(2)(E)-Eligibility and Grant Payment Request

Proposed §25.511(c)(6) requires an applicant's electric generating facility to operate in such a manner that the electric generating facility serves a greater output of electricity to the ERCOT bulk power system than it serves to an industrial load or PUN. Proposed §25.511(d)(1)(E) states that the application must include a description of the operational attributes of the electric generating facility, including the manner in which it will serve an associated PUN or industrial load, if any, along with a description of how the electric generating facility primarily serves and benefits the ERCOT bulk power system given its relationship to a PUN or industrial load and whether full generation output would be available to the ERCOT bulk power system during any Energy Emergency Alert. Proposed §25.511(f)(2)(E) describes that the request for completion bonus grant payment for an electric generating facility that also serves a PUN or industrial load must include an accounting showing that the majority of the output of the electric generating facility served the ERCOT bulk power system during the performance year.

Drax Group proposed amending the standard for an electric generating facility to "primarily serves" the ERCOT bulk power sys-

tem." Drax Group argued that the facility should only be required serve at least 100 MW of electricity to the ERCOT bulk power system.

Vistra, TPPA, and GRIT recommended using a higher threshold requirement than a simple majority for the amount of capacity serving the ERCOT power region. Vistra commented that a simple majority eligibility threshold for a facility's output serving the ERCOT grid is insufficient. Specifically, Vistra stated that a 50.1 percent minimum requirement to serve the ERCOT grid does not fulfill the intent of SB 2627 in promoting reliability by investing into new dispatchable generation and recommended a higher threshold be instituted.

TPPA recommended that the "serves a greater output to ERCOT" be significantly enhanced to ensure taxpayer money is being used for the entire ERCOT region's benefit, as opposed to benefiting individual consumers.

GRIT recommended requiring an industrial load or PUN "primarily serve" the ERCOT grid by supplying 90 percent of its total potential annual energy output in order to be eligible. GRIT elaborated, stating that "dispatchable load reduction component of the 90 percent eligibility criteria should be inclusive of run hours in response to ERCOT Emergency Response Service calls, economic runs in response to energy market prices, and run hours in anticipation of ERCOT 4CP periods." GRIT explained that this methodology would ensure that baseload power or islanded backup power would constitute "primary service" to the industrial load or PUN. GRIT also recommended that dispatchable generation within a PUN should be eligible for a completion bonus grant provided "it offers over 100 MW of dispatchable generating capacity to the grid in excess of the capacity reserved to serve the co-located load" to ensure that excess reserve capacity is not used to serve the co-located load.

Conversely, TIEC recommended that §25.511(c)(6) be deleted from the rule because the 50 percent "greater output" energy production threshold for eligibility would disqualify most, if not all, industrial generation facilities from qualifying for TEF loans and completion bonus grants. TIEC asserted that basing the eligibility threshold on energy production rather than capacity contradicts the intent of the TEF, which aims to support excess capacity primarily used during periods of high demand. TIEC explained that generators serving industrial loads typically produce a much higher ratio of energy relative to their total capacity compared to sales of energy to the grid.

Commission Response

The commission modifies subsection (c) of the rule such that an electrical generation facility that is also serving an industrial load or PUN must provide more than 100 MW of nameplate capacity and greater than 50 percent of its nameplate capacity to the ERCOT region to qualify for a completion bonus grant. This modification is consistent with PURA §34.0105(c)(1), which requires eligible facilities to have a generation capacity of at least 100 MW. It is also consistent with PURA §34.0105(c)(1), which states that the commission may not provide a completion bonus grant for a facility that will be used primarily to serve an industrial load or PUN. The commission interpreted "a facility that will be used primarily to serve an industrial load or private use network" as a facility that uses 50 percent or more of its total capacity for an industrial load or PUN in its adoption order for §25.510.

The commission agrees with TIEC that the eligibility threshold for participation of facilities serving PUNs or industrial load should be based on capacity rather than actual load served. However, the commission disagrees with comments recommending a higher or lower threshold for "primarily serves" because the meaning will remain consistent across rules related to the suite of TEF programs. Similarly, the commission also declines to adopt TIEC's recommendation that any incremental capacity above the NCP demand should be considered eligible for completion bonus grants because this recommendation is inconsistent with the commission's interpretation of the phrase "primarily serves."

Targa proposed modifications to §25.511(c)(6), §25.511(d)(1)(E), and §25.511(f)(2)(E) of the proposed regulations, aimed at expanding eligibility criteria for electric generating facilities to include those providing electricity to critical natural gas facilities during energy emergencies, as per Tex. Util. Code §38.074 and associated regulations. Targa argued that such changes would serve the public interest by enhancing reliability for critical natural gas facilities which are crucial for grid reliability, especially in areas with generation and transmission constraints.

Additionally, Targa contended that PURA §34.0106(b) lacks clarity in defining when an electric generating facility "primarily" serves an industrial load or PUN. The company commented that the commission could designate such facilities as eligible for a completion bonus grant, citing PURA §34.0104(c)(3) and general principles of statutory interpretation.

Commission Response

The commission declines to adopt Targa's recommendation to expand eligibility criteria for electric generating facilities that provide electricity to critical natural gas facilities. PURA §34.0106 does not indicate any differentiation or special allowance for facilities that provide service to critical natural gas facilities. Likewise, there is no statutory provision authorizing a completion bonus grant for facilities that primarily serve industrial loads if those loads are critical natural gas facilities.

Proposed §25.511(b) and §25.511(c)-Eligibility and Definitions

Proposed §25.511(c) outlines the requirements to which an applicant's electric generating facility must adhere. Proposed §25.511(b) defines specific terms used in the rule.

TIEC recommended that pro-rata shares of generation units should be eligible for a completion bonus grant because facilities with co-located industrial load may be intentionally oversized to sell excess generation at wholesale in the ERCOT market. TIEC advised that the proposed rule should promote such co-located generation configurations to utilize economics of scale and encourage the development of dispatchable generation. As mentioned above, TIEC recommended additional rule language to the define "electric generating facility" consistent with its recommendations.

Further, TIEC recommended revisions to the determination of generating capacity eligibility for completion bonuses, aligning with the prohibition outlined in PURA §34.0106. TIEC proposed that eligibility should be determined "by comparing the net dependable capacity of generation at an industrial site to the maximum NCP demand of the co-located load" and that any new generation facilities with an excess capacity of 100 MW or more should also be eligible on a pro-rata basis. TIEC also commented that the proposed rule's method of determining whether a generator "primarily serves" an industrial load or PUN "be based on the percentage of energy output exported to the grid versus the energy that is consumed on-site" is flawed, and

that revising eligibility in this manner would enable industrial customers to leverage economies of scale by oversizing generation capacity relative to on-site load and providing excess capacity to the grid, thereby enhancing reliability during periods of peak energy consumption. TIEC concluded that the critical factor for eligibility should be the amount of capacity from a generator, rather than energy exported to the grid. Additionally, TIEC asserted that the allocation of a greater share of capacity to load should not affect eligibility as long as a minimum of 100 MW is dedicated to serving the ERCOT grid because such capacity would qualify for TEF loans or grants as a standalone generator.

Commission Response

The commission declines to define electric generating facility to include pro rata shares of generation resources co-located with industrial loads, as recommended by TIEC. The program does allow co-located generation facilities to receive a completion bonus grant, but the rule requires the facility to provide more than 100 MW and more than 50 percent of the nameplate capacity to the ERCOT region. "Electric generating facility" is defined in 16 TAC §25.5, and subsection (c) of the proposed rule is modified to state that, to be eligible, the electric generating facility must consist of one or more generation resources physically capable of interconnecting to the ERCOT region through a single point of interconnection to be eligible for a completion bonus grant.

The commission declines to determine eligibility for completion bonus grants based on comparing net dependable capacity to the maximum NCP of co-located loads, as recommended by TIEC. The approach proposed by TIEC applies only to excess capacity and would not conform to the criteria described earlier for eligibility of facilities that serve an industrial load or PUN.

Proposed §25.511(d)(2)(B), §25.511(f)(2)(C-D), and §25.511(h)(1)(D)- Determination of Eligibility for Grant, Grant Payment Request, Discount of Payment

Proposed §25.511(d)(2)(B) states a notice of eligibility will authorize an applicant to request and obtain data from ERCOT showing the electric generating facility's EAF performance during the 100 hours with the least quantity of operating reserves during a performance year. A notice of eligibility will automatically expire 45 days after the tenth anniversary of the electric generating facility's commercial operations date. Proposed §25.511(f)(2) describes the information required when submitting a request for grant payment. Proposed §25.511(h)(1)(D) adds a new section discounting facilities serving an industrial load or PUN on a pro-rata basis.

Vistra provided comments suggesting that completion bonus grants issued to facilities serving industrial loads or PUNs should be discounted on a pro-rata basis, similar to facilities falling below optimal performance standards. Vistra argued that facilities serving industrial loads or PUNs are akin to generators with sub-optimal performance as only a portion of their output capacity serves the grid. Vistra recommended the addition of a new section, §25.511(d)(1)(D), to implement this suggestion.

Vistra and NRG proposed redlines for sections §25.511(f)(2)(C) and §25.511(f)(2)(D) to eliminate references to EAF. NRG recommended replacing EAF with "availability factor" in various places throughout the rule and suggested that EAF would not be a factor in determining the completion bonus grant payment amount and performance record for an electric generating facility. Vistra also proposed redline for §25.511(d)(2)(B) and §25.511(f)(2)(E), suggesting adjustments to the notice of eligibility ERCOT data request provision, striking "equipment availability factor (EAF)" and adding "EUOF" and noting that information relevant to a determination under their new (h)(1)(D), detailed below, was relevant to this data request.

Vista recommended redline for a new section, §25.511(h)(1)(D), stating the following: "(D) The commission will further reduce a [completion bonus] grant payment to a facility that serves a PUN or industrial load by multiplying the grant payment by the ratio between the MW-hours the facility served the ERCOT grid during the completion bonus grant award payment year and the total number of MW-hours the facility produced in that year."

Commission Response

The commission declines Vistra's proposed modification to discount completion bonus grant payments on a pro-rata basis for facilities serving industrial loads or PUNs. The criteria described previously for eligibility of facilities that serve industrial loads or PUNs satisfy PURA §34.0105(b) and §34.0106(b)(1). Vistra's proposed treatment for facilities that serve an industrial load or PUN does not conform to the statutory requirements and does not align with PURA §34.0105(i), which relates to discounting grant disbursements based on performance during the assessed hours rather than service to industrial loads or PUNs.

The commission addresses NRG's and Vistra's recommendation by replacing the EAF with the PRF, a performance standard metric based on ERCOT real-time telemetered and current operating plan (COP) data. The PRF is defined at in subsection (b) of the adopted rule.

Dispatchable Electric Generation vs Electric Generating Facility

Proposed §25.511(c)(1)(A-B), §25.511(c)(2), and §25.511(d)(1)(D)-Eligibility, Determination of Eligibility for Grant

Proposed §25.511(c)(1) describes the requirements for an applicant's electric generating facility to be eligible for an award. Proposed §25.511(c)(2) states an electric generating facility must be a dispatchable electric generating facility with an output that can be controlled primarily by forces under human control that is not an electric energy storage facility. Proposed §25.511(d)(1)(D) states an application must contain a record of the applicant's history of electric generation operations in this state, including information demonstrating the applicant's prior experience with operating and maintaining dispatchable electric generating facilities.

TPPA recommended maintaining consistency in the use of the term "dispatchable electric generating facility" throughout several sections of the proposed regulations, specifically in §25.511(c)(1)(A-B), §25.511(c)(2), and §25.511(d)(1)(D). TPPA commented that there appears to be no significant distinction between the terms "dispatchable electric generating facility" and "electric generating facility" used elsewhere in the rule. Additionally, TPPA highlighted that the term "electric generating facility" is already defined by §25.5(36) and could potentially encompass electric energy storage facilities.

Commission Response

The commission declines to provide further definition of "dispatchable electric generating facility" in response to TPPA's comment. The eligibility requirements in PURA and the rule specifically require facilities to be dispatchable to participate in the program, and subsection (d) specifies that an applicant's prior experience with operating and maintaining dispatchable electric

generating facilities must be included in the application. Further, subsection (c) explicitly excludes electric energy storage facilities from participating in the program. Thus, revisions to the rule are not necessary.

Eligibility Criteria

Proposed §25.511(c)-Eligibility

Proposed §25.511(c) describes the requirements an applicant's electric generating facility must abide by to be eligible for a completion bonus grant award.

HEN and Golden Spread both filed comments focused on the independent treatment of applications to both the Loans for the ERCOT Power Region program and the Completion Bonus Grant program. HEN recommended that the rule explicitly state that receipt of a loan from the TEF Loans for ERCOT Power Region program is not a requirement for eligibility to receive a completion bonus grant. HEN stated that given the proposed language is silent on this issue, there may be confusion as to the eligibility requirements for completion bonus grants. HEN explained that PURA §34.0105 does not require completion bonus grants to be limited to entities that also received loan awards under PURA §34.0104. Similarly, Golden Spread commented that, to encourage participation in TEF programs, an entity's eligibility or application in one TEF program should not adversely affect an entity's eligibility in another TEF program.

Alternatively, GRIT recommended that an applicant that meets the in-service deadlines for the TEF loans for ERCOT Power Region program under proposed §25.510 also be eligible for completion bonus grant under proposed §25.511.

Commission Response

The commission declines to modify the proposed rule to refer to an applicant's eligibility for other TEF programs as recommended by HEN, GRIT, and Golden Spread. PURA Chapter 34 provides independent eligibility and evaluation criteria for each TEF program. Although PURA §34.0106(e)(2) allocates an aggregated maximum of $7.2 billion from the TEF to both the Loans for ERCOT Power Region and Completion Bonus Grant programs, to support a combined maximum of 10,000 additional MW, the statute is silent on whether participation in one TEF program affects eligibility for another TEF program. For these reasons, the commission interprets PURA Chapter 34 not to impose any restrictions for interested entities who wish to participate in either, or both, the loan or completion bonus grant program. Therefore, it is unnecessary to modify proposed §25.511 to refer to an applicant's eligibility for other TEF programs.

TPPA recommended that compliance with the Lone Star Infrastructure Protection Act (LSIPA), codified under Texas Business and Commerce Code §117.002, should be a requirement for eligibility of a completion bonus grant because of the prohibition on interconnecting of facilities out of compliance with LSIPA.

Commission Response

The commission adds a provision to subsection (c) to explicitly require compliance with the LSIPA, as recommended by TPPA. The modification will also align with similar requirements in §25.510.

TPPA recommended the commission authorize MOUs to be eligible for funding because such entities may be interested in applying and their inclusion would provide "dispatchable electric generation capacity operated by credible, experienced utilities.' TPPA highlighted concerns regarding potential exclusion due to registration requirements as a power generation company.

Commission Response

The commission declines TPPA's recommendation to explicitly authorize MOUs to participate in the completion bonus grants program. PURA §34.0105 does not exclude MOUs and cooperatives from participation, rendering explicit inclusion unnecessary. However, the commission modifies subsection (d) of the rule to add an exception to registration with the commission as a power generation company for MOUs, electric cooperatives, and river authorities.

Proposed §25.511(c)(1)-Eligibility

Proposed §25.511(c)(1) describes the requirements for an electric generating facility to be eligible for an award.

TPPA recommended proposed §25.511(c)(1) be revised to explicitly require the 100 MW of dispatchable generation to originate from new facilities. TPPA explained that, under the proposed language, a facility could be eligible if enough generation was added at an existing site, such as adding one MW of new generation to an existing site of 99 MW. TPPA stated that such an outcome is inconsistent with plain language and intent of the statute. As an alternative, TPPA recommended that the 100 MW eligibility standard from the loan program rule under proposed §25.510 could be duplicated in proposed §25.511. TPPA also recommended that the commission clarify that the term "capacity,' as used in proposed §25.511(c)(1) is the facility's nameplate rating, as defined in §25.5(72), and does not have another meaning, such as a facility's summer or winter net dependable capability.

Conversely, Calpine recommended that new generating facilities that would increase the total capacity of existing dispatchable generation resources by at least 100 MW should be eligible for a completion bonus grant. Calpine recommended the commission specifically denote that such facilities are eligible because of the intent of SB 2627 to incentivize the construction of additional dispatchable capacity.

Commission Response

The commission agrees with TPPA and Calpine that a completion bonus grant should be available for the construction of new generation at existing electric generation facility sites so long as the new construction results in at least 100 MW of capacity. The commission modifies subsection (c) to allow both construction of a new electric generating facility and construction of new GRs at an existing electric generating facility to be eligible for a completion bonus grant. The commission makes additional conforming modifications to the rule to reflect this change in eligibility.

Golden Spread advised that existing facilities that serve a non-ERCOT interconnection should be eligible for completion bonus grants if the existing facility newly interconnects to ERCOT. Golden Spread requested modification to the language to recognize that switchable resources may not always provide power to the ERCOT grid during the term of a completion bonus grant.

Commission Response

The commission declines to modify the rule as requested by Golden Spread. Switchable facilities that are newly built and meet the requirements in proposed §25.511 are eligible to apply for completion bonus grants; no modifications to the rule are necessary to accommodate their eligibility. However, a new in-

terconnection at an existing facility that does not require new construction would not meet eligibility requirements.

USA Compression requested clarification on the eligibility of distributed generation for a completion bonus grant. USA Compression recommended that the electronic application allow for an applicant to list certain information such as the discrete names, operational attributes, construction schedules, and commercial operations dates of each of the applicant's generating facilities.

Commission Response

The commission agrees with USA Compression that applicants should be allowed to submit information for each generating facility in the application. The commission will provide applicants a web-based portal for electronic submission of application information, and the system will be capable of receiving and tracking a wide range of input data, data types, and formats. As USA Compression's comments relate to distributed generation, the commission does not agree that distributed generation is eligible if aggregation of capacity across separate facilities is needed to meet the 100 MW capacity requirement. No modifications to the rule are necessary.

Proposed §25.511(c)(1), §25.511(c)(1)(A-B), and §25.511(c)(5)-Eligibility

See proposed §25.511(c)(1) in the section above. Proposed §25.511(c)(5) states an applicant's electric generating facility must meet the planning model requirements necessary to be included in an ERCOT capacity, demand, and reserves report for the ERCOT region after June 1, 2023.

Vistra recommended the term "new" be omitted from proposed §25.511(c)(1)(A) and (B) as it introduces uncertainty as to what projects are eligible for a completion bonus grant and is inconsistent with statute. Vistra commented that PURA §34.0105(a) already limits the grants only to "facilities that were not included in ERCOT's Capacity, Demand, and Reserves Report (CDR) before June 1, 2023" and provides no other time-based metric for eligibility.

Commission Response

The commission declines to modify the rule to remove the use of "new" as recommended by Vistra. The commission agrees with Vistra that the restriction related to the ERCOT CDR report requires new construction but disagrees that the use of "new" in the rule introduces uncertainty. The commission also modifies the rule to clarify that new construction of GRs at an existing electric generating facility is also eligible for a completion bonus grant.

Proposed §25.511(c)(2)-Eligibility Criteria for Dispatchable Electric Generating Facilities

Proposed §25.511(c)(2) states an electric generating facility must be a dispatchable electric generating facility with an output that can be controlled primarily by forces under human control that is not an electric energy storage facility.

Sierra Club commented that, while the statutory prohibition on electric energy storage facilities being eligible for completion bonus grants is clear, the mere presence of electric energy storage at a facility does not disqualify the facility from the program. Sierra Club explained that any electricity produced by the electric energy storage could be determined to be ineligible by default and excluded from a completion bonus grant application without affecting facilities that would otherwise be eligible.

Sierra Club suggested that the prohibition on electric energy storage should not extend to thermal energy storage such as geothermal or hydrogen plants because they are "energy storage facilities" not "electric energy storage facilities."

TPPA requested clarification as to the term "electric energy storage facility" as used in proposed §25.511(c)(2) because facilities are ineligible for the program and the term is undefined. TPPA also remarked that it is ambiguous whether an "electric energy storage facility" is the same as an "energy storage resource" which is used in other commission rules such as §25.55(b)(1), relating to Weather Emergency Preparedness.

Commission Response

The commission declines Sierra Club's proposed modification to the rule relating to thermal energy storage facilities not being an "electric energy storage facility." Energy storage, regardless of the underlying technology, is not dispatchable generation. Consequently, with respect to the TEF program eligibility requirements, the commission does not consider the output from storage as capacity for the facility. However, the existence of energy storage associated with an electric generating facility does not, by itself, affect the eligibility for a completion bonus grant.

With respect to energy storage more broadly, the commission notes that the TEF completion bonus grants are directed to "dispatchable electric generating facilities"--not energy storage. Accordingly, to the extent that a dispatchable electric generating facility is configured to store some of its energy output, such storage is outside the scope of this rule. Energy storage that is part of an electric generating facility would not itself disqualify the facility, but the storage would also not enhance or contribute to the capacity of the underlying electric generating facility with respect to a completion bonus grant.

Regarding TPPA's request for clarification, the commission declines to define the term "electric energy storage facility" in this section and clarifies that "electric energy storage facility" and "energy storage resource" are not used synonymously in this section.

Proposed §25.511(c)(3)-Eligibility

Proposed §25.511(c)(3) states an applicant's electric generating facility must interconnect and provide electricity to the ERCOT region.

TPPA recommended proposed §25.511(c)(3) be revised to explicitly limit completion bonus grant eligibility to facilities that only provide power to the ERCOT region, as opposed to switchable facilities that can provide electricity to another ISO or RTO besides the ERCOT power region.

TEC recommended that switchable units should be eligible to receive a completion bonus grant award under the proposed rule if the unit can meet the applicable performance standards, subject to any additional requirements imposed by agreement between the ERCOT power region and another ISO.

Golden Spread commented that the restriction on eligibility under PURA §34.0106(b)(1) does not prevent switchable facilities that can provide electricity to another ISO or RTO besides the ERCOT power region from being eligible for a completion bonus grant. Golden Spread noted that the statutory prohibition only applies to a facility that is used "primarily" to serve an industrial load or PUN.

Commission Response

The commission agrees with Golden Spread that PURA §34.0106(b)(1) does not categorically exclude switchable facilities from eligibility for the TEF completion bonus grant program. However, it is unnecessary to modify the rule; switchable facilities are eligible if they provide generation capacity to the ERCOT region and otherwise meet all other eligibility requirements. Further, switchable facilities are not synonymous with facilities that serve an industrial load or PUN and, therefore, are not subject to the statutory restrictions on those types of facilities.

Proposed §25.511(c)(3) and §25.511(c)(4)-Eligibility

Proposed §25.511(c)(3) states an applicant's electric generating facility must interconnect and provide electricity to the ERCOT region. Proposed §25.511(c)(4) requires an applicant's electric generating facility to participate in the ERCOT wholesale market.

TPPA requested clarification as to whether there is a meaningful distinction between requiring a facility to "interconnect and provide electricity to the ERCOT market" in proposed §25.511(c)(3) and requiring a facility to "participate in the ERCOT wholesale market" in proposed §25.511(c)(4). TPPA recommended merging the provisions to require a dispatchable electric generating facility to "interconnect, produce, and sell electricity in the wholesale power market in ERCOT."

Commission Response

The commission declines to modify the rule to combine the two provisions related to dispatchable facilities, as TPPA recommended. PURA §34.0106(d) states that each facility that receives a completion bonus grant must participate in the ERCOT wholesale electricity market, and PURA §34.0105(f) requires facilities to be interconnected in the ERCOT power region by certain dates to be eligible to receive a completion bonus grant. The intent of the program is to not only interconnect with the ERCOT power region, but to provide capacity to and participate in the ERCOT market. Thus, facilities need to both "interconnect and provide electricity to the ERCOT region" and "participate in the ERCOT wholesale market." However, the commission modifies the rule for other reasons to eliminate the provision "interconnect and provide electricity to the ERCOT region." This provision is now accounted for in (c)(1), which requires that any new GR "interconnect to and provide power for the ERCOT region."

USA Compression filed comments discussing the benefits of distributed generation and whether it should be eligible for a completion bonus grant. Specifically, USA Compression interpreted the proposed §25.511(c)(1) as allowing the aggregation of distributed energy resources.

Commission Response

The commission declines to amend the rule to allow entities that aggregate electric generating facilities across multiple locations to apply for TEF completion bonus grant funding, as recommended by USA Compression. To be eligible for a TEF completion bonus grant, a project must consist of new GRs, whether at a new electric generating facility or an existing facility, and install at least 100 MW in nameplate capacity that is physically capable of operating behind a single point of interconnection.

Proposed §25.511(c)(1)(A)-Eligibility

Proposed §25.511(c)(1)(A) states an applicant's electric generating facility must have a capacity of at least 100 MW attributable to the construction of new dispatchable electric generating facilities providing power for the ERCOT region.

GRIT recommended that portfolios of distribution-interconnected generators between 2.5 and 100 MW be eligible for a completion bonus grant if such generators are aggregated. GRIT commented that there is no reason to allow aggregation of transmission-interconnected facilities but not distributed generation facilities. GRIT stated that authorizing such aggregation would enhance resiliency, reliability, affordability, and congestion in urban areas.

Commission Response

The commission declines to permit distributed generation eligibility on an aggregated basis per GRIT's recommendation. PURA §34.015(c) states that construction of a new facility is eligible only if the facility has a generation capacity of at least 100 MW. An eligible facility must consist of one or more GRs physically capable of interconnecting to the ERCOT power region through a single point of interconnection, as required by (c)(5) of the adopted rule. Consequently, GRs operating within an individual facility must be physically capable of delivering energy from a single point of interconnection and must meet the 100 MW minimum capacity requirement to qualify for a completion bonus grant.

Proposed §25.511(c)(7) and §25.511(d)(1)(F)-Eligibility, Determination of Eligibility for Grant

Proposed §25.511(c)(7) states an applicant's electric generating facility must meet the interconnection deadlines. Proposed §25.511(d)(1)(F) states that an eligibility application must include a description of the electric generating facility's ability to address regional and reliability needs. Vistra recommended requiring applicants to register as a "generation entity" because this will ensure the commission's weatherization rules at §25.55 apply.

Commission Response

The commission agrees with Vistra that the registration of the facility's GR with ERCOT would necessitate adherence to the weather preparation requirements of §25.55. However, for added clarity, the commission modifies subsection (c) of the rule to explicitly state the obligation of the electric generating facility qualifying for the TEF completion bonus grant to comply with §25.55.

Proposed §25.511(d)(1)(A) and §25.511(d)(1)(H)(iv)-Determination of Eligibility for Completion Bonus Grant Award

Proposed §25.511(d)(1)(A) requires applicants to provide the applicant's corporate name and the name of the generating facility for which it seeks a completion bonus grant award. Proposed §25.511(d)(1)(H)(iv) requires applicants to provide the name of the electric generating facility on ERCOT's market participant list for electric generating facilities already interconnected to the ERCOT region.

TPPA recommended inserting the word "proposed" before "name of the electric generating facility" in (d)(1)(A) and (d)(1)(H)(iv) to provide flexibility in accounting for facility name changes during the pendency of a completion bonus grant application.

Commission Response

The commission agrees with TPPA and modifies subsection (d) to acknowledge that the name of an electric generating facility may change. However, the commission declines to modify subsection (d)(1)(H)(iv) because the section pertains to facilities already interconnected to the ERCOT region, after which the facility's name is known.

Proposed §25.511(d)(1)(G)(iii) and §25.511(d)(1)(H)(i)-Construction Costs

Proposed §25.511(d)(1)(G)(iii) states that applications must include the estimated construction costs of the electric generating facility for facilities not yet interconnected to the ERCOT power region. Proposed §25.511(d)(1)(H)(i) states that applications must include the actual new construction costs of the electric generating facility for facilities already interconnected to the ERCOT power region.

Calpine recommended removing (d)(1)(G)(iii), which requires an eligibility application to include the estimated construction costs of an electric generating facility not yet interconnected to the ERCOT region. Calpine also recommended removing (d)(1)(H)(i), which requires an eligibility application to include the actual construction costs of an electric generating facility already interconnected to the ERCOT region. Calpine noted that SB 2627 neither states nor implies that a generator's eligibility to receive a completion bonus grant is related to the total amount of costs estimated or incurred. Calpine commented that, unlike for the Loans for ERCOT Power Region program, a grant recipient is not required by statute to "independently fund any portion of the generator's construction costs to be eligible for a completion bonus grant." Calpine also noted that by the time an applicant requests funding under the grant program, the generator will have achieved commercial operations and that construction costs will therefore already have been incurred and paid.

Commission Response

The commission declines to modify the rule to eliminate costs from the eligibility application as recommended by Calpine. PURA §34.0105(d)(2) directs the commission to evaluate an application based on "the generation capacity and estimated construction costs of the facility."

Proposed §25.511(e)(1)(A)-Completion Bonus Grant Award Amount

Proposed §25.511(e)(1)(A) states an award amount may not exceed $120,000 per MW of capacity for an electric generating facility that is interconnected to the ERCOT region before June 1, 2026.

Sierra Club recommended that taxpayer money should not be used to provide completion bonus grants to facilities already in operation when the TEF constitutional amendment was approved. Sierra Club recommended adding language to §25.511(e)(1)(A) that would set the day after voter approval [November 7, 2023] as the earliest date of eligibility.

Commission Response

The commission declines Sierra Club's request to modify the rule to include a date of eligibility. PURA §34.0105(c)(2) expressly prohibits facilities that met the planning model requirements necessary to be included in the CDR before June 1, 2023. Projects that did not meet these CDR requirements before June 1, 2023, are eligible to apply for a completion bonus grant.

Eligibility Application

Proposed §25.511(d)(1)(G) and §25.511(d)(1)(H)-Application Requirements

Proposed §25.511(d)(1)(G) states the application requirements that are specific to electric generating facilities that are not yet interconnected to the ERCOT region. Proposed §25.511(d)(1)(H) states the application requirements that are specific to electric generating facilities that are already interconnected to the ERCOT region.

HEN and TPPA recommended removing (d)(1)(G) from the rule because it applies to generators that have not yet interconnected to the ERCOT region. HEN explained that, per the statutory language of PURA §34.0105(f), a key precondition to eligibility for completion bonus grants is meeting target interconnection dates. Therefore, only generators that have achieved interconnection should be eligible for a completion bonus grant. TPPA stated that because the provision applies to facilities that have yet to interconnect with the ERCOT region, there is no guarantee that such generators would become operational. Therefore, awarding funds to such projects would divert commission resources from completed projects and reduce funds available for projects that would be beneficial to consumers.

Commission Response

The commission disagrees with HEN and TPPA's recommendation to remove (d)(1)(G). PURA §34.0105(f) limits the amount of an award based on when an electric generation facility interconnects but does not limit the time at which an applicant may apply. PURA §34.0105(h) directs payments of a completion bonus grant award to begin on the first anniversary of COD, but the notice of eligibility for a completion bonus grant will precede initial payment, and this notice is not prohibited from occurring before the COD.

Determining that an entity with a project that is not yet interconnected to the ERCOT region is eligible to receive completion bonus grants does not necessarily divert or reduce resources because the mere notice of eligibility for a completion bonus grant does not equate with making payments. An electric generating facility is potentially eligible for a completion bonus grant if it interconnects in the ERCOT power region before June 1, 2029, and there is no statutory requirement for such an electric generating facility to wait until it is interconnected in the ERCOT power region to apply for a completion bonus grant. An applicant can file an application at any time beginning January 1, 2025, up to 180 days after the facility's interconnection date. Facilities must interconnect prior to June 1, 2029, to be eligible for the program, unless the commission determines that extenuating circumstances merit an extension of this deadline. Applications will be accepted according to the requirements in subsection (d) of the adopted rule or until program funding, the statutory budget, or MW limit outlined in PURA §§34.0104(d) and 34.0106(e)(2) has been reached.

Proposed §25.511(d)(1)-Eligibility Application

Proposed §25.511(d)(1) states that an applicant must submit an application for a completion bonus grant no later than 180 days after the commercial operations date of the electric generating facility for which the completion bonus grant is requested.

NRG recommended revising §25.511(d)(1) to allow applicants not yet interconnected to the ERCOT power region to submit a contingent notice of eligibility for a completion bonus grant beginning on June 1, 2024. NRG stated that this allows applicants also seeking a TEF loan to factor potential grant payments into their financial projections. NRG recommended the notice of eligibility and amount of the grant be conditioned upon the applicant filing supplemental documentation upon interconnection to demonstrate the date of interconnection and capacity interconnected.

Commission Response

The commission declines to modify the rule to allow for submission of a contingent notice of eligibility, as recommended by NRG. An electric generating facility is not required to be interconnected in the ERCOT power region before submitting an application for a completion bonus grant. Any completion bonus grant award or payment would be conditioned on satisfying all requirements, including historical performance. No completion bonus grant payments would be made until after the electric generating facility has interconnected to the ERCOT region and completed its first full test period.

Proposed §25.511(d)(1)(G)(i)-Proposed Project Schedule, Registration Documents, and Anticipated COD

Proposed §25.511(d)(1)(G)(i) states that applications for generating facilities that are not yet interconnected to the ERCOT region must include a proposed project schedule with anticipated dates for completion of construction, submission of registration documents with ERCOT and the commission, and anticipated commercial operations date.

Sierra Club recommended that facilities not yet connected to the ERCOT region be required to include regulatory approvals of any environmental permits in the project schedule required under §25.511(d)(1)(G)(i).

Commission Response

The commission declines Sierra Club's recommendation to modify the rule to include a schedule of regulatory approvals and permits. All regulatory approvals and permits would be in place before an electric generating facility interconnects to the ERCOT region, and no completion bonus grant payments would be made until after the electric generating facility has interconnected and completed its first full test period.

Proposed §25.511(d)(1)-Eligibility Application

Proposed §25.511(d)(1) outlines the requirements for eligibility applications.

Vistra recommended that the rule authorize a corporate parent to submit a completion bonus grant award application on behalf of its subsidiary for efficiency. Vistra explained that at the time of application, the company that will undertake the project may not exist or have sufficient resources, or that a project may not even be economically viable without a completion bonus grant award.

Commission Response

The commission agrees with Vistra and modifies subsection (d) of the rule to authorize a corporate parent to submit an application on behalf of its subsidiary. A corporate parent entity may apply on behalf of a project entity so long as the project entity is the eventual party to the completion bonus grant agreement and provides appropriate evidence confirming it is owned by the parent.

Proposed §25.511(d)(1)(B)-Applicant's Quality of Services and Management

Proposed §25.511(d)(1)(B) states that applications must include information describing the applicant's quality of services and management.

Calpine recommended that the rule provide more specific, objective standards to demonstrate an applicant possesses sufficient quality of service and management for efficiency and to ensure only qualified applicants are considered for a completion bonus grant. Specifically, Calpine advised the commission to consider possible factors based on prior experience operating electric generating facilities, such as an applicant's employees having a minimum number of years of experience in the dispatchable electric generation industry and in firm fuel contract procurement, and applicants disclosing their disciplinary record with ERCOT and the commission. Calpine further recommended that an applicant that does not possess at least ten years of experience should be ineligible to receive a completion bonus grant.

Commission Response

The commission declines to modify the rule regarding specific criteria for quality of services and management, as recommended by Calpine. While the commission agrees that the examples cited by Calpine may be reasonable indicators, the commission disagrees that the rule should list explicit and specific thresholds, such as minimum years of experience. PURA Chapter 34 provides adequate guidance to the commission on the required program eligibility evaluation criteria.

Proposed §25.511(d)(1)(D)-Applicant's History of Electric Generation Operations

Proposed §25.511(d)(1)(D) states an eligibility application must contain a record of the applicant's history of electric generation operations in this state.

TPPA recommended proposed §25.511(d)(1)(D) be revised to also include an applicant's history of electricity generation operations in the United States, rather than be limited to just history of electrical generation operations in the State of Texas. TPPA commented that this change would align the provision with the language of PURA §34.0105(d)(1)(C).

Commission Response

The commission agrees with TPPA's recommendation and modifies subsection (d) to also require an applicant's history of electricity generation operations in this country.

Proposed §25.511(d)(1)(E)-Determination of Eligibility for Grant

Proposed §25.511(d)(1)(E) states that the application must include a description of the operational attributes of the electric generating facility.

USA Compression recommended that proposed §25.511(d)(1)(E) be revised to include "information from applicants regarding the flexibility, ramp rate, and maximum duration of the applicants' electric generating facilities" so that the commission can prioritize "flexible, fast-ramping, multi-hour-duration dispatchable generation projects for completion bonus grants."

Commission Response

The commission declines to modify the rule to require specific additional application information, as recommended by USA Compression. The application form will allow entities to list "operational attributes" of the project, and applicants can choose to submit details, such as those suggested by USA Compression, for consideration. The commission will evaluate applications on a holistic basis.

Vistra requested clarification on the purpose in the application process for requesting whether a facility will be available during any EEA under proposed §25.511(d)(1)(E). Vistra also requested the rule specify whether a facility that is unable to be available during an EEA event will either be disqualified from receiving a completion bonus grant or will receive a prorated grant.

Commission Response

The commission declines to modify the rule to specifically disqualify or prorate a completion bonus grant if a facility declares it will be unavailable during an EEA in its application materials, as suggested by Vistra. The required statement regarding whether a facility will be available during an EEA in subsection (d) relates only to facilities that will serve an industrial load or PUN. The commission modifies subsection (d) to clarify that this provision relates only to those facilities, rather than to all applicants.

Commission Evaluation of Application

Proposed §25.511(c)(5), §25.511(d)(1)(I), and §25.511(d)(2)(A)-Planning Model Requirements and Project Eligibility

Proposed §25.511(c)(5) states that applicants must meet the planning model requirements necessary to be included in an ERCOT capacity, demand, and reserves report for the ERCOT region after June 1, 2023. Proposed §25.511(d)(1)(I) states that an application must include a statement describing when the electric generating facility met the planning model requirements. Proposed §25.511(d)(2)(A) states that the commission will file a notice of eligibility stating the completion bonus grant award amount based on the capacity of the facility and its interconnection date for applicants deemed eligible to receive a completion bonus grant.

NRG recommended revising §25.511(d)(2)(A) to specify the earliest start date for applications to be filed and to require applicants that have not yet interconnected to later submit updated documentation to determine the actual completion bonus grant amount for which the applicant is eligible. NRG commented that the rule only sets a hard deadline for filing of applications (no later than 180 days after COD) but does not state the earliest start date.

NRG proposed modifying §25.511(c)(5) and (d)(1)(I) to recognize that projects might not have yet met eligibility for inclusion in the CDR or have been interconnected when an initial application is submitted.

Commission Response

The commission agrees with the issues raised by NRG related to application start dates before interconnection and modifies subsection (d) of the rule to clarify application and award for projects that have not yet interconnected at the time of application. Applicants may file an application at any time beginning January 1, 2025, up to 180 days after the facility's interconnection date.

The commission agrees with NRG's recommended modification to subsection (c) to align more clearly with PURA §34.0105(c)(2) regarding the ERCOT CDR report and modifies the rule accordingly.

Proposed §25.511(d)(1)(K) and §25.511(e)(1)(A) -Extenuating Circumstances and Completion Bonus Grant Award Amount

Proposed §25.511(d)(1)(K) states that an applicant can provide a statement asserting that extenuating circumstances support the extension of the interconnection dates described in (e)(1). Proposed §25.511(e)(1)(A) states an award amount may not exceed $120,000 per MW of capacity for an electric generating facility that is interconnected to the ERCOT region before June 1, 2026.

WattBridge commented that "extenuating circumstances" should be revised to include delays caused by the commission failing to timely act upon a loan application. WattBridge explained that practical considerations associated with scheduling and implementation of the completion bonus grant program necessitates such language. WattBridge further recommended that §25.511(e)(1)(A) should be revised to account for delays caused by the commission in processing the application. Specifically, WattBridge recommended that if a loan is not awarded within 90 days of submission but is ultimately granted, the June 1, 2026 deadline for the $120/kw completion bonus grant under §25.511(d)(1)(K) should be tolled and extended for each day the commission delays reviewing the application.

Commission Response

The commission declines to modify the rule to account for delays in construction financing, as recommended by WattBridge, because award of a loan is neither a condition precedent nor an eligibility requirement for obtaining a completion bonus grant. The commission will apply a consistent approach to deadlines across all applicants.

Proposed §25.511(d)(2), §25.511(e)(1)(A), and §25.511(f)(4)-Process for Determining Eligibility for Completion Bonus Grant Awards

Proposed §25.511(d)(2) outlines the process by which the commission will determine whether an applicant is eligible for a completion bonus grant and the resulting steps that need to be taken applicants who are determined to be eligible. Proposed §25.511(e)(1)(A) states an award amount may not exceed $120,000 per MW of capacity for an electric generating facility that is interconnected to the ERCOT region before June 1, 2026. Proposed §25.511(f)(4) states that the commission will evaluate a request for grant payment to determine whether an electric generating facility meets the performance standards to receive a grant payment.

TPPA requested that the commission lay out the process by which the commission would review and evaluate an application to determine eligibility. TPPA recommended that section §25.511(d)(2) be expanded to contain additional procedural details, including timelines for the commission review process, entities who would conduct an eligibility review, whether evaluators will be permitted to contact an applicant directly or request additional information or modifications to an application, and the order in which applications will be processed for eligibility.

TPPA requested clarification for §25.511(e)(1) regarding the commission's determination of whether extenuating circumstances justify the extension of certain deadlines and §25.511(f)(4) relating to the commission's evaluation as to whether an eligible application meets the performance standards and should receive a grant payment.

Commission Response

The commission declines to modify the rule to further describe evaluation of applications for completion bonus grants. The rule identifies several categories of information the commission will consider in evaluating applications. The commission will evaluate applicants consistently according to the rule's evaluation criteria.

The commission also declines to modify the rule to describe extenuating circumstances because such circumstances will necessarily be unique to each applicant's situation. Further, the adopted rule describes how an eligible applicant can receive its annual grant payment in subsection (f). The evaluation will be conducted by ERCOT according to the PRF and ARF formulas.

Notice of Eligibility

Proposed §25.511(f)(2)(C)-Grant Payment Request Amount

Proposed §25.511(f)(2)(C) states that an applicant's request for completion bonus grant payment must include the amount of the grant payment requested based on the applicant's notice of eligibility and the electric generating facility's EAF performance rating during the year.

Calpine recommended that proposed §25.511(f)(2)(C) should be revised to state that information submitted in a request for a completion bonus grant payment is confidential and not subject to disclosure under Chapter 552 of the Texas Government Code. Calpine remarked that certain information, such as a facility's EAF, could be sensitive business information.

Commission Response

The commission declines to modify the rule to include a provision for confidentiality of the performance rating as part of the completion bonus grant application, as recommended by Calpine. The calculation of an electric generating facility's annual performance and any associated payment of a completion bonus grant are not an application under this rule. Therefore, this information is not confidential.

Proposed §25.511(d)(2)(A) and §25.511(f)(4)-Applicant Name and Performance Standards

See proposed §25.511(d)(2)(A) in the section above. Proposed §25.511(f)(4) states that the commission will evaluate a request for grant payment to determine whether an electric generating facility meets the performance standards to receive a grant payment.

TEC and Golden Spread recommended that a 60-day timeline on the commission's obligation to issue a notice of eligibility be added to proposed §25.511(d)(2)(A) to provide certainty to applicants for planning of eligible projects. Golden Spread further recommended that the timeline also be applied to §25.511(f)(4).

Commission Response

The commission declines to modify the rule to set a specific timeline for determining eligibility to obtain a completion bonus grant award, as suggested by TEC and Golden Spread. Given the unpredictability of the applicant pool and the eligibility period extending through 2029, the commission opts to maintain its evaluative flexibility for completion bonus grant awards. It should be noted that while each TEF program is distinct, the completion bonus grant program shares a funding cap with the Loans for the ERCOT Power Region program under §25.510, underscoring the commission's intention to retain flexibility in assessing applications across both programs.

However, the commission agrees that prompt administration of grant payments to eligible applicants is an appropriate goal of the completion bonus grant payment program. Accordingly, the commission modifies subsection (f) to incorporate performance calculation, payment notification, and review timelines applicable to the determination of bonus grant payments.

Performance Standards

Proposed §25.511(g), §25.511(d)(2)(B), and §25.511(h)-Performance Standards, Determination of Eligibility for Grant, Grant Payout Discount Formula

Proposed §25.511(g) states that an electric generating facility's performance is based on EAF during the performance year for which an applicant requests a grant payment and EAF is the fraction of a given operating period in which a generating unit is available to produce electricity without any outages or equipment deratings during the 100 hours with the least quantity of operating reserves during a performance year. It also states a grant payment may be discounted based on the formula prescribed subsection (h) of this section. Proposed §25.511(d)(2)(B) states a notice of eligibility will authorize an applicant to request and obtain data from ERCOT showing the electric generating facility's EAF performance during the 100 hours with the least quantity of operating reserves during a performance year. A notice of eligibility will automatically expire 45 days after the tenth anniversary of the electric generating facility's commercial operations date. Proposed §25.511(h) describes specifics of the grant payout discount formula.

HEN and NRG recommended the EAF calculation of 100 hours with the least quantity of operating reserves for generator performance be changed because it is unpredictable and burdensome for the commission or ERCOT to administer. HEN highlighted potential unintended consequences of using this measurement, including how unpredictable high demand or low resource availability periods could cause a generator to fail the performance metric if planned maintenance or large outages coincided. HEN expressed concern about creating a disincentive for generators to perform necessary maintenance to stay available during periods of low operating reserves. To alleviate the administrative burden of identifying and reviewing the 100 hours with the least quantity of operating reserves for each generator, HEN suggested calculating the EAF seasonally and raising the EAF thresholds. As an example, HEN proposed an EAF threshold of 97 percent for full payment and 92 percent for reduced payment during winter and summer, with slightly lower thresholds during spring and fall to account for planned maintenance outages. NRG stated that in the NERC GADS system, EAF is calculated by comparing the actual availability of a resource across all hours in the reporting period against the maximum capability of the resource in that period. Therefore, a resource with 95 percent of its capacity available in a particular operating hour would be considered to have a 95 percent EAF for that hour.

NRG added that any ERCOT-approved planned outage hours should be excluded when calculating performance. NRG remarked that the resource owner should not be penalized for such outages because a resource may not be able to move a planned outage. NRG noted that most planned outages for maintenance occur during spring and fall but unseasonable weather could cause higher than average demand and therefore lower operating reserves.

Further, NRG recommended the availability calculation exclude unplanned outages due to events such as weather emergencies or transmission system failures because such occurrences are outside of the generator's control.

NRG recommended modifying §25.511(g) and §25.511(h)(2) to lower the optimal availability factor for the first performance year to 92 percent to account for expected operational issues during the first 12 to 18 months of commercial operations, making the formula simpler to implement (as it is calculated on a 12-month basis).

TIEC and TPCA recommended that the NERC GADS definition for EAF be added to proposed §25.511(g) provide a commonly understood industry standard and to avoid duplicative metrics. TIEC also recommended the EAF performance metric be rephrased given that the EAF is a ratio of available hours measured against the number of hours in a test period, rather than an absolute number of hours as stated in the proposed rule. TIEC accordingly suggested "EAF of 95" be replaced with

"EAF of 0.95" in proposed §25.511(c)(1). For consistency with PURA §34.0105(i), TIEC also recommended that the median performance standard under proposed §25.511(g)(2) evaluate the median performance of all dispatchable resources in the ERCOT power region over a defined test period. Specifically, TIEC recommended the provision be revised to be a measure of all generators in the ERCOT power region over the 50 hours of lowest reserves in the prior year. TIEC remarked that using a lower number of hours for the standard would more effectively capture expected performance of dispatchable units during periods of peak demand and reliability risk. TIEC explained that facilities built under the TEF programs will either be new or recently upgraded, therefore such facilities should reasonably be expected to perform more efficiently than the median performance of older units during the test period.

TCPA added that the EAF should be based on the "average [or equivalent] unit capacity that is actually available during the interval" that would then be averaged across the 100-hour period of lowest operating reserves. TCPA explained that using a different calculation for EAF would be confusing and that the proposed language for the EAF calculation could result in any equipment derate or interruption due to ambient temperature adjustments resulting in a zero EAF interval. TCPA commented that a zero interval could consequently prevent an applicant from receiving a grant for the performance year. TCPA stated that it is foreseeable that any given generating facility could experience small derates in more than half of the 100 hours with the lowest operating reserves which, per the language of proposed §25.511(g), would result in an EAF below the median level required to qualify for a completion bonus grant.

LCRA recommended the EAF calculation under proposed §25.511(g) be revised by either removing "or equipment deratings" or, as an alternative, qualifying the phrase by specifying only "significant equipment deratings" of 30 percent or greater of the nameplate capacity of the unit will factor into the EAF. LCRA commented that requiring a generator to perform at full nameplate capacity with no deratings is too demanding of a performance standard. LCRA explained that such performance is impractical and unreasonable to expect given the typical operations and maintenance procedures associated with dispatchable generating units and the varying weather conditions that may affect output.

LCRA recommended the EAF calculation under proposed §25.511(h) be revised to be consistent with the optimal performance standard under proposed §25.511(g)(1). Specifically, LCRA noted that the proposed linear progression of grant award payments to 100 percent EAF miscalculates the difference between the median EAF and the optimal EAF which would result in a reduced grant award being calculated for grant recipients that achieve an EAF between 50 and 95 points.

Vistra recommended that any discount of a grant award should not "dramatically reduce the payment for performance just below the optimal standard as compared to performance at the optimal standard." Specifically, Vistra commented that the 0.015 multiplier for performance between the median and optimal performance thresholds is unnecessarily punitive towards generators that perform close to, but just below, the optimal performance threshold. Vistra recommended that if the EAF metric is retained, the multiplier should be changed to 0.016667 or 1/60 to mitigate the effect of the multiplier. Vistra noted that the proposed multiplier of 0.015 would suffice if its proposal to replace EAF with EUOF is adopted.

Vistra emphasized that planned outages should be excluded from the performance metric calculations, regardless of whether EAF is retained. Vistra remarked that, per ERCOT's Physically Responsive Capacity data, the fall and spring months can sometimes have low reserves because of unseasonable weather and low renewable output coincides with ERCOT-approved planned outages for dispatchable facilities. Vistra noted that the commission has authority under PURA to establish the median and optimal performance standards, despite the express statutory requirement for the performance standard address the 100 hours of the lowest operating reserves.

Commission Response

The commission declines to modify the rule in the various manners relating to EAF definitions and calculation as recommended by HEN, NRG, TIEC, TCPA, LCRA, and Vistra. Instead, the commission adopts two performance standards based on ERCOT availability and real time (RT) telemetered data: the performance reliability factor (PRF) and the availability reliability factor (ARF). These performance standards are elaborated below. The commission modifies subsections (b) and (g) of the rule to include these standards.

PRF is computed using ERCOT availability and RT telemetered data to holistically evaluate the availability and performance of a GR during the assessed hours:

Figure 1: 16 TAC Chapter 25 - Preamble

"RT Telemetered HSL" is the High Sustained Limit (HSL) telemetered by the GR in real time. "Available flag" is a binary flag that is equal to the minimum of a COP available flag and an RT available flag. "COP available flag" is a binary flag that equals one if each hourly check of the GR's COP for the hour that includes the interval in question indicates the GR will be available in that interval (i.e., any status other than OUT or EMRSWGR), with such hourly checks starting at 14:30 on the day before the relevant interval; otherwise, the flag equals zero. "RT available flag" is a binary flag that equals one if the RT telemetered resource status code indicates the GR is available (i.e., any status other than OUT or EMRSWGR); otherwise, the flag equals zero. For a GR that provides capacity to an industrial load or PUN, obligated capacity is equal to the net capacity that is dedicated to the ERCOT market, as of the interconnection date and as measured by the maximum NCP demand of the associated load. For all other GRs, obligated capacity is equal to the adjusted seasonal net max sustainable rating (defined as the registered ERCOT Seasonal Net Max Sustainable Rating adjusted for planned derates). "Total evaluated period intervals" is equal to the total number of intervals in the assessed hours, excluding any that occurred during an approved planned outage of the generation resource.

ARF is a metric calculated with ERCOT data for each GR in an electric generating facility. The ARF is computed as the proportion of time that each GR was available (i.e., not in a planned outage) during the assessed hours. The ARF is calculated as follows:

Figure 2: 16 TAC Chapter 25 - Preamble

"Total evaluated period intervals" is equal to the total number of intervals in the assessed hours, excluding any that occurred during an approved planned outage of the generation resource. "Total period intervals" is equal to the total number of intervals during the assessed hours.

The adopted rule requires that the PRF be calculated annually for each GR in a facility, for ten consecutive test periods, start-

ing with the first test period following a facility's interconnection date. The PRF of each GR will be compared against PRF performance, during the recent test period, of a randomly sampled reference group of non-grant recipient, dispatchable, interconnected, thermal generation resources with a nameplate capacity of at least 50 MW that have been interconnected to the ERCOT region since 2004.

The test period is a fixed 12-month period from June 1 to May 31. At the conclusion of a test period, ERCOT will calculate the median and optimal PRF values based on the performance of the reference group during the test period. At the same time, ERCOT will compute the PRF and ARF for each grant recipient's GR or GRs and evaluate it against the PRF performance of the reference group during the most recent test period. Eligible applicants will receive a payment for any GR that performs above the median PRF value and whose payment is not withheld due to a low ARF value.

As comments relate to the computation of the 100 hours with the least quantity of operating reserves, or assessed hours, PURA §34.0105(i) requires the use of those assessed hours, which is an objective measure. The commission declines recommendations from commenters that would include or exclude, for example, an individual facility's determination whether to take a planned outage. Planned outage time is excluded from the PRF calculation and included in the ARF calculation. If any GR is in a planned outage during any time within the assessed hours, its PRF will not be affected, its ARF will be negatively affected. Even if, for example, that GR qualifies for its full completion bonus grant payment based on its PRF, the payment amount will be discounted based on the ARF because its planned outage coincided with some of the assessed hours.

Subsection (h) allows for a discounted payment for performance that is above the median but below the optimal PRF value. The ARF and overall discount formula affect a GR's grant payment calculation in this way: the GR will receive its full payment amount if the GR's ARF is between 0.9 and one, a discounted payment if the GR's ARF is less than 0.9, and no payment if the formula in subsection (h) returns a value of less than or equal to zero.

The commission also declines to modify the rule for various EAF levels recommended by commentors because it has adopted the PRF and ARF instead. In response to LCRA's comment that requiring performance at nameplate capacity is too demanding, the commission has set the performance requirement for each facility based on obligated capacity, rather than nameplate capacity. The commission modifies subsection (g) of the rule in accordance with the discussion above.

Proposed §25.511(g)-Performance Standards

See proposed §25.511(g) in the sections above.

NRG recommended the EAF metric be replaced with Equivalent Unplanned Outage Factor excluding Outside Management Control events (XEUOF), which is a different metric taken from GADS. NRG argued that it is more appropriate because it accounts for "planned outages, seasonal derates, and situations outside a resource owner's reasonable control." NRG further proposed converting XEUOF to an availability requirement by deducting XEUOF from 1 and establishing the parameters for "net maximum capacity" to work in the ERCOT power region where the maximum capacity of a resource is generally measured in terms of the unit's applicable seasonal net maximum capability. NRG explained that XEUOF already excludes planned outages and provides a framework for excluding events outside human control. NRG noted that because, "XEUOF reflects the percentage of time a plant is unavailable, as opposed to EAF which reflects the percentage of time the plant is available" the calculation between the two metrics differs slightly.

TCPA, LSP, and WattBridge recommended replacing EAF with (1 - EUOF) to remove planned outages from being used to measure an electric generating facility performance. TCPA suggested that the performance standard should be limited to factors within a generator's reasonable control, specifically, ambient derates and planned outages should be excluded from the performance standard because such events are difficult or impossible for a generator to mitigate. WattBridge further noted that the 100 hours cited in the provision are likely connected to weather periods that may cause either high demand for power or low resource availability for intermittent and dispatchable resources. Therefore, a project's performance under the rule should not be impacted by not accounting for this maintenance standard if one or more planned outages coincide with one or more of the 100 hours with the least quantity of operating reserves. WattBridge stated adjusting the performance standard for maintenance is necessary for logistical realities and to ensure reliability. LSP recommended the optimal performance standard be equal to the 90th percentile using the same test period as the median performance standard and commented that the change would create a high but achievable threshold for optimal performance.

LSP also recommended the median performance standard be the 50th percentile as that may be equivalent to the lowest 25th percentile of fleet performance, therefore resulting in awarding completion bonus grants to facilities with poor performance. LSP said that it is only necessary to calculate the median performance once over a representative period such as between 2022 and 2024 and then utilized for each of the ten years grant distribution period.

Calpine commented that outages or equipment deratings under proposed §25.511(g) should exclude planned outages or outages that are outside of the generator's control such as ERCOT approved planned outages, including ERCOT instruction to reduce output or go offline, limitations imposed by transmission outages, seasonal ambient temperature deratings, or outages directly related to ERCOT denial or a generating facility's request for maintenance. As an alternative to the EAF, Calpine recommended the commission develop a system-wide average metric where performance above the metric would provide full payment to a generator for the performance year, while performance below the threshold would be discounted.

Calpine also recommended the commission consider whether a generator could also be credited for postponing an outage or completing an outage early in response to an ERCOT Advance Action Notice.

Calpine requested clarification as to the meaning of "the fraction of a given operating period" as used in proposed §25.511(g). Calpine remarked that greater transparency and clarity on the EAF calculation process in the rule is beneficial because it aids grant applicants in understanding how to achieve the optimal performance standard and ultimately provide ERCOT electric consumers with more reliable electric capacity in the long run.

Commission Response

The commission modifies subsections (b) and (g) of the rule to define a PRF based on COP and RT telemetered data and measured against the median performance standard of a reference group of GRs. Planned outage time is excluded from the PRF calculation and included in the ARF calculation. If a GR is in a planned outage during any time within the assessed hours, its PRF will not be affected, but its ARF will be negatively affected. Even if, for example, that GR qualifies for its full completion bonus grant payment based on its PRF, the payment amount will be discounted based on the ARF (at an ARF value of less than 0.9) because its planned outage coincided with some of the assessed hours.

Calpine recommended the phrase "available to produce" in proposed §25.511(g) should be revised to mean that "a generating facility has an offer in SCED, has received an ancillary service award, or has an offer in the day-ahead market (DAM)" because such a status demonstrates operational readiness to participate in the ERCOT market.

Commission Response

The commission declines Calpine's recommended rule revisions regarding a facility's availability. The commission modifies subsections (b) and (g) of the rule to define a PRF based on COP and RT telemetered data and measured against the median performance standard of a reference group of GRs. Therefore, it is not necessary to define "available to produce."

WattBridge recommended that the EAF be calculated in a manner consistent with the GADS methodology provided by in Appendix F of NERC's Data Reporting Instruction to ensure that the performance of the entire facility is measures, as opposed to individual units.

Commission Response

The commission declines to modify the rule to calculate EAF in a manner consistent with the GADS methodology, as recommended by WattBridge. The commission will use ERCOT data rather than NERC GADS EAF data, in part because the EAF data are not suited to account for the 100 hours with the least quantity of operating reserves as statutorily specified.

Proposed §25.511(d)(2)(B) and §25.511(g)- Determination of Eligibility for Grant, Performance Standards

See proposed §25.511(d)(2)(B) and §25.511(g) in the sections above.

ERCOT recommended that the rule be revised to provide that any EAF must be calculated using ERCOT's own availability data. ERCOT commented that, using its own data, it can determine the 100 hours with the lowest level of operating reserves and determine an EAF using this information and the calculation under proposed §25.511(g). To further facilitate this change, ERCOT recommended proposed §25.511(d)(2)(B) be revised to allow ERCOT to establish an EAF margin based on the data available to it. Alternatively, ERCOT recommended revising proposed §25.511(g) "to provide for a reduction in the EAF proportional to the magnitude of the derate, rather than considering any derate to mean the unit is entirely unavailable" to ensure that the impact of small derates on a generator's availability would not disproportionately affect a generator's EAF calculation.

ERCOT requested clarification as to whether the EAF data ERCOT must provide to a completion bonus grant applicant will be calculated using data from NERC GADS under proposed §25.511(d)(2)(B). ERCOT further noted that proposed §25.510 in Project 55826 derives EAF from NERC GADS. ERCOT explained that while EAF is a reliable metric for calculating availability, it cannot calculate an EAF using NERC GADS because ERCOT does not have access to that system or the corresponding information within it because it is confidential. ERCOT also commented that an EAF cannot be created for 100 non-continuous hours for purposes of the bonus because NERC GADS calculates EAF on a monthly and yearly basis.

To avoid any potential concerns relating to the integrity of the EAF figure provided to the grant applicant, ERCOT additionally suggested that proposed §25.511(d)(2)(B) be revised to require ERCOT to confidentially file the availability calculation with the commission in a preassigned project number at the same time that ERCOT provides that information to the applicant.

Commission Response

The commission agrees with ERCOT about using ERCOT telemetered and availability data to calculate an EAF metric and modifies the rule to use a separate metric, PRF, to avoid confusion with either NERC EAF or the PAF and POF as applied in §25.510. The EAF metric used in the proposed rule relies on confidential NERC GADS data that is not readily available to ERCOT or the commission.

In addition, in response to ERCOT's comment requesting that the commission modify the proposed rule to add a confidential filing by ERCOT, the commission modifies subsection (f) of the rule to change the process by which ERCOT will communicate with the TEF administrator. The process does not require a confidential filing. It requires that ERCOT send performance data to the TEF administrator, who will then share each eligible applicant's data with that applicant.

Proposed §25.511(f)(2) and §25.511(d)(2)(B)-Grant Payment Request, Determination of Eligibility for Grant

Proposed §25.511(f)(2) describes the information that must be included in the request for grant payment. Proposed §25.511(d)(2)(B) states a notice of eligibility will authorize an applicant to request and obtain data from ERCOT showing the electric generating facility's equivalent availability factor (EAF) performance during the 100 hours with the least quantity of operating reserves during a performance year. A notice of eligibility will automatically expire 45 days after the tenth anniversary of the electric generating facility's commercial operations date.

TPPA recommended that the commission include a defined timeframe under which ERCOT would be expected to furnish EAF data to a requester.

Commission Response

The commission agrees with TPPA that timeliness is an important factor in the administration of the program. Accordingly, the commission modifies subsection (f) of the rule to incorporate calculation deadlines applicable to ERCOT. The processes related to determining assessed hours, median performance, optimal performance, PRF, and ARF will allow for reporting of data to the commission and TEF administrator to be effectively concurrent with reporting to the completion bonus grant recipient.

Proposed §25.511(g), §25.511(g)(1), §25.511(g)(2), and §25.511(h)(2)-Performance Standards and Grant Payment Discount Formula

Proposed §25.511(g) states that an electric generating facility's performance is based on EAF during the performance year of a given operating period in which a generating unit is available to

produce electricity without outages or equipment derates during the 100 hours with the least quantity of operating reserves during a performance year and outlines the formula for discounting grant payments based on performance. Proposed §25.511(g)(1) states that optimal performance is an EAF of 95 during the 100 hours with the least quantity of operating reserves for the performance year. Proposed §25.511(g)(2) states that median performance is an EAF of 50 during the 100 hours with the least quantity of operating reserves for the performance year. Proposed §25.511(h)(2) provides an example on how the grant payment discount formula would be applied.

Vistra recommended the EAF metric be replaced with the EUOF metric defined by NERC to account for planned outages and derates or outages and derates outside the generator's control. Vistra noted that planned outages can take days or weeks depending on maintenance and therefore that the inclusion of planned outage hours in the performance calculations may incentivize focusing maintenance efforts on meeting a performance metric rather than safe and reliable operations. Vistra concluded that any performance metric should acknowledge that no generator can operate at all times at maximum capacity. Accordingly, Vistra recommended that an EUOF standard of five percent or EAF standard of 85 percent is appropriate.

Commission Response

The commission declines to replace the EAF metric with the EUOF metric, as recommended by Vistra. However, the commission agrees with Vistra that the rule should not discourage a GR owner from undertaking prudent planned maintenance. The commission therefore modifies the rule to define a PRF, which excludes planned outages. However, the rule also includes the ARF, which will be negatively impacted by planned outages.

Proposed §25.511(g)(2)-Median Performance

Proposed §25.511(g)(2) states that median performance of an electric generating facility is an EAF of 50 during the 100 hours with the least quantity of operating reserves for the performance year.

Sierra Club recommended that the 50 out of 100 hours with least quantity of operating reserves for the performance year performance standard in proposed §25.511(g)(2) should be increased to 70 out of 100. Sierra Club explained that the hours with the lowest quantity of operating reserves is the most important time period. Accordingly, Sierra Club advised that raising the threshold to 70 hours is a reasonable minimum standard to receive a performance bonus from taxpayers.

Commission Response

The commission declines to increase the value of the median performance standard during the 100 hours with the least quantity of operating reserves, or assessed hours, as recommended by Sierra Club. Instead, the commission modifies the rule such that the median performance metric is derived from the 50th percentile of the GR reference group's performance during the assessed hours, and not performance during the 50th hour of the assessed hours. Therefore, the hour count other than the total number of assessed hours is not applicable to the metric. The median performance will be based on actual data during a defined test period and will be evaluated based on the relative position of a GR's test period performance as it relates to the reference group's performance.

Completion Bonus Grant Award Amount

Proposed §25.511(e)(1)(B)-Completion Bonus Grant Award Amount for Interconnection After June 1, 2026, and Before June 1, 2029

Proposed §25.511(e)(1)(B) states an award amount may not exceed $80,000 per MW of capacity for an electric generating facility that is interconnected in the ERCOT region after June 1, 2026, and before June 1, 2029.

Vistra recommended modifying the rule to track the statutory language of SB 2627 more clearly. Specifically, Vistra noted that PURA §34.0105(f)(2) establishes $120,000 and $80,000 as caps on grant awards, not as specific amounts to be awarded. Vistra commented that a "non-discriminatory, pre-determined award amount" would provide the most market certainty, even at amounts lower than the caps provided by PURA. Vistra alternatively recommended revising the provisions to provide the commission's methodology for determining completion bonus grant amounts. Vistra recommended that the rule language precisely track the bonus grant cap for electric generating facilities interconnected "on or after June 1, 2026."

Commission Response

The commission declines to modify the rule to establish a "predetermined award amount," as recommended by Vistra. PURA §34.0105(f) sets caps on grant awards and does not specify lower award amounts. In addition, PURA §34.0105(i) requires the commission to adopt performance standards that operate to discount a grant award for less-than-optimal performance. To give full effect to these provisions, the commission authorizes a grant award payment at the statutory cap for optimal performance and discounts the award payment in accordance with the formula in subsection (h) for any performance below the optimal level. The commission agrees with Vistra that the grant caps in the rule should exactly track statutory language. Therefore, the commission modifies the rule to reflect that an $80,000 grant cap will apply for an electric generating facility interconnected "on or after" June 1, 2026.

New §25.511(h)(1)(D)-Grant Payment Discount Formula

Calpine recommended adding a new provision in §25.511(h) that would authorize an applicant to earn back some portion of the withheld or discounted payment if performance in a subsequent performance year exceeds 95. Calpine opined that a specified percentage of the withholding could be paid out at each performance increment above 95 up to 100 to incentivize a grant recipient to improve generator performance.

Commission Response

The commission declines to add a new provision allowing an applicant to earn back some portion of the withheld or discounted payment, as suggested by Calpine. The full completion bonus grant serves as an incentive for high performance. Although various factors may impact performance within any given period, improved results in later periods do not compensate for earlier underperformance. Furthermore, PURA §34.0105(i) prohibits the commission from disbursing an annual grant payment if the facility's performance is at or below the median performance standard for the designated test period within that year.

No Contested Case or Appeal

Proposed §25.511(i)-No Contested Case or Appeal

Proposed §25.511(i) states that neither an application for a completion bonus grant award nor a request for grant payment is a

contested case and commission decisions in this case are not subject to motions for rehearing or appeal.

Vistra commented that removing completion bonus grant applications from the contested case process would depart from the commission's normal procedures. Vistra advocated for completion bonus grant applications to be processed as limited contested cases under 16 TAC §22.35 in which the only parties to the proceeding would be the applicant and commission staff. Vistra noted that such a change would be prudent for administrative efficiency and would avoid legal challenges to TEF programs.

LCRA and Calpine recommended modifying the rule to permit a completion bonus grant recipient to challenge the EAF data from ERCOT if the recipient concludes ERCOT's data contains errors or contradicts the applicant's data regarding its facility EAF performance. Calpine explained that because certain factors such as planned outages or outages outside of a generator's control should not be counted against a generator's performance, a system of accountability is warranted. Calpine emphasized that this is particularly true in the completion bonus grant program because a developer bears all costs until and unless a grant is awarded.

Calpine also recommended that if the commission were to deny a grant application or otherwise finds it deficient, an applicant should be afforded the opportunity to cure the deficiencies without a contested case proceeding or refile the application without prejudice.

TPPA requested clarification on whether the rule would prohibit all forms of appeal, including judicial review.

Commission Response

The commission declines to process a completion bonus grant application as a contested case, as recommended by Vistra. Under the Texas Administrative Procedure Act (Texas APA), a contested case is a proceeding in which a state agency determines the legal rights, duties, or privileges of a party after an opportunity for an adjudicative hearing. No part of Chapter 34 of PURA provides an applicant the opportunity for an adjudicative hearing to present evidence in favor of its eligibility to receive a completion bonus grant. The commission interprets the absence of an opportunity for hearing to signify that contested case rights under the Texas APA do not apply to whether an applicant is eligible to obtain a completion bonus grant. Accordingly, the commission will make eligibility determinations under subsection (d) of the rule based on information that an applicant provides in its application. Moreover, applicants do not have the opportunity to move for rehearing or seek judicial review under the Texas APA because those rights are exclusively associated with contested cases.

Commission determinations on completion bonus grant applications for program eligibility are final. The limitation of an appeal mechanism reflects that the commission will not develop an internal appeal process for determinations on whether an applicant is eligible to obtain a completion bonus grant. Even so, the commission agrees with Calpine that, in limited circumstances, the commission may need additional information to make a determination on a completion bonus grant application. The absence of Texas APA contested case procedures does not prevent an applicant from supplementing or revising an application upon the request of the commission after initial application.

While completion bonus program eligibility does not provide an opportunity for a hearing, the commission agrees with LCRA and Calpine that ERCOT's determinations of PRF and ARF should be correctable if those terms are calculated based on faulty data inputs. Accordingly, the commission modifies subsection (f) of the rule to reflect that eligible applicants may seek review of ERCOT's determination of PRF, ARF, and the payment calculation using ERCOT's alternative dispute resolution procedures codified under ERCOT Protocols section 20. The commission also modifies subsection (i) of the rule to remove references to requests for grant payments because subsection (f) provides a mechanism to dispute ERCOT determinations that may result in the filing of a complaint at the commission.

The commission is unable to provide further clarification in response to TPPA's question regarding appealability because it does not have the power to define the jurisdiction of Texas courts with respect to the various challenges that applicants may present in relation to this rule.

This new rule is adopted under the following provisions of PURA: §14.002, which provides the commission with the authority to make, adopt, and enforce rules reasonably required in the exercise of its powers and jurisdiction; PURA §34.0105, which provides the framework to establish procedures for applying for a completion bonus grant for the construction of dispatchable electric generating facilities in the ERCOT power region, as well as evaluation criteria, disbursement, and performance standards; and §34.0106, which establishes conditions for the dispensation of completion bonus grants to eligible applicants.

Cross reference to statutes: Public Utility Regulatory Act §§14.002, 34.0105, and 34.0106.

§25.511. Texas Energy Fund Completion Bonus Grant Program.

(a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §34.0105 and §34.0106 and establish:

(1) Procedures for submitting an application to be eligible for a completion bonus grant award;

(2) The process by which an applicant may receive an annual grant payment; and

(3) Performance standards for electric generating facilities for which an applicant seeks a completion bonus grant payment.

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

(1) Assessed hours--the 100 hours during the test period with the least quantity of operating reserves, as determined by the highest values of peak net load, where peak net load is calculated as gross load minus wind, solar, and storage injection.

(2) Availability reliability factor (ARF)--a metric calculated with ERCOT data for each generation resource for which the commission awards a completion bonus grant under this section. The ARF is computed as the proportion of time that each generation resource was available (i.e., not in a planned outage) during the assessed hours. The ARF is calculated as follows: "Total evaluated period intervals" is equal to the total number of intervals during the assessed hours, excluding any that occurred during an approved planned outage of the generation resource. "Total period intervals" is equal to the total number of intervals during the assessed hours.
Figure: 16 TAC §25.511(b)(2)

(3) Interconnection date -- the resource commissioning date, as defined in the ERCOT protocols, for the last generation resource in an electric generating facility for which an applicant seeks a completion bonus grant award. The new electric generating facility

or new generation resources at an existing electric generating facility must meet the eligibility criteria described in subsection (c) of this section.

(4) Performance reliability factor (PRF) -- a metric calculated with ERCOT availability and real time (RT) telemetered data for each generation resource for which the commission awards a completion bonus grant under this section. The PRF is computed as the average ratio of each generation resource's RT high sustainable limit (HSL) and its obligated capacity over the assessed hours. Intervals that occurred during an approved planned outage of a generation resource are excluded. The PRF is calculated as follows: "RT Telemetered HSL" is the HSL telemetered by the generation resource in real time. "Available Flag" is a binary flag that is equal to the minimum of a current operating plan (COP) available flag and a RT available flag. "COP available flag" is a binary flag that equals one if each hourly check of the generation resource's COP for the hour that includes the interval in question indicates that the generation resource will be available in that interval (i.e., any status other than OUT or EMRSWGR), with such hourly checks starting at 14:30 on the day before the relevant interval; otherwise, the flag equals zero. "RT available flag" is a binary flag that equals one if the RT telemetered resource status code indicates the generation resource is available (i.e., any status other than OUT or EMRSWGR); otherwise, the flag equals zero. For a generation resource that provides capacity to an industrial load or private use network (PUN), obligated capacity is equal to the net capacity that is dedicated to ERCOT, as of the interconnection date. For all other generation resources, obligated capacity is equal to the adjusted seasonal net max sustainable rating (defined as the registered ERCOT Seasonal Net Max Sustainable Rating adjusted for planned derates). "Total evaluated period intervals" is equal to the total number of intervals during the assessed hours, excluding any that occurred during an approved planned outage of the generation resource.
Figure: 16 TAC §25.511(b)(4)

(5) Test period -- the one-year period starting on June 1 of one year and ending on May 31 of the following year.

(c) Eligibility. To be eligible for a completion bonus grant award under this section, an applicant must construct at least 100 MW of new nameplate capacity, either as new generation resources in a new electric generating facility, or new generation resources at an existing electric generating facility, and the generation resources for which a completion bonus grant is sought must also:

(1) interconnect to and provide power for the ERCOT region;

(2) be dispatchable with an output that can be controlled primarily by forces under human control;

(3) not be an electric energy storage facility;

(4) participate in the ERCOT wholesale market;

(5) consist of one or more generation resources physically capable of interconnecting to the ERCOT region through a single point of interconnection;

(6) be eligible to interconnect to the ERCOT region based on the attributes of the owners of the electric generating facility, according to the requirements in the Lone Star Infrastructure Protection Act (codified at Texas Business and Commerce Code §117.002);

(7) not meet the planning model requirements necessary to be included in an ERCOT capacity, demand, and reserves report for the ERCOT region before June 1, 2023 for the construction or addition of any generation resource;

(8) operate in such a manner that the electric generating facility that is serving an industrial load or PUN must meet the following conditions: the portion of nameplate capacity that will serve the maximum non-coincident peak demand of the industrial load or PUN must be less than 50 percent of the facility's total nameplate capacity, and the remaining capacity serving the ERCOT market must be greater than 100 MW; and

(9) meet the interconnection deadlines described in subsection (e)(2) of this section.

(d) Determination of eligibility for completion bonus grant award.

(1) Eligibility application. No earlier than January 1, 2025, and no later than 180 days after the interconnection date of the electric generating facility for which an applicant requests a completion bonus grant award, an applicant must submit an electronic application in the form and manner prescribed by the commission. The application must include:

(A) the applicant's legal name and the proposed name of each generation resource in the electric generating facility for which it seeks a completion bonus grant award. A corporate sponsor or parent may submit the application on behalf of its subsidiary applicant;

(B) information describing the applicant's quality of services and management;

(C) information describing the applicant's efficiency of operations;

(D) a record of the applicant's history of electric generation operations in this state and this country, including information demonstrating the applicant's experience operating and maintaining dispatchable electric generating facilities;

(E) a description of the operational attributes of the electric generating facility; if any generation resource in the electric generating facility will serve an industrial load or PUN, a description of the manner in which it will serve the industrial load or PUN, how the electric generating facility will primarily serve and benefit the ERCOT bulk power system given its relationship to a PUN or industrial load, the total nameplate capacity of the electric generating facility, the anticipated or actual maximum non-coincident peak demand of the associated industrial load or PUN, whether the electric generating facility's generation capacity would be available to the ERCOT bulk power system during any Energy Emergency Alert, and a copy of any information submitted to ERCOT regarding PUN net generation capacity availability;

(F) a description of the electric generating facility's ability to address regional and reliability needs;

(G) for electric generating facilities not yet interconnected to the ERCOT region:

(i) a proposed project schedule with anticipated dates for completion of construction, submission of registration documents with ERCOT and the commission, and anticipated interconnection date;

(ii) the anticipated nameplate capacity of the electric generating facility when commercial operations begin; and

(iii) the estimated construction costs of the electric generating facility.

(H) for electric generating facilities already interconnected to the ERCOT region:

(i) the actual construction costs of the electric generating facility, listed by generation resource;

(ii) the interconnection date of the newly constructed electric generating facility or of the last new generation resource added to an existing electric generating facility;

(iii) the total nameplate capacity of each generation resource in the electric generating facility that meets the eligibility requirement described in subsection (c)(7) of this section; and

(iv) the name of each generation resource in the electric generating facility and the name of the electric generating facility on ERCOT's market participant list.

(I) a statement describing when each generation resource in the electric generating facility met the planning model requirements necessary to be included in an ERCOT capacity, demand, and reserves report with an identification of the first appearance of the electric generating facility, or any generation resource in the electric generating facility, in an ERCOT capacity, demand, and reserves report;

(J) a statement of whether the applicant applied for a loan under §25.510 of this title (relating to Texas Energy Fund In-ERCOT Generation Loan Program) and the commission's determination on the loan application, if known;

(K) if applicable, a statement asserting that extenuating circumstances support the extension of any deadline described in subsection (e)(2) of this section, including the facts surrounding those extenuating circumstances;

(L) documentation that the applicant has registered or will register with the commission as a power generation company, unless the applicant is an MOU, electric cooperative, or river authority;

(M) documentation that the applicant has registered or will register its generation resources according to ERCOT's registration requirements; and

(N) a narrative explanation of the applicant's preparations for compliance with §25.55 of this title (relating to Weather Emergency Preparedness).

(2) The commission will evaluate the information provided in an application to determine whether an applicant is eligible to receive a completion bonus grant award. Determination of eligibility to receive a completion bonus grant award does not entitle an applicant to a grant payment.

(A) The commission will issue a notice of eligibility for an applicant it determines is eligible to receive a completion bonus grant award. The notice of eligibility will state the completion bonus grant award amount based on the actual or projected capacity of each generation resource in the electric generating facility and its actual or projected interconnection date. The award amount is calculated for each generation resource, and these amounts are added together, if applicable, to reach a total award amount for the electric generating facility. For a project that has not reached its interconnection date at the time the application is submitted, the applicant must subsequently submit to the TEF administrator documentation demonstrating that the interconnection date satisfies the applicable deadline in subsection (e)(2) of this section and demonstrate adherence to the criteria described in subsection (c) of this section. If the actual nameplate capacity or interconnection date differs from estimates, the commission may revise the eligible applicant's completion bonus grant award amount to reflect actual information and amend the notice of eligibility accordingly.

(B) For the ten successive test periods following a qualifying electric generating facility's interconnection date, an eligible applicant is authorized to receive an annual completion bonus grant payment for each test period in which its generation resource or resources meet the performance standard established in this section.

(C) An eligible applicant must enter into a grant agreement in the form and manner specified by the commission whereby the eligible applicant commits to adhere to the requirements described in subsection (c) of this section for the duration of any test period for which it may receive a completion bonus grant payment. Failure to enter into a grant agreement or breach of the executed grant agreement will be grounds for the commission to determine that an applicant is ineligible to obtain any future completion bonus grant payment.

(3) Information submitted to the commission in a completion bonus grant application is confidential and not subject to disclosure under Chapter 552 of the Texas Government Code.

(4) An applicant must separately file a statement indicating that an application for a completion bonus grant award has been presented to the commission for review with the date of application submission.

(e) Completion bonus grant award amount.

(1) The amount of a completion bonus grant award is based on program funding availability, and either;

(A) the combined capacity of each new generation resource and interconnection date of the new electric generating facility; or

(B) the combined capacity of each new generation resource and interconnection date of the last new generation resource added to an existing electric generating facility.

(2) Unless the commission determines that extenuating circumstances justify extension of the deadlines under this subsection, the commission may approve a completion bonus grant award for an applicant considered eligible to receive a completion bonus grant award in an amount not to exceed:

(A) $120,000 per MW of applicable capacity that is interconnected to the ERCOT region before June 1, 2026; or

(B) $80,000 per MW of applicable capacity that is interconnected to the ERCOT region on or after June 1, 2026, and before June 1, 2029.

(3) The applicable capacity for use in paragraph (1)(A) and (1)(B) of this subsection is:

(A) the combined nameplate capacity of all new generation resources, if the newly constructed electric generating facility provides all capacity exclusively to the ERCOT power region;

(B) the increase in nameplate capacity attributable to the addition of one or more new generation resources at an existing electric generating facility; or

(C) the net nameplate capacity that exclusively serves the ERCOT region, as determined by the maximum non-coincident peak demand of the industrial load or PUN, if the electric generating facility serves an industrial load or PUN.

(f) Grant payment process.

(1) For each test period, the TEF administrator will disburse a grant payment to an applicant eligible to receive a completion bonus grant award. A grant payment is one-tenth of an applicant's total completion bonus grant award, subject to the performance standards

and discount methodology prescribed under subsections (g) and (h) of this section.

(2) No later than 45 days following the end of each test period, ERCOT must determine and provide to the TEF administrator the assessed hours, the median and optimal performance levels of the generation resources in the reference group, the PRF and ARF for each generation resource in an electric generating facility under this section, and the amount of payment each eligible applicant is entitled to for that test period, based on the performance of each of its generation resources. The TEF administrator will provide each eligible applicant the assessed hours, the median and optimal performance levels, the eligible applicant's PRF and ARF, and the eligible applicant's calculated completion bonus grant payment amount.

(3) ERCOT's determination of a generation resource's PRF and ARF and the calculation of the applicant's completion bonus award payment following a test period are subject to review under Section 20 of the ERCOT protocols (alternative dispute resolution procedure) as modified by this subsection. To seek review of ERCOT's determination of PRF, ARF, or payment amount, an eligible applicant must submit a written request for an alternative dispute resolution proceeding to ERCOT no later than 30 days after the date the TEF administrator provides PRF and ARF determinations and payment calculations to the eligible applicant for the test period. The eligible applicant must simultaneously notify the TEF administrator in writing in the manner prescribed by the commission that it has invoked review of ERCOT's determination of PRF or ARF or payment calculations. An eligible applicant may appeal the outcome of the ERCOT review in accordance with §22.251(d) of this title (relating to Review of Electric Reliability Council of Texas (ERCOT) Conduct). The only parties to an appeal of the ERCOT review are the eligible applicant, ERCOT, and commission staff.

(4) Thirty-five days after the TEF administrator provides the PRF, ARF, and completion bonus grant payment amount to each eligible applicant, the TEF administrator will instruct the Texas Treasury Safekeeping Trust Company to disburse the grant payment to the eligible applicant and notify the eligible applicant of the disbursement, unless the eligible applicant requests review of the determination of PRF or ARF under paragraph (3) of this subsection. Upon resolution of a requested review, the TEF administrator will instruct the Texas Treasury Safekeeping Trust Company to disburse the grant payment, if appropriate.

(g) Performance standards. An electric generating facility's performance is based on the PRF and ARF of each generation resource in the facility during the test period. The generation resource's PRF will be compared against the PRF of a reference group of non-grant recipient generation resources in the ERCOT region. ERCOT, in consultation with commission staff, must select a reference group comprising at least 30 resources randomly sampled from all dispatchable, interconnected, thermal generation resources with a nameplate capacity of at least 50 MW that were first interconnected to the ERCOT region on or after January 1, 2004. A grant payment may be discounted based on the formula prescribed in subsection (h) of this section. The performance standards for any test period are as follows:

(1) Optimal performance standard is determined by the 90th percentile of PRF scores achieved by resources in the reference group during the assessed hours.

(2) Median performance standard is determined by the 50th percentile of PRF scores achieved by resources in the reference group during the assessed hours.

(h) Grant payment discount formula. A grant payment equals one-tenth of an applicant's completion bonus grant award as stated in the applicant's notice of eligibility, subject to discount or withholding. Grant payments are calculated per generation resource. Each generation resource's performance is computed separately, and a grant payment for that generation resource calculated accordingly. The total grant payment is summed from the individual generation resources' grant payments, if applicable. The formula for any discount of an annual grant payment is as follows:
Figure: 16 TAC §25.511(h)

(1) Discount or withholding of payment.

(A) The TEF administrator will not apply any discount to a grant payment if the generation resource meets or exceeds the optimal PRF performance standard established under subsection (g)(1) of this section and achieves an ARF of between 0.9 and one.

(B) The TEF administrator will disburse a discounted grant payment if the PRF of the generation resource for which the grant was provided is above the median performance standard established under subsection (g)(2) of this section but less than an optimal performance standard established under subsection (g)(1) of this section, or if the ARF of the generation resource is less than 0.9.

(C) The TEF administrator will withhold a grant payment if the PRF of the generation resource is equal to or below the median performance standard established under subsection (g)(2) of this section, or if the generation resource's calculation according to the formula in this subsection returns a value less than or equal to zero.

(2) Example. An applicant would receive the following grant payments for hypothetical test periods 1, 2, and 3 based on a $12,000,000 completion bonus grant award described in a notice of eligibility for a 100 MW generation resource interconnected on March 1, 2026. The table below represents an example of hypothetical test period PRF distributions.
Figure: 16 TAC §25.511(h)(2)

(i) No Contested Case or Appeal. An application for completion bonus grant eligibility is not a contested case. A commission decision on completion bonus grant program eligibility is not subject to a motion for rehearing or appeal under the commission's procedural rules.

(j) Expiration. This section expires December 1, 2040.

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 April 25, 2024.

TRD-202401762
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: May 15, 2024
Proposal publication date: December 15, 2023
For further information, please call: (512) 936-7322

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 84. DRIVER EDUCATION AND SAFETY

SUBCHAPTER M. CURRICULUM AND ALTERNATIVE METHODS OF INSTRUCTION

16 TAC §84.500, §84.502

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 84, Subchapter M, §84.500 and §84.502 regarding the Driver Education and Safety program, without changes to the proposed text as published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 319). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 84, implement Texas Education Code, Chapter 1001, Driver and Traffic Safety Education.

The adopted rules are necessary to implement Senate Bill (SB) 2304, Section 3, 88th Legislature, Regular Session (2023), which amends Texas Education Code, Chapter 1001, to require that the curriculum of each driver education and driving safety course include information relating to the Texas Driving with Disability Program (program).

The program is designed, in collaboration with the Department, the Department of Public Safety, the Texas Department of Motor Vehicles, and the Governor's Committee on People with Disabilities, to develop informational materials for prospective students with a health condition or disability that may impede effective communication with a peace officer. Such information will provide an affected person with the option to voluntarily list any such health condition on the person's vehicle registration information or on an application for an original driver's license. This information may serve to reduce issues that can arise at a traffic stop by alerting the peace officer at the start of an encounter that the motorist has a disability or health condition that affects their ability to communicate effectively. The information developed by these organizations, upon completion, will be placed on the Department website for the DES program, and incorporated within its Program Guides as part of a future rulemaking.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §84.500, Courses of Instruction for Driver Education Providers, by: (1) including the Texas Driving with Disabilities Program, adopted by SB 2304, in the educational objectives for driver training course curricula; and (2) reorganizing supplemental educational objectives within the rule section.

The adopted rules amend §84.502, Driving Safety Courses of Instruction, to include the Texas Driving with Disabilities Program, adopted by SB 2304, in the educational objectives for driving safety course curricula.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 319). The public comment period closed on February 26, 2024. The Department received comments from two interested parties on the proposed rules. The public comments are summarized below.

Comment - The Department received a comment from an interested party in support of the proposed rules who stated that the program was a welcome addition to individuals with all types of disabilities who operate motor vehicles. The commenter believes that the program could provide a greater feeling of independence for those persons with disabilities.

Department Response - The Department appreciates the comment in support of the proposed rules and no change was made to the proposed rules as a result of this comment.

Comment - The Department received a second comment from an interested party that noted that the licensing fee for an online driving safety provider was too high. This comment refers to a rule subchapter that was not amended during this rulemaking and, therefore, is outside of the scope of the rulemaking.

Department Response - The Department appreciates the comment, however, as the comment was outside of the scope of the rulemaking, no change was made to the proposed rules as a result of this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Driver Education and Training Safety Advisory Board met on February 28, 2024, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register.*

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapter 51 and Texas Education Code, Chapter 1001. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are proposed to be adopted is Senate Bill 2304, 88th Legislature, Regular Session (2023).

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 April 23, 2024.

TRD-202401716
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: May 15, 2024
Proposal publication date: January 26, 2024
For further information, please call: (512) 463-7750

CHAPTER 111. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 111, Subchapter A, §111.1; Subchapter C, §111.23; Subchapter F, §111.50; Subchapter P, §§111.150, 111.151, and 111.155; Subchapter Q, §111.160; and Subchapter T, §111.190 and §111.192; and adopts the repeal

of existing rules at Subchapter O, §111.140, regarding the Speech-Language Pathologists and Audiologists program, without changes to the proposed text as published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7727). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC Chapter 111, implement Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists; and Chapter 51, the enabling statute of the Texas Commission of Licensing and Regulation (Commission) and the Department. Specific provisions within this rule chapter also implement the statutory requirements under Texas Occupations Code, Chapters 53, 108, 111, 112, 116, and 402, as applicable.

The adopted rules are necessary to implement recommended changes from the Speech-Language Pathologists and Audiologists Advisory Board with input from two of its workgroups; implement select changes from Department staff as a result of the four-year rule review; and make technical corrections from two previous rulemakings.

Advisory Board Workgroup Changes

The adopted rules implement recommended changes from the Speech-Language Pathologists and Audiologists Advisory Board based on input from two of its workgroups. The advisory board agreed with the recommended changes from both workgroups, and those recommended changes are included in these adopted rules.

First, the Licensing Workgroup recommended changes to address how a licensee may provide proof of licensure to a client when providing telehealth services and services outside of an office setting. This workgroup recommended changes to §111.151, which requires a licensee to display a license certificate or carry a license identification card. The requirement to always carry a license while providing services is not convenient and can be burdensome in some clinical settings. The adopted rules provide an additional option and allow a licensee to provide proof of licensure to a requestor through the Department's online license search.

Second, the Standard of Care Workgroup recommended changes to address cognition screenings as part of the communication screenings. This workgroup recommended changes to §111.190 to add provisions on cognition screening as it relates to communication function. Cognition plays an important part in understanding communication, and screening for communication-related cognition issues will allow providers to recommend therapy or rehabilitation. The adopted rules provide that cognitive processes affecting communication function may be screened for under communication screening.

Four-Year Rule Review Changes

The adopted rules implement select changes from Department staff as a result of the four-year rule review conducted under Government Code §2001.039. The Department conducted the required four-year review of the rules under 16 TAC Chapter 111, and the Commission readopted the rule chapter in its entirety and in its current form. (Proposed Rule Reviews, 45 TexReg 7281, October 9, 2020. Adopted Rule Reviews, 46 TexReg 2050, March 26, 2021). In response to the Notice of Intent to Review that was published, the Department received public comments regarding 16 TAC Chapter 111, but none of those public comments affect these adopted rules.

The adopted rules include select changes from Department staff based on the Department's review of the rules during the rule review process. These changes include clarification and clean-up changes to existing rules and updates to statute and rule citations.

Technical Corrections

The adopted rules make technical corrections from two previous rulemakings: the emergency telehealth rules (Emergency Rules, 46 TexReg 5313, August 27, 2021) and the comprehensive telehealth rules (Proposed Rules, 46 TexReg 5698, September 10, 2021. Adopted Rules, 46 TexReg 9021, December 24, 2021). In the previous rulemakings, the "in-person" supervision requirement was removed throughout the rules package in multiple rules (both rulemakings); the definitions of "direct supervision" and "indirect supervision" were amended (both rulemakings); and a new definition of "tele-supervision" was added that replaced former language regarding supervision through telehealth or telepractice/telehealth (comprehensive rulemaking). The preambles for those rules explained that the rules allow for direct and indirect supervision to be performed through tele-supervision and that in-person supervision is not required.

The previous rulemakings amended §111.50(e) regarding supervision of speech-language pathology assistants, and the preambles stated: "Subsection (e) is amended to allow supervision to be performed through tele-supervision and not require in-person supervision." The "in-person" reference was removed from the introduction paragraph of §111.50(e), but inadvertently was not removed from paragraphs (e)(4) and (e)(6). The adopted rules make technical corrections to remove the remaining "in-person" references under §111.50(e).

SECTION-BY-SECTION SUMMARY

Subchapter A. General Provisions.

The adopted rules amend §111.1. Authority and Applicability. The adopted rules change the name of the section from "Authority" to "Authority and Applicability." The adopted rules amend subsection (a) to identify the other statutes that are implemented by the rules in Chapter 111. The adopted rules also add new subsection (b) to explain that the Chapters 60 and 100 rules also apply to the Speech-Language Pathologists and Audiologists program. This new provision replaces the rules under Subchapter O, §111.140, Rules, which are being repealed.

Subchapter C. Examinations.

The adopted rules amend §111.23, License Examination--Jurisprudence Examinations. The adopted rules change the name of the section from "License Examination--Jurisprudence Examination" to "License Examination--Jurisprudence Examinations." The adopted rules amend subsection (a) to recognize that there are two separate jurisprudence exams - one for speech-language pathology and another for audiology; and amend subsection (b) to update the reference to examinations. The adopted rules also create separate provisions for the speech-language pathology jurisprudence examination and the audiology jurisprudence examination. The general provision under subsection (c) has been amended to apply only to the speech-language pathology jurisprudence examination, and a separate provision for the audiology jurisprudence examination has been added as new subsection (d). There are no substantive changes to these provisions.

Subchapter F. Requirements for Assistant in Speech-Language Pathology License.

The adopted rules amend §111.50, Assistant in Speech-Language Pathology License--Licensing Requirements--Education and Clinical Observation and Experience. The adopted rules make technical corrections to §111.50(e) from two previous rulemakings as discussed above. Under subsection (e), the adopted rules remove the "in-person" references under paragraphs (e)(4) and (e)(6).

Subchapter O. Responsibilities of the Commission and the Department.

The adopted rules repeal Subchapter O, Responsibilities of the Commission and the Department, and §111.140, Rules. These explanatory provisions are no longer necessary, since sufficient time has passed since the program was transferred to the Department. New provisions regarding the applicability of the rules under Chapters 60 and 100 have been included in the changes to §111.1, Authority and Applicability. The rules under Chapters 60 and 100 have broader applicability than the specific provisions cited in §111.140.

Subchapter P. Responsibilities of the Licensee and Code of Ethics.

The adopted rules amend §111.150, Changes of Name, Address, or Other Information. The adopted rules update subsection (a) to provide that a licensee notify the Department of any changes to the specified information in a form and manner prescribed by the Department.

The adopted rules amend §111.151, Consumer Information, Display of License, and Proof of Licensure. The adopted rules reflect the recommendations from the Speech-Language Pathologists and Audiologists Advisory Board with input from its Licensing Workgroup as discussed above. The adopted rules change the name of the section from "Consumer Information and Display of License" to "Consumer Information, Display of License, and Proof of Licensure." The adopted rules add a new subsection (e), which requires a licensee, upon request, to provide proof of licensure to a client by showing the current license certificate, the current license identification card, or the current results of a license search on the Department's website.

The adopted rules amend §111.155, Standards of Ethical Practice (Code of Ethics). The adopted rules update the statutory citation in subsection (a)(16).

Subchapter Q. Fees.

The adopted rules amend §111.160, Fees. The adopted rules update the cross-referenced fee provisions in subsections (k) - (m) to use updated, standardized fee language.

Subchapter T. Screening Procedures.

The adopted rules amend §111.190, Communication Screening. The adopted rules reflect the recommendations from the Speech-Language Pathologists and Audiologists Advisory Board with input from its Standard of Care Workgroup as discussed above. The adopted rules amend subsection (a) to clarify that individuals licensed under the Act may conduct communication screenings. In addition, the adopted rules amend subsection (b) to provide that communication screenings may include cursory assessments of cognition to determine if further testing is indicated, and to provide that the aspects of cognition to be screened are any cognitive processes affecting communication function. Finally, the adopted rules amend subsection (c) to provide that cognition screenings should be conducted in the client's dominant language and primary mode of communication.

The adopted rules amend §111.192, Newborn Hearing Screening. The adopted rules update the rule citation in subsection (b) to reflect the Health and Human Services Commission's transfer of the rules related to Early Childhood Intervention Services to a new rule chapter in the Texas Administrative Code (TAC).

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the December 22, 2023, issue of the *Texas Register* (48 TexReg 7727). The public comment period closed on January 25, 2024. The Department received comments from one interested party on the proposed rules. The public comment is summarized below.

Comment: The Department received a comment from the Texas Academy of Audiology (TAA) in support of the proposed rules. First, TAA agreed with the rule change regarding providing proof of licensure through a licensure search option, which could reduce administrative burdens and delays. Second, TAA agreed with the proposed changes "to add cognition screenings as part of a holistic communication evaluation" and stated that the proposed rule is in alignment with existing language that allows for certain screenings. TAA noted that these screenings "are distinct from medical evaluations for and subsequent diagnosis of cognitive disorders, which remains firmly within the scope of licensed physicians, preferably neurologists." TAA hoped that the Department would monitor how the cognition screening tools are used and the marketing materials that are used. Third, TAA agreed with the clarification and clean-up changes from the four-year rule review. Finally, TAA appreciated the clarification removing the "in-person" supervision references and noted that this change reflects the "clinical realities of telehealth."

Department Response: The Department appreciates the TAA comment in support of the proposed rules. The Department agrees with TAA's statement that the communication screening is not a medical evaluation or diagnosis. Regarding monitoring the use of the screening tools and the marketing materials, while the Department is not in a position to monitor the screenings provided, Rule 111.155, Standards of Ethical Practice (Code of Ethics), specifies the requirements and the prohibitions regarding a licensee's practice, and Rule 111.152, Advertising, prohibits a licensee from presenting false, misleading, deceptive, or non-verifiable information relating to the services of the licensee. The Department will be able to identify issues if complaints are filed with the Department. The Department did not make any changes to the proposed rules in response to this public comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Speech-Language Pathologists and Audiologists Advisory Board met on February 26, 2024, to discuss the proposed rules and the public comments received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register.* At its meeting on April 12, 2024, the Commission adopted the proposed rules as recommended by the Advisory Board.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §111.1

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adopted rules.

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 April 26, 2024.

TRD-202401812
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: May 16, 2024
Proposal publication date: December 22, 2023
For further information, please call: (512) 475-4879

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SUBCHAPTER C. EXAMINATIONS

16 TAC §111.23

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department’s governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adopted rules.

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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Doug Jennings
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For further information, please call: (512) 475-4879

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SUBCHAPTER F. REQUIREMENTS FOR ASSISTANT IN SPEECH-LANGUAGE PATHOLOGY LICENSE

16 TAC §111.50

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adopted rules.

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

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For further information, please call: (512) 475-4879

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SUBCHAPTER O. RESPONSIBILITIES OF THE COMMISSION AND THE DEPARTMENT

16 TAC §111.140

STATUTORY AUTHORITY

The adopted repeal is adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department’s governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted repeal is also adopted under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the adopted repeal are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adopted repeal.

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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Doug Jennings
General Counsel
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SUBCHAPTER P. RESPONSIBILITIES OF THE LICENSEE AND CODE OF ETHICS

16 TAC §§111.150, 111.151, 111.155

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adopted rules.

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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Doug Jennings
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For further information, please call: (512) 475-4879

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SUBCHAPTER Q. FEES

16 TAC §111.160

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adopted rules.

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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Doug Jennings
General Counsel
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For further information, please call: (512) 475-4879

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SUBCHAPTER T. SCREENING PROCEDURES

16 TAC §111.190, §111.192

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department. The adopted rules are also adopted under Texas Occupations Code, Chapter 401, Speech-Language Pathologists and Audiologists.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 401. No other statutes, articles, or codes are affected by the adopted rules.

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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Doug Jennings
General Counsel
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For further information, please call: (512) 475-4879

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER G. APPLY TEXAS ADVISORY COMMITTEE

19 TAC §1.128

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter G, §1.128, concerning the Authority and Specific Purposes of the Apply Texas Advisory Committee, without changes to the proposed text as published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 327). The rule will not be republished.

This adopted amendment changes the reference to §4.11 to §4.10.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Chapter 1, Subchapter A, General Provisions, §1.15, which provides the authority for the Commissioner of Higher Education to approve proposed Board rules for publication in the *Texas Register.*

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

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 April 26, 2024.

TRD-202401821
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 16, 2024
Proposal publication date: January 26, 2024
For further information, please call: (512) 427-6585

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

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §4.10

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 4, Subchapter A, §4.10, Common Admission Application Forms, without changes to the proposed text as published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 327). The rule will not be republished.

This adopted amendment aligns the rule with the General Appropriations Act, House Bill 1, Article III, Section 9 (88th Legislature, Regular Session), Cost Recovery for the Common Application Form, which provides the Coordinating Board with the authority to recover costs related to the common application form for each general academic institution, each participating public two-year institution, and each participating independent institution.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the General Appropriations Act, House Bill 1, Article III, Section 9 (88th Legislature, Regular Session), which provides the Coordinating Board with the authority to recover costs related to the common application form for each general academic institution, each participating public two-year institution, and each participating independent institution.

The adopted amendment affects rules in Title 19, Texas Administrative Code, 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.

Filed with the Office of the Secretary of State on April 26, 2024.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: January 26, 2024
For further information, please call: (512) 427-6585

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SUBCHAPTER B. TRANSFER OF CREDIT, CORE CURRICULUM AND FIELD OF STUDY CURRICULA

19 TAC §§4.22, 4.23, 4.27, 4.29, 4.32, 4.34, 4.39

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter B, §§4.27, 4.32, and 4.34, with changes to the proposed text as published in the February 16, 2024, issue of the *Texas Register* (49 TexReg 830) and will be republished. Sections 4.22, 4.23, 4.29, and 4.39, are adopted without changes and will not be republished.

This amendment encourages the transferability of lower division course credit among institutions of higher education, and especially provide for the smooth transfer of lower division credit through core curricula, field of study curricula, and a procedure for the resolution of transfer disputes. The Board is authorized to adopt rules and establish policies and procedures for the development, adoption, implementation, funding, and evaluation of core curricula, field of study curricula, and a transfer dispute resolution process under Texas Education Code, §§61.059, 61.0512, 61.0593, 61.821 - 61.828, and 61.834.

Rule 4.22, Authority, lists the sections of Texas Education Code that grant the Board authority over transfer of credit, core curriculum, and field of study curricula, and updates statutory references as appropriate.

Rule 4.23, Definitions, lists definitions broadly applicable to chapter 4. This rule provides the addition of definitions for Academic Associate Degrees and Applied Associate Degrees. This rule uses Texas Education Code, §61.003, to define categories of institutions.

Rule 4.27, Resolution of Transfer Disputes for Lower-Division Courses, details the procedures in the resolution of credit transfer disputes involving lower-division courses. This rule revision includes the Commissioner's role in the process placing emphasis on the fact the Commissioner or his designee's decision is final and there is no process for appeal. This revision also removes problematic language no longer supported by statutory authority.

Rule 4.29, Core Curricula Larger than 42 Semester Credit Hours, revision allows for an institution, contingent upon Board approval, to have a core curriculum of fewer than 42 semester credit hours for an associate degree program if it would facilitate the award of a degree or transfer of credit.

Rule 4.32, Field of Study Curriculum, revised to correct an error in the timeline of the process.

Rule 4.34, Revision of Approved Field of Study Curricula, revises the language of subsection (c) for clarity.

Rule 4.39, Texas Direct Associate Degree, an addition to subchapter B for the purpose of awarding a Texas Direct Associate Degree. The rule allows for the award of a "Texas Direct" associate degree with the directive to include a notation on the student's transcript who completes a field of study curriculum, the college's core curriculum; or an abbreviated core curriculum related to a specific approved field of study curriculum transferable to one or more general academic institutions.

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

Comment: South Texas College submitted a comment regarding proposed rule 4.39 which states "A junior college, public state college, or public technical institute shall award a student a "Texas Direct" associate degree and include a notation on the transcript of a student who completes any Board-approved field of study curriculum developed by the Board," there are some challenges when it comes to being able to accomplish this at the community college level. This is stemming from discussions that were held with other community college peers during the recent TACRAO quarterly meeting that also share the same concern. The group is seeking further clarification on the notation for a "Texas Direct" associate degree since it's intended to streamline the transfer process from college to university; however, the challenge for the community colleges is not knowing what university the student intends to transfer to as there could be multiple options with varying directed electives. The same can be said about the board-approved field of studies (FOS), especially since some courses are also shared with the core curriculum and community colleges cannot double count credits the way universities can. The FOS structure is not the same as the one we have for Core Curriculum in terms of scheme whereby we can code the courses based on the foundation area they fall under. Below is a snapshot of how core courses are identified on transcripts with a common code, so this would make it easier for the receiving institution to apply the course correctly on the declared program. If something similar can be developed for the FOS, the receiving institution would be able to identify the courses easily.

Response: The Coordinating Board thanks the institution for its comment, and recognizes the concerns raised about transcripting the Texas Direct associate degree. The community college will need to include on the student transcript the notation for the Texas Direct if the student has completed the components of the field of study including: the discipline-specific core curriculum, discipline foundation courses, as well as the directed electives from any general academic teaching Institution. The Coordinating Board will provide additional guidance for institutions in an FAQ and other mechanisms for communicating with institutions.

Comment: San Jacinto College submitted the following comments: §4.27. Resolution of Transfer Disputes for Lower-Division Courses. In §4.27(a)(1) we believe "accept" should be clarified as "accept and apply." That ensures clarity and consistency with subsequent language in §4.27(1)(c), "the receiving institution shall apply the credit toward the core curriculum or the field of study..." Further, we believe it will be beneficial to define all instances of "transfer of credit" throughout Texas Administrative Code Title 19 Part 1 as "the acceptance of credit and the application of that credit to a student's degree plan at the receiving institution." The instances in this statute are examples of the need for that broader change.

Response: Regarding the clarification proposed in §4.27(a)(1) and §4.27(c), the Coordinating Board agrees with the changes proposed and has aligned language in both sections to be "accept and apply." Regarding the request for a definition of "transfer of credit," while the Coordinating Board agrees that having a standardized definition would be helpful, Coordinating Board staff need to gather more information on what sections of Texas Administrative Code would be affected by a broad definition prior to proposing amendments to implement this suggestion.

Comment: §4.34. Revision of Approved Fields of Study Curricula. Regarding §4.34(c), we believe it is important to consider revisions to the "two academic years" limit. The rule should align with and honor a student's catalog year, e.g., "[a] student is entitled to apply an institution's approved directed electives specified in the catalog for the year the student began the field of study at the community college." First, if it is a truly contiguous pathway, this suggested change may be essential. The "two academic years after" effectively disregards catalog years for transfer students. Second, the "two academic years after" may likely have a disproportionately negative effect on part-time students at universities and community colleges. By definition, it often will take those students longer than two years to complete the FOS/AA. If the FOS revisions - including directed electives - are not tied to catalog years, part-time students may inevitably be caught in a bind when revisions have been made to the FOS in the time since they started the program 2.5 to 3 or more years ago.

Response: The Coordinating Board thanks the institution for its comment. Rule 4.32(b)(3)(G) includes a provision requiring a receiving institution to accept a directed elective upon transfer if it was listed as an active directed elective in the Coordinating Boards field of study directed electives inventory at the time the student completed the course. The Coordinating Board has provided additional clarification in §4.34(c) and §4.34(d) permitting an institution to add directed electives, but requiring a two-year phased period for directed electives. The Coordinating Board will notate deletion and phase out dates on its inventory to ensure there is a historical record.

Comment: §4.32. Field of Study Curriculum. Regarding §4.32(b), may the Texas Transfer Advisory Committee (TTAC) consider whether: (1) Selected Texas Core Curriculum Courses and (2) Discipline Foundation Courses should also include a minimum number of semester credit hours (SCH), similar to the Directed Electives? Without such a minimum, select fields of study do not seem to present a viable lower division transfer pathway. For example, the Political Science Field of Study currently includes no selected core curriculum courses, yet nine of the 12 SCH in the discipline foundation are commonly core courses, and with 40 of the 52 SCH directed electives also commonly being core courses, the Political Science FOS is effectively the core curriculum and three SCH, GOVT 2304. Similarly/alternatively, may the Academic Course Guide Manual (ACGM) Advisory Committee consider the breadth of political science courses available in the ACGM? It may be in the discipline's and students' best interest for there to be more political science courses available in the ACGM such that a more substantive transfer pathway may be defined by the field of study.

Response: The Coordinating Board thanks the institution for its comment. While the field of study curriculum (FOSC) does not list a minimum for Discipline Foundation Courses the total field of study courses must be 18 semester credit hours. Having a maximum but not a minimum requirement ensures that faculty subcommittees can customize the field of study curriculum as much as possible within the framework. The core curriculum courses do not count toward the 18 SCH and are additional core

courses the student must take to be FOSC complete. The ACGM Advisory Committee can recommend the development of new courses in the ACGM, at which point THECB staff would convene faculty committees for course development.

The amendments are adopted under Texas Education Code, Sections 61.059, 61.0512, 61.0593, 61.821 - 61.828, and 61.834, which provides the Coordinating Board with the authority to develop and implement policies affecting the transfer of lower division course credit among institutions of higher education.

The adopted amendments affect transfer of credit, core curriculum, and fields of study.

§4.27. Resolution of Transfer Disputes for Lower-Division Courses.

(a) Each institution of higher education shall apply the following procedures in the resolution of credit transfer disputes involving lower-division courses:

(1) If an institution of higher education does not accept and apply a course included in the field of study curriculum for the program in which a student is enrolled or a course in the core curriculum earned by a student at another institution of higher education, the receiving institution shall give written notice to the student and to the sending institution that it intends to deny the transfer of the course credit and shall include in that notice the reasons for the proposed denial. The receiving institution must attach the procedures for resolution of transfer disputes as outlined in this section to the notice. The notice and procedure must include:

(A) clear instructions for appealing the decision to the Commissioner; and

(B) the name and contact information for the designated official at the receiving institution who is authorized to resolve the credit transfer dispute.

(2) A student who receives notice as specified in paragraph (1) of this subsection may dispute the denial of credit by contacting a designated official at either the sending or the receiving institution.

(3) The two institutions and the student shall attempt to resolve the transfer of the course credit in accordance with this section. An institution that proposes to deny the credit shall resolve the dispute not later than the 45th day after the date that the student enrolls at the institution.

(4) If the student or the sending institution is not satisfied with the resolution of the credit transfer dispute, the student or the sending institution may notify the Commissioner in writing of the denial of the course credit and the reasons for denial.

(b) Not later than the 20th business day after the date that the Commissioner receives the notice of dispute concerning the application of credit for the core curriculum or field of study curriculum, the Commissioner or the Commissioner's designee shall make the final determination about a credit transfer dispute and give written notice of the determination to the student and each institution.

(c) If the Commissioner or the Commissioner's designee determines that an institution may not deny the transfer of credit for the core curriculum or the field of study curriculum, the receiving institution shall accept and apply the credit toward the core curriculum or the field of study as determined by the Commissioner or the Commissioner's designee.

(d) A decision under this section is not a contested case. The Commissioner or the Commissioner's designee's decision is final and may not be appealed. Each transfer credit dispute resolved by the Commissioner shall be posted on the Board website, including the final determination.

(e) Each institution of higher education shall publish in its course catalogs the procedures specified in this section.

(f) The Board shall collect data on the types of transfer disputes that are reported and the disposition of each case that is considered by the Commissioner or the Commissioner's designee.

§4.32. Field of Study Curriculum.

(a) In accordance with Texas Education Code, §61.823, the Board is authorized to approve Field of Study Curricula for certain fields of study/academic disciplines. The Board delegates to the Commissioner development of Field of Study Curricula with the assistance of the Texas Transfer Advisory Committee, as defined by Title 19, Subchapter V, Chapter 1. The Texas Transfer Advisory Committee is responsible for convening Discipline-Specific Subcommittees. Discipline-Specific Subcommittees shall provide subject-matter expertise to the Texas Transfer Advisory Committee in developing Field of Study Curricula in specific disciplines.

(b) A complete Field of Study Curriculum will consist of the following components:

(1) Selected Texas Core Curriculum courses.

(A) Selected Texas Core Curriculum courses relevant to the discipline may be included in the Field of Study Curriculum for that discipline.

(B) Discipline-Specific Subcommittees are responsible for identifying discipline-relevant courses from a list of all Texas Core Curriculum courses provided by the Board that may be used to satisfy core curriculum requirements. Each Discipline-Specific Subcommittee shall recommend identified Texas Core Curriculum courses to the Texas Transfer Advisory Committee.

(C) The Texas Transfer Advisory Committee shall recommend the Texas Core Curriculum courses selected for inclusion in a Field of Study Curriculum to the Commissioner who may approve or deny the inclusion of the recommended Texas Core Curriculum courses in the Field of Study Curriculum.

(D) Each institution of higher education must publish on its public website in manner easily accessed by students the Texas Core Curriculum courses selected for inclusion in a Field of Study Curriculum with the cross-listed TCCNS course number.

(2) Discipline Foundation Courses (DFC).

(A) Discipline Foundation Courses are a set of courses within a major course of study, consisting of up to twelve (12) semester credit hours, selected for inclusion in a Field of Study Curriculum for that discipline. These courses will apply toward undergraduate degrees within the Field of Study Curriculum at all Texas public institutions that offer a corresponding major or track, except for those institutions approved to require alternative Discipline Foundation Courses under Title 19, Chapter 4, Subchapter B, §4.35 (relating to Petition for Alternative Discipline Foundation Courses).

(B) Each receiving institution must apply the semester credit hours a student has completed in a Discipline Foundation Course upon the student's transfer into a corresponding major or track. The sending institution must indicate Discipline Foundation Courses on the transfer student's transcript.

(C) Discipline-Specific Subcommittees are responsible for identifying discipline-relevant courses for inclusion on the Discipline Foundation Courses list. The Discipline-Specific Subcommittees must select from courses listed in the Lower-Division Academic

Course Guide Manual. Each Discipline-Specific Subcommittee shall report this course list to the Texas Transfer Advisory Committee.

(D) The Texas Transfer Advisory Committee shall recommend the Discipline Foundation Courses selected by the Discipline Specific Subcommittees for inclusion in a Field of Study Curriculum to the Commissioner. The Commissioner may approve or deny the Discipline Foundation Courses recommended by the Texas Transfer Advisory Committee for inclusion in a Field of Study Curriculum.

(E) General academic teaching institutions may submit a request for an alternative set of Discipline Foundation Courses for a specific program of study according to the process in Title 19, Chapter 4, Subchapter B, §4.35.

(F) Each institution of higher education must report to the Coordinating Board and publish on its public website in manner easily accessed by students the Discipline Foundation Courses with the cross-listed TCCNS course numbers for each course.

(G) The Commissioner must publish the list of Discipline Foundation Courses for each approved Field of Study Curriculum on the agency website with the cross-listed TCCNS course number for each course.

(3) Directed Electives.

(A) Directed Electives are a set of courses that apply toward a major course of study within a Field of Study Curriculum at a specific general academic teaching institution.

(B) The Directed Electives for each Field of Study Curriculum must consist of at least six (6) semester credit hours. The Directed Electives and Discipline Foundation Courses components combined may not exceed twenty (20) semester credit hours in total.

(C) Faculty from each general academic teaching institution may select a list of Directed Electives for the major course of study corresponding to each Field of Study curriculum. Faculty must select the Directed Electives only from courses listed in the Lower-Division Academic Course Guide Manual.

(D) The Chief Academic Officer of the institution shall submit the list of Directed Electives for inclusion in a Field of Study Curriculum with the cross-listed TCCNS course number to the Commissioner not later than 45 days after being sent the request from the Coordinating Board. The Coordinating Board shall publish the list of each institution's Directed Electives for each approved Field of Study Curriculum on the agency website with the cross-listed TCCNS course numbers for each course.

(E) An institution that does not submit its Directed Electives in accordance with subparagraph (D) of this paragraph shall be required to accept any Directed Elective courses that appear on the Board's list for the Texas Direct Associate Degree for any institution's Field of Study Curriculum.

(F) Each institution of higher education must publish on its public website in a manner easily accessed by students Directed Electives with the cross-listed TCCNS course number.

(G) An institution shall accept and apply directed electives for fields of study upon transfer as long as the directed elective was active on the Coordinating Board's inventory of directed electives at the time the student completed the course at the community college.

(c) A receiving general academic teaching institution shall determine whether a transfer student is Field of Study Curriculum complete upon the transfer student's enrollment. If a student successfully completes an approved Field of Study Curriculum, a general academic teaching institution must substitute that block of courses for the receiving institution's lower-division requirements for the degree program for the corresponding Field of Study Curriculum into which the student transfers. Upon enrollment, the general academic teaching institution must grant the student full academic credit toward the degree program for the block of courses transferred.

(d) If a student transfers from one institution of higher education to another without completing the Field of Study Curriculum, the receiving institution must grant academic credit in the Field of Study Curriculum for each of the courses that the student has successfully completed in the Field of Study Curriculum of the sending institution. After granting the student credit for these courses, the institution may require the student to satisfy remaining course requirements in the current Field of Study Curriculum of the receiving general academic teaching institution, or to complete additional requirements in the receiving institution's program, as long as those requirements do not duplicate course content the student previously completed through the Field of Study Curriculum.

(e) Each institution must note the selected Texas Core Curriculum component and Discipline Foundation Courses components of the Field of Study Curriculum courses on student transcripts as recommended by the Texas Association of Collegiate Registrars and Admissions Officers (TACRAO).

(f) The Board shall publish on its website the components of each Field of Study Curriculum, including the selected Texas Core Curriculum courses, the Discipline Foundation Courses, and the Directed Electives of each general academic teaching institution.

(g) Effective Dates.

(1) Unless repealed or replaced, Field of Study Curricula in effect as of March 1, 2021, will remain in effect until August 31, 2025, upon which date those Field of Study Curricula expire by operation of law. For Field of Study Curricula that are repealed, replaced, or expire by operation of law, the following transition or "teach out" provisions apply:

(A) A student who has earned credit on or before August 31, 2022, in one or more courses included in a Field of Study Curriculum that exists on March 1, 2021, is entitled to complete that Field of Study Curriculum on or before August 31, 2025.

(B) A student who has not, on or before August 31, 2022, earned any course credit toward a Field of Study Curriculum in effect on March 1, 2021, is not entitled to transfer credit for that Field of Study Curriculum.

(2) After an institution's Spring 2026 enrollment deadline, a receiving institution is not required to transfer a complete Field of Study Curricula that expired prior to that date. A receiving institution may, at its discretion, choose to accept a complete or partial Field of Study Curricula that has expired.

§4.34. Revision of Approved Field of Study Curricula.

(a) The Commissioner may modify or revise a Field of Study Curriculum when a need for such a revision is identified.

(b) Any Chief Academic Officer of an institution that offers a corresponding major or track may request a modification or revision to an approved Field of Study Curriculum. The Texas Transfer Advisory Committee shall evaluate institutions' proposed modifications or revisions to Field of Study Curricula and may refer the proposed revisions to Discipline-Specific Subcommittees prior to making a final recommendation to the Commissioner.

(c) Institutions may request deletion of directed electives not more than once a year in a manner prescribed by the Board. Each directed elective requested for deletion is subject to a two-year phase out

period to be noted on the Coordinating Board and institutional websites.

(d) Institutions may add directed electives once every year in a manner and timeline prescribed by the Board. The institution must demonstrate a compelling academic reason for the change in directed electives.

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 April 26, 2024.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: February 16, 2024
For further information, please call: (512) 427-6182

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SUBCHAPTER C. TEXAS SUCCESS INITIATIVE

19 TAC §§4.51 - 4.63

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of Title 19, Part 1, Chapter 4, Subchapter C, §§4.51 - 4.63, concerning the Texas Success Initiative, without changes to the proposed text as published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 329). The rules will not be republished.

Specifically, this repeal will allow the Coordinating Board to adopt new rules relating to college readiness standards.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Education Code, Section 51.344, which provides the Coordinating Board with the authority to adopt rules relating to Texas Education Code, Chapter 51, Subchapter F-1, relating to the Texas Success Initiative.

The adopted repeal affects Texas Education Code, Chapter 51, Subchapter F-1, Section 51.344, relating to the Texas Success Initiative.

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. COLLEGE READINESS STANDARDS

19 TAC §§4.51 - 4.62

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 4, Subchapter C, §§4.51 - 4.62, concerning college readiness standards and the Texas Success Initiative (TSI), with changes to the subchapter title, §4.54 proposed text, and Figure: 19 TAC §4.54(b) as published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 330). The rules will be republished. Sections 4.51 - 4.53 and 4.55 - 4.62 are adopted without changes and will not be republished.

The TSI is a system established in statute for assessing whether students have met requirements to be deemed college-ready, requiring advising and academic assistance supporting students' successful course completions and momentum towards meeting academic and career goals. Specifically, this new section will modernize existing rules related to the TSI to reflect best practices in the delivery of developmental education.

The new adopted subchapter C title is College Readiness Standards.

Rule 4.51 provides the purpose and authority for this subchapter. Rules establishing the TSI derive from Texas Education Code (TEC), chapter 51, subchapter F-1, and the Coordinating Board's authority to promulgate TSI-related rules is established in TEC, §51.344.

Rule 4.52 sets out categories of students to whom TSI and college readiness requirements do not apply. This rule implements statutory language in TEC, §51.332, which carves out certain student categories (like students in military service, or students who have already earned an associate or baccalaureate degree) from TSI requirements. This rule clarifies that college readiness standards do not apply to a high school student who is a non-degree seeking student and an institution shall not require a non-degree seeking high school student to be assessed for college readiness. This revision aligns the rule to TEC, §51.333, which applies to an entering undergraduate student.

Rule 4.53 contains definitions for the subchapter. The Coordinating Board refines the definitions to match current practices and developmental education and other support models more closely - for example, by changing the Advising definition to reflect that students receive college guidance from a wide variety of sources. The rule adds definitions for degree seeking and non-degree seeking students to clarify which students are required to meet college readiness standards. These definitions implement TEC, §51.9685, and will be applicable across the definitions in Board rules.

Rule 4.54 lists the standards set by the Coordinating Board for institutions to determine whether a student has met requirements for exemption from the TSI. Statute provides for students to qualify for TSI exemption upon achieving certain scores on assessments or upon completion of certain college-level coursework (TEC, §51.338). Rule 4.54 complies by establishing benchmarks for commonly administered assessments like the SAT and the ACT, as well as stating how students can qualify for TSI exemptions through demonstrations of success on prior college-level coursework. Revisions to this section align the exemptions to the Education Code, chapter 51, subchapter F-1, and eliminate obsolete assessment instruments and standards. The section additionally clarifies that students who have successfully earned college credit in math or English via dual credit are deemed exempt from TSI assessment because the student has demonstrated that they are ready to perform college level course

work through course completion. Additionally, a student who has earned the Texas First Diploma is exempt from TSI assessment because a student must meet standards that demonstrate early readiness from college pursuant to TEC, §28.0253, in order to earn the diploma. This section is adopted with the Algebra II STAAR End-of-Course test with a minimum score of 4000 added to Section 4.54(E) and Figure: 19 TAC 4.54(b).

Rule 4.55 outlines steps for institutions to assess and place students on an individualized basis, including delivering pre-assessment information to students and describing relevant factors to place students in appropriate coursework or interventions. This rule carries out statutory provisions, including TEC, §51.333(b).

Rule 4.56 establishes the Texas Success Initiative Assessment Instrument (TSIA and TSIA2) in rule, which is the Coordinating Board-approved assessment instrument required by TEC, §51.334. Test results are valid for a five-year period, and institutions must follow Coordinating Board and vendor requirements to administer the assessment.

Rule 4.57 sets out the benchmarks required on the TSIA for a student to demonstrate college readiness as required by TEC, §51.334(c). The Coordinating Board designates benchmarks with the objective of ensuring appropriate placement of students to achieve success in coursework.

Rule 4.58 requires institutions to develop advising and academic success plans for non-exempt students who do not meet college readiness assessment benchmarks. These plans must be individualized to the student and created in partnership with the student, a best practice required by law (TEC, §51.335). The Coordinating Board encourages institutions to adopt Non-Course-Based models where possible, to address needs in a targeted manner intended to keep students engaged and enrolled in their programs.

Rule 4.59 states how institutions may determine whether to enroll students in college-level coursework.

Rule 4.60 complies with a statutory requirement that the Coordinating Board periodically evaluate effectiveness of the TSI program by setting out required reporting necessary to conduct the evaluation (TEC, §51.343).

Rule 4.61 describes the required components of a developmental education program, in keeping with statutory requirements in TEC, §51.336(e). The revised rule gives institutions greater flexibility to design and offer different models of developmental education to students.

Rule 4.62 pertains to the privacy of student information. This provision ensures compliance with federal law and state law on data privacy (TEC, §51.344(c)).

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

Comment 1: The following comment was received from South Texas College:

Starr EOC Math Exemption is not included in the proposed changes under TSI exemptions, pg. 333 Section 4.54 - Exemption. Clarification is needed if STARR EOC Math exemption is to be included or will be excluded under the new recommended proposal. They are only referencing reading and writing.

Response 1: The Coordinating Board appreciates these comments and provides the following responses.

The omission of Algebra II EOC with a score of 4000 as a demonstration of college readiness for mathematics was not intentional. The Algebra II STAAR End-of-Course test with a minimum score of 4000 should be added to §4.54(E).

Comment 2: The following comments were received from San Jacinto College:

Regarding 19 TAC §§4.51 - 4.62

There is a massive body of national research that supports the efficacy of having students on focused pathways with defined goals and exit points along the pathway. Research clearly shows that students are retained, complete, and pursue further education (transfer) at a significantly higher rate if students have well-defined pathways and clear objectives relative to completion, both in technical pathways and transfer pathways. To promote dual credit through a non-degree seeking entrance into dual credit is diametrically opposed to ensuring that students have goals and clear paths to credentials that lead to jobs, transfer, and enhanced quality of life.

To promote dual credit through the non-degree seeking status also circumvents the requirement that students are "college ready," meaning that no TSIA or other qualifying test or course is required to be placed into dual credit college courses. This will limit what courses can be offered to students, and courses will likely not meet requirements for associate degrees and will not transfer if the student wishes to transfer to a four-year institution. Even if the courses are accepted in transfer, it is extremely unlikely that they will count for anything other than electives.

Regarding §4.52 Applicability(b)(4) and 4.53 Definitions(19)

If nearly all of dual credit students are now non-degree seeking, can the funded 15 credit hours be courses that are not included in degree requirements? Currently, we are not funded for courses that fall outside of degree requirements. Thus, we have eliminated EDUC 1300, BCIS 1305, and physical education from dual credit offerings because these are not degree requirements for San Jacinto College and not funded for contact hours. With the change to funding for 15 non-specific hours, can that be courses that are not in our degree requirements?

Regarding §4.52 Applicability(b)(4) and §4.54 Exemption(d).

In addition, once the dual credit student has completed the 15 hours that do not require college readiness and now chooses a degree pathway and is "degree seeking," does the TSIA or other qualifying test come into play? If so, then community colleges' developmental education programs will grow substantially because none of these students will be college ready and cannot take courses that have reading, writing, and mathematics competency requirements. This again is diametrically opposed to what has been the community college goal, and that is the reduction of developmental education in the pursuit to ensure that students graduating high school are college ready and can enroll in gateway courses. Or is it expected that the high school program and faculty deliver the college readiness portions of a College Connect or similar course which would also facilitate the separation of the college credit from the high school credit described in the College Connect rules?

Regarding §4.52 Applicability(b)(4)

How does the non-degree seeking status align with the high school endorsements that students must choose at eighth grade? What is the point of that if the student is not going to

enter a pathway that is based on the chosen endorsement? Since it is unlikely that the courses that can be taken by non-college ready non-degree seeking students will align with any transfer pathway, these 15 hours will be wasted in terms of applying toward an associate degree or a transfer degree. If a student is on a technical pathway at the certificate level, it may be that courses count. But even technical pathways that are degrees (not certificates) require students to be college ready for gateway math and English. So are we unintentionally steering all students into technical certificates, even if that is not the student's intent?

Response 2:

The Coordinating Board appreciates these comments and provides the following responses.

1) The term "degree seeking student" is defined in §4.83(9) as a student who has filed a degree plan with an institution of higher education or is required to do so pursuant to Education Code, §51.9685. A non-degree seeking student is one who has not filed a degree plan or is not required to do so. This designation has no impact on advising students and providing information about well-defined pathways and clear objectives relative to completion, both in technical and transfer pathways, as noted in the comment.

2) Institutions may still require students to meet the institution's regular prerequisite requirements designated for that course (§4.85(b)(3)) or may impose additional requirements that do not conflict with this subchapter (§4.85(b)(4)). A dual credit course must be in the approved undergraduate course inventory of the institution and must meet the definition as outlined in §4.83(10). Courses are fundable, must count towards a degree plan, and must be transferable.

3) See previous response.

4) Successful completion of a college-level course that is reading/writing or mathematics-intensive is demonstration of college readiness by applicable subject area. Students who successfully complete such courses are TSI-met/complete (§4.54(2)(b)).

Comment 3: The following comment was received from CHILDREN AT RISK:

Recommendations Summary:

We recommend that the committee reconsiders maintaining the exemption criteria for

Algebra II End of Course (EOC) exams as is in the present Texas Administration

Code. (Subchapter C, 4.54)

SUBCHAPTER C TEXAS SUCCESS INITIATIVE

4.54 Exemptions, Exceptions, and Waivers

Rule 4.54 lists the standards set by the Coordinating Board for institutions to determine whether a student has met requirements for exemption from the TSI. Part (b) states that a student who achieves the passing standard on an assessment as set out in this subsection shall be deemed exempt from the requirements of the Texas Success Initiative.

(E) STAAR End of Course Test. A student who achieves a minimum score of 4000 on STAAR English III EOC shall be exempt for both reading and writing.

We recommend that the committee reconsiders maintaining the exemption criteria for Algebra II End of Course (EOC) exams as is in the present Texas Administration Code.

Per current the Texas Administration Code, the exemption related to STAAR testing included a minimum Level 2 score of 4000 on the Algebra II EOC for exemption from the mathematics section.

Data from the 2022-23 Texas Education Agency Performance Report reveals that only 19.9% of the 2021-22 graduates in the state completed advanced/dual-credit courses in mathematics. Comparing this to the 2017-18 school year, where 32% of students mastered the Algebra I EOC, it's evident that there has been a decline in students accessing advanced math coursework over time.

The proposal mentions that the proposed rule seeks to "eliminate obsolete assessment instruments and standards" though it's essential to recognize that districts retain the autonomy to request the Texas Education Agency (TEA) to administer an Algebra II End-of-Course (EOC) exam. This autonomy is crucial because it ensures that districts can tailor their educational offerings to meet the diverse needs of their students. By preserving this flexibility, we uphold the principle of providing equitable access to opportunities for all students, irrespective of their geographical location or educational background. Stripping away the language and opportunity for districts to make such requests could inadvertently limit students' access to vital educational resources and pathways for academic advancement. It is imperative to maintain language in the proposal that safeguards districts' ability to facilitate students' access to these opportunities.

This decline in access to advanced math coursework directly impacts students' pathways to postsecondary success. Research consistently demonstrates the importance of advanced math education for college and career readiness. Mastery of Algebra II and beyond is crucial for developing critical thinking skills, problem-solving abilities, and analytical reasoning--all of which are essential for success in higher education and the workforce.

(1) "Students who study math through Algebra II are more than twice as likely to earn a four-year degree than those who do not" Achieve.

(2) "The highest level of mathematics reached in high school continues to be a key marker in precollegiate momentum, with the tipping point of momentum toward a bachelor's degree now firmly above Algebra II" Anneberg Institute for School Reform.

(3) "After controlling for demographic factors, 73% of students who took calculus during high school later earned a bachelor's degree, while just 3% of those who took "vocational" math (e.g. courses labeled vocational, general, basic, or consumer math) did" Public Policy Institute of California.

The primary focus is on the potential consequences of removing the exemption and the need to carefully consider the broader impact on student access to higher education opportunities include:

(1) Concerns regarding the impact on students who struggle to meet TSI math passing standards, especially considering that only 18.7% of students in the state currently meet these standards.

(2) Some students may experience TSI burnout after multiple failed attempts, affecting their psychological well-being and readiness for college-level math.

(3) The removal of exemptions could limit access to dual credit classes requiring math readiness and potentially hinder college access and success for affected students.

(4) The importance of ensuring equitable access to college readiness programs and support for students of all backgrounds.

Eliminating the exemption related to the mathematics section of the TSI not only restricts students' access to higher education but also narrows their pathways to associate degrees and workforce opportunities. With the TSI serving as a prerequisite for enrollment in Dual Credit courses, removing this exemption directly impedes students' access to classes that require college readiness in mathematics.

Maintaining an exemption pathway for students who demonstrate proficiency in Algebra II coursework is essential for promoting equitable access to post-secondary education and fostering students' long-term success in their academic and professional endeavors.

Response 3:

The Coordinating Board appreciates these comments and provides the following response.

The omission of Algebra II EOC with a score of 4000 as a demonstration of college readiness for mathematics was not intentional. The Algebra II STAAR End-of-Course test with a minimum score of 4000 should be added to §4.54(E).

The new sections are adopted under Texas Education Code, §51.344, which provides the Coordinating Board with the authority to adopt rules to implement Texas Education Code, Chapter 51, Subchapter F-1, relating to the Texas Success Initiative.

The adopted new sections affect Texas Education Code, §§51.331-51.344, 61.07611, and 61.0762; and Texas Administrative Code, Title 19, Part 1, §§2.3, 4.85, 4.86, 4.155, and 21.52.

§4.54. Exemption.

(a) For the purpose of demonstrating exemption under subsection (b) of this section, the Board shall ensure that the passing standard on each approved assessment meets the college readiness standard under §4.57(a) of this subchapter (relating to Texas Success Initiative Assessment College Readiness Standards).

(b) A student who achieves the passing standard on an assessment as set out in this subsection shall be deemed exempt from the requirements of the Texas Success Initiative. An institution shall not require an exempt student to provide any additional demonstration of college readiness and shall allow an exempt student to enroll in an entry-level academic course as defined in §4.53(13) of this title (relating to Definitions). The following figure contains the full list of assessments, minimum required scores, and eligible exemptions.
Figure: 19 TAC §4.54(b)

(1) For a period of five (5) years from the date of testing, a student who is tested and performs at or above the following standards that cannot be raised by institutions:

(A) ACT. A student who has achieved the applicable standard under this subsection shall be deemed exempt under this subchapter.

(i) ACT administered prior to February 15, 2023: composite score of 23 with a minimum of 19 on the English test shall be exempt for both the reading and writing sections of the TSI Assessment, and/or 19 on the mathematics test shall be exempt for the mathematics section of the TSI Assessment.

(ii) ACT administered on or after February 15, 2023: a combined score of 40 on the English and Reading (E+R) tests shall be exempt for both reading and writing or ELAR sections of the TSI Assessment. A score of 22 on the mathematics test shall be exempt for the mathematics section of the TSI Assessment. There is no composite score.

(iii) The use of scores from both the ACT administered prior to February 15, 2023, and the ACT administered after February 15, 2023, is allowable, as long as the benchmarks set forth in clause (ii) of this subparagraph are met.

(B) SAT. A student who has achieved the applicable standard under this subsection shall be deemed exempt under this subchapter.

(i) SAT administered on or after March 5, 2016: a minimum score of 480 on the Evidenced-Based Reading and Writing (EBRW) test shall be exempt for both reading and writing sections of the TSI Assessment. A minimum score of 530 on the mathematics test shall be exempt for the mathematics section of the TSI Assessment. There is no minimum combined EBRW and mathematics score.

(ii) Mixing or combining scores from the SAT administered prior to March 5, 2016, and the SAT administered on or after March 5, 2016, is not allowable.

(C) GED: minimum score of 165 on the Mathematical Reasoning subject test shall be exempt for the mathematics section of the TSI Assessment. A minimum score of 165 on the Reasoning Through Language Arts (RLA) subject test shall be exempt for the English Language Arts Reading (ELAR) section of the TSI Assessment.

(D) HiSET: minimum score of 15 on the Mathematics subtest shall be used to determine exemption on the mathematics section of the TSI Assessment. A minimum score of 15 on the Reading subtest and a minimum score of 15 on the Writing subtest, including a minimum score of 4 on the essay, shall be exempt for the English Language Arts Reading (ELAR) section of the TSI Assessment.

(E) STAAR End of Course Test. A student who achieves a minimum score of 4000 on STAAR English III EOC shall be exempt for both reading and writing. A student who achieves a minimum score of 4000 on STAAR Algebra II EOC shall be exempt from mathematics.

(c) A student who has met one of the following criteria shall be exempt from the requirements of the Texas Success Initiative for the respective content area in which they have demonstrated college readiness. The following chart contains the full list of course and program completions and eligible exemptions.
Figure: 19 TAC §4.54(c)

(1) A student who successfully completes a college preparatory course under Texas Education Code, §28.014, is exempt for a period of twenty-four (24) months from the date of high school graduation with respect to the content area of the course, under the following conditions:

(A) The student enrolls in the student's first college-level course in the exempted content area in the student's first year of enrollment in an institution of higher education; and

(B) The student enrolls at the institution of higher education:

(i) that partnered with the school district in which the student is enrolled to provide the course, or

(ii) with an institution that deems the student TSI-met based on the completion of a course that meets the requirements of subsection (c)(1) of this section.

(2) A student who has previously enrolled in any public, private, or independent institution of higher education or an accredited out-of-state institution of higher education and:

(A) has met college readiness standards in mathematics, reading, or writing as determined by the receiving institution, or

(B) who has satisfactorily completed college-level coursework in mathematics, reading, or writing with a grade of 'C' or better, including a high school student who has earned college credit for a dual credit course or a course offered under §4.86 of this chapter (relating to Optional Dual Credit or Dual Enrollment Program: College Connect Courses), with a grade of 'C' or better.

(3) A student who has earned the Texas First Diploma under chapter 21, subchapter D of this title (relating to Texas First Early High School Completion Program).

(d) An institution may exempt a non-degree-seeking or non-certificate-seeking student not otherwise exempt under this section.

(e) In accordance with the requirements of this subchapter, an institution shall not require a student who is exempt in mathematics, reading, and/or writing or to whom this subchapter is inapplicable under §4.52 of this subchapter (relating to Applicability) to be assessed under this subchapter or to enroll in developmental coursework or interventions in the corresponding area of exemption. This limitation does not restrict an institution from advising a student to complete additional coursework or interventions to increase the likelihood of the student's success in completing the courses and program in which the student enrolls.

(f) ESOL Waiver--An institution may grant a temporary waiver from the assessment required under this title for students with demonstrated limited English proficiency in order to provide appropriate ESOL/ESL coursework and interventions. The waiver must be removed after the student attempts 15 credit hours of developmental ESOL coursework at a public junior college, public technical institute, or public state college; nine (9) credit hours of developmental ESOL coursework at a general academic teaching institution; or prior to enrolling in entry-level academic coursework, whichever comes first, at which time the student would be assessed by the institution with a Board-approved instrument as defined by §4.56 of this subchapter (relating to Texas Success Initiative Assessment Instrument). Funding limits as defined in Texas Education Code, §51.340, for developmental education still apply.

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

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SUBCHAPTER D. DUAL CREDIT PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND TEXAS PUBLIC COLLEGES

19 TAC §§4.81 - 4.86

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of Title 19, Part 1, Chapter 4, Subchapter D, Dual Credit Partnerships Between Secondary Schools and Texas Public Colleges, §§4.81 - 4.86, without changes to the proposed text as published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 336). The rules will not be republished.

The Coordinating Board replaced these regulations with new chapter 4, subchapter D, §§4.81 - 4.87. The new rule language aligns with new dual credit requirements and provides opportunity to streamline reporting for institutions.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Education Code, Section 28.009(b), 28.0095, 61.059(p), 130.001(b)(3)-(4) and 130.008, which provides the Coordinating Board with the authority to regulate dual credit partnerships between public institutions of higher education and secondary schools with regard to lower division courses, and provide funding for dual credit courses, including courses offered under the FAST program.

The adopted repeal affects chapter 4, subchapter D, §§4.81 - 4.86.

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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Texas Higher Education Coordinating Board
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19 TAC §§4.81 - 4.87

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter D, §§4.81 - 4.87, concerning dual credit partnerships between secondary schools and Texas public colleges. Sections 4.85 - 4.87 are adopted with changes to the proposed text as published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 337) and will be republished. Sections 4.81 - 4.84 are adopted without changes and will not be republished. These new rules replace existing rules §§4.81 - 4.86, which the Coordinating Board will repeal. Negotiated rulemaking was used in the development of these adopted rules. Reports of negotiated rulemaking committees are public information and are available upon request from the Coordinating Board.

Prior to the 88th Legislative Session, Education Code, §§ 28.009, 29.908, 61.059(p), and 130.008, defined how the state can fund dual credit courses. With the Legislature's addition of

the Financial Aid for Swift Transfer (FAST) Program in Education Code, §28.0095, the Coordinating Board is updating its dual credit rules to ensure alignment of the Coordinating Board's rules with current statutes and to clarify which dual credit courses the agency can fund in the base and performance tiers under Education Code, chapter 130A. The adopted new rules clarify reporting and funding requirements for institutions and make the definitions uniform across the Coordinating Board's rules. The Coordinating Board will use the definitions for dual credit of its rules and will streamline the institutions' compliance and reporting obligations.

Rule 4.81, Purpose, establishes the purpose of the subchapter, to provide rules and regulations for public institutions of higher education to establish partnerships with secondary schools to provide dual credit instruction.

Rule 4.82, Authority, contains the legal authority for chapter 4, subchapter D, which is contained in Education Code, §§28.009(b), 28.009, 28.0095, 29.908, 61.059(p), 130.001(b)(3)-(4), and 130.008.

Rule 4.83, Definitions, lists definitions pertinent for dual credit education.

Paragraph (10) ("Dual Credit Course or Dual Enrollment Course") defines a dual credit or dual enrollment course. This definition includes several definitions in statute: Education Code, §28.009(a-4), providing a general definition in Title 2 of the Education Code, relating to Public Education; Education Code, §28.0095(3), establishing a definition of dual credit for purposes of the FAST program; Education Code, §61.059(p), defining dual credit hours eligible for funding through appropriations; and Education Code, §130.008(a-1), defining dual credit specifically for public junior colleges. These statutory definitions structure the permissible subject matter areas in subparagraph (10)(B), including courses in the core curriculum under Education Code, §61.821; courses identified as part of a field of study curriculum under Education Code, §61.823; courses satisfying a foreign language requirement; and career and technical education courses counting toward an industry-recognized credential, certificate, or associate degree. This definition stipulates that institutions must offer dual credit courses, including courses that are eligible for FAST funding, pursuant to an agreement between the secondary-level education provider and the institution of higher education.

Subparagraphs (10)(C)-(E) concern dual enrollment courses, a model for providing joint high school and college credit that, under some definitions, allows students to earn two separate grades in the high school and college levels. The Texas Education Code uses the term "dual enrollment," including providing specific funding for dual enrollment courses delivered through community colleges under H.B. 8 (Education Code, §130A.101(c)(3)), but authorizes the Board to define the term. Proposed Coordinating Board rules thus provide a needed definition for the dual enrollment model of joint credit delivery, aligned with widespread industry usage of the term. The new definition of "dual credit" includes what was previously described as "dual enrollment" since the two course structures are fundable in the same manner pursuant to Education Code, §28.0095.

Paragraphs (1) ("Avocational Course") and (3) ("Career and Technical Education Course") concern related concepts within the career and technical education category. Statute allows for students to take dual credit courses in career and technical subjects (as opposed to academic subjects) when that course counts toward an industry-recognized credential, certificate, or associate degree (Education Code, §28.0095(3)(D)); see also Education Code §61.059(p)(3). The proposed "career and technical education course" definition excludes certain categories unlikely to count later toward a student's credential, including avocational courses as defined in Education Code, §130.351(2).

Paragraphs (8) ("Credit"), (11) ("Equivalent of a Semester Credit Hour"), (15) ("Locally Articulated College Credit"), and (19) ("Semester Credit Hour") relate to the units of measurement for each course that count toward a larger credential. Dual credit courses must confer credit toward a larger credential or degree, as required by statute and reflected in the "credit" definition in the proposed rules (Education Code, §28.009(a-1)). Institutions denominate credit differently for different types of courses: for academic courses, credit is denominated in semester credit hours (SCH), as reflected in paragraph (19); for career and technical courses, credit is denominated in contact hours, and so paragraph (11) accordingly contains a conversion of contact hours to SCH. Additionally, institutions may choose to use students' fulfillment of certain pre-identified requirements as career and technical education credits, as recognized in paragraph (15).

Paragraph (4) ("Certificate") establishes a single, clear definition for a term with multiple potential meanings in the higher education sector, connecting the dual credit rule to the definition established in statute (Education Code, §61.003(12)).

Paragraphs (12) ("Field of Study Curriculum (FOSC)") and (16) ("Program of Study Curriculum (POSC)") recognize two statutorily established curricula designed by the Legislature to improve the portability of the credits students earn across Texas public institutions. FOSC establishes a set of courses for students to take in certain disciplines with guaranteed transfer and applicability to a major across Texas public institutions (Education Code, §61.823); POSC establishes a similar set of courses for students enrolled in career and technical education programs (Education Code, §61.8235).

Paragraphs (5) ("College Board Advanced Placement") and (14) ("International Baccalaureate Diploma Program") define two common advanced academic programs intended to prepare students for college.

Paragraphs (2) ("Board"), (6) ("Commissioner"), and (7) ("Coordinating Board") establish specific roles related to the Coordinating Board, including specifying that "Board" means the governing board of the agency, "Coordinating Board" refers to the agency including agency staff, and "Commissioner" meaning the Commissioner of Higher Education. These definitions clearly distinguish between different but related entities, specifically identifying responsible parties within the rule text.

Similarly, paragraphs (13) ("Institution of Higher Education or Institution"), (17) ("Public Two-Year College"), and (18) ("School District") define commonly used categories of educational providers, in each case connecting definitions in rule with commonly understood terms defined in statute (Education Code, chapter 12 and §61.003).

Paragraph (9) ("Degree-Seeking Student") defines a student seeking a degree as one who has filed, or is required to file, a degree plan pursuant to Education Code, §51.9685. This provision of statute requires dual credit students to file degree plans by the end of the regular semester immediately following

the semester in which they earn at least 15 SCH, or by the end of the first semester if the student already enters with at least 15 SCH (Education Code, §51.9685(c-2)). While it was commonly understood that a high-school student with at least 15 SCHs was a degree-seeking student, there was no definition in statute or rule previously.

Rule 4.84, Institutional Agreements, establishes parameters for the institutional agreements between school districts or private schools and institutions of higher education, required for institutions to offer dual credit coursework. Subsection (b) lists required elements of these agreements, which includes the minimum content necessary to establish a successful dual credit framework in alignment with Education Code, §28.009(b-2). These elements provide for transparent exchange of necessary data and information and establish important safeguards for students, including adequate and appropriate academic support. The Coordinating Board is updating this section of the rules to clarify that such agreements must address the joint participation of the school district and an institution of higher education in the FAST program.

Rule 4.85, Dual Credit Requirements, stipulates course eligibility, student eligibility, requirements for the location and composition of the class, standards for faculty, and baseline academic policies. The Coordinating Board amends this rule to provide greater clarity around which students are eligible to enroll in dual credit courses based on whether the student is TSI-exempt or has met college readiness standards. Pursuant to this rule a student may enroll in dual if the student is: (a) non-degree seeking, (b) exempt from the requirements of TSI, or (c) has met the college readiness standards. The unamended provisions of this section ensure that each institution retains latitude to apply its general academic policies to dual credit students and that the quality of instruction for high school students is the same as that of the institution's regular college students.

Subsection (a) stipulates course eligibility for dual credit, including those defined in proposed rule 4.83 that are included in the institution's undergraduate course inventory. Institutions may not offer remedial or developmental education as dual credit, although this limitation does not prohibit institutions from enrolling students not yet deemed college-ready in dual credit, including in College Connect Courses as established by this subchapter.

Subsection (b) relates to students eligible to enroll in dual credit courses. State law requires students entering college classes demonstrate college readiness, show that those standards to not apply, or qualify for an exemption from those standards under the Texas Success Initiative (TSI) (Education Code, chapter 51, subchapter F-1). Institutions may exempt students who are non-degree seeking or non-certificate seeking from TSI requirements under Education Code, §51.338; as defined in the proposed rule's definitions, non-degree-seeking students may include students not yet required to file degree plans under Education Code, §51.9685. Institutions have latitude to determine whether a student may enroll in dual credit coursework, in keeping with typical accreditation requirements that institutions exercise oversight over student admissions and enrollment.

Subsection (c) and (d) relate to the physical location and student composition of the dual credit class. The Coordinating Board authorizes the offering of distance education courses under Education Code, §61.0512; the proposed rule notes that any dual credit offered through distance education should comply with existing Coordinating Board rules under Texas Administrative Code chapter 2, subchapter J. Dual credit classes may consist of dual credit students only or a mixture of dual credit and college students. Institutions may also offer dual credit classes composed of a mixture of dual credit and non-dual credit high school students if that is the only financially viable way to offer dual credit, for example in rural districts with very small total enrollments of dual credit students. The rule sets out parameters for these mixed classes to ensure appropriate standards for the dual credit students.

Subsections (e), (f), and (g) relate to general academic policies for dual credit courses, which should match the standards used for non-dual credit college courses. In selecting and managing faculty to teach dual credit courses, public junior colleges must abide by Education Code, §130.008(g); in addition, under the proposed rule, faculty would need to meet accreditation requirements and qualify as instructors of record with the institution of higher education. Similarly, dual credit course curriculum, instruction, grading, support services, transcripting and other academic policies should match what institutions offer their non-dual credit students. This requirement in the proposed rule ensures dual credit students experience a full college-level education and reinforces standards typically required by federally recognized institutional accreditors.

Rule 4.86, Optional Dual Credit or Dual Enrollment Program: College Connect Courses, sets parameters for a new dual credit model institutions may optionally provide, called College Connect Courses. These courses allow students not yet deemed college ready to experience college-level coursework in a supportive environment, in which institutions provide supplemental content to help prepare students. Students must meet the eligibility requirements stipulated in proposed rule 4.85. Amendment to 4.86(c) authorizes a student who has earned more than 14 SCHs, and is not otherwise college ready, to take a College Connect course in math or communications offered by an institution. This amendment will allow a high-school student who may be classified as degree seeking but is not yet college ready to gain exposure to college-level content and have the opportunity to demonstrate college readiness in math or ELA by earning a grade of C or better in the course.

Rule 4.87, Funding, connects the dual credit rules with Coordinating Board funding provisions. Under statute, all public institutions of higher education may receive appropriations for eligible dual credit courses under Education Code, §61.059(p). In addition, any participating public institution of higher education may receive dual credit funding for eligible courses through the FAST program, as established in Education Code, §28.0095, Texas Administrative Code, chapter 13, subchapter Q, and subsection (c) and (e) of the proposed rule. Public junior colleges may receive funding through the newly established Community College Finance Program for eligible dual credit courses that meet the proposed rule's requirements, in accordance with Education Code, §130A.101(c)(3), Texas Administrative Code, chapter 13, subchapter P or S, and subsection (a) of the proposed rule.

The Coordinating Board received comments from two Texas institutions of higher education and one nonprofit organization during the public comment period for the proposed new dual credit rules, including comments regarding the proposed rules for College Connect Courses. The following comments and the Coordinating Board response to comments cover a variety of topics relating to the new dual credit rules.

Comments Received by McLennan Community College:

Comment: Regarding the definition of Career and Technical Education Course in 4.83(3) - What about courses that are not workforce on the IHE side but are CTE on the K12 side? These include rubrics such as ENGR, BUSI, AGRI. Would like those included in this definition.

Response: The Coordinating Board thanks the institution for the comment. These courses are not fundable courses for an institution of higher education as Career and Technical Education Courses so therefore they are not included as part of the definition. Approved Career and Technical Education Courses for institutions of higher education are listed in the Workforce Education Course Manual (WECM).

Comment: Regarding "Dual Credit Course or Dual Enrollment Course" in 4.83(10) - The current rule 4.85(b)(3) includes in the workforce section "a program leading to a credential of less than a Level 1 certificate." This version does not include that, which could exclude OSAs. Would like that language included in this version of 4.85.

Response: The Coordinating Board thanks the institution for the comment. The definition for a Dual Credit Course includes a Career and Technical Education Course as defined in 4.83(3) that leads to a credential, which includes an Occupational Skills Award certificate.

Comment: Regarding "Dual Credit Course or Dual Enrollment Course in 4.83(10) - If the course is not Career or Technical Education and is not in the core curriculum of the institution, it must be a requirement in an approved Field of Study Curriculum (FOSC). There is no option for a Dual Credit course outside of the core that is needed for an Associate of Arts(AA)/Associate of Science(AS) if the AA/AS unless it is in an approved FOSC. Currently there are only eight approved FOSC. Would like the FOSC restriction changed to an AA/AS degree plan, FOS preferred, until additional ones are approved.

Response: The Coordinating Board thanks the institution for the comment. Texas Education Code §§ 130.008, 28.009, and 29.908 limit the dual credit courses that the Coordinating Board may fund to those in the Texas Core Curriculum, foreign language, or a Field of Study. The proposed definition of a dual credit course includes these types of courses in 4.83(11)(ii).

Comment: Regarding 4.85 "Dual Credit Requirements" under (a) Eligible Courses - Request clarification. This appears to read that Early College High School (ECHS) students can only take the same academic courses as any other Dual Credit student, which would restrict academic choices outside of the core to an approved FOSC. Is this correct? If yes, the earlier comment about the limited options for a FOSC apply to this area as well. Further, the restriction appears to apply only to an ECHS but not a PTECH since PTECHS aren't specifically mentioned when they are mentioned separately in other areas of Texas Administrative Code and Texas Education Code.

Response: The Coordinating Board thanks the institution for the comment. The proposed rule 4.85(a)(3) exempts ECHS students from the more limited definition of dual credit by referencing 130.008 (a-2). An ECHS student may be enrolled in a program that meets the requirements in 29.908.

Comments received from Children at Risk:

Comment: Strongly advise the committee to maintain separate definitions for Dual Credit and Dual Enrollment. It is imperative to recognize the distinct differences between these two educational pathways and carefully deliberate the potential consequences for both

the high schools and the colleges and universities. (Subchapter D, 4.83)

Response: The Coordinating Board thanks the entity for the comment. The term dual enrollment does not appear in the Texas Education Code therefore will not be utilized in the rules as a separate category. The definition of dual credit includes courses for which a student only earns college credit, including dual enrollment courses.

Comment: We recommend considering expanding access to College Connect Courses as early as

10th grade.

Response: The Coordinating Board thanks the entity for this comment. The rules do not limit a student's ability to access dual credit courses, including College Connect Courses, at any grade level.

Comments received from Tyler Junior College:

Comment: Does the success course need to be offered in the same semester as the core course?

Response: The Coordinating Board thanks the institution for the comment. It is unclear to which course, "the success course" is referring. To clarify, the dual credit College Connect Course option is a college-level, dual credit course. In order to impact the student's performance in the college-level course, college readiness content must be delivered within the same semester and in the same subject matter as the college-level course. College readiness content should be integrated into the college-level course, to increase student success in the course. In response to comment, the Board will revise proposed rule 4.86(d)(2) to specify that: The supplemental college readiness content shall be related to and integrated with the subject matter of the course.

This amendment should clarify that the intent of the College Connect Courses is to provide additional to support to a student who has not yet demonstrated college readiness by integrating subject matter related content into the College Connect Course experience.

Comment: Is a co-requisite model an option for College Connect students? If so, could the co-requisite be offered in a different semester than the core course? Would that detrimentally impact co-requisite funding?

Response: The Coordinating Board thanks the institution for the comment. The institution has full discretion over the mode of delivery for supplemental college readiness content that is provided for a student enrolled in a College Connect Course who has not yet met the TSIA/TSIA2 college readiness benchmark(s), provided that the college readiness content is integrated with and related to the course content. Because the College Connect Course is a college-level dual credit course, it is eligible for formula and FAST funding. The supplemental/embedded college readiness content, if delivered as a separate, supplemental corequisite course, is not itself eligible for FAST funding. The Education Code limits funding for courses provided to high school students to those that meet the definition of dual credit in new Rule 2.83(10).

Comment: Does the success course need to be in the subject matter of the core course? In other words, could we pair an

EDUC 1300 Learning Framework with another core course, or does the success course need to be directly related to the core class being offered? As previously noted, for the student who is not exempt or has not yet met the college readiness benchmark(s) on the TSIA/TSIA2.

Response: The Coordinating Board thanks the institution for this comment. In response to the comment, the Board will revise proposed Rule 4.86(d)(2) to specify that: The supplemental college readiness content shall be related to and integrated with the subject matter of the course.

An institution must provide an integrated curriculum in the subject matter of the college-level course to ensure underprepared students achieve successful mastery of the college-level content. The college-level course content should adhere, at minimum, to the learning outcomes and contact hours outlined in the *Lower-Division Academic Course Guide Manual.* The college readiness content must be related to the specific content areas where a student needs additional support to be successful in the college-level course, rather than a paired EDUC 1300 course, as specified in the revised rule text.

Comment: Do you have examples of what other colleges are currently doing?

Response: The Coordinating Board's Division of Digital Learning is currently developing openly licensed course material that includes integrated college readiness skills, in partnership with Texas institutions of higher education. That course material may be of assistance to institutions seeking to offer College Connect Courses and will be available on OERTX.

Rule amendments made at adoption:

Section 4.86(d)(2) is revised to clarify college readiness content must be related to the subject matter of the course:

(2) An institution must also incorporate supplemental college readiness content to support students who have not yet demonstrated college readiness, as defined in §4.57, within these courses. *The supplemental college readiness content shall be related to and integrated with the subject matter of the course.* An institution may deliver this supplemental instruction through a method at their discretion, including through embedded course content, supplemental coursework, or other methods.

Section §4.85(g)(2) is revised to provide more flexibility in student support services without limiting them only to what is outlined in the institutional agreement. The revision aligns with the Southern Association of Colleges and Schools Commission on Colleges guidance:

(2) Each student in a dual credit course must be eligible to utilize the [same or comparable] support services that are [afforded college students on the main campus] *appropriate for dual credit students.* The institution is responsible for ensuring timely and efficient access to such services (e.g., academic advising and counseling), to learning materials (e.g., library resources), and to other benefits for which the student may be eligible.

Section 4.87 is revised to delete subsection (d) to eliminate confusion about the eligibility for funding for a dual credit course delivered by an institution of higher education to a student enrolled in an Early College High School Program. Nothing in these rules modifies or eliminates the funding available for an institution that delivers a dual credit course to a high school student as authorized under Texas Education Code, §§29.908 and 130.008. The subsequent subsections are renumbered accordingly.

The new sections are adopted under Education Code, §§28.009(b) and (b-3), 28.0095(j), 130.001(b)(3) -(4) and 130.008(a-3), which provide the Coordinating Board with the authority to regulate dual credit partnerships between public institutions of higher education and secondary schools with regard to lower division courses.

The adopted new sections affect Texas Administrative Code, chapter 4, subchapter D.

§4.85. Dual Credit Requirements.

(a) Eligible Courses.

(1) An institution may offer any dual credit course as defined in §4.83(11) of this subchapter (relating to Definitions).

(2) A dual credit course offered by an institution must be in the approved undergraduate course inventory of the institution.

(3) An Early College High School may offer any dual credit course as defined in §4.83(11) or Texas Education Code, §28.009 and §130.008, subject to the provisions of subchapter G of this chapter (relating to Early College High Schools).

(4) An institution may not offer a remedial or developmental education course for dual credit. This limitation does not prohibit an institution from offering a dual credit course that incorporates Non-Course-Based College Readiness content or other academic support designed to increase the likelihood of student success in the college course, including any course offered under §4.86 of this subchapter (relating to Optional Dual Credit Program: College Connect Courses).

(b) Student Eligibility.

(1) A high school student is eligible to enroll in dual credit courses if the student:

(A) is not a degree-seeking student as defined in §4.83(10) of this subchapter (relating to Definitions);

(B) demonstrates that he or she is exempt under the provisions of the Texas Success Initiative as set forth in §4.54 of this chapter (relating to Exemption);

(C) demonstrates college readiness by achieving the minimum passing standards under the provisions of the Texas Success Initiative as set forth in §4.57 of this chapter (relating to Texas Success Initiative Assessment College Readiness Standards) on relevant section(s) of an assessment instrument approved by the Board as set forth in §4.56 of this chapter (relating to Assessment Instrument); or

(D) Meets the eligibility requirements for a Texas First Diploma under §21.52 of this title (relating to Eligibility for Texas First Diploma).

(2) A student who is enrolled in private or non-accredited secondary schools or who is home-schooled must satisfy paragraph (b)(1) of this subsection.

(3) An institution may require a student who seeks to enroll in a dual credit course to meet all the institution's regular prerequisite requirements designated for that course (e.g., a minimum score on a specified placement test, minimum grade in a specified previous course, etc.).

(4) An institution may impose additional requirements for enrollment in specific dual credit courses that do not conflict with this subchapter.

(5) An institution is not required, under the provisions of this section, to offer dual credit courses for high school students.

(c) Location of Class. An institution may teach dual credit courses on the college campus or on the high school campus. For dual credit courses taught exclusively to high school students on the high school campus and for dual credit courses taught via distance education, the institution shall comply with chapter 2, subchapter J of this title (relating to Approval of Distance Education for Public Institutions).

(d) Composition of Class. A dual credit course may be composed of dual credit students only or of a mixture of dual credit and college students. Notwithstanding the requirements of subsection (e) of this section, exceptions for a mixed class that combines dual credit students and high school credit-only students may be allowed when the creation of a high school credit-only class is not financially viable for the high school and only under one of the following conditions:

(1) If the course involved is required for completion under the State Board of Education High School Program graduation requirements;

(2) If the high school credit-only students are College Board Advanced Placement or International Baccalaureate students; or

(3) If the course is a career and technical education course and the high school credit-only students are eligible to earn articulated college credit.

(e) Faculty Selection, Supervision, and Evaluation. Each institution shall apply the standards for selection, supervision, and evaluation for instructors of dual credit courses as required by the institution's accreditor. A high school teacher may only teach a high school course offered through a dual credit agreement if the teacher is approved by the institution offering the dual credit course.

(f) Course Curriculum, Instruction, and Grading. The institution shall ensure that a dual credit course offered at a high school is at least equivalent in quality to the corresponding course offered at the main campus of the institution with respect to academic rigor, curriculum, materials, instruction, and methods of student evaluation. These standards must be upheld regardless of the student composition of the class, location, and mode of delivery.

(g) Academic Policies and Student Support Services.

(1) Regular academic policies applicable to courses taught at an institution's main campus must also apply to dual credit courses. These policies may include the appeal process for disputed grades, drop policy, the communication of grading policy to students, when the syllabus must be distributed, etc. Additionally, each institution is strongly encouraged to provide maximum flexibility to high school students in dual credit courses, consistent with the institution's academic policies, especially with regard to drop policies, to encourage students to attempt rigorous courses without potential long-term adverse impacts on students' academic records.

(2) Each student in a dual credit course must be eligible to utilize support services that are appropriate for dual credit students. The institution is responsible for ensuring timely and efficient access to such services (e.g., academic advising and counseling), to learning materials (e.g., library resources), and to other benefits for which the student may be eligible.

(3) A student enrolled in a dual credit course at an institution shall file a degree plan with the institution as prescribed by Texas Education Code, §51.9685.

(h) Transcripting of Credit. Each institution or high school shall immediately transcript the credit earned by a student upon a student's completion of the performance required in the course.

§4.86. Optional Dual Credit or Dual Enrollment Program: College Connect Courses.

(a) Authority. These rules are authorized by Texas Education Code, §§28.009(b), 28.0095, 130.001(b)(3) - (4), and 130.008.

(b) Purpose. The purpose of this rule is to encourage and authorize public institutions of higher education to deliver innovatively designed dual credit courses that integrate both college-level content in the core curriculum of the institution alongside college-readiness content and skills instruction. These innovatively designed courses will allow students the maximum flexibility to obtain college credit and provide integrated college readiness skills to students who are on the continuum of college readiness and will benefit from exposure to college-level content.

(c) Student eligibility. An eligible student must be enrolled in a public school district or open-enrollment charter as defined in Texas Education Code, §5.001(6), and meet the requirements of §4.85(b) of this subchapter (relating to Dual Credit Requirements). Notwithstanding §4.85(b), an institution may enroll a high school student who is not exempt or college ready under the requirements of §4.54 or §4.57 of this chapter (relating to Exemptions, Exceptions, and Waivers and College Ready Standards, respectively) in a math or communications College Connect Course offered by the institution.

(d) Course content. The following standards apply to delivery of College Connect Courses offered under this rule:

(1) An institution may only offer College Connect Courses within the institution's core curriculum in accordance with §4.28 of this chapter (relating to Core Curriculum).

(2) An institution shall also incorporate supplemental college readiness content to support students who have not yet demonstrated college readiness, as defined in §4.57, within these courses. The supplemental college readiness content shall be related to and integrated with the subject matter of the course. An institution may deliver this supplemental instruction through a method at their discretion, including through embedded course content, supplemental coursework, or other methods.

(e) The Coordinating Board may provide technical assistance to an institution of higher education or school district in developing and providing these courses.

(f) Additional Academic Policies.

(1) College Connect Courses offered through dual credit must confer both a college-level grade and a secondary-level grade upon a student's successful completion of the course. A grade conferred for the college-level course may be different from the secondary-level grade, to reflect whether a student has appropriately demonstrated college-level knowledge and skills as well as secondary-level knowledge and skills. An institution may determine how a student enrolled in this course may earn college credit, whether through college-level course completion or successful completion of a recognized college-level assessment that the institution would otherwise use to award college credit.

(2) An institution must enter into an institutional agreement with the secondary school according to §4.84 of this subchapter (relating to Institutional Agreements) to offer College Connect Courses.

(3) An institution is strongly encouraged to provide the maximum latitude possible for a student to withdraw from the college-level course component beyond the census date, while still giving the student an opportunity to earn credit toward high school graduation requirements, in accordance with §4.85(g) of this subchapter (relating to Dual Credit Requirements).

(4) Hours earned through this program before the student graduates from high school that are used to satisfy high school graduation requirements do not count against the limitation on formula funding for excess semester credit hours under §13.104 of this title (relating to Exemptions for Excess Hours).

(g) Funding and Tuition. The Coordinating Board shall fund College Connect Courses in accordance with §4.87 of this subchapter (relating to Funding).

§4.87. Funding.

(a) A public junior college may submit for funding any course that meets the requirements of this subchapter as provided in chapter 13, subchapter S of this title (relating to Community College Finance Program), or chapter 13, subchapter P of this title (relating to Community College Finance Program for Fiscal Year 2024).

(b) A public junior college may report a course for funding for which a high school student may earn college credit that does not otherwise meet the requirements of this subchapter for the purpose of calculating base tier funding according to the provisions of chapter 13, subchapter S or subchapter P of this title. Such a course is not considered a dual credit or dual enrollment course under Title 19, Part 1.

(c) An institution may submit a dual credit course for funding under the FAST program of chapter 13, subchapter Q of this title (relating to Financial Aid for Swift Transfer (FAST) Program) only if the course meets all requirements of that subchapter.

(d) Nothing in this subchapter shall be construed to prohibit an Early College High School under Texas Education Code, §28.908, from participating in or receiving funding under the FAST program of chapter 13, subchapter Q of this title.

(e) An institution may waive all or part of tuition and fees for a Texas high school student enrolled in a course for which the student may receive dual course credit.

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For further information, please call: (512) 427-6182

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SUBCHAPTER V. NON-DISCRIMINATION IN INTERCOLLEGIATE ATHLETICS

19 TAC §§4.350 - 4.353

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 4, Subchapter V, §§4.350 - 4.353, compliance with non-discrimination in intercollegiate athletic competition, without changes to the proposed text as published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 343). The rules will not be republished.

The adopted rules require collegiate athletes to compete on the team according to their biological sex as correctly stated on their birth certificate.

Texas Education Code, Chapter 61, Subchapter Z, Chapter 51, Section 51.980, also requires the Coordinating Board to develop rules to ensure compliance with state and federal law regarding the confidentiality of student medical information, including Chapter 181, Health and Safety Code, and the Health Insurance Portability and Accountability Act of 1996.

Rule 4.350, Authority, indicates the specific section of the Texas Education Code that provides the agency with authority to adopt rules.

Rule 4.351, Definitions, provides definitions aligned to the Save Women's Sports Act.

Rule 4.352, Participation in Athletic Competition Based on Biological Sex, requires institutions to comply with the provisions in the Save Women's Sports Act.

Rule 4.353, Confidentiality and Privacy, provides that in implementing the provisions of statute, each institution shall comply with all state and federal laws, as required in Texas Education Code, §51.980(g).

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

The new sections are adopted under Texas Education Code, Section 51.980, which provides the Coordinating Board with the authority to adopt rules as necessary to implement non-discrimination in the intercollegiate athletic competition legislation.

The adopted new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter V.

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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SUBCHAPTER X. PARENTING AND PREGNANT STUDENTS

19 TAC §§4.370 - 4.376

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in, Title 19, Part 1, Chapter 4, Subchapter X, §§4.370 - 4.376, Parenting and Pregnant Students, with changes to §§4.374 - 4.376 proposed text as published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 344). The rules will be republished. Sections 4.370 - 4.373 are adopted without changes and will not be republished.

Texas Education Code (TEC), Chapter 51, Subchapter Z, §51.9357 and §§51.982 - 51.983, requires the Coordinating Board to adopt rules relating to the protection of pregnant and parenting students, resources for such students, and reporting requirements. The new rules provide clarity and guidance to students, institutions of higher education, and Coordinating Board staff for the implementation of the program.

Specifically, these new sections outline the authority and purpose, definitions, parenting student early registration, the liaison officer, protections for pregnant and parenting students, and reporting requirements.

Rule 4.370 and §4.371, Purpose and Authority, respectively, indicate the specific sections of the TEC that provide the Coordinating Board with authority to issue these rules, as well as the purpose of the Parenting and Pregnant Student rules.

Rule 4.372, Definitions, provides definitions for words and terms within the Parenting and Pregnant Student rules. The definitions provide clarity for words and terms that are integral to the understanding and administration of the Parenting and Pregnant Student rules.

Rule 4.373, Parenting Student Early Registration, outlines the requirements for early course/program registration or pre-registration for parenting students at institutions. These requirements ensure parenting students have access to early registration or pre-registration and aims to provide them with the necessary information to make informed decisions about their academic schedules, including their eligibility for early registration access. This section is adopted based on TEC, §51.983, which directs the Coordinating Board to adopt rules as necessary to implement early registration for parenting students.

Rule 4.374, Liaison Officer, outlines the requirements that institutions must appoint a liaison officer for students who are parents or guardians of children under 18. The requirements establish a robust support system through liaison officers, offering a range of resources to meet the unique needs of parenting students, while promoting accessibility, privacy, and a comprehensive approach to support the academic and personal success of parenting students. Considering the comments received, the revised section includes clarifying language to better align with TEC, 51.9357(b), by outlining that an institution shall designate a parenting student liaison and provide resources for said students. This section is adopted based on TEC, §51.9357, which directs the Coordinating Board to adopt rules as necessary to implement the designation of a liaison officer for parenting students. Rule 4.374(b)(7) is also revised at adoption to specify that additional resources may be provided by the Coordinating Board to align with statute.

Rule 4.375, Protections for Pregnant and Parenting Students, contains revised language at adoption to provide institutions clarity related to absences, academic accommodations, access to course materials, and the option for a leave of absence to supplement existing protections outlined in Title IX. The additional protections ensure a supportive educational environment for pregnant and parenting students. The requirements provide a comprehensive approach to support pregnant and parenting students. Considering the comments received, the rule is restructured to incorporate §4.375(b), which addresses excused absences, and §4.375(c) which delineates leave of absence, to offer clearer guidelines for institutions. These revisions are made in response to comments by institutions to better address specific program requirements including short courses and clinical rotations for which a student may not be able to miss more than three class days. The revisions require an institution to afford a student no fewer than three class days or the number of days the institution's policy would provide for a student with a non-pregnancy temporary medical condition. The section has updated language that considers a student's academic program, clarifies the time period for make-up work, explains that accommodations shall align with those provided to students with a temporary medical condition, and revised language that clarifies provisions related to a student's return after a leave of absence so long as the program still exists at the institution and would meet accreditation standards. This section is adopted based on TEC, §51.982, which directs the Coordinating Board to adopt rules as necessary to implement protections for pregnant and parenting students. The revisions at adoption also ensure that an institution's excused absence policy will not come into conflict with federal law or accreditation requirements. In response to comment, the Coordinating Board also makes revisions at adoption to §4.375(c) to better specify the requirements for a student who takes a leave of absence. These requirements ensure that a student can complete the program in which the student was enrolled and requires an institution to counsel a student taking a leave of absence of the possible impact of the leave on their financial aid.

Rule 4.376, Reporting, outlines the reporting requirements for institutions must be fulfilled by May 1 of every year, which allows for a thorough assessment of the experiences faced by this student demographic. This reporting requirement is adopted to foster a comprehensive understanding of the educational landscape for parenting students, including collecting the contact details of the liaison officer to facilitate communication and support of parenting students. The revised language simply aligns the rule to TEC, §51.9357(c), which contains the list of data required to be reported annually. This section is adopted based on TEC, §51.9357, which directs the Coordinating Board to adopt rules as necessary to implement the designation of a liaison officer and the reporting required by institutions for parenting students.

The following comment(s) were received regarding the adoption of the new rule.

Comment 1: The following comments were received from Austin Community College:

What is the date by which colleges will need to have early registration implemented for parenting students?

Will THECB provide a data template for the reporting requirements? When can we expect guidance about the specifications of the required report in advance of the May 2024 due date?

Under §4.375. Protections for Pregnant and Parenting Students, will individual instructors have to detail each of these protections in their syllabi or will it be enough to post these protections on the college's website?? Specifically - excusing absences related to a student's pregnancy or childbirth without a doctor's certification and giving a pregnant or parenting student reasonable time to make up or complete any assignments or assessments missed due to such an absence.

Will 'reasonable time' be determined by college policy or by individual instructors or their departments?? Is 'reasonable time' flexible or consistent across all instructional departments of the institution??

Response 1:

The Coordinating Board appreciates these comments and provides the following responses.

Pursuant to TEC, §51.983, Early Registration for Parenting Students was effective September 1, 2023.

Yes, THECB will provide a template with the required data for reporting purposes. THECB anticipates guidance to be shared simultaneously with institutions by the end of March 2024.

Pursuant to TEC, §51.982(f), institutions are required to adopt a policy that must be posted on the institution's website. Additionally, the institution is encouraged to explore effective methods of sharing and communicating this information to students, faculty, staff, and employees.

The determination of reasonable time and its flexibility should align with the college's policy.

Comment 2: The following comments were received from The University of Texas System, University of Houston System, Texas Tech University System, University of North Texas System, Texas State University System, and Texas A&M University System:

Thank you for your hard work drafting the proposed rules relating to parenting and pregnant students. The undersigned public systems of higher education make this joint comment seeking additional clarification before the Texas Higher Education Coordinating Board implements a final rule.

1. 4.375(b)

Language in Proposed Rule:

(b) An institution shall excuse absences related to a student's pregnancy or childbirth without a doctor's certification that such absence is necessary for no more than five consecutive school days or ten days in any thirty-day period.

(1) An institution shall allow a student a reasonable time to make up or complete any assignments or assessments missed due to such an absence.

(2) An institution shall provide a student with access to all course materials that are made available to any other student with an excused absence. This may include instructional materials, laboratory access, and recordings of class lectures.

Comment:

Our institutions look forward to continuing to work with pregnant students and those with related medical conditions to achieve academic success. There is some concern that students in certain academic programs, such as short courses that last only five or ten days or medical residences--with multiple brief rotations--may not be able to miss "five consecutive school days or ten days in a thirty-day period" and "make up or complete any assignments" without fundamentally altering the academic program. Further, accreditation issues may arise in certain academic programs if a student misses this much class, especially if the student misses ten days multiple times during the course. Moreover, the term "reasonable time" in subsection (b)(1) could be clarified to ensure that "reasonable time" is not a period that would fundamentally alter an academic program. Accordingly, we ask that the Coordinating Board clarify this language and allow for the flexibility needed based on the circumstances of the student's academic program while also providing important support for pregnant students and those with related conditions.

2. 4.375(c)

Language in the Proposed Rule:

(c) An institution shall permit but not require a parenting or pregnant student to take a leave of absence related to a student's pregnancy or parenting status for a minimum of one semester without a showing of medical need.

(1) An institution shall make every reasonable effort to accommodate pregnant and parenting students within their degree program's curriculum and accreditation requirements. A student taking a leave of absence under this section may be taken with the advanced approval of the student's department.

(2) The institution shall implement policies and procedures to ensure that a student meets with the institution's scholarships and financial aid office prior to beginning a leave of absence to receive information on financial impacts due to the leave of absence under this section.

Comment:

Our institutions will continue to attempt to meet with students before they take a leave of absence so that students understand the impact a leave of absence decision may have on their finances and future educational pursuits. Sometimes students take a leave of absence because of an emergency and cannot meet with financial aid officials before they make the decision to take leave. Ensuring that the institution approves any leave of absence may help to ensure the student speaks with institutional representatives before taking leave. To that end, we would suggest stating that "a leave of absence under this section 'must' be taken with the advanced approval" of institutional officials. Further, the institution can attempt to meet with students, but cannot ensure that students meet with financial aid because institutions cannot control whether students choose to do so. The Coordinating Board may wish to clarify the language to account for this.

3. 4.375(d)

Language in the Proposed Rule:

(d) An institution shall ensure that a student in good academic standing at the time a leave of absence commences may return to their degree or certificate program in good academic standing, not be required to reapply for admission, and may complete their degree or certificate program by fulfilling the requirements in effect at the time the leave of absence commenced.

Comment:

The majority of students who take a brief leave of absence for pregnancy, childbirth, or related medical conditions should be able to return and complete the same degree program in which they were enrolled when the absence commenced. Some students, however, may take a longer leave of absence. We request additional clarification to account for the fact that certain academic programs at the institution may no longer exist when a student returns (perhaps many years later), or the program that existed at the time may no longer be sufficient to meet accreditation standards. Degree programs generally have an established matriculation-to-graduation time limit. For example, many undergraduate degree programs generally have a six-year time limit from matriculation to graduation for a student to complete their degree program before that academic program curriculum expires. Graduate and doctoral programs have varying time limits as well. Degree programs with accelerated technological advancements may have shorter time limits due to rapidly evolving technological changes that require the program's curriculum to be revised more often; otherwise, these types of degree programs become obsolete. For example, a degree in Biomedical Informatics has a five-year curriculum expiration at some institutions. If a program is no longer accredited, the institution cannot provide that obsolete education, nor would doing so benefit the student. Accordingly, the Coordinating Board may wish to clarify 4.375(d) to account for these issues.

4. Conclusion

As the largest public systems of higher education in this great state, we are committed to providing equitable and important support for pregnant students and those with pregnancy-related conditions. We thank you for your hard work in drafting these rules and for your consideration of this joint comment. We look forward to continuing to partner with the Coordinating Board going forward to advance educational opportunities for Texans.

Response 2:

The Coordinating Board appreciates these comments and provides the following responses.

Comments one through three in relation to §4.375 have been updated to consider the flexibility needed based on the circumstances of the student's academic program, leave of absence, and return to the program, as long as the program still exists and meets accreditation standards.

Comment 3: The following comments were from Texas Woman's University:

I. 4.375. Protections for Pregnant and Parenting Students - Section (c)(2)

Rule 4.375, Section (c)(2) requires universities to "implement policies and procedures to ensure that a student meets with the institution's scholarships and financial aid office prior to beginning a leave of absence to receive information on financial impacts due to the leave of absence under this section."

TWU agrees that it is important for students considering a leave of absence to be fully informed of the potential financial impact of this important decision. However, TWU is concerned that the requirement for staff to meet with students prior to beginning their leave of absence will strain the limited staff resources the university has to support this obligation. As such, TWU respectfully urge the Board to modify Rule. 4375, Section 3, to allow for universities to provide information on financial impacts prior to a student going on a leave of absence, but allow for the meetings to be at the student's request.

II. 4.375. Protections for Pregnant and Parenting Students - Section (d)

Rule 4.375, Section (d) states that "a student in good academic standing at the time a leave of absence commences may return to their degree or certificate program in good academic standing, not be required to reapply for admission, and may complete their degree or certificate program by fulfilling the requirements in effect at the time the leave of absence commenced." (Emphasis added.)

One of TWU's primary educational goals is to prepare our students with the knowledge and skills needed to achieve successful careers in their chosen fields. As such, TWU offers several 75 programs with over 91 undergraduate or graduate degrees. A significant percentage of those programs are certification, professional, or graduate degree programs whose requirements are based on state or nationally-recognized professional certification or licensure standards. The proposed Rule 4.375, Section (d) as written would restrict the ability of universities to ensure that their graduates are sufficiently prepared for their chosen careers; it would allow for scenarios where students returning from a leave of absence could complete their degree based on outdated certification or licensure requirements. Such outcomes would diminish the integrity and value of TWU's programs, and also be a grave disservice to the students taking leave. To address this concern, TWU respectfully recommends that Rule 4.375, Section (d) be modified to state that a pregnant and parenting student who takes a leave of absence "may complete their degree or certificate program by fulfilling the requirements in effect at the time of the student's return."

Response 3:

The Coordinating Board appreciates these comments and provides the following responses.

Rule 4.375(c)(2), now §4.375(c)(3), has been updated in consideration of the following: An institution shall implement policies and procedures to ensure that the student is informed of possible impacts to their financial aid or scholarships. These institutional policies and procedures should encourage students to meet with the financial aid office before the student takes a leave of absence, where possible.

Rule 4.375(d), now 4.375(4), has been updated in consideration of the following: An institution shall ensure that a student in good academic standing at the time a leave of absence commences may return to their degree or certificate program in good academic standing, not be required to reapply for admission so long as the program still exists at the institution and the program would still meet accreditation standards. The institution may require that the student fulfills revised requirements of the program if the program is in effect when the student returns has changed.

The new section is adopted under Texas Education Code, Chapter 51, Subchapter Z, §51.9357 and §§51.982 - 51.983, which provides the Coordinating Board with the authority to adopt rules as necessary to implement the Parenting and Pregnant Student program.

The adopted new section affects Texas Education Code, §51.9357 and §§51.982 - 51.983.

§4.374. Liaison Officer.

(a) An institution is required to designate a minimum of one employee to serve as a liaison officer for current or incoming students at the institution who are the parent or guardian of a child younger than 18 years of age.

(b) The liaison officer or officers shall provide a parenting student information on and access to resources designed to assist in their successful and timely degree or certificate completion. Such resources include:

(1) Medical and behavioral health coverage and services;

(2) Public health benefit programs, including programs related to food security, affordable housing, and housing subsidies;

(3) Parenting and child-care resources;

(4) Employment assistance;

(5) Transportation assistance;

(6) Academic success services; and

(7) Other resources provided by the institution.

(c) An institution shall not condition student access to the liaison officer or officers or any resources on the student being required to consent to the release of their personally identifiable information. Any such consent must be voluntary.

(d) The institution shall post contact information for the liaison officer or officers and maintain that information on the institution's website in a manner that is readily available to current or incoming students at the institution who are the parent or guardian of a child younger than 18 years of age.

§4.375. Protections for Pregnant and Parenting Students.

(a) In addition to the discrimination protections provided to pregnant or parenting students pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq., institutions shall provide pregnant or parenting students the additional protections as set forth in this section. To the extent a student is afforded protections by both federal law and these rules, a student shall be entitled to the most liberal benefit available by these rules and federal law.

(b) Absences related to a student's pregnancy, childbirth, or resulting medical status or condition.

(1) An institution shall excuse absences related to a student's pregnancy or childbirth without a doctor's certification that such absence is necessary for the greater of three school days in a term or semester or the maximum number of excused absences that the institution would grant to another student enrolled in the same course for any reason.

(2) Notwithstanding paragraph (1) of this subsection, an institution may ensure that the total number of excused absences does not result in a fundamental alteration to an essential program requirement or conflict with federal law or accreditation standards.

(3) An institution shall allow a student a reasonable time to make up or complete any assignments or assessments missed due to such an excused absence consistent with the institution's policy regarding excused absences and make up work.

(4) An institution shall provide a student with access to all course materials that are made available to a student with a temporary medical condition. This may include instructional materials, laboratory access, and recordings of class lectures, depending on the circumstances.

(5) An institution shall provide any other reasonable accommodations to a pregnant student, including accommodations that:

(A) would be provided to a student with a temporary medical condition; or

(B) are related to the health and safety of the student and the student's unborn child.

(c) Leave of Absence for Pregnant or Parenting Students.

(1) An institution shall permit but not require a parenting or pregnant student to take a leave of absence related to a student's pregnancy or parenting status for a minimum of one semester without a showing of medical need.

(2) An institution shall make every reasonable effort to facilitate leave for pregnant and parenting students within their degree program's curriculum and accreditation requirements. A student taking a leave of absence under this section may be taken with the advanced approval of the student's department or the designated office(s) by the institution.

(3) An institution shall implement policies and procedures to ensure that the student is informed of possible impacts to their financial aid or scholarships. These institutional policies and procedures should encourage that students meet with the financial aid office before the student takes a leave of absence, where possible.

(4) An institution shall ensure that a student in good academic standing at the time a leave of absence commences may return to their degree or certificate program in good academic standing, not be required to reapply for admission so long as the program still exists at the institution and the program would still meet accreditation standards. The institution may require that the student fulfills revised requirements of the program if the program in effect when the student returns has changed.

§4.376. Reporting.

An institution must report the information required by Texas Education, §51.9357(c), no later than May 1 of each year in the manner required by the Coordinating Board.

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

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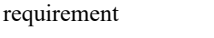

CHAPTER 7. DEGREE GRANTING COLLEGES AND UNIVERSITIES OTHER THAN TEXAS PUBLIC INSTITUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §7.8

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 7, Subchapter A, §7.8, Institutions Not Accredited by a Board-Recognized Accreditor, without changes to the proposed text as published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 346). The rule will not be republished.

During the most recent years, 2022 and 2023, consultant fees, which are paid out of the $5,000 fee, were $3,500 for each Certificate of Authority application and travel fees averaged $3,550. Therefore, applicants paid an average total of $8,550.

Instead of charging travel expenses after the site visit, the average travel expenses have been included in the increased flat fee amount for each of the categories. The proposed fees are as follows:

1. Certificate of Authority application fee: $8,000

2. Certificate of Authority renewal fee: $8,000

3. Certificate of Authority amendment fee: $800

The adopted amendments incorporate the specific fees into the rule and result in an overall cost reduction for the state of Texas.

The Coordinating Board is authorized to set and collect fees regarding Certificates of Authority. Texas Education Code, §61.305(c), requires the Coordinating Board to set an initial fee for a Certificate of Authority in an amount not to exceed the average cost of reviewing the application, including the cost of necessary consultants.

Texas Education Code, §61.307(b), requires the Coordinating Board to set a fee to cover the cost of program evaluation for an amendment to a Certificate of Authority.

Texas Education Code, §61.308(b), requires the Coordinating Board to set a renewal fee in an amount not to exceed the aver-

age cost of reviewing the application, including the cost of necessary consultants.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, Sections 61.305(c), which provides the Coordinating Board with the authority to set an initial fee for a Certificate of Authority in an amount not to exceed the average cost of reviewing the application, including the cost of necessary consultants; 61.307(b), which provides the Coordinating Board with the authority to set a fee to cover the cost of program evaluation for an amendment to a Certificate of Authority; and 61.308(b) which provides the Coordinating Board with the authority to set a renewal fee in an amount not to exceed the average cost of reviewing the application, including the cost of necessary consultants.

The adopted amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 7, Subchapter A, §7.8.

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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CHAPTER 10. GRANT PROGRAMS
SUBCHAPTER RR. TEXAS INNOVATIVE ADULT CAREER EDUCATION (ACE) GRANT PROGRAM

19 TAC §§10.870 - 10.878

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 10, Subchapter RR, §§10.870 - 10.878, Texas Innovative Adult Career Education (ACE) Grant, without changes to the proposed text as published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 348). The rules will not be republished.

The adopted new subchapter provides information necessary for the implementation and administration of the Program to develop, support, or expand program of eligible nonprofit workforce intermediary and job training organizations and of eligible nonprofit organizations providing job training to veterans and low-income students prepare to enter high demand and higher earning occupations. Negotiated rulemaking was used in the development of these adopted rules. Reports of negotiated rulemaking committees are public information and are available upon request from the Coordinating Board.

Texas Education Code (TEC), chapter 136, §136.001 and §§136.005 -136.007 requires the Coordinating Board to adopt rules for the administration of the program, including rules providing for application and evaluation process.

Specifically, these new sections outline the authority, purpose, definitions, eligibility, application process, evaluation, grant awards, reporting requirements, and additional requirements which are necessary to administer the Texas Innovative Adult Career Education Grant Program.

Rule 10.870 indicates the purpose of the Texas Innovative Adult Career Education Grant Program.

Rule 10.871 indicates the specific sections of the TEC that provide the agency with authority to issue these rules.

Rule 10.872 provides definitions for words and terms within the Texas Innovative Adult Career Education Grant rules. The definitions are adopted to provide clarity for words and terms that are integral to the understanding and administration of the Texas Innovative Adult Career Education Grant rules.

Rule 10.873 outlines the requirements that the organizations must fulfill to participate in the Texas Innovative Adult Career Education Grant Program. The requirements are adopted to: (a) clarify the type of organization eligible to participate, (b) provide rules specific to requirements the Coordinating Board is proposing to ensure effective administration of the Texas Innovative Adult Career Education Grant Program, such as the requirement that each organization enter into an agreement with one or more public junior colleges, public state colleges, or public technical institutes, (c) provides rules specific to the type of students the job training and student services assist. This section is adopted based on TEC, §136.007, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Innovative Adult Career Education Grant Program.

Rule 10.874 outlines the application process that eligible organizations will undergo to qualify for funding consideration.

Rule 10.875 outlines the evaluation process and award criteria factors organizations must meet, such as (a) student completion of developmental education at partnering institutions, (b) student persistence rates at partnering institutions, (c) certificate or degree completion rates at partnering institutions at comparable institutions within a three-year period, (d) student entry into careers requiring credentials that result in higher earnings. This section outlines the evaluation process and the services the Coordinating Board includes to evaluate applicants for their evidence-based programs for low income and veteran students.

Rule 10.876 outlines the process for grant award amounts and how the Coordinating Board will advance awards to a grantee. The adopted rule provides what the grant award may be used to cover in the grantee application, and that the determination of the allowability of administrative costs will be set forth in the Request for Application.

Rule 10.877 outlines the reporting requirements for the Texas Innovative Adult Career Education Grant Program. The adopted rule provides the type of activities and information grantees must submit during the grant period.

Rule 10.878 outlines the additional requirements related to the Texas Innovative Adult Career Education Grant Program, such as the Coordinating Board's right to reject applications and cancel grant solicitation, and that grantees must sign a notice of grant award to receive funds.

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

The new section is adopted under Texas Education Code, Section 136.007, which provides the Coordinating Board with the

authority to adopt rules as necessary to implement the Texas Innovative Adult Career Education Grant Program.

The adopted new section affects Texas Education Code, Sections 136.001 and 136.005 -136.007.

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 §§12.1 - 12.9

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 12, Subchapter A, §§12.1 - 12.9, Opportunity High School Diploma Program, with changes to the proposed text as published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 350). Section 12.6 of the rules will be republished to correct a non-substantive grammatical error. Sections 12.1 - 12.5 and §§12.7 - 12.9 are adopted without changes and will not be republished.

The Coordinating Board adopted the establishment of the Opportunity High School Diploma Program rule framework to provide an alternative means by which an adult student who has dropped or stopped out of high school is able to enroll in a career and technical education program at a public junior college and may earn a high school diploma through concurrent enrollment in a competency-based education program. The adopted new rules provide clarity and guidance to students, participating institutions, and the Coordinating Board staff for the program's implementation.

Specifically, these new sections outline the authority and purpose, definitions, program design and administration, program requirements, institutional and student eligibility, program approval process, required reporting, and funding necessary to administer the Opportunity High School Diploma Program.

Rule 12.1, Purpose, states the purpose of this new rule, which is to implement the Opportunity High School Diploma Program to provide an adult student who has dropped or stopped out of high school the opportunity to earn a high school diploma equivalent to one awarded under Texas Education Code, §28.025, via concurrent enrollment in a career and technical education program and a competency-based education program at a public junior college.

Rule 12.2, Authority, authorizes the Coordinating Board to adopt rules as necessary to implement Texas Education Code, chapter 130, subchapter O: Opportunity High School Diploma Program, as promulgated under Texas Education Code, §130.458.

Rule 12.3, Definitions, provides definitions for words and terms within Opportunity High School Diploma rules. The definitions provide clarity for words and terms that are key to the understanding and administration of the program.

Rule 12.4, Program Design and Administration, states that the Commissioner must consult with the Texas Education Agency and Texas Workforce Commission to determine program elements and competencies. Additionally, it provides that a public junior college must submit an application to the Coordinating Board to receive approval to offer this program. This section is adopted based on Texas Education Code, §130.458, which directs the Board to adopt rules as necessary to implement the Opportunity High School Diploma Program.

Rule 12.5, Program Requirements, outlines the general and curricular requirements necessary to ensure that the Opportunity High School Diploma Program offered by a public junior college adequately prepares students for postsecondary education or additional career and technical education. This section establishes the five core program competencies a public junior college must include, and measure with Board-approved assessments, in a program and allows latitude in the addition of curricular elements designed to meet regional employers' or specific workforce needs. This section also establishes the criteria for competency assessment and transcription, location of program delivery, and awarding of a high school diploma for successful completion of the program. This section implements Texas Education Code, §130.458, which directs the Board to adopt rules as necessary to implement the Opportunity High School Diploma Program.

Rule 12.6, Eligible Institutions and Students, specifies eligibility for public junior colleges and/or consortiums applying to offer, and students seeking to participate in, the Opportunity High School Program. This section lists the permissible types of entities that a public junior college can enter into a consortium with to expand access for students. The section also details student eligibility requirements that make the program available to a wide range of adult students.

Rule 12.7, Program Approval Process, lists the required elements in an eligible public college's application including compliance with §12.5 of this subchapter, consultation with local workforce and employer, and any pertinent consortia agreements. The section also outlines the process for approval that the Coordinating Board and the Commissioner of Higher Education will follow after applications are submitted as well as the notification of approved programs to the public. This section is adopted based on Texas Education Code, §130.458, which directs the Coordinating Board to adopt rules as necessary to implement the Opportunity High School Diploma Program.

Rule 12.8, Required Reporting, details the required reporting a public junior college with an approved program will have to submit to the Coordinating Board in order to measure program effectiveness. The rules require each public junior college to submit data through the Education Data System and to comply with its reporting standards. The Coordinating Board will utilize this data to prepare and submit a progress report to the Legislature no later than December 1, 2026.

Rule 12.9, Funding, establishes that the Coordinating Board shall consult with the Texas Workforce Commission on the identification of available funding for the program. This section

is adopted based on Texas Education Code, §130.458, which directs the Coordinating Board to adopt rules as necessary to implement the Opportunity High School Diploma Program.

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

The new subchapter is adopted under Texas Education Code, §130.458, which provides the Coordinating Board with the authority to adopt rules as necessary to implement Texas Education Code, Chapter 130, Subchapter O: Opportunity High School Diploma Program.

The adopted new subchapter affects Texas Education Code, Chapter 130, Subchapter O, and Texas Education Code, §28.025.

§12.6. Eligible Institutions and Students.

(a) Eligible Institutions.

(1) A public junior college may submit an application to the Coordinating Board for approval to offer an Opportunity High School Diploma Program.

(2) Subject to approval under this subchapter, an eligible public junior college may enter into agreement to offer the program in consortium with one or more public junior colleges, general academic teaching institutions, public school districts, or nonprofit organizations. A public junior college's application shall describe the role of each member of the consortium in delivering the program elements.

(b) Eligible Students. An institution may admit an adult student without a high school diploma to the Opportunity High School Diploma Program. Adult student means a student aged 18 or older on the date of first enrollment in the program. An institution shall concurrently enroll each eligible student in a career and technical education program.

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 April 26, 2024.

TRD-202401832
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 16, 2024
Proposal publication date: January 26, 2024
For further information, please call: (512) 427-6344

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CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER N. TEXAS RESKILLING AND UPSKILLING THROUGH EDUCATION (TRUE) GRANT PROGRAM

19 TAC §13.406

The Texas Higher Education Coordinating Board (Coordinating Board) adopts an amendment to Title 19, Part 1, Chapter 13, Subchapter N, §13.406, Texas Reskilling and Upskilling through Education (TRUE) Grant Program, without changes to the proposed text as published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 354). The rule will not be republished.

The adopted amendment adds employers to the list of workforce stakeholders that can partner with eligible institutions to analyze job posting and identify employers hiring roles with skills developed by education and training programs funded by TRUE.

The adopted amendment is identical to an amendment made to the TRUE Grant Program during the 88th Legislative Session (R). The Coordinating Board is authorized by Texas Education Code, Chapter 61, Subchapter T-2, §§61.882(b)1-866, which provides the authority to administer the TRUE Grant Program in accordance with the subchapter and rules adopted under the subchapter.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Education Code, Chapter 61, Subchapter T-2, §§61.882(b)1-866, which provides the Coordinating Board with the authority to administer the TRUE Grant Program.

The adopted amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter N, 13.406(b)(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.

Filed with the Office of the Secretary of State on April 26, 2024.

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Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6209

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SUBCHAPTER S. COMMUNITY COLLEGE FINANCE PROGRAM

19 TAC §§13.550 - 13.558, 13.560 - 13.564

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 13, Subchapter S, §§13.550 - 13.558 and 13.560 - 13.564, Community College Finance Program. Section 13.553 and §§13.556 - 13.558 are adopted with changes to the proposed text as published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 354) and will be republished. Sections 13.550 - 13.552, 13.554, 13.555, and 13.560 - 13.564 are adopted without changes and will not be republished.

The adopted subchapter replaces Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter P, as the primary community college finance subchapter starting in fiscal year 2025.

The Coordinating Board initially adopted rules relating to the new community college finance system on an emergency basis in August 2023, including chapter 13, subchapter P, allowing for the implementation of H.B. 8 by the start of the 2024 fiscal year. Subchapter S, which becomes effective on September 1, 2024, contains the following substantive changes to the rules previously adopted by the Coordinating Board in subchapter P, which are no longer in effect after August 31, 2024:

1. Guidance on permissible expenditures of state-appropriated funds, aligned with restrictions contained in the 2024-2025 General Appropriations Act and Texas Education Code Section 130.003(c) (see rule 13.562)

2. Requirements for schools receiving a scale adjustment under the Base Tier Allocation to submit a report on participation in shared services, implementing Texas Education Code §130A.054(e) (see rule 13.563)

3. Clarification of the Structured Co-Enrollment Fundable Outcome definition, including that these outcomes do not also include courses fundable under the Dual Credit or Dual Enrollment Fundable Outcome (see rule 13.553(30))

4. Modification of the methodology used to calculate the tuition and fees used in the Base Tier Allotment, designed by the Coordinating Board to improve the accuracy, timeliness, and transparency of this value (see rule 13.554(d))

5. Clarification of the Transfer Fundable Outcome to ensure that neither hours reported by an institution nor individual student transfers count towards more than one fundable outcome (see rules 13.553(32) and 13.556(e))

6. Refinement of the methodology for calculating Adult Learners, intended to reinforce institutions' incentives to encourage timely completion and to apply the added weight for Adult Learners to a broader range of outcomes (see rule 13.557)

7. Addition of Third-Party Credentials as a new Fundable Outcome, in recognition of institutions enabling students to earn credentials of value conferred by third-party providers (see rule 13.556)

8. Clarification and addition of greater detail of the Credential of Value Baseline filter, the minimum benchmark credentials must meet for fundability, which is met by producing a positive return on investment relative to a high school diploma within ten years (see rule 13.556)

9. Addition of a new Credential of Value Premium as a Fundable Outcome that rewards an institution when a student earns a credential of value quickly enough that they are projected to achieve a positive return on investment on or before the year in which the majority of graduates are projected to reach that threshold (see rule 13.556)

10. Recognition of completion of an Opportunity High School Diploma - a new program established by H.B. 8 (88R) - as a Fundable Outcome under the Performance Tier (see rule 13.556)

11. Revision of the Dual Credit and Dual Enrollment Fundable Outcome to ensure that the hours reported by institutions do not count towards multiple fundable outcomes and to include completion of the Texas First program, established by S.B. 1888 (87R) (see rule 13.556)

12. Revisions to certain workforce credential definitions, including Occupational Skills Awards (OSAs), Continuing Education Certificates, and Institutional Credentials Leading to Licensure or Certification (ICLCs), to align more closely with industry practices; this includes redefining ICLCs to fund only the conferring of a credential (see rule 13.553 and 13.556)

13. Specification that the Coordinating Board will apply the rules in effect for the fiscal year in which the funding was delivered, clarifying for institutions which rules will apply as the Coordinating Board continues to refine the community college finance system (see rule 13.552)

14. Exclusion of credentials awarded to non-resident students, located outside of Texas, and enrolled in 100% online programs from eligibility for funding in alignment with restrictions on contact hour funding beginning with awards in fiscal year 2025 (see rule 13.556).

The adoption of subchapter S maintains continuity with existing rules in subchapter P while adopting the changes listed above and ensuring the applicability of the rules beyond the 2024 fiscal year.

Rule 13.550, Purpose, establishes the purpose of subchapter S to implement the new community college finance system established by H.B. 8 (88R).

Rule 13.551, Authority, establishes the portions of the Texas Education Code (TEC) that authorize the Coordinating Board to adopt rules pertaining to community college finance.

Rule 13.552, Applicability, states that the Coordinating Board will apply the rules in effect for the fiscal year in which the funding was delivered, unless otherwise provided. This provision provides guidance to institutions on which rules will apply as the Coordinating Board iterates and refines the community college finance framework.

Rule 13.553, Definitions, lists definitions pertinent to the community college finance system. Whereas the current subchapter P uses this section to elaborate on policy details, this section provides only general meanings of terms and reserves substantive policy detail for the sections described below.

Rule 13.554, Base Tier Allotment, establishes the calculations used to determine Base Tier funding that the legislature entitled community colleges to receive under TEC §§130A.051-056. To summarize, Base Tier funding is calculated as Instruction and Operations (I&O) minus Local Share. If Local Share is greater than Instructions and Operations, then Base Tier funding is zero.

Specifically, Rule 13.554(b) establishes the I&O funding amount, corresponding to TEC §130A.052, as Contact Hour Funding plus the product of the Weighted Full-Time Student Equivalents (Weighted FTSE) multiplied by Basic Allotment. The rule explicitly defines the calculations used to derive Full-Time Student Equivalents based on contact hours and semester credit hours reported to the Coordinating Board by community college districts. Hours reported are weighted by student characteristics as instructed by TEC §130A.054 at levels based on the higher cost of educating students with certain characteristics (e.g., adult learners are weighted the highest due to the higher cost of educating the student). In accordance with TEC §130A.055, the rule defines Contact Hour Funding as the institution's reported base-year contact hours, weighted by the average cost to provide each contact hour in each discipline as defined in the Report of Fundable Operating Expenses. The Basic Allotment rate and contact hour funding rate are set by the commissioner from funding amounts derived from the General Appropriations Act, in accordance with TEC §§130A.053 and 130.055.

Rule 13.554(d) establishes Local Share as the amount of maintenance and operations ad valorem tax revenue generated by $0.05 per $100 of taxable property value in a college's taxing district plus the amount of tuition and fee revenue that would be generated by charging the average amount of tuition and fees charged by community college districts in the state of Texas to each in-district FTSE, in accordance with TEC §130A.056.

Specifically, the Coordinating Board will calculate estimated tax revenue for each district as the actual amount of current tax revenue collected in Fiscal Year 2022 multiplied by the ratio of the maintenance and operations tax rate to the total tax rate, divided by the product of the maintenance and operations tax rate and 100 and multiplied by five. This estimation takes into account that not all property taxes owed are able to be collected by institutions due to delinquent or late collections over which the institutions have no control.

The Coordinating Board will estimate tuition and fee revenue for Local Share by summing 1) the average of tuition and fees charged by community colleges to in-district students two fiscal years prior multiplied by non-dual credit or dual enrollment FTSEs during the fiscal year two years prior and 2) the amount of tuition set per SCH for the Financial Aid for Swift Transfer (FAST) program, multiplied by dual credit or dual enrollment SCHs for the fiscal year two years prior. THECB will source tuition and fee data from the Integrated Fiscal Reporting System, which captures the most recent actual tuition and fees charged by Texas community colleges. Using the average tuition and fee rate specific to in-district students avoids unduly penalizing colleges that have above-average percentages of in-district students and/or that provide substantial discounts to their in-district students. Using the two different tuition rates, depending on the type of student, provides further equity in the method of estimating tuition and fee revenue across the community college districts by avoiding an undue penalty on colleges participating in the FAST program and those with higher percentages of dual credit or dual enrollment students, regardless of their participation in FAST.

Rule 13.555, Performance Tier Funding, establishes the basic components of the Performance Tier portion of community college funding, codified under TEC, chapter 130A, subchapter C. Performance Tier funding consists of the number of Fundable Outcomes each community college produces, weighted according to certain Fundable Outcome Weights. The subsequent sections describe each of these components in greater detail.

Rule 13.556, Performance Tier: Fundable Outcomes, describes the outcomes that are eligible to receive performance tier funding. Outcomes consist of the categories of 1) fundable credentials; 2) credential of value premium; 3) dual credit fundable outcomes; 4) transfer fundable outcomes; 5) structured co-enrollment fundable outcomes; and 6) Opportunity High School Diploma fundable outcomes.

Specifically, Rule 13.556(b) defines the credentials eligible for funding under the Community College Finance System, which include associate degrees, bachelor's degrees, Level 1 and 2 certificates, Advanced Technical Certificates, Continuing Education Certificates, Occupational Skills Awards (OSAs), Institutional Credentials Leading to Licensure or Certification (ICLCs), and Third-Party Credentials. Restrictions are applied on OSAs and ICLCs that share the same contact hours. Pursuant to H.B. 8 and Texas Education Code §130A.101(c)(1), this section also establishes the manner by which THECB will determine whether a credential qualifies as a credential of value and is thereby fundable. Most otherwise fundable credentials are credentials of value when the majority of graduates are projected to achieve a positive return on investment relative to a high school graduate with no additional credentials within ten years, whereas OSAs, ICLCs, and Third-Party Credentials are credentials of value through fiscal year 2025 when they require a minimum amount of instruction and meet other programmatic requirements.

Rule 13.556(c) establishes the credential of value premium as a fundable outcome that rewards an institution when a student earns certain credentials of value quickly enough that they are projected to achieve a positive return on investment on or before the year in which the majority of graduates are projected to reach that threshold. It also requires that THECB annually publish the "target year" by which a student in a given program must graduate for the institution to earn the credential of value premium. This provides an added incentive for colleges to invest in improving the speed and efficiency with which their students are able to complete programs of study.

Rule 13.556(d) describes the dual credit fundable outcome, as required by Texas Education Code §130A.101(c)(3). An institution earns a dual credit fundable outcome for students who complete 15 SCH or the equivalent and transfer to a general academic teaching institution in the state. The Coordinating Board will consider for adoption revised chapter 4, subchapter D, at its April Board meeting. These rules will govern the requirements of fundable dual credit courses and agreements.

Rule 13.556(e) describes the transfer fundable outcome, as required by Texas Education Code §130A.101(2)(A). The methodology refines how this outcome is calculated to clarify that hours earned by a student will count toward a single fundable outcome for a single institution. As such, the section establishes rules that exclude hours counting toward the dual credit fundable outcome and require both that a single transfer funds only one institution and that one institution can receive funding for a given student's transfer only once, except under very specific circumstances laid out in the rule. These provisions will direct funding to the institution that plays a more substantial role in achieving the transfer outcome and prevent an institution from receiving funding if a transfer student repeatedly re-enrolls at the institution and transfers elsewhere.

Rule 13.556(f) describes the structured co-enrollment fundable outcome, as required by Texas Education Code §130A.101(2)(B).

Rule 13.556(g) describes the Opportunity High school Diploma fundable outcome, which is another category of fundable credentials authorized by Texas Education Code §130A.101(c)(1). House Bill 8 established the Opportunity High School Diploma program under Texas Education Code, chapter 130, subchapter O. The Coordinating Board will consider for adoption rules implementing this new program at its April 2024 Board meeting.

Rule 13.557, Performance Tier: Fundable Outcome Weights, establishes the weights that are applied to the fundable outcomes achieved by students in the categories of economically disadvantaged, academically disadvantaged, and adult learners, for the purposes of performance tier funding. An institution earns an additional weight of 25 percent of the funding amount for a fundable outcome when that outcome is achieved by an economically disadvantaged or academically disadvantaged student and an additional weight of 50 percent when the outcome is achieved by an adult learner, as defined in the rule.

Rule 13.558, Performance Tier: High-Demand Fields, establishes that an institution will receive additional weight for awarding a credential delivered in a discipline listed as a High-Demand Field. The rules governing establishment of High Demand Fields are set out subchapter T of this chapter to be adopted at the April 2024 Board meeting.

Rule 13.560, Formula Transition Funding, establishes that after calculating the base tier and performance tier funding for each

community college, the Coordinating Board shall ensure that a community college district does not receive less in formula funding for the year in question than it received in 2023 appropriations for formula funding (contact hours, success points, core operations, and bachelor's of applied technology funding) and need-based supplements. The Coordinating Board implements this provision to smooth the transition from the prior system of formula funding predominantly based on contact hour generation to the new system of performance-based funding. Including this provision ensures that no institution will experience a significant detrimental impact on its operations as the new system adjusts funding and moves to outcome-driven performance. Because this provision was only intended to facilitate the transition to a new finance system, it will expire at the end of FY 2025.

Rule 13.561, Payment Schedule, sets out both the payment schedule for non-formula support items and the payment schedule (three times per year) at which the Coordinating Board will make formula funding payments to each institution as authorized by TEC §130.0031. The Coordinating Board shall pay all non-formula support item amounts to the institution by September 25th of a fiscal year, in accordance with the requirements in the 2024-25 General Appropriations Act. The first payment is 50% of the total formula funding entitlement and 25% for the second and final payment. Institutional stakeholders suggested that the Coordinating Board should make the first payment 50% in recognition that a college district's expenses are weighted towards the start of the fiscal year and to smooth the transition from the prior payment schedule, which had historically provided 48% of funding to a community college district by October 25.

Rule 13.562, Limitations on Spending, describes the restrictions on how community college districts may expend state-appropriated funds, in alignment with state statute (TEC §130.003(c); General Appropriations Act, 88th Leg. R.S., H.B. 1, art. III-231, ch. 1170, Rider 14). This provision is in response to requests from stakeholders for greater clarification of permissible expenditures.

Rule 13.563, Shared Services Report, stipulates that smaller community college districts receiving a Base Tier scale adjustment must submit a report on their participation in shared services, and describes the content of this shared report. This provision carries out a statutory requirement for small schools to submit this report, codified in TEC §130A.054(e).

Rule 13.564, Effective Date of Rules, states that the proposed rules will take effect on September 1, 2024, which is the start of the 2025 fiscal year. Subchapter P of this chapter phases out by the end of FY 2024 and subchapter S becomes effective at the start of FY 2025.

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

Section 13.553(13) amends the credentialing examination definition for clarity and to include the definition of an authorized professional organization. This provides clarity regarding qualified sources of eligible credentialing examinations.

Section 13.553(14) amends the definition of Dual Credit or Dual Enrollment Fundable Outcome to ensure that dual credit/enrollment hours reported for fundable outcomes beginning in FY25 and later are applicable to an academic or technical education program or are completed by a student who graduates with a Texas First Diploma. It also notes that dual credit or dual enrollment courses must be fundable to apply toward the fundable outcome.

Sections 13.556(b)(1)(C) and 13.556(b)(1)(D) are amended to remove the contact hour thresholds for Institutional Credentials Leading to Licensure or Certification (ICLC) and Third-Party Credentials, respectively. Minimum program lengths of 144 contact hours (9 semester credit hours) for standard ICLCs and third-party credentials and 80 contact hours (5 semester credit hours) for high-demand field ICLCs and third-party credentials will no longer be required for funding eligibility beginning in FY26.

Section 13.556(b)(2) clarifies that the Credential of Value Baseline refers to the majority of students statewide within a program area, as opposed to an institutional majority, and that the Credential of Value Baseline criteria for fundability will apply to all potentially fundable credentials beginning in FY 2026.

Section 13.556(b)(3) includes clarifying language to ensure that when a community college awards multiple OSAs or ICLCs that share contact hours to the same student in the same fiscal year, the college reports only one such credential for funding. If an OSA shares contact hours with an ICLC, the college shall report only the OSA credential for funding. Section 13.556(b)(1) is amended with a conforming removal.

Section 13.556(b)(3) also includes clarifying language to ensure that a credential awarded by an institution to a non-resident student located out-of-state and enrolled in a 100% online program is not eligible for funding, in alignment with contact hour funding restrictions, beginning in fiscal year 2025. Original language would have inadvertently excluded hybrid programs from funding. Section 13.556(b)(1) is amended with a conforming removal.

Section 13.556(c) clarifies the Credential of Value premium only applies to the credentials listed in section 13.556(b)(1)(A): associate degrees, baccalaureate degrees, Level 1 or Level 2 certificates, advanced technical certificates, and continuing education certificates.

Section 13.556(e) includes additional language to update the methodology for assigning a transfer fundable outcome when more than one community college meets all requirements for a transfer fundable outcome. The methodology now includes an option to grant the transfer fundable outcome to multiple institutions only when a tie remains unbroken after applying three tiebreaker conditions.

Section 13.557(d) includes clarifying language for the calculation of age for Adult Learners. The data collection methodology will now allow for the capture of those students who were not enrolled in a community college in the two fiscal years prior to transfer and will allow for the Coordinating Board to calculate age in the earliest fiscal year of enrollment during the prior four fiscal years.

The Coordinating Board has also made non-substantive amendments throughout chapter 13, subchapter S, to correct for typographical and grammatical errors.

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

Comment: South Texas College submitted a comment seeking clarification on whether transfer degrees such as Associate of Arts, Associate of Science, and Associate of Arts in Teaching degrees will qualify as a credential of value. South Texas College is concerned that since these degrees are not designed as terminal degrees they won't fare well on their own if the return on investment in 10 years is the sole criterion for being a recognized credential of value.

Response: The Texas Higher Education Coordinating Board appreciates the clarifying comment. The associate degrees listed above currently qualify under the same credential of value methodology. For some students, this will be a terminal degree. If the student earned a higher-level credential, the Coordinating Board will apply the Credential of Value methodology to the highest-level degree earned.

Comment: South Texas College submitted a comment seeking clarification on whether semester credit hours or contact hours is the defining metric for Institutional Credentials Leading to Licensure or Certification (ICLCs) and Third-Party Credentials to be counted as a fundable outcome.

Response: The Coordinating Board thanks the institution for the submitted comment. The definitions for Occupational Skills Awards, Institutional Credentials Leading to Licensure or Certification (ICLC), and Third-Party Credentials each contain criteria for consideration as a fundable credential. Each definition includes requirements expressed as either semester credit hours (SCH) or contact hours for continuing education units (CEU) for funding in the performance tiers. In the definition for each of these three credentials, these two criteria are listed as either SCH or CEU.

Comment: San Jacinto College and Texas2036 submitted a comment inquiring whether the Coordinating Board will consider lowering the contact hour threshold for non-credit programs, so as to include some that are less than 80 and 144 hours. Both comments acknowledged that while certain credentials are very critical trainings and fields, they will not likely rise to the level of high demand based on volume, and would remain subject to the 144 hour threshold.

Response: The Texas Higher Education Coordinating Board thanks both San Jacinto College and Texas2036 for the question and agrees with the change in methodology. The Board has revised Section 13.557(b)(1)(C) and (D) removing the contact hour threshold for ICLCs and third party credentials beginning in FY26 and making corresponding revisions in Section 13.557(b)(2) to provide that these credentials will be subject to the credential of value baseline methodology at that time.

Comment: Texas Business Leadership Council (TBLC) submitted a comment supporting the creation of a Credential of Value Premium, acknowledging that it will incentivize colleges' focus on guided pathways strategies to support students in timely completion of credentials. Timely completion will allow students to enjoy a faster return on their investment and will in turn bolster the talent pipeline to help address hiring challenges that many employers are currently facing.

Response: The Texas Higher Education Coordinating Board thanks TBLC for the comment and agrees with the sentiment expressed.

Comment: Texas Business Leadership Council (TBLC) submitted a comment supporting the addition of Third-Party Credentials as fundable outcomes, acknowledging this will further support reskilling and upskilling needs within the workforce that are becoming increasingly important due to emerging technologies. TBLC also encourages the agency to transition to utilizing job and wage data to determine fundability in lieu of contact hour requirements for Third-Party Credentials.

Response: The Texas Higher Education Coordinating Board thanks TBLC for the comment and agrees with the sentiment expressed. The Board has revised Section 13.557(b)(1)(D) to address this comment.

Comment: Texas Business Leadership Council (TBLC) submitted a comment requesting that the weights and rates used in the funding formula be relatively consistent from year to year, utilizing a stepped-down approach if significant adjustments need to be made. This will allow the colleges to more confidently conduct long-term planning and investments in program offerings.

Response: The Texas Higher Education Coordinating Board thanks TBLC for the comment. This will be addressed in rules to be considered by the Board for adoption at its July 2024 meeting. The Coordinating Board will publish as proposed for public comment these rules at the end of April.

Comment: Texas2036 submitted a comment recommending adjusting funding levels to ensure dual credit is not disproportionately disincentivized relative to transfer outcomes, or vice-versa. Texas2036 is asking that funding levels account for the relative values of dual credit and transfer milestones in relation to the ultimate goal of credential of value attainment.

Response: The Texas Higher Education Coordinating Board thanks Texas2036 for the comment. This will be addressed in rules to be considered by the Board for adoption at its July 2024 meeting. The Coordinating Board will publish as proposed for public comment these rules at the end of April.

Comment: Texas2036 submitted a comment requesting that the Credential of Value Premium is significant enough to incentivize college support of timely credential completion. This premium will incentivize colleges to focus on student pathways that lead to timely credential attainment to ensure a positive return on investment for students.

Response: The Texas Higher Education Coordinating Board thanks Texas2036 for the comment. This will be addressed in rules to be considered by the Board for adoption at its July 2024 meeting. The Coordinating Board will publish as proposed for public comment these rules at the end of April.

Comment: Texas2036 submitted a comment requesting that when the determination for a self-sufficient wage becomes available, the Texas Higher Education Coordinating Board should ensure that the credential of value baseline leads to a self-sufficient wage.

Response: The Texas Higher Education Coordinating Board thanks Texas2036 for the comment and will continue to consider the latest data and frameworks available--including self-sufficient wage data-- any future changes to our methodology.

Comment: Texas2036 submitted a comment requesting the Texas Higher Education Coordinating Board adjust its definition of credential of value to rely on data for each credential program so that the value of each individual credential is determined. As higher education institutions increasingly adopt stackable credentials, multiple credentials can be embedded within a single program which may lead to program-level analyses that conflate workforce value among different credentials.

Response: The Texas Higher Education Coordinating Board thanks Texas2036 for the comment and respectfully disagrees with adjusting the definition. The current methodology is by credential, and not by program. The Coordinating Board recognizes that stackability is a complex issue and will continue to explore opportunities to refine our methodology.

Comment: Texas2036 submitted a comment requesting the Texas Higher Education Coordinating Board to evaluate Third-Party Credentials utilizing a methodology aligned to how Credentials of Value are determined once adequate data is available to ensure that these fundable outcomes are equipping Texas students in the labor market.

Response: The Texas Higher Education Coordinating Board thanks Texas2036 for the comment and agrees that the Credentials of Value methodology should apply to third-party credentials in the future, contingent on the agency having sufficient data to do so. The Board proposed revisions at adoption to Section 13.557(b)(2) requiring this in fiscal year 2026 to address this issue.

Comment: Texas2036 submitted a comment asking the Texas Higher Education Coordinating Board to consider additional criteria beyond Pell-recipient in determining funding weights based on student type for performance and base tiers to ensure the full economically disadvantaged student population is captured as intended. This adjustment would ensure each college receives the appropriate funding needed to support all of their economically disadvantaged students.

Response: The Texas Higher Education Coordinating Board thanks Texas2036 for the comment, and respectfully disagrees with changing the criteria for determining the economically disadvantaged student type funding weight. As currently drafted, the look-back window checks for Pell receipt in the year in which an outcome was achieved and the four fiscal years prior for all outcomes except structured co-enrollment. The student must have received Pell within that window at the institution where the outcome was earned. For structured co-enrollment, the student must have received Pell in their initial semester of enrollment in the co-enrollment program (13.557(b)).

As stated, Pell receipt is the best available measure of economic disadvantage at this time. Pell eligibility is calculated using a standardized, rigorous needs assessment methodology that is applied uniformly across institutions. Award determinations are made formulaically, avoiding a possible incentive to alter financial aid practices in ways that could be detrimental to students (e.g., by awarding smaller amounts to a larger number of students who would then qualify). However, we will continue to explore other options.

The new sections are adopted under Texas Education Code, Section 130A.005, which provides the Coordinating Board with the authority to adopt rules and take other actions consistent with Texas Education Code, chapter 61, chapter 130, and chapter 130A to implement Tex. H.B. 8, 88th Leg., R.S. (2023). In addition, Texas Education Code, Section 130.355, permits the Coordinating Board to establish rules for funding workforce continuing education.

The adopted new sections affect Texas Education Code, Sections 28.0295, 61.003, 61.059, 130.003, 130.0031, 130.0034, 130.008, 130.085, 130.310, 130.352 and chapter 130A.

§13.553. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Academically Disadvantaged--A designation that applies to postsecondary students who have not met the college-readiness standard in one or more Texas Success Initiative (TSI) assessments as provided by §4.57 of this title (relating to Texas Success Initiative Assessment College Readiness Standards), and who were not classified as either waived or exempt pursuant to §4.54 of this title (relating to Exemption).

(2) Adult Learner--A student aged 25 or older on September 1 of the fiscal year for which the applicable data are reported, in accordance with Coordinating Board data reporting requirements.

(3) Advanced Technical Certificate (ATC)--A certificate that has a specific associate or baccalaureate degree or junior level standing in a baccalaureate degree program as a prerequisite for admission. An ATC consists of at least 16 semester credit hours (SCH) and no more than 45 SCH and must be focused, clearly related to the prerequisite degree, and justifiable to meet industry or external agency requirements.

(4) Associate Degree--An academic associate degree as defined under Texas Education Code, §61.003(11), or an applied associate degree as defined under Texas Education Code, §61.003(12)(B).

(5) Baccalaureate Degree--A degree program that includes any grouping of subject matter courses consisting of at least 120 SCH which, when satisfactorily completed by a student, will entitle that student to an undergraduate degree from a public junior college.

(6) Base Tier Funding--The amount of state and local funding determined by the Board for each public junior college that ensures the college has access to a defined level of funding for instruction and operations.

(7) Base Year--The time period comprising the year of contact hours used for calculating the contact hour funding to public junior colleges. The Base Year for a funded fiscal year consists of the reported Summer I and II academic term from the fiscal year two years prior to the funded fiscal year; the Fall academic term one fiscal year prior to the funded fiscal year; and the Spring academic term one fiscal year prior to the funded fiscal year.

(8) Basic Allotment--A calculation of the dollar value per Weighted FTSE, based on appropriations made in that biennium's General Appropriations Act.

(9) Census Date--The date upon which a college may report a student in attendance for the purposes of formula funding, as specified in the Coordinating Board Management (CBM) manual for the year in which the funding is reported.

(10) Continuing Education Certificate--A credential awarded for completion of a program of instruction that meets or exceeds 360 contact hours and earns continuing education units. The certificate program is intended to prepare the student to qualify for employment; to qualify for employment advancement; or to bring the student's knowledge or skills up to date in a particular field or profession; and is listed in an institution's approved program inventory.

(11) Credential of Value Baseline--A credential earned by a student that would be expected to provide a positive return on investment. Credential of Value Baseline methodology is described in §13.556 of this subchapter (relating to Performance Tier: Fundable Outcomes).

(12) Credential of Value Premium Fundable Outcome--A fundable outcome earned by an institution for a credential earned by a student that would be expected to provide a wage premium. Credential of Value Premium methodology is described in §13.556 of this subchapter.

(13) Credentialing Examination--A licensure or registration exam required by a state or national regulatory entity or a certification exam required by an authorized professional organization. An authorized professional organization is a national, industry-recognized

organization that sets occupational proficiency standards, conducts examinations to determine candidate proficiency, and confers an industry-based certification.

(14) Dual Credit or Dual Enrollment Fundable Outcome--An outcome achieved when a student earns at least 15 SCH or the equivalent of fundable dual credit or dual enrollment courses, defined as follows:

(A) Courses that qualify as dual credit courses as defined in §4.83(10) of this title (relating to Definitions); and:

(i) In fiscal year 2025 or later, apply toward an academic or career and technical education program requirement at the postsecondary level; or

(ii) In fiscal Year 2025 or later are completed by a student who graduates with a Texas First Diploma, as codified in chapter 21, subchapter D of this title (relating to Texas First early high school completion program).

(B) All dual credit courses taken by a student enrolled in an approved Early College High School program, as provided by Texas Education Code, §28.009, except a physical education course taken by a high school student for high school physical education credit.

(15) Economically Disadvantaged--A designation that applies to postsecondary students who received the federal Pell Grant under 20 U.S.C. §1070a.

(16) Equivalent of a Semester Credit Hour--A unit of measurement for a continuing education course, determined as a ratio of one continuing education unit to 10 contact hours of instruction, which may be expressed as a decimal. One semester credit hour of instruction equals 1.6 continuing education units of instruction. In a continuing education course, not fewer than 16 contact hours are equivalent to one semester credit hour.

(17) Formula Funding--The funding allocated by the Coordinating Board among all public junior colleges by applying provisions of the Texas Education Code, agency rule, and the General Appropriations Act to a sector-wide appropriation from the General Appropriations Act.

(18) Full-Time Student Equivalent (FTSE)--A synthetic measure of enrollment based on the number of instructional hours delivered by an institution of higher education divided by the number of hours associated with full-time enrollment for the time period in question.

(19) Fundable Credential--As defined in §13.556(b) of this subchapter.

(20) Fundable Outcome Weights--A multiplier applied to eligible fundable outcomes to generate a Weighted Outcome Completion for use in determining the Performance Tier allocation. The methodology for each Fundable Outcome Weight is defined in §13.557 of this subchapter (relating to Performance Tier: Fundable Outcome Weights).

(21) High-Demand Fields--A field in which an institution awards a credential that provides a graduate with specific skills and knowledge required for the graduate to be successful in a high-demand occupation, based on the list of high-demand fields as defined in subchapter T of this chapter (relating to Community College Finance Program: High-Demand Fields).

(22) Institutional Credentials Leading to Licensure or Certification (ICLC)--A credential awarded by an institution upon a student's completion of a course or series of courses that represent the achievement of identifiable skill proficiency and leading to licensure or certification. This definition includes a credential that meets the definition of an Occupational Skills Award in all respects except that the program may provide training for an occupation that is not included in the Local Workforce Development Board's Target Occupations list.

(23) Level 1 Certificate--A certificate designed to provide the necessary academic skills and the workforce skills, knowledge, and abilities necessary to attain entry-level employment or progression toward a Level 2 Certificate or an Applied Associate Degree, with at least 50% of course credits drawn from a single technical specialty. A Level 1 Certificate must be designed for a student to complete in one calendar year or less time and consists of at least 15 semester credit hours and no more than 42 semester credit hours.

(24) Level 2 Certificate--A certificate consisting of at least 30 semester credit hours and no more than 51 semester credit hours. Students enrolled in Level 2 Certificates must demonstrate meeting college readiness standards set forth in §4.57 of this title and other eligibility requirements determined by the institution.

(25) Local Share--The amount determined to be the institution's contribution of local funds to the Instruction and Operations (I&O) amount for each public junior college. The amount consists of estimated ad valorem maintenance and operations tax revenue and tuition and fees revenue, as determined by the Board.

(26) Non-Formula Support Item--An amount appropriated by line item in the General Appropriations Act to a single public junior college or limited group of colleges for a specific, named purpose.

(27) Occupational Skills Award (OSA)--A sequence of courses that meet the minimum standard for program length specified by the Texas Workforce Commission for the federal Workforce Innovation and Opportunity Act (WIOA) program (9-14 SCH for credit courses or 144-359 contact hours for workforce continuing education courses). An OSA must possess the following characteristics:

(A) The content of the credential must be recommended by an external workforce advisory committee, or the program must provide training for an occupation that is included on the Local Workforce Development Board's Target Occupations list;

(B) In most cases, the credential should be composed of Workforce Education Course Manual (WECM) courses only. However, non-stratified academic courses may be used if recommended by the external committee and if appropriate for the content of the credential;

(C) The credential complies with the Single Course Delivery guidelines for WECM courses; and

(D) The credential prepares students for employment in accordance with guidelines established for the Workforce Innovation and Opportunity Act.

(28) Opportunity High School Diploma Fundable Outcome--An alternative means by which adult students enrolled in a workforce program at a public junior college may earn a high school diploma at a college through concurrent enrollment in a competency-based program, as codified in Texas Education Code, chapter 130, subchapter O, and Texas Administrative Code, Title 19, Part 1, Chapter 12.

(29) Semester Credit Hour (SCH)--A unit of measure of instruction, represented in intended learning outcomes and verified by evidence of student achievement, that reasonably approximates one hour of classroom instruction or direct faculty instruction and a minimum of two hours out of class student work for each week over a 15-week period in a semester system or the equivalent amount of work over a different amount of time. An institution is responsible for determin-

ing the appropriate number of semester credit hours awarded for its programs in accordance with Federal definitions, requirements of the institution's accreditor, and commonly accepted practices in higher education.

(30) Structured Co-Enrollment Fundable Outcome--A student who earns at least 15 semester credit hours at the junior college district in a program structured through a binding written agreement between a general academic teaching institution and a community college. Under such a program, students will be admitted to both institutions and recognized as having matriculated to both institutions concurrently. The Structured Co-enrollment Fundable Outcome does not include courses fundable under the Dual Credit or Dual Enrollment Fundable Outcome.

(31) Third-Party Credential--A certificate as defined in Texas Education Code, §61.003(12)(C), that is conferred by a third-party provider. The third-party provider of the certificate develops the instructional program content, develops assessments to evaluate student mastery of the instructional content, and confers the third-party credential. A third-party credential that meets the requirements of §13.556 of this subchapter is fundable in accordance with that section.

(32) Transfer Fundable Outcome--An institution earns a fundable outcome in the Performance Tier under §13.555 of this subchapter (relating to Performance Tier Funding) when a student enrolls in a general academic teaching institution, as defined in Texas Education Code, §61.003, after earning at least 15 semester credit hours from a single public junior college district as established under §13.556(e) of this subchapter. For the purpose of this definition, semester credit hours (SCH) shall refer to semester credit hours or the equivalent of semester credit hours.

(33) Weighted Full-Time Student Equivalent (Weighted FTSE or WFTSE)--A synthetic measure of enrollment equal to the number of instructional hours delivered by an institution of higher education divided by the number of hours associated with full-time enrollment for the fiscal year two years prior to the one for which formula funding is being calculated, where the hours delivered to students with certain characteristics carry a value other than one.

(34) Weighted Outcomes Completion--A synthetic count of completions of designated student success outcomes where outcomes achieved by students with certain characteristics carry a value other than one. The synthetic count may also represent a calculation, such as an average or maximizing function, other than a simple sum.

§13.556. Performance Tier: Fundable Outcomes.

(a) This section contains definitions of Fundable Outcomes eligible for receiving funding through the Performance Tier. An institution's Performance Tier funding will consist of the count of Fundable Outcomes, multiplied by weights identified in §13.557 of this subchapter (relating to Performance Tier: Fundable Outcome Weights) as applicable, multiplied by the monetary rates identified in this subchapter. Fundable Outcomes consist of the following categories:

(1) Fundable Credentials;

(2) Credential of Value Premium;

(3) Dual Credit Fundable Outcomes;

(4) Transfer Fundable Outcomes;

(5) Structured Co-Enrollment Fundable Outcomes; and

(6) Opportunity High School Diploma Fundable Outcomes.

(b) Fundable Credentials.

(1) A fundable credential is defined as any of the following:

(A) Any of the following credentials awarded by an institution that meets the criteria of a credential of value as defined in paragraph (2) of this subsection using the data for the year in which the credential is reported that is otherwise eligible for funding, and the institution reported and certified to the Coordinating Board:

(i) An associate degree;

(ii) A baccalaureate degree;

(iii) A Level 1 or Level 2 Certificate;

(iv) An Advanced Technical Certificate; and

(v) A Continuing Education Certificate.

(B) An Occupational Skills Award awarded by an institution that the institution reported and certified to the Coordinating Board;

(C) An Institutional Credential Leading to Licensure or Certification (ICLC) not reported pursuant to subparagraph (B) of this paragraph and that the institution reported and certified to the Coordinating Board. For fiscal year 2025 or prior only, the credential shall meet one of the following criteria:

(i) The credential includes no fewer than 144 contact hours or nine (9) semester credit hours; or

(ii) The credential is awarded in a high demand field, as defined in Coordinating Board rule, and includes no fewer than 80 contact hours or five (5) semester credit hours; or

(D) A Third-Party Credential that meets the following requirements:

(i) The third-party credential is listed in the American Council on Education's ACE National Guide with recommended semester credit hours;

(ii) The third-party credential program content is either embedded in a course, embedded in a program, or is a stand-alone program;

(iii) The third-party credential is conferred for successful completion of the third-party instructional program in which a student is enrolled;

(iv) The third-party credential is included on the workforce education, continuing education, or academic transcript from the college; and

(I) For fiscal year 2025 only, the third-party credential includes no fewer than the equivalent of nine (9) semester credit hours or 144 contact hours; or

(II) For fiscal year 2025 only, the third-party credential is awarded in a high-demand field as defined in Coordinating Board rule, and includes no fewer than the equivalent of five (5) semester credit hours or 80 contact hours; and

(v) The student earned the third-party credential on or after September 1, 2024.

(2) Credential of Value Baseline. For fiscal year 2025 or prior only, a credential identified in paragraph (1)(A) of this subsection must meet the Credential of Value Baseline criteria for eligibility as a Fundable Outcome. Beginning in fiscal year 2026, any credential identified in paragraph (1) of this subsection must meet the Credential of Value Baseline criteria for eligibility as a Fundable Outcome. This baseline is met when a credential earned by a student would be expected to provide a positive return on investment within a period of ten years.

(A) A program demonstrates a positive return on investment when the majority of students statewide completing the credential, within a program area, are expected to accrue earnings greater than the cumulative median earnings of Texas high school graduates who do not hold additional credentials, plus recouping the net cost of attendance within ten years after earning the credential.

(B) This calculation of return on investment shall include students' opportunity cost, calculated as the difference between median earnings for Texas high school graduates and estimated median earnings for students while enrolled:

(i) Four years for baccalaureate degree holders;

(ii) Two years for associate degree holders; or

(iii) One year for holders of a Level 1 certificate, Level 2 certificate, Advanced Technical Certificate, or Continuing Education Certificate.

(C) The Coordinating Board shall calculate the expected return on investment for each program based on the most current data available to the agency for the funding year for each program or a comparable program.

(D) In applying the methodology under this section to a program offering a credential in an emerging or essential high-demand field pursuant to §13.595(a) and (b) of this chapter (relating to Emerging and Essential Fields), the Commissioner of Higher Education shall utilize recent, relevant data, including:

(i) employer certifications provided under §13.595(b);

(ii) information on program design, including at minimum the cost and length of the program; and

(iii) any other information necessary for the Coordinating Board to apply the methodology under this section to the program proposed in an emerging or essential high-demand field.

(3) The following limitations apply to a fundable credential:

(A) For a credential under paragraph (1)(B) or (C) of this subsection, if more than one credential that the institution awarded to a student includes the same contact hours, the institution may only submit one credential for funding;

(B) If an institution awarded to a student a credential eligible for funding under paragraph (1)(B) and (C) of this subsection and those credentials share the same contact hours, the institution shall submit for funding only the credential awarded under paragraph (1)(B) of this subsection; and

(C) For a degree or certificate awarded on or after September 1, 2024, a fundable credential excludes a degree or certificate awarded to a non-resident student enrolled in a 100-percent online degree or certificate program as defined in §2.202(4)(A) of this title (relating to Definitions) for a student who resides out-of-state.

(c) Credential of Value Premium. An institution earns a Credential of Value Premium for each student who completes a Fundable Credential under subsection (b)(1)(A) of this section as follows:

(1) The student completes the credential of value on or before the target year for completion that, for the majority of students who complete comparable programs, would enable the student to achieve a positive return on investment within the timeframe specified for the program as described in paragraph (2) of this subsection.

(2) For each program, the Coordinating Board shall calculate the year in which the majority of comparable programs would be projected to have the majority of their students achieve a positive return on investment.

(3) Each year, the Coordinating Board shall publish a list of the target years for completion for each program.

(d) Dual Credit Fundable Outcome. An institution achieves a Dual Credit Fundable Outcome when a student has earned a minimum number of eligible dual credit semester credit hours, as defined in §13.553(14) of this subchapter (relating to Definitions).

(e) Transfer Fundable Outcome.

(1) An institution earns a transfer fundable outcome when a student enrolls in a general academic teaching institution (GAI), as defined in Texas Education Code, §61.003(3), after earning at least 15 semester credit hours (SCH) from a single public junior college district, subject to the following:

(A) The student is enrolled at the GAI for the first time in the fiscal year for which the public junior college is eligible for a performance tier allocation, as established in this subchapter;

(B) The student earned a minimum of 15 SCHs from the public junior community college district seeking the transfer fundable outcome during the period including the fiscal year in which they enroll at the GAI and the four fiscal years prior; and

(C) The attainment of the 15 SCHs satisfies the following restrictions:

(i) The transfer fundable outcome shall exclude the 15 SCHs that previously counted toward attainment of a dual credit fundable outcome for the student under subsection (d) of this section.

(ii) The transfer fundable outcome may include any SCHs earned by the student not previously counted toward a dual credit fundable outcome under subsection (d) of this section.

(2) Only one institution may earn a transfer fundable outcome for any individual student, except as provided by subparagraph (C) of this paragraph. An institution may earn the transfer fundable outcome only once per student. The Coordinating Board shall award the transfer fundable outcome in accordance with this subsection.

(A) If a student has earned 15 SCH at more than one institution prior to transfer to any GAI, the Coordinating Board shall award the transfer fundable outcome to the last public junior college at which the student earned the 15 SCH eligible for funding under this section.

(B) If the student earned the 15 SCH at more than one institution during the same academic term, the Coordinating Board shall award the transfer fundable outcome to the public junior college:

(i) from which the student earned the greater number of the SCH that count toward the transfer fundable outcome during the academic term in which they earned the 15 SCH; or

(ii) if the student earned an equal number of SCH that count toward the transfer fundable outcome in the academic term in which the student earned the 15 SCH, to the institution from which the student earned a greater number of SCH that count toward the transfer fundable outcome in total.

(C) If a student has met the SCH requirements of subparagraph (B)(i) and (ii) of this paragraph at more than one public junior college, each public junior college may receive a transfer fundable outcome.

(f) Structured Co-Enrollment Fundable Outcome. An institution achieves a Structured Co-Enrollment Fundable Outcome when a student has earned a minimum number of eligible semester credit hours in a structured co-enrollment program, as defined in §13.553(30) of this subchapter.

(g) Opportunity High School Diploma Fundable Outcome. An institution achieves an Opportunity High School Diploma Fundable Outcome when a student has completed the program and attained the credential, as defined in §13.553(28) of this subchapter. A student must earn the Opportunity High School Diploma on or after September 1, 2024 to qualify as a Fundable Outcome.

§13.557. Performance Tier: Fundable Outcome Weights.

(a) This section contains definitions of Fundable Outcome Weights that are applied to the Fundable Outcomes specified in §13.556 of this subchapter (relating to Performance Tier: Fundable Outcomes) to generate a Weighted Outcome Completion. A Fundable Outcome that does not qualify for one of the following Fundable Outcome Weight categories receives a weight of 1. The Coordinating Board will apply the following weights to Fundable Outcomes to the extent permitted by data availability. Fundable Outcome Weights consist of the following categories:

(1) Outcomes achieved by economically disadvantaged students;

(2) Outcomes achieved by academically disadvantaged students; and

(3) Outcomes achieved by adult learners.

(b) Economically Disadvantaged Students.

(1) An institution will receive an additional weight of 25% for fundable credentials, transfer fundable outcomes, and structured co-enrollment fundable outcomes as referenced in §13.556 of this subchapter achieved by an economically disadvantaged student, as defined in §13.553(15) of this subchapter (relating to Definitions).

(2) For purposes of calculating economically disadvantaged for the Transfer Fundable Outcome and Fundable Credentials, the student must be classified as economically disadvantaged at any point during the fiscal year in which the outcome was achieved or the four fiscal years prior at the institution in which the outcome was achieved.

(3) For purposes of calculating economically disadvantaged for Structured Co-Enrollment Fundable Outcome, the student must be classified as economically disadvantaged in the initial semester of enrollment in the Structured Co-Enrollment Program at either the community college or general academic institution.

(c) Academically Disadvantaged Students.

(1) An institution will receive an additional weight of 25% for any fundable credentials, transfer fundable outcomes, and structured co-enrollment fundable outcomes in §13.556 of this subchapter achieved by an academically disadvantaged student, as defined in §13.553(1) of this subchapter.

(2) For purposes of calculating academically disadvantaged for Transfer Fundable Outcome and Fundable Credentials, the student must be classified as academically disadvantaged at any point during the fiscal year in which the outcome was achieved or the four fiscal years prior at the institution in which the outcome was achieved.

(3) For purposes of calculating academically disadvantaged for Structured Co-Enrollment Fundable Outcome, the student must be classified as academically disadvantaged in the initial semester of enrollment in the Structured Co-Enrollment Program at the institution in which the outcome was achieved.

(d) Adult Learners.

(1) An institution will receive an additional weight of 50% for a fundable credential, transfer fundable outcomes, and structured co-enrollment fundable outcomes in §13.556 of this subchapter achieved by an adult learner, as defined in §13.553(2) of this subchapter.

(2) For purposes of calculating an Adult Learner for a transfer fundable outcome, the Coordinating Board shall calculate age in accordance with this subsection.

(A) The student shall be 25 years of age or older in the earliest fiscal year in which they were enrolled at the public junior college during the current fiscal year or the two fiscal years prior to first enrollment in a general academic institution; or

(B) If the student was not enrolled at the public junior college during the current fiscal year or the two fiscal years prior to the first enrollment in a general academic institution, the student must be 25 years of age of older in the earliest fiscal year of enrollment at the public junior college during the prior four fiscal years.

(3) For purposes of calculating an Adult Learner for a fundable credential, the student's eligibility will be determined as follows:

(A) For a student who completes an Occupational Skills Award, Institutional Credential leading to Licensure or Certification, Third Party Credential, Level I Certificate, Level II Certificate, Continuing Education Certificate, or Advanced Technical Certificate, as defined in §13.556(b) of this subchapter, 25 years of age or older on September 1 of the fiscal year in which the student earned the credential;

(B) For a student who completes an associate degree as defined in §13.556(b) of this subchapter, 25 years of age or older on September 1 of the earliest fiscal year in which the student was enrolled during the period including the year in which the student earned the credential and the prior fiscal year; and

(C) For a student who completes a bachelor's degree as defined in §13.556(b) of this subchapter, 25 years of age or older on September 1 of the earliest fiscal year in which the student was enrolled during the period including the year in which the student earned the credential and the three fiscal years prior.

(4) For purposes of calculating an Adult Learner for Structured Co-Enrollment Fundable Outcome, the student must be classified as an Adult Learner in the initial semester of enrollment in the Structured Co-Enrollment Program at the institution in which the outcome was achieved.

(e) Applicability of Weights. For purposes of transitioning to the new formula model, an institution will receive fundable outcome weights for Occupational Skills Awards, Institutional Credentials Leading to Licensure or Certification, and Third-Party Credentials achieved by economically disadvantaged students, academically disadvantaged students, or adult learners beginning with these awards reported in Fiscal Year 2025. This subsection expires on August 31, 2026.

§13.558. Performance Tier: High-Demand Fields.

An institution will receive an additional weight, as calculated by an increased funding rate for awarding a Fundable Credential described in §13.556 of this subchapter (relating to Performance Tier: Fundable Outcomes) for credentials delivered in disciplines designated as a High-Demand Field for that institution, as described in subchapter

T of this chapter (relating to Community College Finance Program: High-Demand Fields).

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 April 26, 2024.

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Texas Higher Education Coordinating Board
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SUBCHAPTER T. COMMUNITY COLLEGE FINANCE PROGRAM: HIGH-DEMAND FIELDS

19 TAC §§13.590 - 13.597

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 13, Subchapter T, §§13.590 - 13.597, Community College Finance Program: High Demand Fields, with changes to the proposed text as published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 364). The rules will be republished.

This subchapter concerns the designation of academic fields as High-Demand Fields in which credentials awarded by public junior colleges are eligible for additional funding under the community college finance system established by H.B. 8 (88R). Specifically, this new section will establish a transparent methodology and process for creating and updating the list of academic fields in which credentials are eligible for additional funding.

An institution will receive additional funding for a credential corresponding to a high-demand field included in its region's list of high-demand fields. Each region's high-demand fields list includes all academic fields corresponding to high-demand occupations and is designed to incentivize institutions to produce credentials that meet critical statewide and local workforce needs. This list consists of the following four categories:

1. Ten statewide high-demand occupations, developed using federal jobs data and employment projections to serve the economic needs of the state;

2. Five regional high-demand occupations, including regional workforce needs as demonstrated by data and projections for occupations not otherwise included on the statewide high-demand list;

3. Up to five region-specific Essential Occupations, added by petition of the colleges in the region, to address any critical local workforce needs not captured by existing data; and

4. Any number of statewide Emerging Occupations, designed to allow colleges to serve newly emergent industries that may not yet exist in historical data, in alignment with state leadership priorities.

The following sections describe the methodology and process used to identify high-demand fields.

Rule 13.590, Authority and Purpose, establishes the statutory authority for the subchapter as Texas Education Code §130.101(c)(1) and describes its purpose.

Rule 13.591, Definitions, defines key terms used in the subchapter.

Rule 13.592, Regions, assigns community colleges to regions. Regional assignments allow the list of High-Demand Fields for each college to reflect economic conditions specific to its region. The assignments align with the regional configuration developed by the Texas Comptroller of Public Accounts, which creates regions based on Workforce Development Areas established by the Texas Workforce Commission. Institutions may also request reassignment to a different region overlapping with the college's service area for a minimum of four years.

Rule 13.593, Regional High-Demand Fields Lists, establishes that the Coordinating Board will create separate lists of High-Demand Fields for each region consisting of statewide, region-specific, Emerging Fields, and Essential Fields. This combination reflects the need for education and training to align with the broad economic trends of the state while also taking regional variation into account.

Rule 13.594, High-Demand Fields Methodology, describes the methodology that the Coordinating Board will apply to calculate the statewide and region-specific high-demand fields in order to create each region's high-demand fields list. It relies on ten-year employment projections derived from the United States Bureau of Labor Statistics and published by the Texas Workforce Commission, ensuring that the process uses thoroughly vetted, publicly available data based on enduring trends. The methodology excludes from analysis occupations that do not typically require the types of credentials that community colleges confer, while allowing such occupations to be added again given appropriate evidence, ensuring that the occupations under consideration match the purpose of incentivizing market-aligned programs at community colleges. It groups both occupations and academic fields into sub-divisions to capture a broader variety of occupations and avoid the possibility that substantively equivalent occupations or academic fields may be inappropriately excluded by slight differences at the most specific level of coding.

Each regional high-demand field list will consist of the academic fields associated with ten statewide occupations and five regional occupations generated by this methodology, as well as up to five regional Essential Occupations and statewide Emerging Occupations. The rule also identifies a crosswalk jointly developed by the Bureau of Labor Statistics and National Center for Education Statistics as the means of linking occupations to academic fields.

Rule 13.595, Essential Occupations, describes the process for institutions to petition for the addition of an Essential Occupation to their region's high-demand fields list, ensuring that the list captures regionally important industries not captured by the methodology in rule 13.594. A college or consortium of colleges in the same region may request the addition of up to five additional Essential Occupations. An eligible Essential Occupation must appear on the local Workforce Development Area's list of Target Occupations. If institutions in a single region request more than five unique Essential Occupations, the rule describes a standard and transparent rubric to score each submission, including factors like workforce demand, compensation, and regional economic importance.

Rule 13.596, Emerging Occupations, establishes a process for state leadership to add high-demand fields across the state to incentivize community colleges to develop programs serving the workforce needs of newly emergent industries. In consultation with the Governor's Office, the Commissioner of Higher Education may add an Emerging Occupation that is aligned to a legislative priority (as shown through passage of legislation or dedicated appropriations to develop or encourage the sector) to the high-demand fields list. This mechanism allows the Coordinating Board to include industries of state importance that may not have sufficient historical employment data to be captured in the methodology established in rule 13.594.

Rule 13.597, Effective Dates: High Demand Fields, establishes the schedule for each category of high-demand fields to take effect. This schedule is aligned to the statewide fiscal calendar, including the legislative appropriations cycle, and allows for each field to remain in effect for a sufficient period of time to allow colleges to conduct academic planning to develop or phase out programs. Paragraph (1) describes how the Board will adopt the standard regional high-demand field list, including the ten statewide and five regional occupations determined by the methodology in rule 13.594, by July of each odd-numbered year, with effectiveness beginning on September 1 of the next fiscal year; a high-demand field that is no longer identified by the methodology in rule 13.594 will have a grace period of one additional biennium. Paragraph (2) concerns how the Board adopts high-demand fields for credentials conferred during fiscal years 2023 - 2025, allowing for a transition period. Paragraph (3) describes the effective dates for Essential Occupations, which will take effect for the following biennium and may be renewed subject to a new petition, and Emerging Occupations, which take effect for the following two fiscal years and may be renewed as well.

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

Section 13.591 amends definitions by adding terms for "Assistant Commissioner," "Emerging Occupation," and "Essential Occupations," and renumbering throughout the rule.

Section 13.592 amends the rule by adding subsection (b), allowing institutions to request reassignment to a neighboring region. The Coordinating Board has amended this language in response to feedback from the field.

Section 13.593 is updated to reflect that the Emerging and Essential Fields list is now composed of separate lists for Emerging Occupations and Essential Occupations.

Section 13.594(2)(A) amends the rule relating to including fields that the BLS has indicated typically do not require credentials usually conferred by community colleges. The new rule allows for inclusion of occupations that typically require successfully completed apprenticeship according to the BLS, or a licensure or certification granted by this state according to the Texas Workforce Commission. Section 13.594(4) amends the rule to reflect the Coordinating Board's decision to separate out Essential Occupations and Emerging Occupations.

Sections 13.595, Essential Occupations, and 13.596, Emerging Occupations, replace the prior rules 13.595 and 13.596 initially published by the Coordinating Board, which had treated Essential and Emerging Occupations uniformly. The proposed rule initially published by the Coordinating Board envisioned a uniform process for approving both Essential and Emerging Occupations, with uniform criteria for both. Based on feedback received by the Coordinating Board, staff has determined that these constitute separate categories, serving different purposes and requiring different approval processes. Essential Occupations relate to regionally critical, potentially longstanding industries that may not emerge under the standard methodology; Emerging Occupations concern new industries, potentially emerging out of technological developments, with likely statewide impact. The revised approval processes for Essential and Emerging Occupations establish different timelines and criteria for both, designed to improve administrability, allow colleges to give input, and permit state leadership to identify and add key statewide priorities.

Section 13.597 contains amendments primarily in paragraph (2), relating to transitional effective dates for the high-demand fields corresponding to credentials conferred during fiscal years 2023 - 2025, and paragraph (3), relating to the redesigned Essential and Emerging Occupations categories.

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

Comment: San Jacinto College submitted a comment regarding the emerging and essential fields list. Since the new emerging and essential category is limited to five per region, San Jacinto College is inquiring if there can be any consideration given to having more than five essential and emerging categories added for these larger regions, particularly those with multiple large community colleges.

Response: The Texas Higher Education Coordinating Board appreciates this comment, and the point that some regional economies may include a higher number of occupations that merit consideration is well taken. The Coordinating Board will continue to review how to best structure the process by which schools can petition to add occupations but believes that there should be only five essential occupations per region at this point in time to ensure the occupations are limited and cross a high threshold of showing value to the region or state. However, in response to this, the Coordinating Board has revised the process to limit the five occupations to only essential occupations as any identified emerging occupations shall apply statewide to all community colleges. The Coordinating Board will continue to consider this issue in the future as we implement this new process.

Comment: Two comments were submitted regarding the restriction on five regional high demand fields. Texas Business Leadership Council and Texas2036 are inquiring if there can be any consideration given to having more than five fields added based on regional size and economic diversity or providing for an application process for additional regional high demand fields.

Response: The Texas Higher Education Coordinating Board appreciates this comment, and the point that some regional economies may include a higher number of occupations that merit consideration is well taken. However, the Coordinating Board believes the current process to add emerging and essential occupations help address this issue, while maintaining consistency across the region by limiting each region to five regional occupations after assessing the statewide list. The Coordinating Board will continue to consider this issue in the future as we implement this new process.

Comment: Texas2036 submitted a comment that questions remain for institutions that may not fit neatly into just one Comptroller region.

Response: The Texas Higher Education Coordinating Board appreciates this comment and has revised the rule in response to feedback on this issue. The rule now allows institutions an annual opportunity to request reassignment to a different region overlapping with the college's service area for a minimum of four years. This allows an institution to consider which region most reflects the workforce needs of their local community.

Comment: San Jacinto College submitted a comment inquiring about the rationale for requiring that both the Governor's Office and the Legislative Budget Board (LBB) must give final approval of the additional programs/credentials in emerging and essential occupations. San Jacinto College notes that this level of review is not required for other elements of HB8 items.

Response: The Texas Higher Education Coordinating Board thanks San Jacinto College for the comment. The Coordinating Board has revised the rule to no longer require the Governor's Office and LBB to approve the addition of essential fields. The revised method of approval of essential occupations ensures a broad perspective on the needs and priorities of the state through the requirement that the requested occupation be identified as a target occupation in the institution's region and also, in the case of multiple requests, requires the scoring of an application using a rubric developed in consultation with the Texas Workforce Commission. Additionally, the Coordinating Board has revised the process for adding emerging occupations to require consultation with the Governor's Office after identifying an occupation that is clearly aligned with legislative priorities, as evidenced by legislative action via statute change or specific funding authorized in the state's budget. This ensures that the Coordinating Board's understanding of the state's emerging workforce needs aligns with executive and legislative leadership.

Comment: The Texas Business Leadership Council (TBLC) submitted a comment supporting the development of a petition process to add emerging and essential fields to the high-demand fields list.

Response: The Texas Higher Education Coordinating Board thanks TBLC for the comment and agrees with the sentiment expressed in regard to capturing workforce needs not apparent in standard data sources.

The new sections are adopted under Texas Education Code, Section 130A.005, which provides the Coordinating Board with the authority to adopt rules to implement the community college finance system established under Texas Education Code, Chapter 130A.

The adopted new sections affect Texas Education Code, Section 130A.101.

§13.590. Authority and Purpose.

(a) Texas Education Code, §130A.101(c)(1), provides for public junior colleges to earn an additional funding weight for a credential conferred in a high-demand occupation as part of performance tier funding.

(b) The purpose of this subchapter is to identify a credential eligible for an additional funding weight. To be eligible for an additional weight a credential must be eligible for performance tier funding under §13.555 of this chapter (relating to Performance Tier Funding), and a public junior college must confer the credential in a field specified in this subchapter, as defined by the discipline's federal Classification of Instructional Program (CIP) Code.

§13.591. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Assistant Commissioner--In this subchapter means the Assistant, Associate, or Deputy Commissioner designated by the Commissioner of Higher Education.

(2) Emerging Occupation--As defined in §13.596 of this subchapter (relating to Emerging Occupations).

(3) Essential Occupation--As defined in §13.595 of this subchapter (relating to Essential Occupations).

(4) High-Demand Field--Academic discipline in which an institution awards a credential that provides a graduate with specific skills and knowledge required for the graduate to be successful in a high-demand occupation, based on the list of high-demand occupations as defined in this subchapter. Fields shall be derived from the CIP SOC Crosswalk most recently published by the Bureau of Labor Statistics and the National Center for Education Statistics, or, at the Commissioner of Higher Education's discretion, the crosswalk most recently published with a reasonable allowance of time for analysis and review.

(5) High-Demand Occupation--An occupation identified as such by the Commissioner of Higher Education in consultation with the Texas Workforce Commission based on exceptionally high projected growth or status as an Emerging or Essential Occupation and other eligibility criteria under this subchapter. A credential awarded in a high-demand field included in the list approved for an additional funding weight under this subchapter correspond to one or more high-demand occupations.

(6) Region--An economic region of this state as defined by the Texas Comptroller of Public Accounts.

§13.592. Regions.

(a) Except as set out under subsection (b) of this section, the Coordinating Board shall use the following regional list for the purpose of generating the list of high-demand fields for each institution under this subchapter.

(1) Alamo Region:

(A) Alamo Colleges District

(B) Victoria College

(2) Capital Region: Austin Community College

(3) Central Texas Region:

(A) Blinn College District

(B) Central Texas College

(C) Hill College

(D) McLennan Community College

(E) Temple College

(4) Gulf Coast Region:

(A) Alvin Community College

(B) Brazosport College

(C) College of the Mainland

(D) Galveston College

(E) Houston Community College

(F) Lee College

(G) Lone Star College System

(H) San Jacinto College District

(I) Wharton County Junior College

(5) High Plains Region:

(A) Amarillo College

(B) Clarendon College

(C) Frank Phillips College

(D) South Plains College

(6) Metroplex Region:

(A) Collin County Community College District

(B) Dallas College

(C) Grayson College

(D) Navarro College

(E) North Central Texas College

(F) Tarrant County College District

(G) Weatherford College

(7) Northwest Region:

(A) Cisco College

(B) Ranger College

(C) Vernon College

(D) Western Texas College

(8) Southeast Region: Angelina College

(9) South Texas Region:

(A) Coastal Bend College

(B) Del Mar College

(C) Laredo College

(D) South Texas College

(E) Southwest Texas Junior College

(F) Texas Southmost College

(10) Upper East Region:

(A) Kilgore College

(B) Northeast Texas Community College

(C) Panola College

(D) Paris Junior College

(E) Texarkana College

(F) Trinity Valley Community College

(G) Tyler Junior College

(11) Upper Rio Grande Region: El Paso Community College

(12) West Texas Region:

(A) Howard College District

(B) Midland College

(C) Odessa College

(b) Not later than March 1 annually, a public junior college that is assigned to a region established under this subchapter may request, via electronic communication to CCFinance@highered.texas.gov signed by the chief executive officer, reassignment to a different region overlapping with the college's service area, as established in Texas Education Code, chapter 130, subchapter J, for the purpose of this subchapter.

(1) An election to a different region under this section shall begin on September 1 and continue for no fewer than the following four (4) fiscal years.

(2) The Coordinating Board shall maintain an updated list that includes each institution and its assigned region pursuant to this section.

§13.593. Regional High-Demand Fields Lists.

(a) For each region, the Commissioner of Higher Education shall approve a list of high-demand fields eligible for an additional funding weight in the performance tier.

(b) Each Regional High-Demand Fields List shall include a list of statewide high-demand fields and a list of region-specific high-demand fields approved by the Commissioner of Higher Education and may include a further list of Emerging and Essential Fields added pursuant to §13.595 of this subchapter (relating to Essential Occupations) and §13.596 (relating to Emerging Occupations).

(c) Each regional high-demand fields list shall be limited to the fields associated with the high-demand occupations identified pursuant to §13.594 of this subchapter (relating to High-Demand Fields Methodology), up to five (5) occupations added pursuant to §13.595 and any occupations added pursuant to §13.596.

(d) Each public junior college shall earn the additional funding weight when it confers a fundable credential in a field that appears on the list of high-demand fields for its assigned region.

§13.594. High-Demand Fields Methodology.

The Coordinating Board shall apply the following methodology to generate region-specific lists of Regional High-Demand Fields to be approved by the Commissioner of Higher Education:

(1) In consultation with the Texas Workforce Commission (TWC), the Coordinating Board shall examine projections of the number of persons expected to be employed in the state of Texas and in each region for each occupation.

(A) These projections shall consider the ten-year employment projections most recently published by the TWC; data from the United States Bureau of Labor Statistics (BLS); and other relevant data regarding projected regional and state workforce needs.

(B) In its examination of workforce projections, the Coordinating Board shall exclude from the analysis all occupations identified by the BLS as typically requiring, at the entry level, no high school diploma or equivalent, a high school diploma or equivalent, a bachelor's degree, or any level of graduate education, except as provided in paragraph (2) of this section.

(2) The Coordinating Board may include an occupation identified by the BLS as typically requiring a high school diploma or equivalent or a bachelor's degree if it meets the following criteria:

(A) The BLS identifies the occupation as typically requiring a high school diploma or equivalent and either the BLS identifies the occupation as typically requiring a successfully completed apprenticeship or the TWC identifies the occupation as requiring a licensure or certification granted by an agency of this state, or other credential, or successful completion of an apprenticeship, to perform the occupation; or

(B) The Coordinating Board identifies relevant data demonstrating that the occupation typically requires a license, certification, credential other than a bachelor's degree, or a completed apprenticeship, and more than one (1) public junior college operates a program intended to prepare individuals to obtain such a credential or completed apprenticeship.

(3) The Coordinating Board shall calculate each region's list of high-demand occupations as follows:

(A) Within each region, group each occupation according to the first four (4) digits of its code under the most recent Standard Occupational Classification (SOC) system as promulgated by the BLS.

(B) Sum the projected change in employment for each grouping of occupations according to the first four (4) digits of SOC codes across all regions to generate a set of projections for each group of occupations across the state and rank this set from highest projected change to lowest.

(4) Each region's list of high-demand occupations shall consist of the ten (10) four-digit SOC groupings with the highest projected change across the state and the five (5) four-digit SOC groupings with the highest projected change within that region that do not appear among the ten (10) with the highest projected change statewide, as well as up to five (5) Essential Occupations identified by six-digit SOC codes as determined pursuant to §13.595(b) of this subchapter (relating to Essential Occupations) and any Emerging Occupations identified by six-digit SOC codes as determined pursuant to §13.596 of this subchapter (relating to Emerging Occupations).

(5) Each region's list of high-demand fields shall consist of all academic fields, defined as its four-digit CIP Code, that correspond to its list of high-demand occupations according to the SOC-to-CIP crosswalk most recently published by the BLS and National Center for Education Statistics, or, at the Commissioner of Higher Education's discretion, the crosswalk most recently published with a reasonable allowance of time for analysis and review.

§13.595. Essential Occupations.

(a) To respond to the rapidly evolving economic needs of the state and any regional labor shortages in critical occupations, this section provides an alternative pathway for the Coordinating Board to include fields linked to occupations not otherwise generated by the methodology described in §13.594 of this subchapter (relating to High-Demand Fields Methodology) to the list of High-Demand Fields for which a college receives additional funding under §13.558 of this chapter (relating to Performance Tier: High-Demand Fields).

(b) Petition Process for Essential Occupations. For including Essential Occupations on a region's high-demand occupations list under §13.594(4), the Coordinating Board shall utilize the following process:

(1) A public junior college or consortium of public junior colleges assigned to the same region under §13.592 of this subchapter (relating to Regions) may petition the Coordinating Board to add no more than five Essential Occupations using a form approved by the Commissioner of Higher Education.

(2) Whether individually or as a member of a consortium, a public junior college may submit only one petition to the Coordinating Board during each time period when petitions are accepted pursuant to paragraph (b)(5) of this section.

(3) A petition under this section may request that specific occupations identified by six-digit SOC codes be added to the list of high-demand occupations on the regional high-demand fields list for the requestor(s) pursuant to §13.594(4).

(4) A petition under this section shall name the Workforce Development Area (WDA) in the institution's service area whose board has designated as a Targeted Occupation pursuant to Texas Government Code, chapter 2308, each occupation that the petition seeks to add to a regional high-demand occupations list. The petition shall also include, for the occupation(s) and region in question:

(A) evidence of current job vacancies or growth, whether recent or projected, in the number of job openings;

(B) evidence of prevailing compensation or growth, whether recent or projected, in prevailing compensation;

(C) evidence of the importance of the occupation(s) to the regional economy; and

(D) evidence that the occupation typically requires for entry completion of an academic or workforce credential that the requestor(s) currently offers or will begin offering by the start of the fiscal year for which the occupation would take effect as a high-demand occupation if approved.

(5) Beginning in fiscal year 2025, in each odd-numbered year the Coordinating Board shall accept petitions under this section for a time period beginning on the earlier of May 1 or the day after the TWC publishes a new list of Target Occupations and ending May 31.

(c) Review Process and Criteria for Essential Occupations. The Coordinating Board shall utilize the following method for reviewing all petitions properly submitted pursuant to subsection (b) of this section:

(1) In consultation with the Texas Workforce Commission, the Coordinating Board shall discard as ineligible any occupation(s) not included on the Targeted Occupations list of a Workforce Development Area within the region to which the petitioner(s) is assigned under §13.592, as well as any occupations already included among the region's high-demand occupations.

(2) If, considering all eligible occupations on all petitions for a region, all public junior colleges in the region request five or fewer unduplicated eligible Essential Occupations for addition to the region's high-demand occupations, the Assistant Commissioner shall recommend that the Commissioner of Higher Education approve the occupations for inclusion on the region's high-demand occupations list.

(3) If multiple public junior colleges in a region request more than five unduplicated eligible Essential Occupations in total for addition to a region's high-demand occupations, the Coordinating Board shall score each occupation according to a rubric developed in consultation with the Texas Workforce Commission and approved by the Commissioner of Higher Education. The rubric shall specify scoring standards that may include the following:

(A) Workforce demand;

(B) Prevailing compensation;

(C) Regional economic importance;

(D) Typical education and training requirements;

(E) Demand among institutions, such as the percentage of the public junior colleges assigned to the region that petitioned for its inclusion as an Essential Occupation, and

(F) Other criteria or evidence relevant to the determination of need for the occupation in the scoring rubric approved by the Commissioner of Higher Education.

(4) Not later than July 15 of each odd-numbered year, the Assistant Commissioner shall review and approve the scores assigned

to each occupation and recommend the five (5) highest scoring occupations for each region to the Commissioner of Higher Education for approval. The Commissioner of Higher Education shall review the occupations recommended by the Assistant Commissioner for each region for addition as an Essential Occupation to the region's list of high-demand occupations. The Commissioner of Higher Education in his or her sole discretion based on the petitions and demonstration of need may approve or deny approval of any occupation recommended by the Assistant Commissioner.

(5) An Essential Occupation shall remain on a region's list of high-demand occupations under §13.594 (relating to High-Demand Fields Methodology) as an Emerging Occupation for not fewer than two (2) fiscal years.

§13.596. Emerging Occupations.

(a) In consultation with the Office of the Governor, the Commissioner of Higher Education may add an occupation to the list of statewide high-demand occupations under §13.594 (relating to High-Demand Fields Methodology) as an Emerging Occupation.

(b) An Emerging Occupation shall meet the following criteria:

(1) The occupation does not already appear among the high-demand occupations for the state; and

(2) The occupation is aligned with a state legislative priority, as evidenced by the passage of legislation or provision of funding to encourage or develop the sector for which the occupation may be necessary.

(c) The Commissioner of Higher Education may designate an Emerging Occupation at any time. An institution may earn the rate for a high demand field designated as an Emerging Occupation beginning September 1 of the fiscal year after the occupation is added to the list.

(d) An Emerging Occupation shall remain on the list of statewide high-demand occupations under §13.594 for not less than two (2) years.

(e) The Commissioner of Higher Education may, in consultation with the Office of the Governor, extend the designation of an Emerging Occupation on the list of statewide high-demand occupations for two (2) years.

§13.597. Effective Dates: High-Demand Fields.

This section establishes the schedule upon which the Coordinating Board will create updated lists of high-demand fields, essential occupations, and emerging occupations, and the amount of time that a field identified as high-demand will remain on a high-demand fields list.

(1) Standard Regional High-Demand Fields.

(A) The Board shall adopt the Regional High-Demand Fields lists for each biennium not later than its July board meeting of each odd-numbered year.

(B) The new Regional High-Demand Fields lists shall be effective for each biennium beginning September 1 of each odd-numbered year.

(C) Applying first to the High-Demand Fields list adopted under §(2)(B) of this section in FY 2024, a field that the Board removes from a Regional High-Demand Fields list shall continue to be funded as a high-demand field for the following biennium.

(2) Standard Regional High-Demand Fields Conferred in FY 2023 - 2025. For calculating FY 2025 funding amounts based on the greater of FY 2025 credentials awarded or the three-year average of FY 2023 - 2025, the Coordinating Board shall apply High-Demand Fields lists as follows:

(A) For credentials awarded in FY 2023, notwithstanding §13.594 (relating to High-Demand Fields Methodology), the Coordinating Board shall use the list of High-Demand Fields for FY 2023 adopted by the Board at its July 2024 board meeting, which it shall also publish publicly.

(B) For credentials awarded in FY 2024 and FY 2025 the Coordinating Board shall identify credentials conferred in High-Demand Fields based on the list developed in accordance with §13.594 and adopted by the Board at its July 2024 board meeting, which it shall also publish publicly.

(3) Emerging and Essential Occupations.

(A) Academic fields linked to Essential Occupations designated pursuant to §13.595(c) (relating to Essential Occupations) shall be effective for the following biennium beginning September 1 of each odd-numbered year but may be renewed subject to approval of a new petition under §13.595(b) and (c).

(B) Academic fields linked to Emerging Occupations designated pursuant to §13.595(d) shall be effective for two (2) fiscal years but may be renewed pursuant to §13.595(d).

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 April 26, 2024.

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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) 427-6548

CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS

SUBCHAPTER D. TEXAS PUBLIC EDUCATIONAL GRANT AND EMERGENCY TUITION, FEES, AND TEXTBOOK LOAN PROGRAMS

19 TAC §22.64

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 22, Subchapter D, §22.64, Texas Public Educational Grant and Emergency Tuition, Fees, and Textbook Loan Programs, without changes to the proposed text as published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 370). The rule will not be republished.

This amendment removes the requirement for the Coordinating Board to collect and maintain copies of guidelines submitted by public institutions for the administration of the TPEG program on their campuses.

Section 22.64 is amended to remove the reporting requirement for respective governing boards to file adopted copies of rules and regulations to the Coordinating Board and Comptroller prior to disbursement of any funds. This update is a result of Article III,

Special Provisions, Section 11(2) being removed from the General Appropriations Act under HB 1 during the 88th legislative session. Removing this requirement in the Administrative Code aligns the program requirements and responsibilities of both the institutions and the Coordinating Board with the changes made to the Special Provisions rider.

No comments were received regarding the adoption of the amendments.

The amendment is adopted for the sole purpose of conforming to changes made in the General Appropriations Act under HB1 which removed Article III, Special Provisions, Section 11(2) during the 88th legislative session.

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

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 §§22.165 - 22.168, 22.170 - 22.173

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 - 22.173, Texas Armed Services Scholarship Program, without changes to the proposed text as published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 371). The rules will not be republished.

These adopted amendments redefine Coordinating Board terminology used throughout the subchapter, updates promissory note obligations based on legislative changes, and provides greater clarity of operational procedures.

Rule 22.165 is amended to update scholarship time limitations in which a recipient can receive an award to remove unnecessary language. The Coordinating Board is given authority to establish rules necessary to administer the Texas Armed Services Scholarship Program under Texas Education Code, §61.9771 and §61.9774.

Rules 22.166, 22.167 and 22.170 - 22.173 are amended to update the definition of "Coordinating Board" to clarify references throughout the subchapter are for the agency and its staff members and not the governing body of the agency. This update aligns terminology throughout subchapter I with the overarching definitions found in General Provisions under subchapter A, §22.1. The Coordinating Board is given authority to establish rules necessary to administer the Texas Armed Services Scholarship Program under Texas Education Code, §61.9771 and §61.9774.

Rule 22.168 is amended to update the promissory note requirements a recipient must agree to when applying for a scholarship and removes duplicative language in the section. This rule change aligns with Senate Bill 371, 88th Legislative Session, that amended Texas Education Code, chapter 61, subchapter FF, which updated the requirement for a recipient to complete 1 year of ROTC training for each year that the student receives a scholarship instead of 4 years. The Coordinating Board is given authority to establish rules necessary to administer the Texas Armed Services Scholarship Program under Texas Education Code, §61.9771 and §61.9774.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Education Code, Sections 61.9771 and 61.9774, which provide the Coordinating Board with the authority to adopt rules necessary to administer the program under Texas Education Code, chapter 61, subchapter FF.

The adopted amendments affect Texas Administrative Code, Title 19, Part 1, Chapter 22.

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 O. TEXAS LEADERSHIP RESEARCH SCHOLARS PROGRAM

19 TAC §§22.300 - 22.313

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 22, Subchapter O, §§22.300 - 22.313, Texas Leadership Research Scholars Program, without changes to the proposed text as published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 373). The rules will not be republished.

Texas Education Code (TEC), Chapter 61, subchapter T-3, requires the Coordinating Board to adopt rules for the administration of the program, including rules providing for the amount and permissible uses of a scholarship awarded under the program. The legislation only specified student eligibility, conditions for continued participation, and authorization for institutional agreements. The new rules provide clarity and guidance to students, participating institutions, and Coordinating Board staff for the program's implementation.

Specifically, these new sections will outline the authority and purpose, definitions, institutional eligibility requirements, student eligibility requirements, satisfactory academic progress, scholarship selection criteria, academic achievement support, leadership development opportunities, hardship provisions, scholarship amounts, and allocation and disbursement of funds,

which are necessary to administer the Texas Leadership Research Scholars Program.

Rule 22.300 indicates the specific sections of the Texas Education Code (TEC) that provide the Coordinating Board with authority to issue these rules, as well as the purpose of the Texas Leadership Research Scholars Program.

Rule 22.301 provides definitions for words and terms within Texas Leadership Research Scholars rules. The definitions are adopted to provide clarity for words and terms that are integral to the understanding and administration of the Texas Leadership Research Scholars rules.

Rule 22.302 outlines the requirements that institutions must fulfill to participate in the Texas Leadership Research Scholars program. The requirements are adopted to: (a) clarify the type of institution eligible to participate, and (b) provide rules specific to requirements the Coordinating Board is proposing to ensure effective administration of the Texas Leadership Research Scholars Program, such as the requirement that each participating institution enter into an agreement with the Coordinating Board. This section is adopted based on TEC, §61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Research Scholars Program.

Rule 22.303 outlines the eligibility requirements that students must meet to allow an institution to select a student as a scholar under the Texas Leadership Research Scholars Program. The requirements are adopted to gather in one place the statutory requirements for the Texas Leadership Research Scholars Program, including requirements: (a) related to a student's financial need; (b) that a student has graduated either from a Texas public high school or Texas public, private, independent institution of higher education; and (c) related to a student's eligibility as economically disadvantaged, such as being a Pell Grant recipient as an undergraduate. This section is adopted based on TEC, §61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Research Scholars Program.

Rule 22.304 outlines the satisfactory academic progress requirements related to a student's eligibility to continue in the program. This section is adopted based on TEC, §61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Research Scholars Program.

Rule 22.305 outlines the process and the criteria in which institutions will select students to receive the Texas Leadership Scholars scholarship. The requirements are adopted to clarify that the Coordinating Board or Administrator will receive nominations from institutions. This section is adopted based on TEC, §61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Research Scholars Program.

Rules 22.306 and 22.307 outline the requirements that institutions must fulfill to provide evidence-based programmatic experiences and support for scholars in the program. The requirements are adopted to: (a) clarify the types of academic achievement and leadership development programmatic elements institutions must provide for scholars; and (b) clarify that the Coordinating Board may enter into agreements with participating institutions to best support scholars in the statutorily required programmatic elements.

Rule 22.308 outlines the requirements that institutions must follow to determine when scholars are no longer eligible to participate in the Texas Leadership Research Scholars Program. The requirements are adopted to gather in one place the statutory requirements for the Texas Leadership Research Scholars Program, including the requirements related to a student's enrollment, the transfer policy, and the number of years a scholar may receive the scholarship.

Rule 22.309 outlines the criteria for an institution to allow an eligible scholar a hardship provision under the Texas Leadership Research Scholars Program. This section provides institutions with the provisions for hardship consideration and defines the conditions the hardship may include such as severe illness. This section outlines the process in which the institution must document the circumstances of the hardship.

Rule 22.310 outlines the scholarship amounts and how the Coordinating Board will allocate the funds to institutions. The adopted rule provides clarification of the statutory requirements related to the minimum amount of the award and how the amount will be calculated to provide clarity for the annual allocation formula for each institution. The allocation of initial awards will be split between research institutions and emerging research institutions. Within those two categories, the share of initial awards available will be reviewed and determined annually based on the number of research doctorates awarded the previous academic year. This calculation ensures that initial scholarship awards are being allocated to institutions successfully graduating research doctorates.

Rule 22.311 establishes the funding for the Texas Leadership Research Scholars Program. Funding under this subchapter is subject to legislative appropriation.

Rule 22.312 establishes the mechanisms by which the Coordinating Board will disburse the funds to each participating institutions to support their participation in the Texas Leadership Research Scholars Program, as well as the institutions' participation in the process. The adopted rule provides the frequency of disbursements to each institution and the way the institutions will have the opportunity to review the calculation for accuracy. This section is adopted based on TEC, §61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Research Scholars Program.

Rule 22.313 outlines the expectations for participating institutions related to reporting, audits, and return of funds. The adopted rule provides clarity related to the institution's compliance and fiduciary responsibilities. This section is adopted based on TEC, §61.897, which directs the Coordinating Board to adopt rules as necessary to implement the Texas Leadership Research Scholars Program.

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

Comment: The following comments were received from the University of North Texas:

We would like to recommend changing the following rules:

(1) 22.303(a)(2)

Language in the proposed rule:

(2) Demonstrate that the student has either:

(A) Graduated from a Texas public high school, including an open-enrollment charter school, during the ten years preceding the date of the student's application to the program; or

(B) Graduated from a Texas public, private or independent institution of higher education as defined by sections 61.003(8) or (15) of the Texas Education Code.

Comment: Since (A) has a timeframe attached to it, 10 years, should (B) have a timeframe attached to it?

Within 5 years of graduation from an institution of higher education?

(1) 22.303(a)(5)(C)

Language in the proposed rule:

(5) Be economically disadvantaged by either:

(A) having received a Pell Grant while enrolled as an undergraduate student; or

(B) having received a TEXAS grant or Tuition Equalization Grant (TEG) as an undergraduate student; or

(C) having received a Leadership Scholarship as an undergraduate student.

Comment: Is this any Leadership Scholarship or specific to the Texas Leadership Scholars Program?

(1) 22.306(a) and 22.307(a)

Language in the proposed rule:

22.306

(a) Each participating Eligible Institution shall ensure that each Research Scholar's experience includes, at a minimum, the following academic programmatic elements:

(1) Program cohort learning communities;

(2) Mentoring, research, and internship opportunities;

(3) Networking with state government, business, and civic leaders; and

(4) Statewide cohort learning institutes or seminars.

22.307

(a) Each participating Eligible Institution must ensure that a Research Scholar's experience includes, at a minimum, the following leadership development elements:

(1) Leadership development programming; and

(2) Scholar summer programming which may be met through participating in a leadership conference, study abroad, or internship opportunities.

Comment: We would recommend omitting programmatic elements or leadership development because:

doctoral students do not typically operate in a cohort

(1) all work with a committee chair to help move through their program in accordance with their institution's guidelines.

(2) Once a doctoral student begins dissertation, they are no longer part of the community

(3) Full-time doctoral students are typically serving in TA or RA roles, and adding additional components could add undue stress for the student.

(1) 22.308(b)(1)

Language in the proposed rule:

(b) Unless granted a hardship postponement in accordance with §22.309 of this subchapter (relating to Hardship Provisions), a student's eligibility for a grant ends:

(1) Four years from the start of the semester in which the student enrolls in the research doctoral degree program at the eligible institution

Comment: (1) [Four] Seven years from the start of the semester in which the student enrolls in the research doctoral degree program at the eligible institution

It is unlikely a Ph.D. student, particularly in a STEM field will complete their degree in 4 years and we worry we could impact completion if an award as sizeable as the TLS award is removed from the student's account. According to the NCSE, below are the averages based on 2020 data.

(1) Physical and Earth Sciences: 6.3

(2) Engineering: 6.8 years

(3) Life sciences: 6.9 years

(4) Mathematics and computer science: 7 years

(5) Psychology and Social Sciences: 7.9 years

(6) Humanities and arts: 9.6 years

(7) Education: 12 years

Response: The Coordinating Board appreciates these comments and provides the following responses.

(1) 22.303(B): No, a timeframe should not be attached for a research scholar who graduated from a Texas public, private or independent institution. This Rule considers any in-state and out-of-state research scholars that attended a postsecondary education in the state at any given time.

(2) Rule 22.303(C) uses the term "Leadership Scholarship" which is defined in 22.301(3) as the scholarship awarded to an undergraduate student in the program under subchapter N of this chapter (relating to Texas Leadership Scholars Grant Program).

(3) Rules 22.306 and 22.307, outline the appropriate application of the Academic Achievement Support and Leadership Development programming, authorized by TEC, Sec 61.985. Upon entering the doctoral program, each student joins a specific cohort. The institution should actively facilitate opportunities for scholars within their cohort to engage with each other and to receive support, for example, by participating in university-sponsored programs to develop and enhance their skills as teachers or researchers. In addition, collaborating with committee chairs and faculty scholars in roles such as Teaching Assistants or Research Assistants could be used to provide academic support. These kinds of supportive programmatic elements can be integrated throughout the scholar's journey until program completion.

(4) Rule 22.308: Although many students take longer to complete their doctoral studies, state funding is limited and only allows up to four years for each research scholar, according to TEC, Sec. 61.897(a)(2).

The new sections are adopted under Texas Education Code, Section 61.897, which provides the Coordinating Board with the authority to adopt rules as necessary to implement the Texas Leadership Research Scholars Program.

The adopted new sections affect Texas Education Code, Sections 61.891 - 61.897.

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 April 26, 2024.

TRD-202401838
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 16, 2024
Proposal publication date: January 26, 2024
For further information, please call: (512) 427-6537

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CHAPTER 23. EDUCATION LOAN REPAYMENT PROGRAMS

SUBCHAPTER J. MATH AND SCIENCE SCHOLARS LOAN REPAYMENT PROGRAM

19 TAC §§23.286 - 23.293

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 23, Subchapter J, §§23.286 - 23.293, Math and Science Scholars Loan Repayment Program, without changes to the proposed text as published in the January 26, 2024, issue of the *Texas Register* (49 TexReg 377). The rules will not be republished.

This amendment redefines Coordinating Board terminology used throughout the subchapter, expands program eligibility to math and science teachers working in any Texas public school, removes award amount limitations based on service location, and clarifies which loans can be considered when determining repayment eligibility.

Rule 23.286, Authority and Purpose, is amended to remove language from the Program's purpose statement that requires a teacher to work at a Title I school during the first four years of participation in the Program. Senate Bill 532, 88th Legislative Session amended Texas Education Code (TEC), chapter 61, subchapter KK, to remove the requirement for a teacher to work at a Title I school during the first four years of service beginning with applicants on or after September 1, 2023. The Coordinating Board is given authority under TEC, §61.9831, to provide rules to assist with the repayment of eligible student loans for eligible persons.

Rule 23.287, Definitions, is amended to update the definition of "Coordinating Board" to clarify references throughout the subchapter are for the agency and its staff members and not the governing body of the agency. It also revises the term "Commissioner" from Chief Executive Officer of the board to the Commissioner of Higher Education. These amendments also impact §§23.288 - 23.290 and 23.292. These non-substantive changes are implemented to align terminology across all subchapters in chapter 23. The Coordinating Board is given authority under TEC, §61.9831, to provide rules to assist with the repayment of eligible student loans for eligible persons.

Rule 23.288, Eligibility for Enrollment in the Program, is amended to delineate program eligibility requirements between applicants who first establish eligibility for the program before September 1, 2023, and applicants who first establish eligibility for the program on or after September 1, 2023, as required by Section 6 of House Bill 532, 88th Legislative Session. Revisions to TEC, chapter 61, subchapter KK, no longer require applicants to work at a Title I school to be eligible for participation on or after September 1, 2023. An update to the rule also clarifies which loans can be considered when determining repayment eligibility. The Coordinating Board is given authority under TEC, §61.9831, to provide rules to assist with the repayment of eligible student loans for eligible persons.

Rule 23.289, Application Ranking Priorities, is amended to make a non-substantive change that aligns with a similar change in §23.287 (relating to Definitions).

Rule 23.290, Exceptions to Consecutive Years of Employment Requirement, is amended to delineate exceptions for the consecutive years of employment requirement between applicants who first establish eligibility for the program before September 1, 2023, and applicants who first establish eligibility for the program on or after September 1, 2023, as required by Section 6 of House Bill 532, 88th Legislative Session. Revisions to TEC, chapter 61, subchapter KK, no longer require applicants to work at a Title I school on or after September 1, 2023. The Coordinating Board is given authority under TEC, §61.9831, to provide rules to assist with the repayment of eligible student loans for eligible persons.

Rule 23.291, Eligibility for Disbursement of Award, is amended to delineate disbursement criteria to an eligible teacher between applicants who first establish eligibility for the program before September 1, 2023, and applicants who first establish eligibility for the program on or after September 1, 2023, as required by Section 6 of House Bill 532, 88th Legislative Session. Revisions to TEC, chapter 61, subchapter KK, no longer require applicants to work at a Title I school on or after September 1, 2023. The rules for applicants on or after September 1, 2023, no longer require a teacher to provide verification of working at a Title I school during the first four years to align with statutory updates. The Coordinating Board is given authority under TEC, §61.9831, to provide rules to assist with the repayment of eligible student loans for eligible persons.

Rule 23.292, Eligible Lender and Eligible Education Loan, is amended to make a non-substantive change that aligns with a similar change in §23.287 (relating to Definitions).

Rule 22.293, Disbursement of Repayment Assistance and Award Amount, is amended to clarify that a math or science teacher that applies for the Program on or after September 1, 2023, may continue to receive the same amount of loan repayment assistance received during the first four consecutive years of teaching service required. Teachers participating in the Program prior to September 1, 2023, are subject to the law and rules in effect at the time. The Coordinating Board is given authority under TEC, §61.9831, to provide rules to assist with the repayment of eligible student loans for eligible persons.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Education Code, Section 61.9831, which provides the Coordinating Board with the authority to provide rules to assist with the repayment of eligible student loans for eligible persons.

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

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 April 26, 2024.

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Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
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Proposal publication date: January 26, 2024
For further information, please call: (512) 427-6365

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1001

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1001 is not included in the print version of the Texas Register. The figure is available in the on-line version of the May 10, 2024, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §97.1001, concerning the accountability rating system. The amendment is adopted with changes to the proposed text as published in the February 23, 2024 issue of the *Texas Register* (49 TexReg 951) and will be republished. The amendment adopts in rule applicable excerpts of the *2024 Accountability Manual.*

REASONED JUSTIFICATION: TEA has adopted its academic accountability manual in rule since 2000 under §97.1001. The accountability system evolves from year to year, so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree from those applied in the prior year.

The adopted amendment to §97.1001 adopts excerpts of the *2024 Accountability Manual* into rule as a figure. The excerpts, Chapters 1-12 of the *2024 Accountability Manual,* specify the indicators, standards, and procedures used by the commissioner to determine accountability ratings for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine distinction designations on additional indicators for Texas public school campuses and districts. Chapter 12 describes the specific criteria and calculations that will be used to assign 2024 Results Driven Accountability (RDA) performance levels. Ratings may be revised as a result of investigative activities by the commissioner as authorized under Texas Education Code (TEC), §39.056 and §39.003.

Following is a chapter-by-chapter summary of the changes for this year's manual. In every chapter, dates and years for which data are considered were updated to align with 2024 accountability and RDA. Edits for clarity regarding consistent language and terminology throughout each chapter are embedded within the proposed *2024 Accountability Manual.*

Chapter 1 gives an overview of the entire accountability system. Dates and years for which data are considered are updated. Edits for clarity regarding consistent language and terminology have been added. Language is adjusted to clarify the existing processes and implications of data compliance reviews and special investigations related to data concerns. Detailed language has been added to clarify compliance reviews, results, and special investigations.

Chapter 2 describes the "Student Achievement" domain. Dates and years for which data are considered have been updated. Edits for clarity regarding consistent language and terminology have been added. Detailed language on the phase-in timeline for approved industry-based certifications (IBCs) and their aligned programs of study have been added. The updated IBC list revision cycle timeline has been added. Detailed language clarifying the expectations and future process for approving college prep courses has been added. Detailed language regarding the purpose and requirements of individual graduation committees has been added. Language describing the Military Enlistment Data Collection process was added. Language describing the alignment of college, career, and military readiness to the Texas Success Initiative Assessment exemption criteria benchmarks for ACT has been added. In response to public comment, Chapter 2 was modified at adoption to add clarity regarding how student demographic data is used in Test Information Distribution Engine (TIDE) to identify emergent bilingual (EB) students/English learners (ELs). Also in response to public comment, Chapter 2 was modified at adoption to include the definition of EL Performance Measures and to clarify when EL Performance Measures are used.

Chapter 3 describes the "School Progress" domain. Dates and years for which data are considered have been updated. Edits for clarity regarding consistent language and terminology have been added. In response to public comment, Chapter 3 was modified at adoption to add clarity regarding how the State of Texas Assessments of Academic Readiness (STAAR®) Spanish to STAAR® would be used for growth. Also in response to public comment, Chapter 3 was modified at adoption to add clarity regarding how student demographic data is used in TIDE to identify EB students/Els and to clarify when EL Performance Measures are used.

Chapter 4 describes the "Closing the Gaps" domain. Dates and years for which data are considered have been updated. Edits for clarity regarding consistent language and terminology have been added. The language for methodology for English language proficiency has been updated. In response to public comment, Chapter 4 was modified at adoption to add clarity regarding how student demographic data is used in TIDE to identify EB students/Els and to clarify when EL Performance Measures are used.

Chapter 5 describes how the overall ratings are calculated. Dates and years for which data are considered have been updated. Edits for clarity regarding consistent language and terminology have been added.

Chapter 6 describes distinction designations. Dates and years for which data are considered have been updated. Edits for clarity regarding consistent language and terminology have been added.

Chapter 7 describes the pairing process and the alternative education accountability (AEA) provisions. Dates and years for which data are considered have been updated. Edits for clarity regarding consistent language and terminology have been added.

Chapter 8 describes the process for appealing ratings. Dates and years for which data are considered have been updated. Edits for clarity regarding consistent language and terminology have been added.

Chapter 9 describes the responsibilities of TEA, the responsibilities of school districts and open-enrollment charter schools, and the consequences to school districts and open-enrollment charter schools related to accountability and interventions. Dates and years for which data are considered have been updated. Edits for clarity regarding consistent language and terminology have been added. In response to public comment, Chapter 9 was modified at adoption to reflect that the PEG list becomes final when final ratings are released.

Chapter 10 provides information on the federally required identification of schools for improvement. Dates and years for which data are considered have been updated. Edits for clarity regarding consistent language and terminology have been added.

Chapter 11 describes the local accountability system. The changes to this chapter are restricted to updating date and year references. At adoption, dates and years for which data are considered have been updated and edits for clarity regarding consistent language and terminology have been added.

Chapter 12 describes the RDA system. Dates and years for which data are considered have been updated. Edits for clarity regarding consistent language and terminology have been added. Detailed language regarding the change of report only to performance level assignment indicators for Bilingual Education/ English as a Second Language/ Emergent Bilingual was added.

SUMMARY OF COMMENTS AND AGENCY RESPONSES: The public comment period on the proposal began February 23, 2024, and ended March 25, 2024, and included a public hearing on March 5, 2024. Following is a summary of public comments received and agency responses.

Accelerated Testers

Comment: Alief Independent School District (ISD) and two school administrators suggested that the accelerated testers' masters level standards are too high and that the ACT/SAT proficiency scores are not equivalent to high school coursework.

Response: The agency disagrees that the accelerated testers' masters level standards are too high, as they were first introduced in 2021 accountability using actual Texas statewide SAT results. TEA will continue to monitor accelerated testers' data for any necessary adjustments for future implementation into the next refresh of the A-F system.

Comment: A school administrator requested that the SAT cross-test for science be considered as an option for accelerated testers.

Response: The agency disagrees as policy changes are beyond the scope of the current rule proposal. TEA will continue to work with stakeholders to consider changes to accelerated testers' policy for future accountability refresh cycles.

Advanced Math Pathways

Comment: COMMIT, TX2036, and a parent commented that there is a lack of recognition of Algebra I in middle school, particularly considering Senate Bill (SB) 2124, 88th Texas Legislature, Regular Session, 2023, and urged the agency to consider strategies to ensure legislative requirements are met and expand public reporting on relevant data points to support local decision-making.

Response: The agency agrees that research has shown the importance of access to advanced math pathways; however, the agency disagrees with making changes that are beyond the scope of the current rule proposal. TEA will continue to research and analyze alternatives, such as bonus points, for future implementation into the next refresh of the A-F system.

Industry Based Certifications/ Programs of Study

Comment: A school administrator suggested a need to review the completer methodology for special student populations, including students with special needs or non-English language backgrounds.

Response: The agency disagrees. Statute requires that program of study completion is included in college, career, and military readiness (CCMR). In addition, there continue to be multiple ways for students to demonstrate CCMR.

Comment: Two school administrators suggested that the agency amend the phase-in for how IBCs count for CCMR credit to align with the intent of House Bill 773, 87th Texas Legislature, Regular Session, 2021, which indicated that completion of a program of study would meet criteria for CCMR in and of itself as noted in TEC, §39.053(c)(1)(B).

Response: The agency disagrees that program of study completion and IBC attainment are as strong independently as indicators of a student's college or career readiness as they are when they are combined.

CCMR Indicators

Comment: Two school administrators, the College Board, and a teacher suggested adding College Level Examination Program (CLEP) tests as a stand-alone measure for CCMR, which would offer students another viable option to demonstrate readiness, potentially saving costs.

Response: The agency disagrees as policy changes are beyond the scope of the current rule proposal. TEA will continue to work with stakeholders to consider the CCMR indicators for future implementation into the next refresh of the A-F system.

Comment: COMMIT and TX2036 supported efforts to improve the rigor of CCMR criteria and requested tiering CCMR indicators within the system to prioritize metrics linked to greater postsecondary success.

Response: The agency agrees that some CCMR indicators are better aligned with postsecondary success or are more in demand than others. The agency studied this suggestion as part of the 2023 A-F Refresh stakeholder feedback process and has previously communicated that additional validity requirements based on supply and demand and wage data will continue to be researched for future implementation into the next refresh of the A-F system.

Comment: Two school administrators suggested that any future changes to CCMR guidelines should apply to future cohorts only and not apply to current or past cohorts, with accompanying financial assistance to help districts meet requirements.

Response: The agency agrees that future changes to CCMR guidelines should be provided with as much advance notice as possible. However, for CCMR to be an accurate and responsive measure of readiness for postsecondary success, some changes may not be able to be delayed four years for a new student cohort. TEA will continue to provide advance notice of changes related to the accountability system and work with stakeholders to model and monitor CCMR data for future accountability refresh cycles.

Comment: Two Texas parents commented that CCMR should offer options to take college preparatory classes in Grade 10 or 11.

Response: The agency disagrees. Chapter 2 of the *2024 Accountability Manual* includes language clarifying the statutory requirements for college preparatory courses.

Alternative Education Accountability (AEA)/ Dropout Recovery System (DRS)

Comment: The Texas Public Charter Schools Association (TPCSA) commented in support of some of the changes in the 2024 proposed manual and requested that TEA model data from the class of 2024 to determine changes for 2025 regarding IBC and programs of study for dropout recovery schools.

Response: The agency agrees and will continue to convene stakeholders with expertise in dropout recovery schools and model and monitor data for future years of accountability.

Comment: TPCSA commented that AEA/DRS should be recognized with their own system for distinction designations and badges.

Response: The agency disagrees as such changes are beyond the scope of the current rule proposal. The agency will continue to convene stakeholders with expertise in DRS, and TEA will explore adding AEA/DRS distinctions for future implementation into the next refresh of the A-F system.

Comment: A school administrator suggested that an attrition rate methodology be considered for DRS/AEAs.

Response: The agency disagrees as such changes are beyond the scope of the current rule proposal. TEA will explore such a change for the next A-F accountability refresh.

Academic Growth

Comment: A school administrator commented that the transition table for academic growth needs to be different for students testing in different languages (English and Spanish) each year.

Response: The agency disagrees. One of the benefits of moving to a transition table model is the inclusion of more students in the growth calculation. This includes students moving from English to Spanish in the case that they take these assessments for the first time in the same year.

Domain III Scoring Methodology

Comment: Waskom ISD and a school administrator suggested a revision to the calculation methodology for Domain 3's 2-point value to utilize only the 3-point target (current interim) rather than the next interim.

Response: The agency disagrees as changes to the methodology are beyond the scope of the current proposal. TEA will continue to work with stakeholders to model and monitor Domain 3 methodology changes for future implementation into the next refresh of the A-F system.

TELPAS Methodology

Comment: A Texas school administrator, TPCSA, and an individual agreed with the proposed manual keeping the 2023 Texas English Language Proficiency Assessment System (TELPAS) growth methodology, which uses domain scores and not composite scores.

Response: The agency agrees with maintaining the 2023 TELPAS growth methodology.

Comment: Alief ISD commented that the TELPAS standards do not account for students from different backgrounds.

Response: The agency disagrees with setting different cut points for students from different backgrounds. TEA will continue to work with stakeholders and monitor any disproportionate impact of TELPAS standards.

Comment: A school administrator commented that if TELPAS composite methodology is used for 2025 accountability, scores should not be rounded.

Response: The agency agrees to model the TELPAS composite methodology data for the 2025 accountability cycle.

Identification of Schools in Improvement

Comment: A Texas school administrator suggested that new campuses either be excluded from being identified as a comprehensive support campus for the first year upon opening or be paired with an existing campus, or that a new methodology be developed that would allow for more opportunities to earn a score of 1 or 2 for approaching the 3-point target in year one.

Response: The agency disagrees. Identifications must include the schools in the bottom 5% of Title I campuses for comprehensive support and improvement (CSI). TEA will continue to work with stakeholders to model and monitor CSI identification data for future accountability refresh cycles.

Comment: A Texas school administrator and Lead4ward recommended not publishing the Public Education Grant (PEG) list until the final accountability ratings are released.

Response: The agency agrees that clarification is needed regarding publishing the final PEG list. At adoption, language has been adjusted to add clarity in Chapter 9 of the manual.

3 D's and 3 F's Requirement

Comment: Two Texas school administrators suggested that the three Fs and three Ds requirement should be removed from the *2024 Accountability Manual,* specifically from Chapter 5 regarding calculating ratings.

Response: The agency disagrees. The D and F requirement is aligned with the redefinition of acceptable and unacceptable performance in SB 1365, 87th Texas Legislature, Regular Session, 2021. TEA will continue to work with stakeholders to consider policy implementation for future accountability refresh cycles.

District/Campus Ratings

Comment: A Texas school administrator suggested that the requirement capping the overall district rating or domain rating at 89 if a single campus receives a score below 70 should be removed.

Response: The agency disagrees. A district may not receive an overall or domain performance rating of A if the district includes any campus with a corresponding overall or domain performance rating of D or F per TEC, §39.054. TEA will continue to work

with stakeholders to consider policy implementation for future accountability refresh cycles.

Comment: A Texas school administrator proposed that district ratings should acknowledge each campus's strengths, whether it's in Domain I, Domain II-A, or Domain II-B, rather than adhering strictly to the methodology outlined in the *2023 Accountability Manual*.

Response: The agency disagrees as the district proportional weight methodology is intentionally aligned with campus results.

Comment: A school administrator suggested that a new formula is needed to identify campus types throughout the A-F accountability system.

Response: The agency disagrees with setting new cut points for different campus types as such changes are beyond the scope of the current rule proposal. TEA will continue to monitor any disproportionate impact to different campus types.

Accountability Manual Release

Comment: TPCSA commented in support of TEA's efforts to release the *2024 Accountability Manual* for public comment earlier in the year but suggested that a preliminary or near-final accountability manual be released by October of the school year to allow schools to better monitor progress against established requirements.

Response: This comment is outside the scope of the proposed rulemaking. However, for future updates to the system, TEA will continue to work with stakeholders to explore the communication timelines.

Comment: Lead4ward and a school administrator suggested publishing the appendices with the proposed accountability manual.

Response: The agency disagrees as the proposed accountability manual has already been published. The appendices will be published as soon as it is feasible after the adoption of the new manual.

Various Edits for Clarification

Comment: A Texas school administrator suggested clarification on page 26 of the manual that State of Texas Assessments of Academic Readiness (STAAR®) Spanish to STAAR® would be used for growth, potentially within the third bullet point for clarity.

Response: The agency agrees and has made a change at adoption to add clarity on page 26 of the manual that STAAR® Spanish to STAAR® would be used for growth.

Comment: A Texas school administrator suggested that clarity should be added on page 32 regarding who qualifies as a retester and specify which end-of-course exams are used for AEA Retest Growth.

Response: The agency disagrees and has determined that the proposed language presents the clearest descriptions. In addition, maintaining language as proposed will ensure that the agency does not signal a change to methodology where there is not a change.

Comment: A Texas school administrator suggested that definitions of how dropout rates are calculated, particularly in the sections addressing dropouts and previous dropouts, should be clearly defined to prevent misconceptions.

Response: The agency disagrees and has determined that the proposed language presents the clearest descriptions. TEA will consider the language for future accountability refresh cycles.

Comment: Lead4ward and a school administrator suggested simplifying EB students/ELs to a simpler term.

Response: The agency disagrees and has determined that the proposed language presents the clearest terms used that align to additional content in the manual. TEA will consider the language for future accountability refresh cycles.

Comment: Lead4ward and a school administrator suggested clarifying how student demographic data is used in TIDE to identify EB students.

Response: The agency agrees and has made a change at adoption to clarify how student demographic data is used in TIDE to identify EB students.

Comment: Lead4ward and a school administrator suggested including the definition of EL Performance Measures.

Response: The agency agrees and has made a change at adoption to clarify the definition of EL Performance Measures in Chapter 2.

Comment: Lead4ward and a school administrator suggested clarifying when EL Performance Measures are used.

Response: The agency agrees and has made a change at adoption to clarify when EL Performance Measures are used in Chapters 2, 3, and 4.

Comment: Lead4ward and a school administrator suggested including the inclusion/exclusion of EB students in various indicators and domains.

Response: The agency disagrees as the definitions are summarized in Appendix H where the criteria is listed.

Comment: A Texas school administrator requested additional percentages be added to a chart used for the identification of targeted support campuses in Chapter 10.

Response: The agency disagrees and has determined that the proposed language presents the clearest descriptions. In addition, maintaining language as proposed will ensure that the agency does not signal a change to methodology where there is not a change.

Comment: A Texas school administrator highlighted a need for clarity regarding the use of scaled scores, particularly concerning whether the goal for improvement consequences involves achieving a full letter grade increase or a specific increase in the scale score, such as from 40 to 50.

Response: The agency disagrees and has determined that the proposed language presents the clearest descriptions. In addition, maintaining language as proposed will ensure that the agency does not signal a change to methodology where there is not a change.

Comment: A Texas school administrator requested clarification of the exit criteria for comprehensive campuses in Chapter 10.

Response: The agency disagrees and has determined that the proposed language presents the clearest descriptions. In addition, maintaining language as proposed will ensure that the agency does not signal a change to methodology where there is not a change.

Comment: Several administrators and Lead4ward commented on various typographical and grammatical errors throughout the manual and suggested changes that would provide clarity to the content.

Response: The agency agrees and has made various typographical and grammatical updates to the manual based on stakeholder feedback to provide clarity throughout the manual.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code (TEC), §7.021(b)(1), which authorizes the Texas Education Agency (TEA) to administer and monitor compliance with education programs required by federal or state law, including federal funding and state funding for those programs; TEC, §7.028, which authorizes TEA to monitor as necessary to ensure school district and charter school compliance with federal law and regulations, financial integrity, and data integrity and authorizes the agency to monitor school district and charter schools through its investigative process. TEC, §7.028(a), authorizes TEA to monitor special education programs for compliance with state and federal laws; TEC, §12.056, which requires that a campus or program for which a charter is granted under TEC, Chapter 12, Subchapter C, is subject to any prohibition relating to the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with TEC, Chapter 12, Subchapter C, as determined by the commissioner; high school graduation under TEC, §28.025; special education programs under TEC, Chapter 29, Subchapter A; bilingual education under TEC, Chapter 29, Subchapter B; and public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, and J, and Chapter 39A; TEC, §12.104, which states that a charter granted under TEC, Chapter 12, Subchapter D, is subject to a prohibition, restriction, or requirement, as applicable, imposed by TEC, Title 2, or a rule adopted under TEC, Title 2, relating to PEIMS to the extent necessary to monitor compliance with TEC, Chapter 12, Subchapter D, as determined by the commissioner; high school graduation requirements under TEC, §28.025; special education programs under TEC, Chapter 29, Subchapter A; bilingual education under TEC, Chapter 29, Subchapter B; discipline management practices or behavior management techniques under TEC, §37.0021; public school accountability under TEC, Chapter 39, Subchapters B, C, D, F, G, and J, and Chapter 39A; and intensive programs of instruction under TEC, §28.0213; TEC, §29.001, which authorizes TEA to effectively monitor all local educational agencies (LEAs) to ensure that rules relating to the delivery of services to children with disabilities are applied in a consistent and uniform manner, to ensure that LEAs are complying with those rules, and to ensure that specific reports filed by LEAs are accurate and complete; TEC, §29.0011(b), which authorizes TEA to meet the requirements under (1) 20 U.S.C. Section 1418(d) and its implementing regulations to collect and examine data to determine whether significant disproportionality based on race or ethnicity is occurring in the state and in the school districts and open-enrollment charter schools in the state with respect to the (a) identification of children as children with disabilities, including the identification of children as children with particular impairments; (b) placement of children with disabilities in particular educational settings; and (c) incidence, duration, and type of disciplinary actions taken against children with disabilities including suspensions or expulsions; or (2) 20 U.S.C. Section 1416(a)(3)(C) and its implementing regulations to address in the statewide plan the percentage of schools with disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that results from inappropriate identification; TEC, §29.010(a), which authorizes TEA to adopt and implement a comprehensive system for monitoring LEA compliance with federal and state laws relating to special education, including ongoing analysis of LEA special education data; TEC, §29.062, which authorizes TEA to evaluate and monitor the effectiveness of LEA programs and apply sanctions concerning emergent bilingual students; TEC, §29.066, which authorizes PEIMS reporting requirements for school districts that are required to offer bilingual education or special language programs to include the following information in the district's PEIMS report: (1) demographic information, as determined by the commissioner, on students enrolled in district bilingual education or special language programs; (2) the number and percentage of students enrolled in each instructional model of a bilingual education or special language program offered by the district; and (3) the number and percentage of emergent bilingual students who do not receive specialized instruction; TEC, §29.081(e), (e-1), and (e-2), which define criteria for alternative education programs for students at risk of dropping out of school and subjects those campuses to the performance indicators and accountability standards adopted for alternative education programs; TEC, §29.201 and §29.202, which describe the Public Education Grant program and eligibility requirements; TEC, §39.003 and §39.004, which authorize the commissioner to adopt procedures relating to special investigations. TEC, §39.003(d), allows the commissioner to take appropriate action under Chapter 39A, to lower the district's accreditation status or the district's or campus's accountability rating based on the results of the special investigation; TEC, §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district and open-enrollment charter school; TEC, §39.053, which authorizes the commissioner to adopt a set of indicators of the quality of learning and achievement and requires the commissioner to periodically review the indicators for consideration of appropriate revisions; TEC, §39.054, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating; TEC, §39.0541, which authorizes the commissioner to adopt indicators and standards under TEC, Chapter 39, Subchapter C, at any time during a school year before the evaluation of a school district or campus; TEC, §39.0543, which describes acceptable and unacceptable performance as referenced in law; TEC, §39.0546, which requires the commissioner to assign a school district or campus a rating of "Not Rated" for the 2021-2022 school year, unless, after reviewing the district or campus under the methods and standards adopted under Section 39.054, the commissioner determines the district or campus should be assigned an overall performance rating of C or higher; TEC, §39.0548, which requires the commissioner to designate campuses that meet specific criteria as dropout recovery schools and to use specific indicators to evaluate them; TEC, §39.055, which prohibits the use of assessment results and other performance indicators of students in a residential facility in state accountability; TEC, §39.056,which authorizes the commissioner to adopt procedures relating to monitoring reviews and special investigations; TEC, §39.151, which provides a process for a school district or an open-enrollment charter school to challenge an academic or financial accountability rating; TEC, §39.201, which requires the commissioner to award distinction designations to a campus or district for outstanding performance; TEC, §39.2011,which makes open-enrollment charter schools and campuses that earn an acceptable rat-

ing eligible for distinction designations; TEC, §39.202 and §39.203, which authorize the commissioner to establish criteria for distinction designations for campuses and districts; TEC, §39A.001, which authorizes the commissioner to take any of the actions authorized by TEC, Chapter 39, Subchapter A, to the extent the commissioner determines necessary if a school does not satisfy the academic performance standards under TEC, §39.053 or §39.054, or based upon a special investigation; TEC, §39A.002, which authorizes the commissioner to take certain actions if a school district becomes subject to commissioner action under TEC, §39A.001; TEC, §39A.004, which authorizes the commissioner to appoint a board of managers to exercise the powers and duties of a school district's board of trustees if the district is subject to commissioner action under TEC, §39A.001, and has a current accreditation status of accredited-warned or accredited-probation; or fails to satisfy any standard under TEC, §39.054(e); or fails to satisfy any financial accountability standard; TEC, §39A.005, which authorizes the commissioner to revoke school accreditation if the district is subject to TEC, §39A.001, and for two consecutive school years has received an accreditation status of accredited-warned or accredited-probation, failed to satisfy any standard under TEC, §39.054(e), or failed to satisfy a financial performance standard; TEC, §39A.007, which authorizes the commissioner to impose a sanction designed to improve high school completion rates if the district has failed to satisfy any standard under TEC, §39.054(e), due to high school completion rates; and TEC, §39A.051, which authorizes the commissioner to take action based on campus performance that is below any standard under TEC, §39.054(e).

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.021(b)(1); 7.028; 12.056; 12.104; 29.001; 29.0011(b); 29.010(a); 29.062; 29.066; 29.081(e), (e-1), and (e-2); 29.201; 29.202; 39.003; 39.004; 39.051; 39.052; 39.053; 39.054; 39.0541; 39.0543; 39.0546; 39.0548; 39.055; 39.056; 39.151; 39.201; 39.2011; 39.202; 39.203; 39A.001; 39A.002; 39A.004; 39A.005; 39A.007; 39A.051; and 39A.063.

§97.1001. Accountability Rating System.

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053, 39.054, 39.0541, 39.0548, 39.055, 39.151, 39.201, 39.2011, 39.202, 39.203, 29.081(e), (e-1), and (e-2), and 12.104(b)(2)(L), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:

(1) indicators, standards, and procedures used to determine district ratings;

(2) indicators, standards, and procedures used to determine campus ratings;

(3) indicators, standards, and procedures used to determine distinction designations; and

(4) procedures for submitting a rating appeal.

(b) The procedures by which districts, campuses, and charter schools are rated and acknowledged for 2024 are based upon specific criteria and calculations, which are described in excerpted sections of the *2024 Accountability Manual* provided in this subsection.
Figure: 19 TAC §97.1001(b)

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.057.

(d) The specific criteria and calculations used in the accountability manual are established annually by the commissioner and communicated to all school districts and charter schools.

(e) The specific criteria and calculations used in the annual accountability manual adopted for prior school years remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

(f) In accordance with TEC, §7.028(a), the purpose of the Results Driven Accountability (RDA) framework is to evaluate and report annually on the performance of school districts and charter schools for certain populations of students included in selected program areas. The performance of a school district or charter school is included in the RDA report through indicators of student performance and program effectiveness and corresponding performance levels established by the commissioner.

(g) The assignment of performance levels for school districts and charter schools in the 2024 RDA report is based on specific criteria and calculations, which are described in the *2024 Accountability Manual* provided in subsection (b) of this section.

(h) The specific criteria and calculations used in the RDA framework are established annually by the commissioner and communicated to all school districts and charter schools.

(i) The specific criteria and calculations used in the annual RDA manual adopted for prior school years remain in effect for all purposes, including accountability and performance monitoring, data standards, and audits, with respect to those school years.

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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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.5

The Texas Board of Physical Therapy Examiners adopts the amendments to 22 TAC §329.5. Licensing Procedures for Foreign-Trained Applicants to remove unnecessary barriers to the licensing of foreign-educated applicants. The amendment is adopted with changes to the proposed text as published in the March 15, 2024, issue of the *Texas Register* (49 TexReg 1635). The rule will be republished.

The amendment for the requirement of an evaluation of professional education and training in (1)(A) differentiates between applicants by exam and applicants by endorsement. Applicants by exam will require the most current version of the Coursework Tool (CWT) in accordance with immigration requirements. Applicants by endorsement will have a range of acceptable versions of the CWT appropriate to the year they graduated from the foreign physical therapy program or a more current version. This will prevent an applicant who has already been evaluated by a version of the CWT for immigration purposes or for licensure in another jurisdiction from being evaluated by a different version of the CWT for Texas licensure. The amendment also authorizes acceptance of a copy of an evaluation that has been used as a licensure requirement by another jurisdiction for extenuating circumstances beyond the applicant's control if the evaluation is sent directly to the board by the jurisdiction.

The amendments in paragraph (1)(B) - (D) update current procedure for deficiencies noted on an evaluation as well as grammatical clean up.

The amendments in paragraph (2) eliminate the requirement for an applicant by endorsement to demonstrate English language proficiency by taking the Test of English as a Foreign Language (TOEFL) and provides exceptions to the TOEFL requirement for an applicant by exam if certain conditions are met.

No comments were received regarding the proposed amendments.

The amended rule is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§329.5. Licensing Procedures for Foreign-Trained Applicants.

A foreign-trained applicant must complete the license application process as set out in §329.1 of this title (relating to General Licensure Requirements and Procedures). In addition, the applicant must submit the following:

(1) An evaluation of professional education and training prepared by a board-approved credentialing entity. The board will maintain a list of approved credentialing entities on the agency website.

(A) The evaluation must:

(i) be based on a Course Work Tool (CWT) adopted by the Federation of State Boards of Physical Therapy:

(I) Applicants by examination must be evaluated using the most current version of the CWT.

(II) Applicants by endorsement must be evaluated using the version of the CWT appropriate to the year the applicant graduated from the foreign physical therapy program or a more current version.

(ii) provide evidence and documentation that the applicant's education is substantially equivalent to the education of a physical therapist who graduated from a physical therapy education program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE); and

(iii) establish that the institution at which the applicant received his physical therapy education is recognized by the Ministry of Education or the equivalent agency in that country.

(iv) Acopy of an evaluation used as a requirement for licensure by another jurisdiction that has the authority to issue a license within that jurisdiction and sent directly to the board by the jurisdiction will be accepted for an applicant by endorsement if:

(I) documents required for credentialing are no longer available from the institution at which the applicant received their physical therapy education; or

(II) there is an undue delay in receiving an evaluation from the credentialer beyond the applicant's control.

(B) If the credentialing entity determines that the physical therapy education is not substantially equivalent, the applicant is responsible for remedying those deficiencies. The applicant may use college credit obtained through applicable College Level Examination Placement (CLEP) or other college advanced placement exams to remedy any deficiencies in general education.

(C) An evaluation prepared by a board-approved credentialer reflects only the findings and conclusions of the credentialer, and shall not be binding on the board.

(D) If the applicant received an entry-level physical therapy degree from a CAPTE-accredited program located outside the U.S., the program is considered equivalent to a domestic CAPTE-accredited physical therapy program, and the applicant is exempt from meeting the requirements of a CWT.

(2) Proof of English language proficiency. A foreign-trained applicant by examination must demonstrate the ability to communicate in English by making the minimum score accepted by the board on the Test of English as a Foreign Language (TOEFL) administered by the Educational Testing Service (ETS).

(A) This requirement is waived for graduates of entry-level physical therapy programs in Australia, Canada (except Quebec), Ireland, New Zealand, and the United Kingdom.

(B) Minimum acceptable TOEFL iBT (internet-based test) scores are as follows: Reading = 22, Writing = 22, Speaking = 24, and Listening = 21.

(C) The board may grant an exception to the English language proficiency requirements under the following conditions:

(i) the applicant holds a current license in physical therapy in a country listed in subparagraph (A) of this paragraph and has been licensed and practicing in that country for at least 5 years prior to application; or

(ii) the applicant submits satisfactory proof that he/she is a citizen or lawful permanent resident of the U.S. or a current U.S. H-1B visa holder, and

(I) has attended four or more years of secondary or post-secondary education in the U.S. or

(II) has completed a post-professional physical therapy degree in English from a country listed in subparagraph (A) of this paragraph.

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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Ralph Harper
Executive Director
Texas Board of Physical Therapy Examiners
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For further information, please call: (512) 305-6900

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CHAPTER 346. PRACTICE SETTINGS FOR PHYSICAL THERAPY

22 TAC §346.1

The Texas Board of Physical Therapy Examiners adopts amendments to 22 TAC §346.1, regarding Educational Settings with changes to the proposed text as published in the March 15, 2024, issue of the *Texas Register* (49 TexReg 1636). The rule will be republished. The adoption of Educational Settings is to clarify the role of physical therapists and physical therapist assistants in the educational setting.

The amendments update the references to federal law that pertain to physical therapy services provided to students with disabilities in the education setting, eliminates the requirement for a reexamination to be performed onsite to allow for the reexamination to be performed via telehealth, and updates the section to reflect contemporary practice within the setting.

Pursuant to §2001.029 of the Texas Government Code, the Board gave all interested persons a reasonable opportunity to provide written/oral commentary concerning the proposed amendment of this rule. The 30-day comment period ended on April 14, 2024. A summary of comments relating to the amendment and the Board's responses follow:

Kristin Fox, PT, MPT, Keller Independent School District, commented relating to the timeframe for review of the IEP plan of care in Subsection (e) stating that it would make more sense from a workflow perspective to change the wording from every 60 days to one time per grading period as PTs in the school setting are already doing progress and data collection surrounding this timeframe. Trying to track every 60 days, especially across breaks, is counterintuitive to the setting in which we work

Board's Response:

The current rule requires that the Plan of Care (Individual Education Program) must be reviewed by the PT at least every 60 school days not every 60 days as indicated in the comment. The current rule does not require counting days across school breaks. For this reason, the Board declines to make changes to the rules based on the comment.

Lisa Williams, PT, Compliance Coordinator, West Texas Therapy, recommended the addition of "prior to continuation of treatment by a physical therapist assistant" at the end of the last sentence of Subsection (e) in order to align with the plan of care review in the §346.3. Early Childhood Intervention (ECI) Setting and with the reevaluation requirement in §322.1. (d).

Board's Response:

The Board concurred with the comment as it provides consistency of intent with other sections of the rules. For this reason, "prior to continuation of treatment by a physical therapist assistant" is added at the end of the last sentence of Subsection (e).

The amended rule is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§346.1. Educational Settings.

(a) In the educational setting, the physical therapist conducts appropriate screenings, evaluations, and assessments to determine needed services to fulfill educational goals. When a student is determined by the physical therapist to be eligible for physical therapy as a related service under Part B of the Individuals with Disabilities Education Act (IDEA), 20 USC §1414, or Section 504 of the Americans with Disabilities Act, as Amended, the physical therapist provides written recommendations to the Admissions Review and Dismissal Committee or the Section 504 Committee as to the amount of specific services needed by the student (i.e., direct and/or indirect services, as well as the frequency, duration, and location of services).

(b) The physical therapist implements physical therapy services in accordance with the decisions of the school committee members and as reflected in the student's Admission Review and Dismissal Committee or Section 504 Committee reports. The physical therapist may implement services by delegating treatment to a PTA under their supervision.

(c) The physical therapist may provide general consultation, coaching, professional development, or other physical therapy program services for school administrators, educators, assistants, parents and others to address district, campus, classroom or student-centered issues. For the student who is eligible to receive physical therapy as a related service, the physical therapist will also provide the direct and/or indirect types of specific services needed to implement specially designed goals and objectives included in the student's Individualized Education Program or the 504 Plan.

(d) The types of services which may require a physician's referral in the educational setting include direct physical modeling or hands-on demonstration of activities with a student who has been determined eligible to receive physical therapy as a related service under the IDEA or under Section 504. Additionally, they may include the direct provision of activities which are of such a nature that they are only conducted with the eligible student by a physical therapist or physical therapist assistant. The physical therapist should refer to §322.1 of this title (relating to Provision of Services).

(e) Evaluation and reevaluation in the educational setting will be conducted in accordance with federal mandates under Part B of the Individuals with Disabilities Education Act (IDEA), 20 USC §1414, or under Section 504 when warranted by a change in the child's condition, and include reexamination of the child. The Plan of Care (Individual Education Program or Section 504 Plan) must be reviewed by the PT at least every 60 school days, or concurrent with every visit if the student is seen at intervals greater than 60 school days, to determine if revisions are necessary prior to continuation of treatment by a physical therapist assistant.

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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Ralph Harper
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Texas Board of Physical Therapy Examiners
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 229. FOOD AND DRUG

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 Subchapter U, §§229.370 - 229.374, relating to Permitting Retail Food Establishments; and amendments to Subchapter Z, §§229.470 - 229.474, relating to Inspection Fees for Retail Food Establishments.

The amendments to §§229.371, 229.372, and 229.471 are adopted with changes to the proposed text as published in the January 19, 2024, issue of the *Texas Register* (49 TexReg 227). These rules will be republished. The amendments to §§229.370, 229.373, 229.374, 229.470, and §§229.472 - 229.474 are adopted without changes to the proposed text as published in the January 19, 2024, issue of the *Texas Register* (49 TexReg 227). These rules will not be republished.

BACKGROUND AND JUSTIFICATION

The amendments update definitions, citations, and clarify rule language in 25 TAC Chapter 229, Subchapters U and Z due to the 2021 adoption-by-reference of the 2017 U.S. Food and Drug Administration Food Code in 25 TAC Chapter 228, Retail Food Establishments.

Amendments to the Retail Foods-related portions of 25 TAC Chapter 229 update rule language to reflect the current practices and needs of the Retail Foods Program. The amendments also remove references to "child care center" in §§229.371, 229.372, and 229.471 since permitting and inspections of food service operations of child care centers transferred from the DSHS Retail Food Safety program to HHSC Regulatory Services Division. The minimum standards for child care centers are in 26 TAC Chapter 746 and the minimum standards for food preparation and food service are in §746.3317.

COMMENTS

The 31-day comment period ended February 19, 2024.

During this period, DSHS received one comment regarding the proposed rules.

Comment: Northeast Texas Public Health District (NETPHD) requests DSHS comment regarding the impact on local jurisdictions of the changes to the definition of "nonprofit organization" proposed at §229.371(4), formerly §229.371(9), and why DSHS changed the exemption under the Internal Revenue Code from 501(C) to 501(c)(3) in the proposed rule.

Response: DSHS appreciates the comments. DSHS acknowledges NETPHD's concern regarding the impact of changing who is permit-exempt and the possible impact on these organizations' ability to respond to public need, especially during times of emergency, and revised the definition of "Nonprofit organization" in §229.371(4) and §229.471(6) by replacing "501(c)(3)" with "501(c)" to remove the proposed amendments to these rules.

DSHS also revised §229.372(j)(1) and (2) to provide greater clarity to the text.

SUBCHAPTER U. PERMITTING RETAIL FOOD ESTABLISHMENTS

25 TAC §§229.370 - 229.374

STATUTORY AUTHORITY

The amendments are authorized by Texas Health and Safety Code §437.0056 and §437.0125, which direct the Executive Commissioner of HHSC to adopt rules necessary for the implementation of food safety laws; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

§229.371. Definitions.

All definitions found in §228.2 of this title (relating to Definitions) are applicable to this subchapter. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

(2) Food establishment--

(A) A food establishment is an operation that:

(i) stores, prepares, packages, serves, or vends food directly to the consumer, or otherwise provides food for human consumption, such as:

(I) a restaurant;

(II) a retail food store;

(III) a satellite or catered feeding location;

(IV) a catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people;

(V) a market;

(VI) a vending machine location;

(VII) a self-service food market;

(VIII) a conveyance used to transport people;

(IX) an institution; or

(X) a food bank; and

(ii) relinquishes possession of food to a consumer directly, or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or delivery service provided by common carriers.

(B) A food establishment includes:

(i) an element of the operation, such as a transportation vehicle or a central preparation facility supplying a vending ma-

chine location or satellite feeding location unless the vending machine or feeding location is permitted by the regulatory authority; and

(ii) an operation conducted in a mobile, stationary, temporary, or permanent facility or location and where consumption is on or off the premises regardless if there is a charge for the food.

(C) A food establishment does not include:

(i) an establishment offering only prepackaged foods that are not time and temperature control for safety (TCS) foods;

(ii) a produce stand only offering whole, uncut fresh fruits and vegetables;

(iii) a food processing plant, including one located on the premises of a food establishment;

(iv) a cottage food production operation;

(v) a bed and breakfast limited as defined in §228.2(5) of this title (relating to Definitions); or

(vi) a private home receiving catered or home-delivered food.

(3) Food Service Establishment--A food establishment as defined in these rules.

(4) Nonprofit organization--A civic or fraternal organization, charity, lodge, association, proprietorship, or corporation possessing a 501(c) exemption under the Internal Revenue Code; or a religious organization.

(5) Permit holder--The person legally responsible for the operation of the food establishment such as the owner, the owner's agent, or other person; and who possesses a valid permit to operate a food establishment.

(6) Retail food store--A food establishment or section of an establishment where food and food products are offered to the consumer and intended for off-premises consumption. The term includes delicatessens offering prepared food in bulk quantities only. The term does not include establishments which handle only prepackaged, non-TCS food products; roadside markets offering only unprocessed fresh fruits and fresh vegetables; or farmers markets; except, for the purposes of obtaining a permit and payment of fees only, the term "retail food store" does not include establishments permitted and inspected under authority granted to municipalities.

(7) School food establishment--A food service establishment where food is prepared and intended for service primarily to students in public and private schools, including kindergarten, preschool and elementary schools, junior high schools, high schools, colleges, and universities. A school food establishment is a food establishment and may include concession stands located on the school premises or other school-sponsored venues. School food establishments are managed and operated under the supervision of school district employees.

(8) Temporary food establishment--A food establishment operating for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

(9) Time and temperature control for safety food (TCS food)--A food requiring time and temperature control for safety to limit pathogen growth or toxin production. The term includes a food that must be held under proper temperature controls, such as refrigeration, to prevent the growth of bacteria that may cause human illness. A TCS food may include a food containing protein and moisture and that is neutral or slightly acidic, such as meat, poultry, fish, and shellfish products; pasteurized and unpasteurized milk and dairy products; raw seed sprouts; baked goods that require refrigeration, including cream or custard pies or cakes; and ice products. The term does not include a food using TCS food as ingredients if the final food product does not require time or temperature control for safety to limit pathogen growth or toxin production.

§229.372. Permitting Fees and Procedures.

(a) Permitting fees.

(1) A person who operates a food establishment shall obtain a permit from the department and pay a permit fee for each establishment unless specifically exempted under subsection (b) or (c) of this section. All permit fees are nonrefundable. Permits are issued for a two-year term. The fees are based on gross annual volume of sales as follows:

(A) for an establishment with gross annual volume of food sales of $0 - $49,999.99, the fee is $250;

(B) for an establishment with gross annual volume of food sales of $50,000 - $149,999.99, the fee is $500; or

(C) for an establishment with gross annual volume of food sales of $150,000 or more, the fee is $750.

(2) A person who contracts with a school to provide food services on a for-profit basis shall obtain a permit and pay a permit fee for each school where food services are provided. Permits are issued for a two-year term. The permit fee is $250.

(3) A person who operates a mobile food unit shall obtain a permit from the department for each mobile food unit operated.

(A) Each mobile food unit shall be inspected and comply with §228.221 of this title (relating to Mobile Food Units) and pay a nonrefundable permit fee before a permit is issued. If a request for inspection is not received or if the mobile food unit does not meet the minimum standards contained in §228.221 of this title within two years of paying the permit fee, a new fee shall be paid.

(B) Mobile food unit permits are issued for a two-year term. The permit fee is $250.

(4) Each roadside food vendor shall obtain a permit and pay a fee. All fees are nonrefundable. A permit will be issued for a two-year term. The permit fee is $250.

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

(6) If the license or permit category changes during the license or permit period, the license or permit shall be renewed in the proper category at the time of the renewal.

(7) An establishment required to be licensed as a food manufacturer under Texas Health and Safety Code Chapter 431, and also required to be permitted under this subchapter, will be issued only one license or permit. The license or permit fee to be paid will be the higher fee of the two applicable fees.

(b) Exemptions from permit and fees.

(1) Food establishments permitted and inspected by a county or public health district under Texas Health and Safety Code Chapter 437, provided inspections are based on the requirements of §229.373 of this subchapter (relating to Minimum Standards for Permitting and Operation), are exempted from obtaining a permit and paying a fee to the department.

(2) The following meet the definition of "food establishment" in §229.371 of this subchapter (relating to Definitions), but are

not required to pay a fee or obtain a Retail Food Establishment permit under this subchapter:

(A) food establishments permitted and under the inspection authority granted to municipal health departments;

(B) food establishments on federal property under federal inspection authority;

(C) food establishments under the inspection authority of state college or university personnel in accordance with the requirements of §229.373 of this subchapter;

(D) food establishments licensed under Texas Health and Safety Code Chapter 431, as manufacturers of food, provided the fee for licensure exceeds the permit fee required under this section;

(E) food establishments under the inspection authority of the Texas Health and Human Services Commission (HHSC) Regulatory Services Division;

(F) facilities under the inspection authority of the HHSC Regulatory Services Division;

(G) hospitals under the inspection authority of the HHSC Regulatory Services Division and that do not serve food to the general public;

(H) correctional facilities under the inspection authority of the Texas Department of Criminal Justice;

(I) nonprofit organizations as defined in §229.371(3) of this subchapter; (Nonprofit organizations which meet the definition of "manufacturers of food" under Texas Health and Safety Code Chapter 431, or the definition of "food salvage establishments" under Texas Health and Safety Code Chapter 432, are not exempt from licensure in those categories.)

(J) food and beverage vending machines; and

(K) mobile food units permitted and inspected under the authority granted to municipalities and which operate only within their respective jurisdictions. (Except for units which handle only pre-packaged, non-TCS foods, a mobile food unit is classified as a food establishment, regardless of whether food preparation occurs on the unit.)

(c) Nonprofit fee exemption. Nonprofit organizations as defined in §229.371(3) of this subchapter (relating to Definitions) are exempt from payment of the permit fee. Nonprofit organizations shall comply with the requirements of §229.373 of this subchapter. The department shall provide guidelines for the safe handling of foods prepared by nonprofit organizations. Any civic or fraternal organization, charity, lodge, association, proprietorship, corporation, or church not meeting the definition of "nonprofit organization" shall obtain a permit, pay the required fee, and comply with the requirements.

(d) Application for permit. The permit application shall be on a form furnished by the department and shall contain the following information:

(1) the name under which the establishment operates;

(2) the mailing address and street address of the establishment;

(3) if a sole proprietorship, the name of the proprietor; if a partnership, the names of all partners; if a corporation, the date and place of incorporation and the name and address of its registered agent in the State; or if any other type of association, the names of the principals of such association;

(4) the names of those individuals in an actual administrative capacity which, in the case of a sole proprietorship, shall be the managing proprietor; in a partnership, the managing partner; in a corporation, the officers and directors; in any other association, those in a managerial capacity;

(5) the signature of the owner, operator, or other authorized person; and

(6) any other information the department may require issuing a permit.

(e) Temporary food establishments. An organizer of an event at which a temporary food establishment operates shall obtain a permit for each temporary food establishment. In the absence of an event organizer, each temporary event operator shall obtain a permit. The application and permit fee for a temporary food establishment must be submitted to the department at least 30 days before the event. The permit fees are as follows.

(1) Single-event permit. The permit fee is $50 and is valid for the duration of a single event not to exceed 14 consecutive days from the initial effective date specified in the permit application. The fee is non-refundable.

(2) Multiple-event permit. A multiple-event permit is issued for a two-year term and the permit fee is $200. The fee is non-refundable.

(f) Two or more establishments. Each establishment shall submit an application even if it is owned by the same person.

(g) Pre-permit inspection. The department may conduct a pre-permit inspection to determine compliance with this subchapter.

(h) Issuance of a permit. The department may issue a permit or a renewal permit for an establishment based on compliance with Chapter 228 of this title (relating to Retail Food Establishments), and payment of all fees. Copies of the permit application are available by sending a request to the department at 1100 West 49th Street, Austin, Texas 78756-3182 or by downloading online at: https://www.dshs.texas.gov/retail-food-establishments/permitting-information-retail-food-establishments.

(1) The permit or proof of permit shall be posted in a location in the food establishment conspicuous to consumers.

(2) Permits for mobile food units, including pushcarts and roadside food vendors, shall be displayed on the unit at all times.

(3) A permit shall only be issued when all past due and delinquency fees are paid. This applies to any delinquent penalties due under an order issued by the department.

(i) Renewal of a permit.

(1) The permit holder shall submit a renewal application and permit fees before the expiration date of the permit. A person filing a renewal application after the expiration date shall pay an additional $100 as a delinquency fee.

(2) The department may renew a permit if the applicant is compliant with Chapter 228 of this title, and all fees are paid.

(3) Failure to submit a renewal application and permit fee before the expiration date, while continuing to operate, is a violation of Texas Health and Safety Code Chapter 437, and is subject to enforcement proceedings under that chapter, and §229.374 of this subchapter (relating to Refusal, Revocation, or Suspension of a Permit; Administrative Penalties).

(j) Amendment of permit.

(1) Fee. For a permit amendment, including a change of name or physical location of a food establishment requiring a permit

under Texas Health and Safety Code §437.0125, the permit holder shall pay as follows:

(A) for an establishment with gross annual volume of food sales of $0 - $49,999.99, the fee is $125;

(B) for an establishment with gross annual volume of food sales of $50,000.00 - $149,999.99, the fee is $250;

(C) for an establishment with gross annual volume of food sales of $150,000.00 or more, the fee is $375; or

(D) for each mobile food unit, roadside vendor, school food establishment, or central preparation facility, the fee is $125.

(2) Change of location. A permit is not transferrable to another location for any non-mobile food establishment except in the case of a permit amendment as described in paragraph (1) of this subsection.

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

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 April 23, 2024.

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Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: May 13, 2024
Proposal publication date: January 19, 2024
For further information, please call: (512) 800-5343

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SUBCHAPTER Z. INSPECTION FEES FOR RETAIL FOOD ESTABLISHMENTS

25 TAC §§229.470 - 229.474

STATUTORY AUTHORITY

The amendments are authorized by Texas Health and Safety Code §437.0056 and §437.0125, which direct the Executive Commissioner of HHSC to adopt rules necessary for the implementation of food safety laws; and Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules and policies necessary for the operation and provision of services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

§229.471. Definitions.

All definitions found in §228.2 of this title (relating to Definitions) are applicable to this subchapter. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

(2) Food employee--An individual working with unpackaged food, food equipment or utensils, or food-contact surfaces.

(3) Food establishment--

(A) A food establishment is an operation that:

(i) stores, prepares, packages, serves, or vends food directly to the consumer, or otherwise provides food for human consumption, such as:

(I) a restaurant;

(II) a retail food store;

(III) a satellite or catered feeding location;

(IV) a catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people;

(V) a market;

(VI) a vending machine location;

(VII) a self-service food market;

(VIII) a conveyance used to transport people;

(IX) an institution; or

(X) a food bank; and

(ii) relinquishes possession of food to a consumer directly, or indirectly through a delivery service, such as home delivery of grocery orders or restaurant takeout orders, or delivery service provided by common carriers.

(B) A food establishment includes:

(i) an element of the operation, such as a transportation vehicle or a central preparation facility supplying a vending machine location or satellite feeding location unless the vending machine or feeding location is permitted by the regulatory authority; and

(ii) an operation conducted in a mobile, stationary, temporary, or permanent facility or location and where consumption is on or off the premises regardless if there is a charge for the food.

(C) A food establishment does not include:

(i) an establishment offering only prepackaged foods that are not time and temperature control for safety (TCS) foods;

(ii) a produce stand only offering whole, uncut fresh fruits and vegetables;

(iii) a food processing plant, including one located on the premises of a food establishment;

(iv) a cottage food production operation;

(v) a bed and breakfast limited as defined in §228.2(5) of this title (relating to Definitions); or

(vi) a private home receiving catered or home-delivered food.

(4) Food service establishment--A food establishment as defined in these rules.

(5) Group residence--A private or public housing corporation or institutional facility providing living quarters and meals. The term includes a domicile for unrelated persons such as a retirement home, correctional facility, or a long-term care facility.

(6) Nonprofit organization--A civic or fraternal organization, charity, lodge, association, proprietorship, or corporation possessing a 501(c) exemption under the Internal Revenue Code; or a religious organization. Nonprofit organizations are exempt from obtaining a permit as specified in §229.372(c) of this chapter (relating to Permitting Fees and Procedures). Nonprofit organizations are not exempt from the

payment of an inspection fee as required under §229.472 of this subchapter (relating to Inspection Fees and Procedures).

(7) School food establishment--A food service establishment where food is prepared or served and intended for service primarily to students in public and private schools, including kindergarten, preschool and elementary schools, junior high schools, high schools, colleges, and universities. A school food establishment is a food establishment and may include concession stands located on the school premises or other school-sponsored venues. School food establishments are managed and operated under the supervision of school district employees.

(8) Temporary food establishment--A food establishment operating for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

(9) Time and temperature control for safety food (TCS food)--A food requiring time and temperature control for safety to limit pathogen growth or toxin production. The term includes a food that must be held under proper temperature controls, such as refrigeration, to prevent the growth of bacteria that may cause human illness. A TCS food may include a food containing protein and moisture and that is neutral or slightly acidic, such as meat, poultry, fish, and shellfish products; pasteurized and unpasteurized milk and dairy products; raw seed sprouts; baked goods requiring refrigeration, including cream or custard pies or cakes; and ice products. The term does not include a food using TCS food as ingredients if the final food product does not require time or temperature control for safety to limit pathogen growth or toxin production.

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

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Cynthia Hernandez
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Department of State Health Services
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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to 30 Texas Administrative Code (TAC) §§115.10, 115.110 - 115.112, 115.114 - 115.119, 115.121 - 115.123, 115.125 - 115.127, 115.129, 115.131, 115.132, 115.135 - 115.137, 115.139, 115.142, 115.144, 115.146, 115.147, 115.149, 115.161, 115.162, 115.164 - 115.167, 115.169 - 115.172, 115.177, 115.183, 115.211 - 115.214, 115.216, 115.217, 115.219, 115.221, 115.222, 115.224, 115.226, 115.227, 115.229, 115.234, 115.235, 115.237, 115.239, 115.311, 115.312, 115.315, 115.316, 115.319, 115.352 - 115.357, 115.359, 115.410 - 115.413, 115.415, 115.416, 115.419, 115.420, 115.422, 115.423, 115.425 - 115.427, 115.429, 115.430 - 115.432, 115.435, 115.436, 115.439 - 115.443, 115.445, 115.446, 115.449 - 115.451, 115.453, 115.458 - 115.461, 115.463, 115.465, 115.468 - 115.471, 115.473, 115.475, 115.478, 115.479, 115.510, 115.512, 115.515 - 115.517, 115.519, 115.531, 115.532, 115.534 - 115.537, 115.539, 115.901, and 115.911. TCEQ also repeals §115.173; and simultaneously adopts new §115.173.

The amendments to §§115.111, 115.131, 115.132, 115.139, 115.171, 115.172, 115.173, 115.219, 115.234, 115.235, 115.237, 115.419, 115.450, 115.459, 115.461, 115.469, 115.479, and 115.519 are adopted with changes to the proposed text as published in the December 15, 2023, issue of the *Texas Register* (48 TexReg 7290) and will be republished. TCEQ adopts non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, establish consistency in the rules, and conform to the standards in the *Texas Legislative Council Drafting Manual, September 2020.*

All other amendments are adopted without changes to the proposed text as published in the December 15, 2023, issue of the *Texas Register* (48 TexReg 7290) and, therefore, will not be republished.

All amended sections, and the repealed and new section, will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules These adopted rules will address federal Clean Air Act (FCAA) reasonably available control technology (RACT) requirements for Bexar County under the 2015 eight-hour ozone National Ambient Air Quality Standard (NAAQS) of 0.070 parts per million (ppm) as well as FCAA RACT and SIP contingency requirements for the Dallas-Fort Worth (DFW) and Houston-Galveston-Brazoria (HGB) nonattainment areas under the 2008 eight-hour ozone NAAQS of 0.075 ppm. The adopted rulemaking will also amend previously adopted rules that addressed EPA's 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry in the DFW and HGB 2008 ozone NAAQS nonattainment areas (Rule Project No. 2020-038-115-AI, adopted June 30, 2021).

The following portion of the Background and Summary addresses the RACT update for Bexar County.

Effective November 7, 2022, EPA reclassified nonattainment areas under the 2015 eight-hour ozone NAAQS (87 *Federal Register* (FR) 60897). Bexar County was reclassified from marginal to moderate nonattainment with a 2023 attainment year and an attainment deadline of September 24, 2024. Ozone nonattainment areas classified as moderate and above are required to meet the mandates of FCAA under §172(c)(1) and §182(b)(2). According to the EPA's Implementation of the 2015 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements: Final Rule (2015 eight-hour ozone standard SIP requirements rule) published in the *Federal Register* (83 FR 62998), states containing areas classified as moderate ozone nonattainment or higher must submit a SIP revision to fulfill RACT requirements for all source categories addressed by control techniques guidelines (CTG) or alternative control techniques (ACT) as well as any non-ACT/CTG category sources that are classified as major stationary sources of nitrogen oxides (NOX) or volatile organic compounds (VOC) (83 FR 62998).

Specifically, the SIP revision must contain adopted RACT regulations, certifications where appropriate that existing provisions are RACT, and/or negative declarations that there are no sources in the nonattainment area covered by a specific CTG source category (80 FR 12264).

Bexar County's reclassification to moderate ozone nonattainment triggered emission control evaluation, emission reduction quantification, rule writing, and submission requirements for attainment demonstration (AD) and reasonable further progress (RFP) SIP revisions. However, neither EPA's reclassification schedule nor its SIP requirements submittal deadline of January 1, 2023, provided sufficient time to implement new VOC emission reduction controls prior to the beginning of the attainment year ozone season in Bexar County, which was March 1, 2023. The portions of this adopted rulemaking affecting Bexar County, along with the concurrently adopted Bexar County RACT Update SIP Revision (Non-rule Project No. 2023-132-SIP-NR), are intended to address the emission control and RACT analysis requirements.

On October 12, 2023, Texas Governor Greg Abbott signed and submitted a letter to EPA to reclassify the Bexar County, DFW, and HGB moderate 2015 eight-hour ozone NAAQS nonattainment areas to serious. On October 18, 2023, EPA published a finding of failure to submit the required moderate AD SIP revisions for all three areas. The commission is proceeding with this rulemaking that addresses RACT in Bexar County since RACT is required for both moderate and serious nonattainment classifications.

All Bexar County VOC emission source categories addressed by CTG and ACT documents were evaluated. 30 TAC Chapter 115 or other approved regulations were developed to update and fulfill RACT requirements. RACT requirements are fulfilled for all non-CTG and non-ACT major VOC emission sources-those for which VOC controls are technologically and economically feasible-by new, updated, or existing 30 TAC Chapter 115 rules and other federally enforceable measures, as documented in the concurrently adopted SIP revision.

The rule revisions to update RACT requirements in Bexar County are adopted in 19 divisions of Chapter 115. Subchapter B, Division 1 Storage of Volatile Organic Compounds, Division 2 Vent Gas Control, Division 3 Water Separation, Division 4 Industrial Wastewater, Division 6 Batch Processes, and Division 7 Oil and Natural Gas Service in Ozone Nonattainment Areas contain adopted revisions. Subchapter C contains adopted revisions in Division 1 Loading and Unloading of Volatile Organic Compounds, Division 2 Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities, and Division 3 Control of Volatile Organic Compound Leaks from Transport Vessels. Subchapter D contains adopted revisions in Division 1 Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries, and Division 3 Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas. In Subchapter E, adopted revisions are in Division 2 Surface Coating Processes, Division 3 Flexographic and Rotogravure Printing, Division 4 Offset Lithographic Printing, Division 5 Control Requirements for Surface Coating Processes, Division 6 Industrial Cleaning Solvents, and Division 7 Miscellaneous Industrial Adhesives. Subchapter F, Division 1 Cutback Asphalt, and Division 2 Pharmaceutical Manufacturing Facilities contain adopted revisions. In these divisions, applicability and compliance provisions for existing RACT rules are amended to add provisions for Bexar County. Adopted changes are also made in Subchapter A, Definitions, and Subchapter J, Division 1 Alternative Means of Control to implement these RACT updates in Bexar County. Revisions to Subchapter B, Division 1 in the DFW area implement major source RACT at the lower 25 tons per year (tpy) major source threshold for the severe nonattainment classification and in Bexar County at the 100 tpy threshold for moderate areas. Likewise, Subchapter B, Division 2 revisions implement RACT for bakery vents at the major source thresholds in DFW and Bexar County. In all other divisions, Bexar County is added to rule provisions with the most stringent requirements for RACT implementation. All adopted regulations have a compliance date of January 1, 2025.

In addition to the adopted rules to address RACT for the Bexar County 2015 ozone NAAQS moderate nonattainment area, the adopted rulemaking will address RACT requirements for the DFW 2008 ozone NAAQS severe nonattainment area and contingency requirements for the DFW and HGB 2008 ozone NAAQS severe nonattainment areas. Effective November 7, 2022, EPA reclassified nonattainment areas under the 2008 ozone NAAQS (87 FR 60926). A 10-county DFW area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) and an eight-county HGB area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) were reclassified from serious to severe nonattainment with a 2026 attainment year and an attainment deadline of July 20, 2027. Reclassification to severe nonattainment triggers emission control evaluation, emission reduction quantification, rule writing, and SIP submission requirements for the DFW and HGB 2008 ozone NAAQS nonattainment areas that must be submitted to EPA by May 7, 2024, the deadline established in EPA's reclassification action for the 2008 ozone NAAQS. This adopted rulemaking will amend Subchapter B, Division 1 VOC storage provisions to address RACT in the DFW 2008 ozone NAAQS severe nonattainment area and will amend rules in Subchapters E and F to address SIP contingency requirements for the DFW and HGB 2008 ozone NAAQS nonattainment areas.

The adopted rulemaking will add provisions for six measures to be implemented if needed for SIP contingency purposes in the DFW and/or HGB 2008 ozone NAAQS nonattainment areas. Contingency measures are control requirements that will take effect and result in emissions reductions if an area fails to attain a NAAQS by the applicable attainment date or fails to demonstrate RFP. Requirements for SIP contingency are established under FCAA, §172(c)(9) and §182(c)(9). Requirements for five contingency measures are adopted in Subchapter E: degreasing contingency rules are adopted in Division 1; industrial maintenance coatings and traffic marking coatings contingency rules are adopted in Division 5; industrial cleaning solvents contingency rules are adopted in Division 6; and industrial adhesives contingency rules are adopted in Division 7. A sixth contingency measure is adopted in Subchapter F, Division 6 for emulsified asphalt paving in the DFW and/or HGB 2008 ozone NAAQS severe nonattainment areas. Adopted contingency measures will apply independent of each other and separately for the DFW and/or HGB 2008 ozone NAAQS severe nonattainment areas. Implementation of a contingency measure will be triggered upon EPA publication of a notice in the *Federal Register* that the specified area(s) failed to attain the applicable ozone NAAQS by the applicable attainment date or failed to demonstrate RFP, and the commission's subsequent publication in the *Texas Register* that compliance with the contingency measures is required. Affected

sources will be required to comply with the contingency rules by no later than 270 days after *Texas Register* publication.

Staff inadvertently omitted some source categories and incorrectly stated multiple VOC content limits for other source categories in the industrial adhesives contingency measure of this rule proposal. This resulted in less emissions reductions available to fulfill contingency requirements in the DFW and HGB areas. The Executive Director intends to immediately initiate rulemaking for commission consideration to restore the missing and incorrect VOC content limits to achieve the reductions originally intended.

In addition to adopted amendments to address SIP contingency requirements for the DFW and HGB 2008 ozone NAAQS nonattainment areas, to address RACT requirements for the Bexar County 2015 ozone NAAQS moderate nonattainment area, and to address RACT requirements for the DFW 2008 ozone NAAQS severe nonattainment area, this adopted rulemaking will also amend Subchapter B, Division 7 to clarify provisions adopted June 30, 2021 (Project No. 2020-038-115-AI) to implement the EPA's 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry. The adopted amendments will also delete rule provisions that would be triggered by the action of Wise County no longer being designated as nonattainment under the 2008 ozone NAAQS. This action will not occur because the petition for review seeking reversal of the nonattainment designation was denied on June 2, 2015, by the U.S. Court of Appeals for the District of Columbia Circuit (Mississippi v. EPA, 790 F.3d. 138). Similarly, the adopted amendments will delete rule provisions that would be triggered by reclassification of the DFW area to severe nonattainment for the 1997 eight-hour ozone NAAQS because the 1997 eight-hour ozone NAAQS was revoked when the 2008 ozone NAAQS was implemented.

Demonstrating Noninterference under Federal Clean Air Act, §110(l) Under FCAA, §110(l), EPA cannot approve a SIP revision if it "would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of." The commission provides the following information to demonstrate why the adopted changes to the Subchapter B, Division 7 and Subchapter E, Division 7 rules and associated Chapter 115 VOC control requirements will not: negatively impact the status of the state's progress towards attainment, interfere with control measures, or prevent reasonable further progress toward attainment of the ozone NAAQS in the HGB, DFW, or Bexar County nonattainment areas.

On June 30, 2021, the commission adopted rules in 30 TAC §§115.170 - 115.183 (Rule Project No. 2020-038-115-AI) to implement the EPA's 2016 Control Techniques Guidelines for the Oil and Natural Gas Industry (EPA-453/B-16-0012016/10). These adopted rules in Chapter 115 concerning RACT requirements for sources covered by EPA's 2016 oil and gas CTG became effective on July 21, 2021, and they were approved by EPA as a revision to the SIP on August 15, 2023, with an effective date of September 14, 2023 (88 FR 55379). The 2016 oil and gas CTG required covered sources in the DFW and HGB ozone nonattainment areas to comply with specified emissions limitations and control requirements for the oil and natural gas industry sector by January 1, 2023. The Chapter 115 rules currently applicable to oil and gas industry operations in the HGB and DFW nonattainment areas inadvertently omit three CTG recommended exemptions, consolidate control provisions in a format that could be interpreted to deviate from EPA's centrifugal and reciprocating compressor CTG, and fail to include a CTG recommended incentive to maintain good fugitive monitoring performance. The adopted 30 TAC Chapter 115, Subchapter B, Division 7 revisions will add §115.172 CTG recommended exemptions, clarify §115.173 compressor control requirements, and amend §115.177 fugitive emission monitoring provisions to establish rule language that more accurately reflects EPA's 2016 oil and gas CTG rule guidelines.

The commission adopts a §115.172(a)(9) exemption for fugitive components in heavy liquid service from routine §115.177 instrument monitoring requirements provided they are monitored weekly by a visual, audio, and olfactory (OVA) survey as the CTG recommends. The OVA monitoring surveys will identify heavy liquid service leaks quicker than instrument monitoring, because they occur more frequently and typically document leak evidence before an instrument reading above the 10,000 ppm leak definition is observed. Therefore, the adopted §115.172(a)(9) exemption will enable heavily liquid service fugitive component leaks to be identified and repaired sooner to reduce natural gas processing plant VOC emissions.

In §115.172(a)(10), the commission adopts a similar CTG recommended exemption from routine instrument monitoring for natural gas plant light liquid service fugitive components that route potential VOC leaks through a closed vent system to a control device, process or fuel gas system provided weekly OVA survey are conducted. The higher potential emissions from light liquid service components and §115.172(a)(10) control requirement will result in potential VOC emission reductions that are an order of magnitude or larger than produced by the adopted §115.172(a)(9) heavy liquid service exemption.

The commission adopts an exemption for wellhead(s)-only sites from instrument monitoring provisions under new §115.172(a)(11), since they have very limited quantities of fugitive components and associated VOC emissions. Any insignificant VOC emissions increase that may result from the adopted CTG recommended wellhead-only exemption will be more than offset by VOC emission reductions from the new implementation of more frequent OVA monitoring provisions adopted in §115.172(a)(9) and (10). The addition of new §115.172(a)(9)-(11) exemptions will not produce a net increase in VOC emissions or negatively impact the status of the state's progress towards attainment.

The commission inadvertently combined CTG recommended centrifugal and reciprocating compressor classification specific control provisions and created unnecessary confusion over the requirements that apply to each compressor type. The commission's adopted revisions to §115.173 will place the centrifugal and reciprocating compressor control provisions in separate §115.173(a) and §115.173(b) subsections, respectively, with the individual compressor type control provisions specified for each compressor type as recommended in the CTG. The adopted updates will clarify each compressor type's specific control requirements to more precisely conform to CTG RACT guidance. The reformatting of §115.173 compressor control requirements according to compressor type will not increase CTG RACT baseline VOC emissions or negatively impact the status of the state's progress towards attainment. The commission's existing §115.177 fugitive emission monitoring provisions require natural gas plant fugitive components that include light liquid service valves to be initially instrument monitored on a monthly basis and provide an option for quarterly monitored components with good monitoring and repair histories to be monitored less

frequently in accordance with CTG recommendations. An oversight in the commission's regulatory language does not currently provide a pathway for fugitive emission components to transition from a monthly to a quarterly monitoring schedule as the CTG recommends as an incentive to encourage good leak repair performance that will reduce VOC emissions. The commission adopts the CTG recommended monitoring schedule pathway as an incentive for industry to expedite the location and repair fugitive component leaks to qualify for pathway access. The commission anticipates that the adopted monitoring schedule pathway requirement to implement and maintain the "good monitoring program practices" will reduce VOC emissions below the current rule's baseline level as a result of the expedited detection and repair practices needed to satisfy qualification criteria. The adopted §115.177 fugitive monitoring pathway language will not produce an increase in VOC emissions or negatively impact the status of the state's progress towards attainment.

The applicability of Subchapter B, Division 7 revisions is limited to the Bexar County, DFW, and HGB areas. The commission's adopted regulatory updates more precisely incorporate CTG RACT recommendations, increase RACT rule effectiveness and result in net VOC emission reductions for the HGB and DFW nonattainment areas. The adopted Subchapter B, Division 7 amendments also implement VOC RACT in Bexar County, which is a requirement of the FCAA and intended to help the area reach attainment, and will not affect Chapter 115 requirements for other areas in Texas. The adopted rulemaking will not negatively impact the state's progress towards attainment of the 2008 and 2015 eight-hour ozone NAAQS, reasonable further progress toward attainment, or any other applicable requirement of the FCAA.

The commission adopts changes to Subchapter E, Division 7, Miscellaneous Industrial Adhesives, to implement a contingency measure required by FCAA, §172(c)(9) and §182(c)(9). This measure, if triggered, would reduce VOC emissions in the DFW and/or HGB areas by revising VOC content limits on various types of industrial adhesives. The changes add new VOC content limits in 30 TAC §115.473(e) and (f) which would apply if the contingency measure were triggered for the DFW or HGB area, respectively. These limits would, upon triggering, replace the current Chapter 115 VOC content limits in the DFW and/or HGB areas with limits taken from South Coast Air Quality Management District (SCAQMD) Rule 1168, as amended November 4, 2022.

Existing TCEQ RACT limits for industrial adhesives are based on the 2008 EPA CTG for Industrial Adhesives. The emission limit recommended in the CTG is based on the 2006 version of SCAQMD Rule 1168. Since 2006, SCAQMD Rule 1168 has been amended twice to establish emission limits for bonding specific substrates. These amendments have accommodated stated industry concerns with the limits in the 2006 version of Rule 1168. Four of the SCAQMD Rule 1168 changes since 2006 have increased the emission limit beyond the limit in existing TCEQ rules. These changes are for pressure sensitive adhesive primers, adhesives to join two specialty plastics, adhesives used in the manufacturing of computer diskettes, and adhesives for structural wood components. The adhesive applications in these categories were new subcategories of previous SCAQMD Rule 1168 and TCEQ adhesive rule categories. TCEQ chose its industrial adhesive contingency measure VOC content limits to equal the SCAQMD Rule 1168 limits adopted November 4, 2022 because TCEQ agrees with SCAQMD's analysis on technological feasibility for these limits. SCAQMD's analysis can be found in SCAQMD's Preliminary Draft Staff Report for Rule 1168- Adhesive and Sealant Applications dated August 2022.

Calculated emissions reductions for this measure sum the reductions in some adhesive categories and the increases in other categories to produce net emission reductions. In the current rulemaking, TCEQ provides the contingency measure emission reductions in a manner that avoids negatively impacting the status of the state's progress towards attainment or preventing reasonable further progress toward attainment of the ozone NAAQS in the HGB and DFW nonattainment areas or any other applicable requirement of the FCAA.

Section by Section Discussion In addition to the information provided above for a background and summary of the adopted rules, including a demonstration of noninterference with §110(l) of the FCAA, the commission also adopts non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, establish consistency in the rules, and conform to the standards in the *Texas Legislative Council Drafting Manual, September 2020.* The specific substantive changes are discussed in greater detail in this Section by Section Discussion in the corresponding portions related to the affected rule sections. Regarding the divisions of 30 TAC Chapter 115 that include adopted amendments, the commission additionally adopts the replacement of the term "Houston-Galveston" with the term "Houston-Galveston-Brazoria." The latter term reflects how the eight-county nonattainment area is commonly referenced in other parts of Chapter 115 by regulated entities and the commission. Other existing references to "Houston-Galveston" in parts of Chapter 115 that are not included in this adopted rulemaking may be addressed in a future rule project. For purposes of being consistent with other formatting styles of Chapter 115, the commission adopts the replacement of "/" with "-" in "Beaumont/Port Arthur," "Dallas/Fort Worth," and "Houston/Galveston," respectively. The commission additionally adopts the replacement of "nine months" in the proposed rule with "270 days" in the adopted rule in order to clarify the compliance date for contingency measures in the event that they are triggered. Number of days is more precise than months and allows for consistency in application and alleviates confusion associated with calculating a nine-month period that may begin and/or end outside of a defined calendar month. These formatting updates are made in sections §§115.419, 115.459, 115.463, 115.469, 115.479, and 115.519 in this adopted rulemaking.

Subchapter A: Definitions

§115.10 Definitions

The commission adopts the change to the introductory paragraph of §115.10 to update a reference to the Texas Clean Air Act and make other non-substantive wording changes to be more precise and consistent.

The commission adopts a new definition for the Bexar County area in §115.10(3) to establish the affected area for the adopted Bexar County nonattainment rules. Former §115.10(3) and subsequent definitions are renumbered accordingly but are not otherwise revised, with the exception of the definitions for covered attainment counties currently in §115.10(10) and Dallas-Fort Worth (DFW) area currently in §115.10(11). For the definition of covered attainment counties, the commission adopts the insertion of "before January 1, 2025" immediately after "Bexar" to make it clear that Bexar County is subject to applicable covered attainment county rules before January

1, 2025, which is the compliance date for the adopted rules applicable in the Bexar County ozone nonattainment area to implement RACT. For the definition of DFW area, the commission adopts the removal of a definition of the DFW area currently in §115.10(11)(B)(iii) that excludes Wise County and applies to Flexographic and Rotogravure Printing in Subchapter E, Division 3. Removal of this definition is necessary to allow the rules in Subchapter E, Division 3 for flexographic and rotogravure printing to apply in Wise County. The clauses in subparagraph (B) of the definition are renumbered accordingly.

Subchapter B: General Volatile Organic Compound Sources

Division 1: Storage Of Volatile Organic Compounds

§115.110 Applicability and Definitions

To switch Bexar County's applicability under the volatile organic compounds (VOC) storage rules in Subchapter B, Division 1, the commission adopts new applicability requirements in §115.110(a)(2) to signify the Bexar County area's status as a nonattainment area for which VOC storage rules for nonattainment areas will apply. Bexar County is currently listed along with other attainment counties for which VOC storage rules for attainment counties apply. Subsequently listed areas are renumbered.

The commission appends "as defined for covered attainment counties in §115.10 of this title (relating to Definitions)" to the end of the current §115.110(a)(5) language and renumbers it as §115.110(a)(6) to specify that Bexar County will be removed from this attainment county applicability list on January 1, 2025 when the area is required to comply with the newly adopted nonattainment county storage tank rules.

§115.111 Exemptions

The commission adopts exemptions in §115.111(a) for the Bexar County ozone nonattainment area on the compliance date for the rules in Subchapter B, Division 1. The exemptions are for adopted nonattainment rules and not existing covered attainment county regulations. Specifically, the commission adopts the application of the existing exemptions in paragraphs (2), (4), (6), and (7) to affected sources in the Bexar County area. Upon the compliance date for the adopted rules in Division 1 that apply in Bexar County, the commission adopts the addition of the Bexar County area for the following exemptions: in paragraph (2), an exemption from Division 1 requirements for tanks with a capacity less than 210,000 gallons that store crude oil or condensate prior to custody transfer; in paragraph (4), an exemption from the requirement to retrofit with a rim-mounted secondary seal under specific circumstances for welded storage tanks with a mechanical shoe primary seal that have a shoe-mounted secondary seal; in paragraph (6), an exemption from any external floating roof secondary seal requirement under specific circumstances for welded storage tanks storing VOC with a true vapor pressure less than 4.0 pounds per square inch absolute (psia); and in paragraph (7), an exemption from any external floating roof secondary seal requirement under specific circumstances for welded storage tanks storing crude oil with a true vapor pressure equal to or greater than 4.0 psia and less than 6.0 psia.

The commission adopts revised §115.111(a)(10) to update regulatory references, remove a severe nonattainment reclassification scenario (since DFW has already been reclassified as severe nonattainment), and add a November 7, 2025 exemption expiration date when the DFW area must comply with severe nonattainment requirements and may no longer use this exemption.

The commission adopts a November 7, 2025 start date in place of "the date specified in §115.119(b)(1)(C)" to activate the §115.111(a)(11) DFW exemption to appropriately reflect its recent severe nonattainment redesignation and not the prior serious nonattainment compliance date. The commission adopts an update to the §115.111(a)(11) exemption requirement reference to the more appropriate §115.112(e)(4)(B) since prior §115.112(e)(4)(B)(ii) control requirement is also removed, as discussed elsewhere in this Section by Section Discussion.

The commission adopts an update to the §115.111(a)(12) exemption requirement reference from §115.112(e)(4)(C) to 115.112(e)(4)(C)(i).

The commission adopts a revision to existing §115.111(a)(13) to exempt Wise County condensate storage tanks and tank batteries with 12-month throughputs greater than 3,000 barrels (126,000 gallons) from §115.112(e)(4)(C)(ii) flash gas control requirements for the period July 20, 2021 until November 7, 2025 if the owner demonstrates the aggregate 12-month rolling storage tank VOC emissions are less the 50 tons per year (tpy).

The commission adopts new §115.111(a)(14) requirements that will exempt Wise County condensate storage tanks and tank batteries with 12-month throughputs greater than 1,500 barrels (63,000 gallons) from §115.112(e)(4)(D) flash gas control requirements, on and after November 7, 2025, if the owner demonstrates the aggregate 12-month rolling storage tank VOC emissions are less the 25 tpy.

The commission adopts new §115.111(a)(15) requirements that will exempt Bexar County condensate storage tanks and tank batteries with 12-month throughputs greater than 6,000 barrels (252,000 gallons) from §115.112(e)(4)(E) flash gas control requirements, on and after January 1, 2025, if the owner demonstrates the aggregate 12-month rolling storage tank VOC emissions are less the 100 tpy.

The commission adopts the revised exemption in former §115.111(a)(14), adopted to be renumbered as §115.111(a)(16), to add Bexar County tanks that store crude oil or condensate and that are also subject to Subchapter B, Division 7 compliance requirements. The commission adopts removal of the reference to the January 1, 2023 compliance date for the DFW and HGB areas to comply with Division 7 requirements and replace it with a reference to the initial compliance schedules for Division 7 rules provided in §115.183. This revision is adopted because the January 1, 2023 compliance date is only applicable in the DFW and HGB areas and not in the Bexar County area. Referring to the initial compliance dates in §115.183 provides an appropriate source for determining the status of this exemption by area.

The commission adopts revisions to existing §115.111(c) stating that the Bexar County exemptions in this subsection no longer apply after December 31, 2024 when affected Bexar County storage tanks are required to meet §115.111(a) provisions to qualify for an exemption.

§115.112 Control Requirements

The commission adopts added language to §115.112(c) to specify that Bexar County area storage tanks are only subject to these requirements through December 31, 2024. On and after January 1, 2025, affected Bexar County storage tanks must comply with adopted §115.112(e) RACT requirements instead of §115.112(c).

The commission adopts the addition of the Bexar County area in §115.112(e) so that Bexar County must comply with current DFW and HGB RACT requirements beginning on January 1, 2025. To clarify the applicability transition from subsection (e) requirements to those in Division 7 for crude oil and condensate storage tanks, the commission adopts the removal of the reference to the January 1, 2023 compliance date for Division 7 and replace it with a reference to the compliance schedule provisions for Division 7 in §115.183. This change is required because Bexar County sources have a later Division 7 compliance date than DFW and HGB.

The commission adopts new §115.112(e)(3)(A)(iv) for the Bexar County area to designate the same minimum RACT efficiency for control devices in the Bexar County area as the HGB and DFW nonattainment areas.

The commission adopts revisions in §115.112(e)(4)(B) and (C) and a new §115.112(e)(4)(D) to lower the throughput flow rate that triggers fixed roof condensate storage tank flash gas control requirements in the DFW area to 1,500 barrels (or 63,000 gallons) per year by November 7, 2025. This throughput is consistent with the severe nonattainment 25 ton major source threshold when using the default VOC content for condensate. Each monthly throughput for the 12 calendar months immediately before any date that a fixed roof condensate storage tank is potentially subject to flash gas control requirements shall be added together to derive the appropriate 12-month value for comparison with the throughput limit. To accomplish this, the provision in former §115.112(e)(4)(B)(i) that established the current 3,000 barrels flash gas control throughput limit for condensate storage tanks prior to custody transfer is consistent with the serious nonattainment 50-ton major source threshold and is moved under subparagraph (B) with an end date before November 7, 2025.

The before November 7, 2025 end date is also added to existing §115.112(e)(4)(C)(ii), which established the current 3,000 barrel limit for Wise County. The commission's adopted Wise County rules in §115.112(e)(4)(C)(ii) specify the last period where the current 3,000 barrel throughput limit will be applicable as the 12 whole calendar months immediately before November 7, 2025 (November 2024 through October 2025). The throughput data are adjusted to the start of the month because production and disposition data covering a calendar month are reported to the Railroad Commission of Texas.

Adopted §115.112(e)(4)(D) reduces the existing 3,000 barrel 12-month rolling average throughput limit requiring flash gas controls on fixed roof condensate storage tanks prior to custody transfer to 1,500 barrels in the entire DFW area beginning on November 7, 2025. To account for how data are reported, compliance with this limit is to be determined using throughput data beginning November 1, 2025.

The commission adopts additional adjustments to §115.112(e)(4)(B)(ii) and §115.112(e)(4)(C)(i). The provision in §115.112(e)(4)(B)(ii) is removed because the DFW area will not be reclassified to severe for the 1997 ozone standard, which has been revoked. The provision in §115.112(e)(4)(C)(i) is amended to specify the end date for the previous 6,000 barrel 12-month rolling average throughput limit for Wise County, which was July 20, 2021.

The commission adopts new §115.112(e)(4)(E) that requires compliance with flash gas emission vapor control system requirements beginning January 1, 2025 for Bexar County area fixed roof tanks with an annual throughput greater than 252,000 gallons that store condensate prior to custody transfer.

The commission adopts revisions in §115.112(e)(5) concerning the VOC emission control trigger levels for a fixed roof tank or tank batteries that store crude oil or condensate prior to custody transfer or at a pipeline breakout station to add a Bexar County trigger level and revises the DFW area trigger level beginning on November 7, 2025 to coincide with the 25-ton major source threshold for severe nonattainment areas.

The commission adopts consolidation of the existing emission trigger level for the DFW area except Wise County into §115.112(e)(5)(B) after moving the 50-ton limit in deleted clause (i) into (5)(B) and deleting clause (ii) which can no longer be applicable due to revocation of the 1997 NAAQS. The trigger in revised §115.112(e)(5)(B) lasts until November 7, 2025. The commission also adopts a November 7, 2025 end date for the same 50-ton limit in §115.112(e)(5)(C)(ii) and also specifies the end date for the previous 100-ton limit in Wise County, which was July 20, 2021.

The commission adopts new §115.112(e)(5)(D) to lower rolling 12-month uncontrolled VOC emission control trigger levels for a fixed roof tank or tank batteries that store crude oil or condensate prior to custody transfer or at a pipeline breakout station in the DFW area to 25 tons. This unifies the control requirements across the DFW area into one provision beginning November 7, 2025.

The commission adopts new §115.112(e)(5)(E) that requires a flash gas emission vapor control system for Bexar County area fixed roof tanks or tank batteries with uncontrolled annual emissions greater than or equal to 100 tpy at a pipeline breakout station or that store crude oil prior to custody transfer. The compliance date for these new Bexar County requirements is January 1, 2025, as specified in §115.183.

The commission adopts the addition of the Bexar County area to the existing §115.112(e)(7) DFW area and HGB area compliance provisions so that on and after January 1, 2025, affected Bexar County area fixed roof tanks that store condensate or crude oil prior to custody transfer must route vapors to a vapor recovery unit, in accordance with manufacturer instructions or industry standards consistent with good engineering practices.

§115.114 Inspection and Repair Requirements

The commission adopts revised §115.114(a) to apply the inspection requirements in that subsection to affected sources located in the Bexar County area. The compliance date for these new Bexar County requirements is January 1, 2025.

The commission adopts the addition of the Bexar County area to existing inspection requirements for fixed roof storage tanks subject to the requirements of §115.114(a)(5). Affected sources located in the Bexar County area are subject to these inspection and repair requirements starting January 1, 2025.

The commission adopts revised §115.114(c) to remove Bexar County area applicability for the storage tank inspection and repair obligations as a covered attainment county on January 1, 2025.

§115.115 Monitoring Requirements

The commission adopts the addition of the Bexar County area to the monitoring requirements in §115.115(a). The requirements apply in Bexar County beginning January 1, 2025.

§115.116 Testing Requirements

The commission adopts the addition of the Bexar County area to the current Beaumont-Port Arthur (BPA), DFW, El Paso, and HGB area VOC emission test requirements in §115.116(a). As specified in adopted §115.119(g), the requirements apply in Bexar County beginning January 1, 2025.

§115.117 Approved Test Methods

The commission adopts the addition of the Bexar County area to the list of areas for which the test methods in §115.117 apply.

§115.118 Recordkeeping Requirements

The commission adopts the addition of the Bexar County area to the list of areas for which the recordkeeping requirements in §115.118 apply. The Bexar County area is also included with the areas for which additional records must be kept to comply with §115.118(a)(6). These adopted requirements apply in Bexar County beginning January 1, 2025. Finally, an adopted provision is added to §115.118(a)(7) to require maintenance of applicable records in Bexar County for at least five years, beginning January 1, 2025.

§115.119 Compliance Schedules

For sources subject to the requirements in Subchapter B, Division 1, the commission adopts a compliance schedule for Bexar County to transition from existing requirements that apply to Bexar County as a covered attainment county to RACT requirements that apply to the Bexar County 2015 ozone NAAQS nonattainment area. Likewise, the commission adopts a compliance schedule for the DFW area to transition from RACT requirements that establish a level of control for an ozone NAAQS nonattainment area classified as serious to a level of control required for a severe ozone NAAQS nonattainment area. The commission also adopts removal of §115.119(b)(1)(C) because the compliance requirements it references are also removed due to revocation of the 1997 ozone NAAQS.

The commission adopts revised §115.119(e) to clarify that Bexar County is no longer subject to the compliance schedule for storage tank requirements in attainment counties beginning January 1, 2025, at which time, the compliance schedule in new §115.119(g) applies. Adopted new §115.119(g) specifies a compliance date that is no later than January 1, 2025 for the new Bexar County nonattainment area storage tank requirements, and existing §115.119(g) and (h) are renumbered accordingly.

The commission adopts revised §115.119(f) to specify November 7, 2025 as the compliance date for storage tanks in Wise County. Existing compliance requirements continue, and new control requirements are included in adopted new §115.112(e)(4)(D) and (5)(D).

Division 2: Vent Gas Control

§115.121 Emission Specifications

The commission adopts revised §115.121(a) to specify that sources with affected vent gas streams located in the Bexar County area are subject to the existing emissions specifications of the subsection, which address VOC vent gas control RACT requirements. Owners or operators of affected vent gas streams located in the Bexar County 2015 ozone NAAQS nonattainment area must comply with the emission specifications in the subsection beginning January 1, 2025, the compliance date specified in adopted new §115.129(g).

The commission adopts revised §115.121(a)(3) to specify that bakeries with affected vent gas streams located in the Bexar County area will be subject to the existing control requirements under §115.122(a)(3).

The commission adopts revised §115.121(c) to clarify that the emission specifications for vent gas control applicable in attainment counties, which currently includes Bexar County, will no longer apply in Bexar County beginning January 1, 2025. Instead, the emissions specifications in subsection (a) apply to affected sources located in the Bexar County area beginning January 1, 2025.

§115.122 Control Requirements

The commission adopts revision of the vent gas control requirements in §115.122(a) to incorporate nonattainment area VOC RACT requirements for the Bexar County area as well as the DFW 2008 ozone NAAQS severe nonattainment area. The Bexar County area is added to the list of areas for which the control requirements in §115.122(a) apply to ensure that sources in the Bexar County area will become subject to RACT requirements for VOC from affected vent gas streams. The commission adopts changes to make Bexar County area bakeries with bakery oven vent gas streams affected by §115.121(a)(3) subject to the existing control requirements in §115.122(a)(3) so the Bexar County area is added to the list of areas for which §115.122(a)(3) applies.

The commission also adopts revised §115.122(a)(3) to address severe ozone classification requirements for the DFW 2008 ozone NAAQS nonattainment area. Existing §115.122(a)(3)(B) is amended to establish that the existing control requirements for affected bakery oven vent gas streams located in the DFW area, which were established to meet serious classification requirements, will continue to apply through November 6, 2025. Beginning November 7, 2025, each bakery oven with an affected vent gas stream located in the DFW 2008 ozone NAAQS severe nonattainment area must reduce uncontrolled VOC emissions by at least 80%. This change is necessary to address sources that become new major sources in the DFW area due to the change in major source threshold as a result of the reclassification from serious to severe nonattainment for ozone. On the compliance date for these adopted severe area RACT provisions, affected sources in the entire DFW 2008 ozone NAAQS nonattainment area, including Wise County, become subject to the adopted severe RACT requirements in §115.122(a)(3)(B).

Existing §115.122(a)(3)(C) is amended to clarify that the requirement to reduce uncontrolled VOC emissions by at least 30% from an affected bakery's 1990 emission inventory, for those sources located in the DFW area with uncontrolled VOC emissions equal to or greater than 25 tons per calendar year and less than 50 tons per calendar year, will no longer apply to those affected sources beginning November 7, 2025. This former requirement is less stringent than the adopted severe RACT requirements in §115.122(a)(3)(B).

The commission adopts a new subparagraph for Bexar County to establish a 100 tpy RACT uncontrolled bakery oven VOC emission rate trigger that requires Bexar County sources to reduce VOC emissions by a minimum of 80%. The adopted new subparagraph is added as §115.122(a)(3)(E), and the provision formerly in §115.122(a)(3)(E) is renumbered to subparagraph (F). Adopted new §115.122(a)(3)(E) establishes control requirements for affected vent gas streams from affected bakery

ovens located in the Bexar County area similar to the control requirements for sources located in the HGB and DFW areas, provided in §115.122(a)(3)(A) and (B).

Adopted renumbered §115.122(a)(3)(F), clarifies that VOC emission reductions in the 30% to 90% range will continue to not be creditable for purposes of 30 TAC Chapter 101, Subchapter H, Division 1 for those bakeries located in the DFW area that have uncontrolled VOC emissions equal to or greater than 50 tons per calendar year through November 6, 2025, an emission control trigger transitions to 25 tons per calendar year beginning November 7, 2025. This adopted change addresses the reclassification from serious to severe ozone nonattainment for sources located in the DFW 2008 ozone NAAQS severe nonattainment area and the change in major source threshold from 50 to 25 tons per year of VOC.

Adopted renumbered §115.122(a)(3)(F) is also amended to add new clause (iv) to establish a 100 tpy VOC uncontrolled bakery oven emission control trigger for sources in the Bexar County area. This adopted change is necessary to address newly affected sources located in the Bexar County area and to specify that these sources will be subject to the same prohibition on creditable VOC emission reductions as those located in other ozone nonattainment areas.

The commission adopts revised §115.122(c) to stipulate that vent gas control requirements applicable in attainment counties will continue to apply in Bexar County through December 31, 2024. Beginning January 1, 2025, sources located in the Bexar County area with affected vent gas streams must comply with the requirements of §115.122(a).

§115.123 Alternate Control Requirements

The commission amends the nonattainment area alternate vent gas control VOC RACT requirements in §115.123(a) to include the Bexar County area. The commission also adopts amended §115.123(c) to specify that the alternate methods in that subsection no longer be available to persons in Bexar County beginning January 1, 2025, the date the provisions in existing §115.123(a) are applicable in the Bexar County 2015 ozone NAAQS nonattainment area. Though the alternate control requirements for vent gas streams for sources located in the Bexar County area under adopted revised §115.123(a) are similar to those in §115.123(c), the adopted change is necessary to transition the provisions applicable in Bexar County from those associated with ozone attainment counties to those required for ozone nonattainment areas.

§115.125 Testing Requirements

The commission adopts the addition of the Bexar County area in the existing flare performance test requirements in §115.125(3)(C) and the vapor combustor performance test requirements in §115.125(3)(D). These requirements will apply for sources in Bexar County beginning January 1, 2025.

§115.126 Monitoring and Recordkeeping Requirements

The commission adopts amended requirements in §115.126 to reflect Bexar County's transition from an attainment county to an ozone NAAQS nonattainment area. This includes removing Bexar County from the list of attainment counties subject to the requirements of the section and adding the Bexar County area to the list of nonattainment areas subject to the requirements of the section. Additionally, owners or operators of vapor control systems for affected sources located in the Bexar County area will be subject to the requirements in §115.126(1), including the existing requirements for continuous monitoring and recording under subparagraph (A) and the existing requirements for flares under subparagraph (B). Owners or operators of vapor control systems for affected sources located in the Bexar County area are required to comply beginning January 1, 2025.

§115.127 Exemptions

The commission adopts revised §115.127(a) to apply the exemptions in the subsection to the Bexar County ozone nonattainment. Section 115.127(c), which currently applies to persons in Bexar County, will be amended to apply only in Aransas, Calhoun, Matagorda, San Patricio, and Travis Counties. Persons located in Bexar County who own or operate the streams identified in §115.127(c) will no longer qualify for the exemptions listed in the subsection beginning January 1, 2025, the adopted compliance date for affected sources in the Bexar County ozone nonattainment area.

§115.129 Counties and Compliance Schedules

Existing §115.129(a) specifies that the compliance date for the attainment counties listed in the subsection, which includes Bexar County, has passed and that the owner or operator of an affected source must continue to comply with the existing provisions of Division 2. Subsection (a) is adopted and revised to include a reference to adopted new §115.129(g), which provides compliance dates for owners or operators of affected sources in the Bexar County 2015 ozone NAAQS nonattainment area, to clarify that owners or operators of affected sources in Bexar County are required to continue to demonstrate compliance with the applicable provisions for attainment counties of Subchapter B, Division 2 through December 31, 2024. To address RACT requirements that apply to newly affected sources in the Bexar County 2015 ozone NAAQS nonattainment area, owners or operators of affected sources are required to demonstrate compliance with all applicable requirements of Division 2 by no later than January 1, 2025.

The commission adopts the addition of Bexar County to the list of counties in existing §115.129(f) to specify that for an owner or operator of an affected vent gas stream that becomes subject to the vent gas control requirements on or after their compliance date specified in adopted new §115.129(g) for sources located in the Bexar County area, the owner or operator is required to comply with the requirements of the division as soon as practicable but no later than 60 days after becoming subject. Additionally, a new subsection is added to establish a January 1, 2025 compliance date in the Bexar County area for owners or operators of vent gas sources that will become subject to the requirements in Subchapter B, Division 2. The adopted compliance schedule specifies that affected entities in Bexar County must comply with existing Division 2 provisions applicable for attainment counties through December 31, 2024, and that by no later than January 1, 2025, affected entities must comply with all new adopted Division 2 provisions applicable in the Bexar County 2015 ozone NAAQS nonattainment area. The Bexar County area compliance date provision is adopted as §115.129(g), and the provision formerly in §115.129(g) is removed as obsolete since Wise County's nonattainment status has been resolved.

Division 3: Water Separation

§115.131 Emission Specifications

The commission adopts revised §115.131(a) to include the Bexar County area to apply RACT for VOC water separators to affected sources located in the Bexar County ozone nonattain-

ment area. This adopted change will subject affected sources located in the area to the existing emission specifications of the subsection beginning January 1, 2025, which is the adopted compliance date for the Bexar County area specified in adopted new §115.139(e).

The commission adopts revised §115.131(c) to clarify that VOC water separation attainment county requirements under existing subsection (c) will remain in effect for sources in Bexar County through December 31, 2024. On January 1, 2025, the emission specifications provided for under subsection (a) will apply in the Bexar County 2015 ozone nonattainment area.

§115.132 Control Requirements

The commission adopts the addition of the Bexar County area to the list of areas subject to the control requirements in §115.132(a). This change is necessary to apply ozone nonattainment area RACT requirements for VOC water separators in the Bexar County 2015 ozone NAAQS nonattainment area.

Because owners or operators of affected sources are required to comply with the control techniques to satisfy RACT specified in §115.132(a)(1) - (4) by the compliance date specified in adopted new §115.139(e), the commission adopts added language to §115.132(c) to clarify that compliance with the control requirements of that subsection for attainment counties is no longer required for sources located in Bexar County beginning January 1, 2025. The commission adopts amendments to punctuation throughout the subsection. These adopted changes do not alter the meaning or intent of the existing rules in §115.132(c) and are adopted only to clarify meaning with appropriate sentence structure and punctuation.

§115.135 Testing Requirements

The commission adopts the addition of the Bexar County area to the list of areas subject to §115.135(a) to clarify that the Bexar County area will be subject to the existing testing requirements that currently exist for other ozone nonattainment areas under Subchapter B, Division 3. Affected sources located in the Bexar County area will become subject to the testing requirements of Division 3 beginning January 1, 2025, at which time, owners or operators of these sources will be required to begin using these methods and procedures.

§115.136 Monitoring and Recordkeeping Requirements

The commission adopts the addition of the Bexar County area to the list of areas subject to §115.136(a) to clarify that sources in the Bexar County area will be subject to the VOC water separation monitoring and recordkeeping requirements that currently exist for other ozone nonattainment areas under Subchapter B, Division 3. Owners or operators of affected sources in the affected ozone nonattainment area must conduct the appropriate monitoring and develop and maintain the appropriate records beginning January 1, 2025, as specified in adopted new §115.139(e).

§115.137 Exemptions

The commission adopts the addition of the Bexar County area to the list of areas subject to §115.137(a). This adopted change applies the exemptions that currently exist for other ozone nonattainment areas covered by Subchapter B, Division 3 to affected sources located in the Bexar County 2015 ozone NAAQS nonattainment area. Owners or operators of affected sources in the nonattainment area will be able to claim the existing exemptions under subsection (a) for their affected sources beginning January 1, 2025. These exemptions are already available for affected sources located in other ozone nonattainment areas subject to Subchapter B, Division 3 requirements.

The commission adopts revised §115.137(c) to clarify that beginning January 1, 2025, the exemptions identified in that subsection, which are associated with attainment counties, no longer apply in Bexar County.

§115.139 Counties and Compliance Schedules

Existing §115.139(a) specifies that the compliance date for the attainment counties listed in the subsection, which includes Bexar County, has passed and that the owner or operator of an affected source must continue to comply with the existing provisions of Division 3. Subsection (a) is adopted with revisions to include a reference to adopted new §115.139(e), which provides compliance dates for owners or operators of affected sources in the Bexar County 2015 ozone NAAQS nonattainment area, to clarify that owners or operators of affected sources in Bexar County are required to continue to demonstrate compliance with the applicable provisions for attainment counties of Subchapter B, Division 3 through December 31, 2024. To address RACT requirements that apply to newly affected sources in the Bexar County 2015 ozone NAAQS nonattainment area, owners or operators of affected sources are required to demonstrate compliance with all applicable requirements of Division 3 by no later than January 1, 2025.

The commission adopts the addition of Bexar County to the list of counties specified in existing §115.139(d) to specify that for an owner or operator of an affected water separator in the Bexar County area who becomes subject to the water separation requirements on or after the compliance date specified in adopted new §115.139(e), the owner or operator is required to comply with the requirements of the division as soon as practicable but no later than 60 days after becoming subject. Additionally, new subsection (e) is adopted, establishing a January 1, 2025 compliance date in the Bexar County area for owners or operators of water separator sources subject to the requirements in Subchapter B, Division 3. The Bexar County area compliance date provision is adopted as new §115.139(e), and the provision formerly in §115.139(e) is removed as obsolete since Wise County's nonattainment status has been resolved. Adopted new §115.139(e) specifies that the owner or operator of each VOC water separator subject to Subchapter B, Division 3 in the Bexar County nonattainment area is required to comply with the requirements of existing §§115.131(c), 115.132(c), and 115.137(c) through December 31, 2024. Beginning January 1, 2025, owners or operators of affected VOC water separators are required to comply with all other applicable requirements of Division 3.

Division 4: Industrial Wastewater

§115.142 Control Requirements

The commission adopts amendments to §115.142 to add the Bexar County area to the list of areas subject to the industrial wastewater control requirements in the section. This adopted change requires an owner or operator of an affected source category in the Bexar County ozone nonattainment area to control VOCs pursuant to the methods and techniques specified in the section, to the performance levels specified in the section, or both, as applicable.

In §115.142(1)(D)(ii), the commission adopts the addition of the Bexar County area to the list of areas subject to the requirements in §115.142(1)(D)(ii)(I) and (II). This adopted change is

necessary to specify that the Bexar County area will be subject to the existing VOC industrial wastewater system requirements for junction boxes and vented covers that currently exist for nonattainment areas. These control requirements will apply to sources located in the Bexar County area beginning January 1, 2025.

In existing §115.142(3), the commission adopts the inclusion of the Bexar County area. This adopted change is necessary to specify that the Bexar County area will become subject to the existing VOC industrial wastewater system requirements for biotreatment units that currently exist for the other ozone nonattainment areas. These control requirements will apply to sources located in the Bexar County area beginning January 1, 2025.

§115.144 Inspection and Monitoring Requirements

The commission adopts the addition of the Bexar County area in §115.144. This adopted change ensures that owners or operators of affected sources in the Bexar County area will follow the same inspection and monitoring requirements that apply for sources in other ozone nonattainment areas covered by the division to demonstrate compliance with VOC industrial wastewater RACT requirements. These inspection and monitoring requirements will apply to sources located in the Bexar County area beginning January 1, 2025.

Paragraph (4) is revised to add the Bexar County area to the list of areas subject to the compliance measurement and inspection requirements in §115.144(4) for industrial wastewater systems. This change is necessary to apply requirements related to RACT to newly affected sources located in the Bexar County area.

§115.146 Recordkeeping Requirements

The commission adopts revisions to §115.146 to add the Bexar County area. Beginning January 1, 2025, an owner or operator of an affected source located in the Bexar County area will be required to compile and maintain records demonstrating compliance with the applicable requirements of Subchapter B, Division 4. These requirements currently exist for other ozone nonattainment areas subject to Subchapter B, Division 4.

§115.147 Exemptions

The commission adopts revisions to §115.147 to provide operators in the Bexar County area with an option to claim an exemption from the control requirements that will otherwise be applicable to affected sources under industrial wastewater rule requirements. These exemptions are currently available for other ozone nonattainment areas under Subchapter B, Division 4 RACT rules. Owners or operators of affected sources located in the Bexar County area will be able to claim these same exemptions, if applicable, beginning January 1, 2025.

§115.149 Counties and Compliance Schedules

The commission adopts new §115.149(c) to establish a compliance date of January 1, 2025 for affected sources in the Bexar County area to comply with the applicable revised industrial wastewater rules in Subchapter B, Division 4.

Division 6: Batch Processes

§115.161 Applicability

The commission adopts the addition of the Bexar County area to the existing applicability provisions in §115.161(a). Affected vent gas streams at batch process operations in the Bexar County area will become subject to the applicable requirements of Subchapter B, Division 6 beginning January 1, 2025.

§115.162 Control Requirements

The commission adopts revised §115.162 to add the Bexar County area to the list of areas subject to the control requirements in the section to specify that affected sources located in the area will be subject to the existing VOC RACT control requirements for batch process operation. Beginning January 1, 2025, affected sources must comply with the requirements for process vents, aggregate streams within a process, and once-in-always-in criteria as applicable.

§115.164 Determination of Emissions and Flow Rates

The commission adopts revised §115.164 to specify that Bexar County area affected sources are required to comply with the determination and estimation methods of §115.164 for batch process operations. These requirements for affected sources in the Bexar County area will begin on January 1, 2025.

§115.165 Approved Test Methods and Testing Requirements

The commission adopts revised §115.165 to apply the specified test methods and testing requirements of the section to affected sources located in the Bexar County area. The same test methods and testing requirements to assess batch process rule compliance apply for other ozone nonattainment areas subject to Subchapter B, Division 6. For the Bexar County area, these requirements will apply beginning January 1, 2025.

§115.166 Monitoring and Recordkeeping Requirements

The commission adopts revised existing §115.166 to specify that affected sources located in the Bexar County area are required to monitor and keep records for at least five years at the affected source to demonstrate compliance with the applicable requirements of Subchapter B, Division 6. These monitoring and recordkeeping requirements already apply in other ozone nonattainment areas covered by the division for vapor control systems and process vents.

§115.167 Exemptions

The commission adopts the addition of a new §115.167(1)(C) to exempt Bexar County area batch process operations that have total VOC emissions, determined before control but after the last recovery device, of less than 100 tpy from all otherwise applicable batch process requirements of the division, except for §115.161(b) and §115.161(c). These exemptions already apply in the BPA ozone maintenance area and the HGB ozone nonattainment area, and these exemptions will apply to affected sources located in the Bexar County area with the VOC emissions threshold beginning on January 1, 2025.

§115.169 Counties and Compliance Schedules

The commission adopts a new §115.169(d) that establishes a compliance date of January 1, 2025 for affected Bexar County area batch process operations that become newly subject to the requirements of Subchapter B, Division 6.

Division 7: Oil And Natural Gas Service In Ozone Nonattainment Areas

§115.170 Applicability

The commission adopts the addition of the Bexar County area to the applicability section of existing §115.170 of Subchapter B, Division 7. This adopted change makes existing applicable equipment in the Bexar County ozone nonattainment area subject to existing RACT requirements for sources covered by EPA's 2016 oil and gas CTG. Newly affected sources in the Bexar County

area will be subject to the existing control requirements in the division beginning January 1, 2025.

§115.171 Definitions

The commission adopts a revised definition for heavy liquid service in §115.171(6) to match the criteria for heavy liquid in §115.10, which establishes a maximum combined VOC true vapor pressure limit of 0.044 pounds per square inch absolute (psia). This revision allows for consistency between the definitions in §115.10 and §115.171(6) and exemption provisions adopted in new §115.172(a)(9). The commission adopts a new definition in §115.171(17) to clarify the meaning of "wellhead" in alignment with EPA's 2016 oil and gas CTG.

The commission adopts a revised definition for intermittent bleed pneumatic controller in §115.171(9)(B) to exempt these controllers from existing bleed rate emission standards in §115.174(b)(2). This exemption aligns with EPA's 2016 oil and gas CTG and provides clarity to regulated entities to distinguish intermittent bleed from continuous bleed pneumatic controllers.

§115.172 Exemptions

The commission adopts new §115.172(a)(9)(A) - (D) to add an instrument monitoring exemption for heavy liquid service components for affected equipment in the areas listed in adopted §115.170. EPA's 2016 oil and gas CTG recommended including a heavy liquids service exemption, but this exemption was inadvertently excluded from the 2021 rulemaking to establish rules to implement the CTG (Rule Project No. 2020-038-115-AI).

The commission adopts an update to the proposed §115.172(a)(10) monitoring exemption for pressure relief devices. The revision more precisely aligns with EPA's 2016 oil and gas CTG guidance and exempts relief valves, which are routed through a closed vent system to a control device, process, or fuel gas system from the instrument monitoring requirements in §115.177(b) if an owner or operator conducts OVA inspections of affected components according to the inspection schedules and procedures in §115.177(b) and complies with either §115.172(a)(10) subparagraphs (A), (C) and (D) or subparagraph (B) repair protocol requirements. This is a change from proposal, where the owners or operators were required to comply with §115.172(a)(10) subparagraphs (A), (B), (C) and (D). The revised wording harmonizes the rule with the EPA's CTG document, whereas the proposal wording did not match the CTG and was logically inconsistent.

The commission adopts new §115.172(e) to add an exemption from §115.177(b) instrument monitoring requirements for well sites that only contain one or more wellheads and no other additional equipment. The 2016 oil and gas CTG recommended including a fugitive monitoring exemption for these limited well sites, but this exemption was inadvertently excluded from the 2021 rulemaking that added Chapter 115, Subchapter B, Division 7 requirements (Rule Project No. 2020-038-115-AI).

The commission adopts new §115.172(f) to exempt pressure relief valves that are vented to a process or to a fuel gas system, and those that are equipped with a closed vent system routed to a control device that meets the requirements of §115.175(a)(2) and (4) of Subchapter B, Division 7, from the monitoring requirements of §115.177(b). This exemption aligns with EPA's 2016 oil and gas CTG. Addition of this new exemption is adopted to correct an error of omission in Rule Project No. 2020-038-115-AI. For closed vent systems to qualify under this adopted new subsection (f), the closed vent system must be monitored according to the requirements of §115.177.

§115.173 Compressor Control Requirements

The commission repeals former §115.173 and simultaneously adopts new §115.173 to separate centrifugal and reciprocating compressor control requirements that were recommended in EPA's 2016 oil and gas CTG. The purpose of this adopted change is to organize the requirements in a format that makes them easier to identify and less likely to be misinterpreted. The commission adopts the reformat of this rule for clarification and correction purposes and is not adopting any changes to the existing requirements that are not recommended by the CTG. All existing control requirements specific to centrifugal compressors are adopted as new §115.173(a)(1) - (2). All existing control requirements specific to reciprocating compressor control requirements are adopted as new §115.173(b)(1) - (3). The reformatted compressor control device options and requirements are adopted as new §115.173(c)(1) - (5).

As noted in the preceding §115.170 applicability discussion, affected sources in the Bexar County area will become subject to the compressor control requirements beginning January 1, 2025. With the exception of the phrase "or rod packing" the provisions from former §115.173(1) are adopted as new §115.173(a)(1). The provisions from former §115.173(2) are adopted as new §115.173(a)(2).

The provisions from former §115.173(3)(A) are adopted as new §115.173(c). The provisions from current §115.173(3)(A)(i) are adopted as new §115.173(c)(1). The provisions from former §115.173(3)(A)(ii) are adopted as new §115.173(c)(2). The provisions from current §115.173(3)(B) are adopted as new §115.173(c)(3). The provisions from former §115.173(3)(C) are adopted as new §115.173(c)(4).

The provisions from former §115.173(3)(D) are adopted as new §115.173(b)(1). The provisions of former §115.173(3)(E) are adopted as new §115.173(b)(2). The commission adopts a new paragraph (3) in adopted new subsection (b) to specify that owners or operators of reciprocating compressors must route VOC gases, vapors, and fumes from the equipment through a closed vent system under negative pressure at the inlet for vapors to a control device that meets the requirements of adopted new subsection (c), if the owner or operator elects to use this method as opposed to replacing the rod packing. This option is not new and was already provided for reciprocating compressors in former §115.173(3) and is also in-line with the previous requirements for routing VOC emissions to a control device or to a process under former §115.173(1).

The provisions from former §115.173(4) are adopted as new §115.173(c)(5). The provisions from former §115.173(4)(A) are adopted as new §115.173(c)(5)(A). The provisions from former §115.173(4)(B) are adopted as new §115.173(c)(5)(B).

With these adopted changes, the commission is clarifying that for both centrifugal and reciprocating compressors subject to the requirements of Subchapter B, Division 7, control of VOC emissions must employ the use of a closed vent system that is designed and operated to route all gases, vapors, and fumes from the applicable equipment to the control device under normal operation and further operated under negative pressure at the inlet for all gases, vapors, and fumes.

§115.177 Fugitive Emission Component Requirements

The commission adopts revised §115.177(b)(7) to allow a valve subject to Subchapter B, Division 7 EPA Method 21 initial fugitive emission monitoring requirements and found not leaking during the most recent two successive monitoring surveys to be subsequently monitored on a quarterly rather than monthly basis beginning with the first month of the next calendar quarter after no leak was detected for two successive monitoring surveys. However, if the same valve were found to be leaking after initiation of monitoring on a quarterly basis, the component will have to return to its original monthly monitoring schedule and will be required to stay on this schedule until it was determined to not be leaking again for two successive months using EPA Method 21. This establishes a pathway for a less frequent monitoring schedule based on good performance. This pathway was recommended in EPA's 2016 oil and gas CTG and was intended to be included in the rules for this section adopted June 30, 2021 (Rule Project No. 2020-038-115-AI); however, the provision was inadvertently excluded from that rulemaking.

The commission adopts revised §115.177(b)(7) to codify an owner's or operator's option to satisfy the 2-year monitoring data requirement of the skip period request with valid historical monitoring data in accordance with the original rule's intent. It would be wasteful and unduly burdensome on regulated entities to disregard up to two years of valid data and require an additional two years of monitoring data when sufficient valid data is already available. This rulemaking also includes §115.177(b)(7) updates to clarify that EPA Method 21 must be used to qualify for a less frequent monitoring schedule in existing subparagraphs (A) and (B), aligning them with recommendations in EPA's 2016 oil and gas CTG.

§115.183 Compliance Schedules

The compliance schedule provisions in §115.183 were originally adopted without reference to applicable areas because only the DFW and HGB areas were subject to the rules in Division 7. Affected entities in both areas were required to comply by no later than January 1, 2023. With the adopted addition of the Bexar County area as subject to Subchapter B, Division 7 requirements, the compliance provisions must differentiate between the existing compliance schedules for the DFW and HGB areas and the adopted compliance schedule for the Bexar County area. The commission adopts amended subsections (a), (b), (d), and (e) to specify that these provisions apply in only the DFW and HGB areas. The compliance schedule for the Bexar County area is added as new subsection (g) to specify that affected Bexar County area equipment is required to comply with Subchapter B, Division 7 requirements no later than January 1, 2025.

No changes are adopted in subsections (c) and (f) because the existing compliance provisions, as written, apply to affected sources located in the Bexar County area. An owner or operator who becomes subject to the requirements of the division on or after the date specified for adopted new subsection (g) is required to comply with the requirements of Division 7 no later than 60 days after becoming subject. Demonstration of compliance with the recordkeeping required under existing §115.180(8) is required no later than 30 days after compliance with Division 7 is achieved. Finally, upon the date an owner or operator could no longer claim the exceptions in existing §115.174(e), the owner or operator is required to comply with the appropriate control requirement within 60 days.

Subchapter C: Volatile Organic Compound Transfer Operations

Division 1: Loading And Unloading Of Volatile Organic Compounds

§115.211 Emission Specifications

The commission adopts the addition of the Bexar County area to the list of areas subject to the emissions specifications in §115.211. The commission also adopts the addition of the Bexar County area to the list of areas subject to §115.211(1) requirements specifying a 0.09 pounds VOC per 1,000 gallons of gasoline loaded into transport vessel emission specification, which represents current RACT.

The commission adopts the addition of language to §115.211(2) referencing the definition of covered attainment counties in §115.10. This adopted addition indicates that Bexar County is not subject to the 0.17 pounds per 1,000 gallons of gasoline loaded emission specification once it is no longer defined as an attainment county, after December 31, 2024. At that time, beginning January 1, 2025, the more stringent 0.09 pounds per 1,000 gallons emission specification for the Bexar County 2015 ozone NAAQS nonattainment area is required.

§115.212 Control Requirements

The commission adopts the addition of the Bexar County area to the list of areas subject to §115.212 loading and unloading control requirements.

The commission adopts the addition of language to §115.212(b)(1) referencing the definition of covered attainment counties in §115.10to indicate that less stringent control requirements are no longer applicable in Bexar County beginning January 1, 2025. At that time, the new, more stringent control requirements in subsection (a) apply in the Bexar County 2015 ozone NAAQS nonattainment area.

§115.213 Alternate Control Requirements

The commission adopts the addition of the Bexar County area to the list of areas subject to existing §115.213(b) requirements.

Owners and operators of loading operations in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria ozone nonattainment areas have complied with these minimum 90% overall efficient VOC loading alternative control requirements for many years. This supports the commission's determination that the minimum 90% overall efficient alternate control requirement is presumed to represent current RACT for affected Bexar County area VOC loading sources.

The commission adopts revised §115.213(c) to end the overall control option for Bexar County on January 1, 2025 when sources in the county transition from compliance with §115.212(b)(1) to §115.212(a)(1).

§115.214 Inspection Requirements

The commission adopts the addition of the Bexar County area to the list of areas subject to existing §115.214(a) inspection requirements. Additionally, the commission adopts the addition of language to §115.214(b) and §115.214(b)(1) referencing the definition of covered attainment counties in §115.10. These adopted additions indicate that once Bexar County is no longer defined as an attainment county, after December 31, 2024, it is no longer subject to the inspection requirements in subsection (b). At that time, beginning January 1, 2025, the inspection requirements in subsection (a) apply in the Bexar County 2015 ozone NAAQS nonattainment area.

The commission adopts revised §115.214(b)(1) to state that the inspection requirements no longer apply in Bexar County beginning January 1, 2025.

§115.216 Monitoring and Recordkeeping Requirements

The commission adopts the addition of the Bexar County area to existing §115.216 monitoring and recordkeeping requirements. Bexar County is subject to this section as an attainment county, but it will no longer be defined as an attainment county after December 31, 2024.

§115.217 Exemptions

The commission adopts revisions to §115.217(a) exemptions to provide operators in the Bexar County area with an option to claim that exemption. Additionally, the commission adopts the addition of language to §115.217(b) referencing the definition of covered attainment counties in §115.10. This adopted addition indicates that once Bexar County is no longer defined as an attainment county, after December 31, 2024, exemptions in subsection (b) no longer apply. At that time, beginning January 1, 2025, the exemptions in subsection (a) apply in the Bexar County 2015 ozone NAAQS nonattainment area.

The commission also adopts revised §115.217(b)(1) to clarify that Bexar County is no longer included in the exception from the covered attainment county exemption beginning January 1, 2025.

§115.219 Counties and Compliance Schedules

The commission adopts renumbering former §115.219(f) as new §115.219(g) with adopted language revisions and adopts new §115.219(f) that specifies affected sources in the Bexar County area must be in compliance with adopted Subchapter C, Division 1 VOC transfer operations, transport vessel and marine transfer equipment requirements no later than January 1, 2025. The adopted §115.219 revisions maintain the Bexar County compliance schedule for currently affected sources until January 1, 2025, when affected Bexar County sources must comply with the new adopted §115.219(f) provisions.

The commission adopts replacement of former §115.219(g), which is no longer a potential scenario, with a compliance schedule for sources that become subject to VOC loading and unloading provisions on or after the designated Subchapter C, Division 1 compliance date. Adopted new §115.219(g) provides a maximum 60 days for affected sources, which become subject to Subchapter C, Division 1 on or after their appropriate §115.219 compliance date, to comply with these VOC transfer operation requirements.

Division 2: Filling Of Gasoline Storage Vessels (Stage I) For Motor Vehicle Fuel Dispensing Facilities

§115.221 Emission Specifications

The commission adopts the addition of the Bexar County area to the list of areas subject to Stage I Motor Vehicle Fuel Dispensing Facilities RACT specifications in §115.221.

§115.222 Control Requirements

The commission adopts the addition of the Bexar County area to the list of areas subject to VOC control requirements during gasoline transfer specified in §115.222(5). These control requirements already apply to existing affected sources located in other ozone nonattainment areas covered by Subchapter C, Division 2.

The commission also adopts the addition of the Bexar County area to the list of areas subject to the VOC control requirements for storage tanks in §115.222(9). Additionally, the commission adopts added language to §115.222(10) indicating that the requirements in that paragraph, which applies in attainment counties, will no longer apply in Bexar County after December 31, 2024. This adopted addition indicates that once Bexar County is no longer defined as an attainment county, it is no longer subject to the control requirements in paragraph (10) for attainment counties.

§115.224 Inspection Requirements

The commission adopts the addition of the Bexar County area to the list of areas subject to the inspection requirements in §115.224. This amendment ensures the area will remain subject to the Stage I inspection requirements after Bexar County ceases to be defined as a covered attainment county.

§115.226 Recordkeeping Requirements

The commission adopts the addition of the Bexar County area to the list of areas subject to the recordkeeping requirements in §115.226. This amendment ensures the area will remain subject to the Stage I recordkeeping requirements after Bexar County ceases to be defined as a covered attainment county.

§115.227 Exemptions

The commission adopts the addition of the Bexar County area to the listed areas to which §115.227(1) applies. This provides Bexar County owners and operators with an option to claim exemptions from Stage I nonattainment rules, which are already available in the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso and Houston-Galveston-Brazoria nonattainment areas.

The commission adopts amended §115.227(3) and (4) to clarify that affected owners and operators in Bexar County area have the option to claim the current exemption until they must comply with Stage I RACT rules on January 1, 2025.

§115.229 Counties and Compliance Schedules

The commission adopts the addition of language to existing §115.229(c) to specify that Bexar County is no longer subject to the attainment county compliance schedule in the subsection beginning January 1, 2025, the date by which affected sources in the Bexar County 2015 ozone NAAQS nonattainment area must instead comply with the nonattainment area RACT requirements in Division 2.

The commission adopts removal of former §115.229(f) that contains obsolete language (since Wise County's nonattainment status has been resolved) and insertion of new §115.229(f) language with a deadline no later than January 1, 2025 for affected sources in the Bexar County area to comply with the adopted Stage I moderate nonattainment rule requirements.

Division 3: Control Of Volatile Organic Compound Leaks From Transport Vessels

§115.234 Inspection Requirements

The commission adopts the addition of the Bexar County area to the listed areas subject to §115.234(a). This implements RACT and makes affected sources in the Bexar County area subject to existing transport vessel VOC leak inspection requirements currently applicable in the BPA, DFW, El Paso, and HGB areas.

§115.235 Approved Test Methods

The commission adopts the addition of the Bexar County area to the list of areas subject to testing requirements in §115.235(a) to mandate test methods required by that subsection when conducting annual vapor-tightness tests on affected Bexar County area transport vessels. Additionally, the commission adopts added language to §115.235(b),indicating that the requirements in that paragraph, which apply in attainment counties, will no longer apply in Bexar County after December 31, 2024.

The test methods are the same for §115.235(a) and (b) so affected sources will be able to use the same test methods under each subsection.

§115.237 Exemptions

The commission adopts revisions to §115.237(a) to provide the opportunity for affected Bexar County area sources to claim the same transport vessel leak inspection exemptions provided in this subsection. Additionally, the commission adopts added language to §115.237(b), indicating that the requirements in that paragraph, which apply in attainment counties, will no longer apply in Bexar County after December 31, 2024.

§115.239 Counties and Compliance Schedules

The commission adopts new §115.239(e) to establish January 1, 2025 as the date by which owners and operators of transport vessels in the Bexar County area must comply with adopted Subchapter C, Division 3 rules. Deletion of former §115.239(e) is adopted because the status of Wise County nonattainment classification has been decided.

Subchapter D: Petroleum Refining, Natural Gas Processing And Petrochemical Processes

Division 1: Process Unit Turnaround And Vacuum-Producing Systems In Petroleum Refineries

§115.311 Emission Specifications

The commission adopts the addition of the Bexar County area to §115.311(a) VOC RACT emission specifications for process unit turnaround and vacuum-producing systems.

§115.312 Control Requirements

The commission adopts the addition of the Bexar County area to §115.312(a) VOC RACT emission control requirements for process unit turnaround and vacuum-producing systems. These same control requirements to satisfy RACT also apply for affected sources located in other ozone nonattainment areas currently covered by Subchapter D, Division 1. The commission also adopts the addition of a reference to §115.10, relating to Definitions, for the listed areas subject to subsection (a).

§115.315 Testing Requirements

The commission adopts the addition of the Bexar County area to existing §115.315(a) testing requirements. These same testing requirements apply for affected sources located in other ozone nonattainment areas currently covered under Subchapter D, Division 1.

§115.316 Monitoring and Recordkeeping Requirements

The commission adopts the addition of the Bexar County area to existing §115.316(a) monitoring and recordkeeping requirements. Beginning January 1, 2025, the adopted compliance date for the Bexar County ozone nonattainment area as specified in adopted new §115.139(c), owners or operators of affected sources in the area must conduct the appropriate monitoring and develop and maintain sufficient records to demonstrate compliance with all applicable requirements of Subchapter D, Division 1.

§115.319 Counties and Compliance Schedules

The commission adopts new §115.319(c) to establish a compliance schedule for affected entities in the Bexar County 2015 ozone NAAQS nonattainment area. Compliance with the adopted Subchapter D, Division 1 rules is required for affected Bexar County sources by no later than January 1, 2025.

Division 3: Fugitive Emission Control In Petroleum Refining, Natural Gas/Gasoline Processing, And Petrochemical Processes On Ozone Nonattainment Areas

§115.352 Control Requirements

The commission adopts the addition of the Bexar County area to §115.352 VOC RACT control requirements for fugitive emissions.

§115.353 Alternate Control Requirements

The commission adopts the addition of the Bexar County area to existing §115.353(a) nonattainment area alternate control requirements.

§115.354 Monitoring and Inspection Requirements

The commission adopts the addition of the Bexar County area to existing §115.354 VOC RACT monitoring and inspection provisions.

§115.355 Approved Test Methods

The commission adopts the addition of the Bexar County area to existing §115.355 petroleum refining, natural gas/gasoline processing and petrochemical processes approved test methods in determining compliance with Subchapter D, Division 3 provisions.

§115.356 Recordkeeping Requirements

The commission adopts the addition of the Bexar County area to existing in §115.356 petroleum refining, natural gas/gasoline processing and petrochemical processes recordkeeping requirements.

§115.357 Exemptions

The commission adopts the addition of the Bexar County area to existing §115.357 exemptions for petroleum refining, natural gas/gasoline processing, and petrochemical process sources that are able to meet specified conditions.

The commission adopts revised §115.357(15) to extend this exemption to Bexar County sources and ensure that affected sources that comply with one division of Chapter 115 regulations will not be required to comply with duplicative requirements from other Chapter 115 divisions. The paragraph references the Subchapter B, Division 7 compliance schedules in §115.183 and the revisions remove the former reference to the January 1, 2023 compliance date for the Subchapter B, Division 7 rules adopted in 2021 (2020-038-115-AI). The commission additionally adopts the addition of language indicating an affected operation must be subject to and must comply with the requirements in Subchapter B, Division 7 to be exempt from the requirements in Subchapter D, Division 3.

§115.359 Counties and Compliance Schedules

The commission adopts a new subsection §115.359(e) establishing a compliance schedule for affected sources in the

Bexar County area. Under new subsection §115.359(e), Bexar County sources subject to adopted Subchapter D, Division 3 requirements must comply no later than January 1, 2025. By adding Bexar County to §115.359(d), sources newly subject after January 1, 2025 will have 60 days to come into compliance. Additionally, the commission adopts removal of former §115.359(e) because Wise County's nonattainment status has been resolved.

Subchapter E: Solvent Using Processes

Division 1: Degreasing Processes

Contingency Measure: Degreasing VOC Limit

The commission adopts amended Subchapter E, Division 1 to establish a new limit for VOC-containing solvent for cold solvent degreasing processes, open-top vapor degreasing processes, and conveyorized degreasing processes. The adopted limit will be implemented in the DFW and/or HGB 2008 ozone NAAQS nonattainment areas when triggered for SIP contingency purposes.

§115.410 Applicability and Definitions

New language is adopted and added to the applicability requirements in §115.410(a) to indicate that the contingency requirements in Division 1 will not apply until the commission publishes notice in the *Texas Register* that the contingency measure is triggered and subsequently applies for affected sources located in the DFW area, the HGB area, or both the DFW and HGB areas. The existing control requirements of §115.412(b) will be triggered for and apply to affected sources in the DFW ozone nonattainment area upon publication in the *Texas Register* by the commission as provided in adopted renumbered §115.419(f). The existing control requirements of §115.412(c) will be triggered for and apply to affected sources in the HGB ozone nonattainment area upon publication in the *Texas Register* by the commission as provided in adopted new §115.419(g).

The change to remove Bexar County from the list of individual counties and add the Bexar County area to the list of nonattainment areas is adopted by the commission. This change is necessary to include the Bexar County area in the list of current nonattainment areas for ozone subject to the requirements of Subchapter E, Division 1 due to the area's designation under the 2015 ozone NAAQS.

§115.411 Exemptions

The commission adopts a new subsection (b) to §115.411, to move existing rule requirements of §115.411 under an adopted new §115.411(a). This change is adopted to distinguish between the existing requirements of the section and the adopted new requirements under adopted new subsection (b) of §115.411. The existing rule requirements of §115.411 that are moved to adopted new subsection (a) are also revised to add the Bexar County ozone nonattainment area to the list of ozone nonattainment areas currently covered under Subchapter E, Division 1. This change is necessary due to the area's designation of nonattainment under the 2015 ozone NAAQS. Further, Bexar County is removed from the list of individual covered attainment counties in the existing provisions of §115.411, now adopted as new §115.411(a). The existing exemptions under §115.411, now adopted as new §115.411(a), for Bexar County as a covered attainment county will continue to apply in the Bexar County 2015 ozone NAAQS nonattainment area.

The existing rules in subsection (a) are also revised to indicate that the exemptions in that subsection will no longer be available for affected sources and operations subject to the requirements of §115.412(b) in the DFW area, of §115.412(c) in the HGB area, or of both §115.412(b) and (c) in the DFW and HGB areas, respectively, upon the compliance schedules for contingency measures specified in adopted renumbered §115.419(f), for the DFW area, or in adopted new §115.419(g), for the HGB area.

Under adopted new subsection (a)(1), the former reference to §115.412(1)(B) is adopted as §115.412(a)(1)(B). Similarly, in adopted new subsection (a)(2), the former reference to §115.412(1)(E) is adopted as §115.412(a)(1)(E). Under adopted new §115.411(a)(3), the former reference to §115.412(3)(A) is adopted as §115.412(a)(3)(A). Finally, the former reference to §115.412(1) is adopted as §115.412(a)(1) in adopted new §115.411(a)(4). See the discussion for §115.412 for similar restructuring of existing rule provisions.

Adopted new subsection (b) adds exemptions that will apply under a triggered SIP contingency requirement. If triggered, these will apply instead of the exemptions under former §115.411, now adopted as new §115.411(a), in the DFW, the HGB, or both the DFW and HGB 2008 ozone NAAQS nonattainment areas. The exemptions adopted in new §115.411(b)(1) - (3) are consistent with the existing exemptions in former §115.411(1) - (2) and (4), now adopted as new §115.411(a)(1) - (2) and (4), with the exception that, as of the compliance date in adopted renumbered §115.419(f) or in adopted new §115.419(g), or both, operations will be required to use a solvent with a VOC content of 25 grams per liter (g/l) or less. Additional minor formatting and reference revisions are adopted to align the adopted rules with the revised structure of the section.

§115.412 Control Requirements

The commission adopts new subsections (b) and (c) in §115.412, and moves rule requirements of former §115.412(a) under adopted new §115.412(a). This change is adopted to distinguish between the former requirements of the section and the adopted new contingency measures requirements under subsections (b) and (c) of §115.412. The rule requirements of §115.412 that are moved to adopted new subsection (a) are also revised to add the Bexar County ozone nonattainment area to the list of ozone nonattainment areas currently covered under Subchapter E, Division 1. This change is necessary due to the area's designation of nonattainment under the 2015 ozone NAAQS. Further, Bexar County is removed from the list of individual covered attainment counties in former §115.412, now adopted as new §115.412(a). The control requirements under former §115.412, now adopted as new §115.412(a), for Bexar County as a covered attainment county continue to apply in the Bexar County area until December 31, 2024. Newly affected sources located in the Bexar County ozone nonattainment area will be required to demonstrate compliance with the control requirements of this section beginning January 1, 2025.

Adopted new subsection (b) establishes a VOC content limit of 25 g/l for solvent used in cold solvent cleaning, open-top vapor degreasing, and conveyorized degreasing for operations in the DFW area according to the compliance schedule in adopted renumbered §115.419(f). Adopted new subsection (c) establishes the same requirements for contingency purposes in the HGB area according to the compliance schedule in adopted new §115.419(g). The new control requirements adopted under subsections (b) and (c), respectively, will apply in addition to existing control measures in §115.412, now adopted as §115.412(a), if

triggered for contingency purposes. Additional minor formatting and reference revisions are adopted to align the adopted rules with the existing structure of the section and to make non-substantive formatting corrections.

§115.413 Alternate Control Requirements

The commission adopts a new exception to the existing alternate control requirements in §115.413 to allow for new alternate control requirements to apply in the DFW area and/or HGB area if the contingency measure for degreasing operations under Subchapter E, Division 1, is triggered. Additionally, the Bexar County ozone nonattainment area is added to the list of ozone nonattainment areas currently covered under Subchapter E, Division 1. Further, Bexar County is also removed from the list of individual covered attainment counties in existing §115.413. These alternate control requirements for owners or operators of affected sources located in the Bexar County ozone nonattainment area will take effect beginning January 1, 2025. Since only the DFW and/or HGB areas will be subject to the adopted new alternate control requirement provisions in adopted new paragraph (4), adopted language is added to §115.413 excepting paragraph (4) from applicability to all the areas subject to the section.

Pursuant to changes for the restructuring of existing rule provisions under §115.412, the commission adopts revised references to former §115.412(1) to new §115.412(a)(1) under existing paragraph (2) of §115.413. The former references to §115.412(2)(D) and §115.412(3)(A) in paragraph (3) of §115.413 are adopted as new §115.412(a)(2)(D) and (a)(3)(A), respectively.

To address SIP contingency control-related requirements under new subsections (b) and (c) of §115.412, the commission adopts a new paragraph (4) under §115.413 to specify alternate control requirements applicable in the DFW area, the HGB area, or both the DFW and HGB areas if one or both of the areas becomes subject to the control requirements in adopted new §115.412(b) and/or (c), respectively. The adopted alternate contingency control requirements will allow the use of an airless/air-tight or other alternate cleaning system approved by EPA under specified conditions if it achieves equivalent emissions reductions and is approved by the executive director of the commission.

Conditions for use of the alternate method are added under adopted new §115.413(4)(A) - (E) and relate to equipment operation, waste storage, spill cleanup, and equipment maintenance. Additional minor formatting and reference revisions are adopted to align the adopted rules with the existing structure of the section.

§115.415 Testing Requirements

To address the Bexar County area's designation as nonattainment for ozone under the 2015 ozone NAAQS, the commission adopts the inclusion of the Bexar County area in the list of ozone nonattainment areas currently subject to Subchapter E, Division 1. This change is necessary to subject affected sources located in the Bexar County area to the existing testing requirements of §115.415 for owners or operators to demonstrate compliance with the RACT requirements of the division. Bexar County is removed from the list of current attainment counties in the introductory paragraph of §115.415. There is no change to testing requirements for owners or operators of affected sources located in the Bexar County ozone nonattainment area.

The former reference to §115.412(1) in paragraph (1) of the section is revised to §115.412(a)(1). The former references to §115.412(2)(D)(iv) and (3)(A)(ii) are also revised to new §115.412(a)(2)(D)(iv) and (a)(3)(A)(ii), respectively, in paragraph (2) of §115.415. These changes are adopted to align with the restructuring of other rule sections under Subchapter E, Division 1.

New testing provisions are adopted to establish VOC-content testing requirements to demonstrate compliance with the SIP contingency control requirements adopted in new §115.412(b) and (c). The adopted new test methods are EPA's Method 24 or alternative procedures described in 40 Code of Federal Regulations (CFR) §60.446. The adopted new test methods are added as §115.415(3), and existing paragraph (3) is renumbered to paragraph (4). Owners or operators of affected sources located in the DFW area, the HGB area, or both the DFW and HGB areas will be required to comply with these new testing requirements to verify compliance with new contingency measures, if triggered.

§115.416 Recordkeeping Requirements

To ensure compliance with the RACT requirements of Subchapter E, Division 1 for affected sources located in the Bexar County ozone nonattainment area, the commission adopts the inclusion of the Bexar County area in the list of ozone nonattainment areas currently covered under Subchapter E, Division 1 recordkeeping requirements. Bexar County is removed from the current list of covered attainment counties concerning recordkeeping requirements for those attainment counties. Owners or operators of affected sources located in the Bexar County ozone nonattainment area are required to demonstrate compliance the recordkeeping requirements of the section beginning January 1, 2025.

In paragraph (2), the commission adds a reference to adopted new paragraph (3) of §115.415. The former reference to §115.411(5) in paragraph (3) of the section is adopted as §115.411(a)(5).

§115.419 Counties and Compliance Schedules

Bexar County is currently subject to Subchapter E, Division 1 requirements as an attainment county. The existing requirements for Bexar County as a covered attainment county will continue to apply in the Bexar County area until December 31, 2024. The commission adopts administrative changes to the compliance schedules in §115.419 to address Bexar County's change in status from a covered attainment county to an ozone nonattainment area. The existing reference to Bexar County in §115.419(b) is removed to clarify that the area is no longer part of the covered attainment counties that are listed in that subsection. Bexar County is added to the list in §115.419(a) of counties within ozone nonattainment and maintenance areas. Existing §115.419(a) specifies that the compliance date for the counties listed in that subsection has passed and that the owner or operator of an affected source must continue to comply with the existing provisions of Division 1. Including Bexar County in subsection (a) ensures there is no gap in compliance for affected sources in Bexar County during the transition time from covered attainment county to ozone nonattainment area. The compliance obligations in Bexar County are not changed, only the area's status listing in the section.

This adopted rulemaking removes existing §115.419(f) because Wise County's attainment status has been resolved as described elsewhere in the section by section discussion. The commission adopts new subsections (f) and (g) to establish the compliance schedules for the contingency requirements for degreasing operations applicable in the DFW area, the HGB area, or both the DFW and HGB areas.

Adopted new subsections (f) and (g) provide that applicable operations in the affected area(s) must comply with the contingency control requirements, if triggered, for degreasing operations by no later than 270 days after the commission publishes notification in the *Texas Register* that the contingency measure is necessary. Adopted new subsection (f) will apply in the DFW area and adopted new subsection (g) will apply in the HGB area. The commission adopts the replacement of "nine months" in proposed section §115.419 with "270 days" in the adopted section in order to clarify the compliance date for contingency measures in the event that they are triggered. Number of days is more precise than months and allows for consistency in application and alleviates confusion associated with calculating a nine-month period that may begin and/or end outside of a defined calendar month.

The adopted rulemaking also adds a new subsection (h) to specify that an owner or operator of an affected source in the Bexar County area that becomes subject to the requirements of the division must demonstrate compliance with all applicable requirements of the division no later than 60 days after triggering applicability to the requirements of this division.

Division 2: Surface Coating Processes

§115.420 Applicability and Definitions

The commission adopts the inclusion of the Bexar County area in §115.420(a) to ensure that Division 2 surface coating process RACT requirements are applicable to affected sources in the Bexar County area. Bexar County owners or operators are required to comply with these requirements beginning January 1, 2025. The commission adopts the addition of "Bexar County" to the applicability designations in §115.420(a)(3), (5) - (7), (9), and §115.420(a)(11) - (15). Bexar County sources will be required to comply with the following current Division 2 VOC RACT surface coating categories that are not addressed in current Subchapter E, Division 5: Coil coating, Fabric coating, Vinyl coating, Can coating, Vehicle refinishing coating (body shops), Factory surface coating of flat wood paneling, Aerospace coating, Mirror backing coating, Wood parts and products coating, and Wood manufacturing coating. TCEQ was unable to confirm that applicable sources do not exist in Wise County because sources above the CTG applicability threshold may be small enough to not require registered air permits or emission inventory reporting.

The commission adopts the removal of the exceptions for Wise County in §115.420(a)(9), (10), and (13) - (15). This makes Wise County subject to the same vehicle refinishing coating (body shops), miscellaneous metal parts and products coating, mirror backing coating, wood parts and products coating, and wood manufacturing coating VOC RACT surface coating requirements as the other DFW 2008 ozone NAAQS nonattainment area counties.

§115.422 Control Requirements

The commission adopts the addition of the Bexar County area to §115.422 to make these existing surface coating VOC RACT control requirements applicable to affected sources in the Bexar County 2015 ozone NAAQS nonattainment area. The adopted rulemaking adds the Bexar County area to §115.422(6) to make these existing surface coating VOC RACT control requirements applicable to affected sources in the Bexar County area.

The commission also adopts the addition of the Bexar County area to §115.422(7) to make these existing VOC RACT control requirements applicable to paper surface coating lines, which incorporate work practices to limit VOC emissions, applicable to affected sources in the Bexar County 2015 ozone NAAQS nonattainment area.

Owners or operators of affected sources located in the Bexar County ozone nonattainment area are required to demonstrate compliance with the control requirements for surface coating processes beginning January 1, 2025. The RACT control requirements of §115.422 already exist for other ozone nonattainment areas currently covered under Subchapter E, Division 2.

§115.423 Alternate Control Requirements

The commission adopts the addition of the Bexar County area in §115.423 to make these existing surface coating VOC RACT alternate control requirements available to affected sources in the Bexar County ozone nonattainment area beginning January 1, 2025.

The commission adopts the addition of the Bexar County area in §115.423(3)(B) to make these existing surface coating efficiency testing requirements applicable to affected sources in the Bexar County ozone nonattainment area.

§115.425 Testing Requirements

The commission adopts the addition of the Bexar County area to §115.425 and makes these existing surface coating testing and test method requirements applicable to affected sources in the Bexar County area. These testing requirements currently apply to other ozone nonattainment areas and include specified test methods, test methods for demonstrating compliance with the alternate control requirements of §115.423(3), and test methods for demonstrating compliance with the alternate emission limits of §115.421(11). Owners or operators of affected sources located in the Bexar County ozone nonattainment area are required to comply beginning January 1, 2025.

The commission adopts the addition of the Bexar County area to existing paragraph (4) which currently applies to other ozone nonattainment areas covered under Subchapter E, Division 2. The adopted revision applies existing procedures and testing requirements for determining capture efficiency to affected sources in the Bexar County ozone nonattainment area. The commission adopts amended §115.425(4)(C)(ii) to add a compliance schedule for initial capture efficiency testing for the Bexar County area of 180 days prior to the adopted compliance deadline for the Bexar County ozone nonattainment area in adopted new §115.429(f). This makes the effective deadline for affected facilities in the Bexar County 2015 ozone NAAQS nonattainment to complete such capture efficiency testing July 1, 2024, six months prior to the adopted rulemaking compliance deadline of January 1, 2025.

§115.426 Monitoring and Recordkeeping Requirements

The commission adopts the addition of the Bexar County area to §115.426 and makes these existing surface coating monitoring and recordkeeping requirements applicable to affected sources in the Bexar County ozone nonattainment area. These requirements already apply in other ozone nonattainment areas covered under Subchapter E, Division 2 and are necessary for owners or operators to demonstrate compliance with the VOC RACT requirements of the division for affected sources.

§115.427 Exemptions

The commission adopts the addition of Bexar County to §115.427 to clarify that Bexar County is now a defined ozone nonattainment area. The commission adopts the addition of

Bexar County to §115.427(1)(B), and §115.427(3) to provide newly affected sources in the Bexar County ozone nonattainment area with the existing surface coating exemptions that are currently available in other ozone nonattainment areas covered under Subchapter E, Division 2. The commission adopts the deletion of the exception for Wise County in §115.427(9) and provides owners or operators of affected sources in Wise County with the option to claim an exemption that is currently available to the other Dallas-Fort Worth area counties with the same ozone nonattainment classification.

§115.429 Counties and Compliance Schedules

The commission adopts a new subsection to establish a compliance schedule for the new Bexar County ozone nonattainment area. The adopted new subsection specifies that an owner or operator of an affected surface coating process in the Bexar County area is required to demonstrate compliance with all applicable requirements of the division by no later than January 1, 2025. The adopted new subsection also specifies that the owner or operator of a surface coating process in the Bexar county ozone nonattainment area that becomes subject to the requirements of Subchapter E, Division 2 on or after the adopted compliance date of January 1, 2025 is required to comply with all applicable requirements of the division as soon as practicable but no later than 60 days after triggering applicability to the rules of the division. The commission also adopts removal of former §115.429(f) because Wise County's nonattainment designation under the 2008 ozone NAAQS has been resolved. The new subsection applicable for the Bexar County area is added as adopted new §115.429(f).

Division 3: Flexographic And Rotogravure Printing

§115.430 Applicability and Definitions

The commission adopts the addition of the Bexar County area to §115.430(a) to make flexographic and rotogravure printing process VOC RACT requirements under Subchapter E, Division 3 applicable to affected sources in the Bexar County area that become newly subject to the division beginning January 1, 2025.

§115.431 Exemptions

The commission adopts the addition of the Bexar County area to §115.431(a) to provide owners and operators in the Bexar County area with an option to claim exemptions from flexographic and rotogravure printing process ozone nonattainment area regulations that will otherwise apply to newly affected sources upon triggering applicability under adopted revised §115.430. These exemptions currently exist for owners or operators of affected sources located in other ozone nonattainment areas currently covered by Subchapter E, Division 3. The adopted rulemaking also adds the DFW 2008 ozone NAAQS severe nonattainment area to §115.431(a)(2) to lower the 10-county DFW area exemption limit to its new 25 tpy major source threshold for a severe nonattainment area. This change is necessary to address the change in the area's major source threshold of VOC from 50 to 25 tpy based on the area's reclassification from serious to severe ozone nonattainment under the 2008 ozone NAAQS.

The commission adopts application of the exemption in §115.431(a)(3) to the Bexar County area to provide owners or operators of affected sources in the Bexar County area with an option to exempt all flexible package printing lines and associated cleaning operations, that will have a combined weight of total actual VOC emissions for all coatings less than 3.0 tpy, from the existing control requirements of §115.432(c) and (d). This exemption is available for other ozone nonattainment areas with affected sources subject to the control requirements of Subchapter E, Division 3.

The commission adopts revised §115.431(a)(4) to provide owners or operators the option to exempt affected sources in the Bexar County area from the existing control requirements of §115.432(c). These newly affected sources are sources that have an uncontrolled maximum potential to emit VOC of less than 25 tpy for all coatings from newly subject flexible package printing lines. This exemption is available for other affected sources located in other ozone nonattainment areas covered under Subchapter E, Division 3.

§115.432 Control Requirements

The commission adopts the addition of the Bexar County area to §115.432(a) and makes these existing publication and packaging rotogravure and flexographic printing process VOC RACT control requirements applicable to affected sources in the Bexar County area.

The commission adopts the inclusion of the Bexar County area to §115.432(c) and makes these existing flexible packaging printing process VOC RACT control requirements applicable to affected sources in the Bexar County area. Owners or operators of affected sources in the Bexar County area are required to comply with these existing control requirements, which currently apply for affected sources located in other ozone nonattainment areas covered under Subchapter E, Division 3, beginning on the adopted compliance date specified in adopted revised §115.439. To be consistent with a rule start date in existing subsection (c) for other ozone nonattainment areas subject to the requirements of the subsection, the commission adopts a start date of January 1, 2025 for when the control requirements of the subsection will begin to apply for the Bexar County area.

§115.435 Testing Requirements

The commission adopts the addition of the Bexar County area to §115.435(a) and makes the existing testing and test method requirements of the section applicable to affected sources in the Bexar County area. This change is necessary to ensure that affected sources in the Bexar County ozone nonattainment area will be able to demonstrate compliance with the existing flexographic and rotogravure printing process VOC RACT requirements of the division.

These requirements exist for other ozone nonattainment areas currently covered by Division 3.

§115.436 Monitoring and Recordkeeping Requirements

The commission adopts changes to make the existing flexographic and rotogravure printing line monitoring and recordkeeping requirements in §115.436(a) applicable to affected sources in the Bexar County area by including the Bexar County area in §115.436(a).

The commission adopts changes to make the existing flexible package printing line monitoring and recordkeeping requirements in §115.436(c) applicable to affected sources in the Bexar County area by including the Bexar County area in §115.436(c). This change is necessary to ensure that owners or operators of affected sources, specifically flexible package printing lines, in the Bexar County area are required to conduct appropriate and sufficient monitoring and to develop and maintain appropriate and sufficient records of such actions to ensure compliance with the existing flexographic and rotogravure printing process VOC

RACT requirements of Subchapter E, Division 3. Compliance is required beginning January 1, 2025. These requirements exist for other ozone nonattainment areas currently covered by Division 3.

§115.439 Counties and Compliance Schedules

The commission adopts the addition of "Bexar County" in §115.439(d) to clarify that the owner or operator of an affected source that becomes subject to the requirements of Subchapter E, Division 3 on or after its applicable compliance date must demonstrate compliance with the requirements of Division 3 as soon as practicable but no later than 60 days after the source becomes subject to the division. For affected sources in the other ozone nonattainment areas covered under Subchapter E, Division 3, the applicable compliance date of March 1, 2013 has passed, and owners or operators of sources in these other areas that become newly subject will have up to 60 days to demonstrate compliance with the division. For newly affected sources in the Bexar County area, the adopted compliance date is specified in adopted new subsection (e). Similarly, owners or operators of sources in the Bexar County area that become newly subject to the requirements of Division 3 on or after the date specified in adopted new §115.439(e) will have up to 60 days to demonstrate compliance with the division.

The commission adopts a new §115.439(e) to establish a compliance schedule for affected sources that become newly subject to the new Bexar County ozone nonattainment area rules. Owners or operators of flexographic or rotogravure printing processes in the Bexar County area that become subject to the requirements of Division 3 must comply with the applicable requirements no later than January 1, 2025.

Division 4. Offset Lithographic Printing

§115.440 Applicability and Definitions

The commission adopts the addition of the Bexar County area to §115.440(a) to make offset lithographic printing process VOC RACT requirements under Subchapter E, Division 4 applicable to affected sources in the Bexar County area that become newly subject to the division beginning January 1, 2025.

The commission adopts revised §115.440(b)(8)(A) by lowering the amount of VOC emissions in the definition for major printing sources for Dallas-Fort Worth counties, except Wise County, from the previous 50 tpy threshold to a 25 tpy threshold. This adopted decrease in the uncontrolled emission threshold for affected major printing sources in the DFW area excluding Wise County takes effect on November 7, 2025. This change is necessary to address the area's severe ozone nonattainment reclassification from serious ozone nonattainment under the 2008 ozone NAAQS. The threshold of 50 tpy for purposes of subparagraph (A) continues to apply through November 6, 2025, after which the threshold of 25 tpy applies.

The commission adopts revised §115.440(b)(8)(C) to lower the amount of VOC emissions in the definition for major printing sources in Wise County to a 25 tpy threshold. This adopted decrease in the uncontrolled emission threshold for major printing sources in Wise County requires compliance on November 7, 2025. This change is necessary to align the major source threshold for Wise County with the rest of the DFW area. The threshold of 100 tpy for purposes of subparagraph (C) continues to apply through November 6, 2025, after which the threshold of 25 tpy applies.

To address the Bexar County area's designation of nonattainment for the 2015 ozone NAAQS, the commission also adopts the addition of a new §115.440(b)(8)(D) that establishes a major printing source threshold of 100 tons of VOC per calendar year for affected sources located in the Bexar County ozone nonattainment area. This applicability threshold for sources in the area applies beginning on January 1,2025.

The commission adopts revised §115.440(b)(9)(A) to lower the amount of VOC emissions in the definition for minor printing sources for Dallas-Fort Worth counties, except Wise County, from the previous threshold of less than 50 tpy to a threshold of less than 25 tpy. This adopted decrease in the uncontrolled emission threshold for affected minor printing sources in the DFW area, excluding Wise County, takes effect on November 7, 2025. This change is necessary to address the area's severe ozone nonattainment reclassification from serious ozone nonattainment under the 2008 ozone NAAQS. The threshold of less than 50 tpy for purposes of subparagraph (A) of paragraph (9) continues to apply through November 6, 2025, after which the threshold of less than 25 tpy applies.

The commission adopts revised §115.440(b)(9)(C) to lower the amount of VOC emissions in the definition for minor printing sources in Wise County to a threshold of less than 25 tpy. This adopted decrease in the uncontrolled emission threshold for minor printing sources in Wise County requires compliance on November 7, 2025. This change is necessary to align the major source threshold for Wise County with the rest of the DFW area. The threshold of less than 100 tpy for purposes of subparagraph (C) of paragraph (9) continues to apply through November 6, 2025 after which the threshold of less than 25 tpy applies.

To address the Bexar County area's designation of nonattainment for the 2015 ozone NAAQS, the commission also adopts the addition of a new §115.440(b)(9)(D) that establishes a minor printing source threshold at less than 100 tons of VOC per calendar year for affected sources located in the Bexar County ozone nonattainment area. This applicability threshold for sources in the area applies beginning on January 1, 2025.

§115.441 Exemptions

The commission adopts the addition of the Bexar County area to §115.441(a) and provides owners or operators of affected sources in the Bexar County area with an option to exempt all offset lithographic printing lines, with combined VOC emissions for all coatings of less than 3.0 tons per year, when uncontrolled, from the existing monitoring and recordkeeping requirements of §115.446 for offset lithographic printing processes. This exemption is available for affected sources located in other ozone nonattainment areas currently covered by Subchapter E, Division 4.

The commission adopts the addition of the Bexar County area to §115.441(b) to allow owners or operators of minor printing sources in the Bexar County area to claim exemptions from otherwise applicable control requirements under §115.442(c). These same exemptions currently exist for similar affected sources located in other ozone nonattainment areas that are also covered by Subchapter E, Division 4. Owners or operators of affected sources located in the Bexar County area will be able to claim these exemptions beginning January 1, 2025.

§115.442 Control Requirements

The commission adopts the addition of the Bexar County area to §115.442(b) to specify that the major source offset lithographic

printing process VOC RACT control requirements applies to affected sources in the Bexar County area that become newly subject to the requirements of the division after triggering applicability under §115.440. This change is necessary to include the newly designated Bexar County ozone nonattainment area for purposes of the 2015 ozone NAAQS.

The commission adopts the addition of the Bexar County area to §115.442(c) to specify that the minor source offset lithographic printing process material VOC limits apply to affected sources in the Bexar County area upon those sources triggering applicability under §115.440 and becoming newly subject to the requirements of Division 4. This change is necessary to include the newly designated Bexar County ozone nonattainment area for purposes of the 2015 ozone NAAQS.

These control requirements apply to owners or operators of affected sources in the Bexar County area subject to the requirements of the division beginning on January 1, 2025.

§115.443 Alternate Control Requirements

The commission adopts the addition of the Bexar County area to §115.443 and enables affected sources in the Bexar County area to comply with lithographic printing process alternative control requirements approved by the executive director. This offset lithographic printing alternative control requirement compliance option is already available for affected sources located in other ozone nonattainment areas covered under Subchapter E, Division 4. These alternate control provisions apply beginning January 1, 2025.

§115.445 Approved Test Methods

The commission adopts the addition of the Bexar County area to §115.445 to make the current testing and test method requirements of the section applicable to affected sources in the Bexar County area. This change is necessary to ensure that affected sources in the Bexar County ozone nonattainment area demonstrate compliance with the existing offset lithographic printing process VOC RACT requirements of the division.

These requirements exist for other ozone nonattainment areas currently covered by Division 4. Owners or operators must use these methods and procedures beginning January 1, 2025.

§115.446 Monitoring and Recordkeeping Requirements

The commission adopts the addition of the Bexar County area to §115.446(b) to specify that owners or operators of affected sources in the Bexar County area are required to conduct monitoring and develop and maintain records according to the existing requirements of §115.446(b). This adopted change is necessary to ensure compliance with the existing offset lithographic printing process VOC RACT requirements of Subchapter E, Division 4. The monitoring and recordkeeping requirements are already applicable to other affected offset lithographic printing sources in other ozone nonattainment areas covered under Division 4. Compliance with these requirements for the Bexar County area begins January 1, 2025.

§115.449 Compliance Schedules

The commission adopts the addition of a new subsection to establish a compliance schedule for the Bexar County 2015 ozone NAAQS nonattainment area that requires compliance with applicable requirements of Subchapter E, Division 4 by no later than January 1, 2025. This adopted new subsection is added as subsection (h), and former subsection (h) is renumbered to subsection (i). The compliance schedule in adopted renumbered §115.449(i) is revised to add Bexar County to the list of counties subject to the compliance provisions for affected sources that become subject to the requirements of Subchapter E, Division 4 on or after the applicable compliance date. The reference in adopted renumbered subsection (i) to §115.449 subsections covered under that provision is revised to include the adopted new subsection (h) compliance schedule for Bexar County. Former §115.449(i), which previously provided for the publication in the *Texas Register* by the commission and the litigation concerning Wise County for the 2008 Eight-Hour Ozone NAAQS, is removed since the Wise County litigation has been resolved and this provision is no longer relevant.

Division 5. Control Requirements For Surface Coating Processes

The commission adopts amended Subchapter E, Division 5 to establish new traffic marking coating provisions that will be implemented in the DFW and/or HGB 2008 ozone NAAQS nonattainment areas if triggered for SIP contingency purposes. The commission adopts changes to make the current surface coating process VOC RACT requirements in this division applicable to affected sources in the Bexar County area.

§115.450 Applicability and Definitions

The commission adopts the addition of the Bexar County area in §115.450(a) and §115.450(a)(6) to expand these current surface coating process VOC RACT requirements in this division to affected sources in the Bexar County area. Owners or operators of affected sources in the Bexar County ozone nonattainment area are required to comply with the applicable requirements of the division beginning January 1, 2025.

Two exceptions are adopted in subsection (a) of §115.450 to allow for the potential applicability of contingency control measures for sources that meet either of the new specific surface coating definitions that are adopted in §115.450(c) for industrial maintenance coatings and traffic marking coatings. These contingency measures will be applicable in either or both the DFW and HGB areas, if triggered. The adopted applicability provisions are added as new §115.450(a)(7) for industrial maintenance coatings and as §115.450(a)(8) for traffic marking coatings. Adopted formatting adjustments will be made to subsection (a) for clarity purposes.

No general definitions are adopted for subsection (b), but two new specific surface coating definitions are adopted for subsection (c). An adopted definition for industrial maintenance coating is added as §115.450(c)(3) to apply for the adopted industrial maintenance coating contingency measure in Subchapter E, Division 5. The adopted new definition for industrial maintenance coatings does not apply to coatings applied to items that meet the definition for Miscellaneous metal parts and products in §115.450(c)(6)(Q). The new adopted definition for traffic marking coating is added as §115.450(c)(10) to apply for the adopted traffic marking coating contingency measure in Subchapter E, Division 5. The adopted new definitions reflect the definitions used in national rules and the rules of other states. The existing definitions are renumbered to accommodate the adopted new definitions.

§115.451 Exemptions

Revisions to the exemptions in §115.451 are adopted to accommodate the two contingency control requirements adopted in Subchapter E, Division 5. An exception is adopted in subsection (a) to allow for the potential that the current exemptions will

not apply under a contingency scenario, and new paragraphs (4) and (5) are adopted to stipulate that exemptions in existing §115.451(a)(1) - (3) will no longer apply for industrial maintenance coatings and traffic marking coatings, respectively, once either or both contingency measures are applicable in either or both the DFW and HGB areas. Additionally, a revision is adopted for the exemption for aerosol coatings in §115.451(l) to remove that exemption for the industrial maintenance and traffic marking coatings because many of the industrial maintenance and traffic marking coatings are available in both aerosol and non-aerosol forms and the aerosol forms are commonly above the VOC limit.

For owners or operators of affected sources in the Bexar County ozone nonattainment area that become newly subject to the requirements of Subchapter E, Division 5, affected persons will be able to claim applicable exemptions beginning January 1, 2025.

§115.453 Control Requirements

Revisions are adopted to the control requirements in §115.453 to accommodate the two contingency control requirements adopted in Division 5. A provision is added to existing subsection (a) to clarify that the two adopted contingency control requirements in adopted new §115.453(f) - (i) will apply in addition to those in subsection (a) upon the compliance date specified in adopted new §115.459(e) - (h). Emissions limits for industrial maintenance coatings are adopted as new subsections (f) and (g), and emissions limits for traffic marking coatings are adopted as new subsections (h) and (i), to establish control requirements for contingency purposes applicable to certain surface coating processes in Subchapter E, Division 5.

The contingency control requirement for industrial maintenance coatings, if triggered, will set a VOC limit of 2.1 pounds per gallon or 250 grams per liter of coating (minus water and exempt solvent) to be met by applying low-VOC coatings. The limits of 2.1 pounds per gallon and 250 grams per liter are considered equivalent. The contingency control requirement for traffic marking coatings will set a VOC content limit of 100 grams of VOC per liter of coating (minus water and exempt solvent) to be met by applying low-VOC coatings. Adopted new subsection (f) will set the industrial maintenance coatings limit for the DFW area, and adopted new subsection (g) will set the industrial maintenance coatings limit for the HGB area. Likewise, adopted new subsection (h) will set the traffic marking coatings limit for the DFW area, and adopted new subsection (i) will set the traffic marking coatings limit for the HGB area. The adopted limits, if either or both are necessary, will help achieve required emissions reductions for SIP contingency purposes.

The existing control requirements in §115.453 apply to the areas listed in the applicability provisions in §115.450, which are amended to include the Bexar County area. As such, owners or operators of affected sources in the Bexar County ozone nonattainment area must comply with the applicable control requirements in §115.453 beginning January 1, 2025.

§115.458 Monitoring and Recordkeeping Requirements

Under the monitoring and recordkeeping requirements for surface coating processes in §115.458, references to the contingency control requirements in adopted new §115.453(f) - (i) are adopted in §115.458(b)(1), recordkeeping requirements. The references are added to require that records must demonstrate compliance with the applicable VOC limits, whether the existing limits or those applicable if either or both contingency measures are triggered in either or both the DFW and HGB areas.

The existing monitoring and recordkeeping requirements in §115.458 apply to the areas listed in the applicability provisions in §115.450, which are amended to include the Bexar County area. As such, owners or operators of affected sources in the Bexar County ozone nonattainment area are subject to the monitoring and recordkeeping requirements in §115.458 beginning January 1, 2025.

§115.459 Compliance Schedules

This adopted rulemaking amends subsection (a) to clarify that compliance with the contingency measures in adopted new §115.453(f) - (i) will not be required until the commission publishes notification in the *Texas Register* of its determination that a contingency rule is necessary. The adopted rulemaking also revises existing subsection (b), for Wise County, to clarify that the compliance date in that subsection will not apply for the adopted new contingency requirements under adopted new subsections (f) through (i) of adopted revised §115.453.

The commission adopts a new subsection to establish a compliance schedule for the Bexar County 2015 ozone NAAQS nonattainment area that requires compliance with applicable requirements of Subchapter E, Division 5 by no later than January 1, 2025. This adopted new subsection is added as subsection (c), and existing subsection (c) is renumbered to subsection (d). Adopted revisions remove existing §115.459(d) because Wise County's attainment status has been resolved, and Wise County remains designated nonattainment for the 2008 eight-hour ozone NAAQS.

Adopted new subsections (e) - (h) are added to establish the compliance schedules for the industrial maintenance coating and traffic marking coating contingency requirements that will be applicable, if triggered, in the DFW area, the HGB area, or both areas. Adopted new subsections (e) and (f) provide that surface coating processes in the DFW area must comply with the industrial maintenance coating and/or traffic marking coating contingency control requirements, respectively, by no later than 270 days after the commission publishes notification in the *Texas Register* that one or both of the contingency measures are necessary. The commission adopts the replacement of "nine months" in proposed section §115.459 with "270 days" in the adopted section in order to clarify the compliance date for contingency measures in the event that they are triggered. Number of days is more precise than months and allows for consistency in application and alleviates confusion associated with calculating a nine-month period that may begin and/or end outside of a defined calendar month.

Adopted new subsections (g) and (h) provide that surface coating processes in the HGB area must comply with the industrial maintenance coating and/or traffic marking coating contingency control requirements, respectively, by no later than 270 days after the commission publishes notification in the *Texas Register* that one or both of the contingency measures are necessary.

Division 6. Industrial Cleaning Solvents

The commission adopts amended Subchapter E, Division 6 to establish a new limit for industrial cleaning solvents to be implemented in either the DFW or HGB or both 2008 ozone NAAQS nonattainment areas if triggered for SIP contingency purposes. The commission also adopts amendments to Division 6 to make the current surface coating process VOC RACT requirements in this division applicable to affected sources in the Bexar County area.

§115.460 Applicability and Definitions

The commission adopts the addition of the Bexar County area in §115.460(a) to make these existing VOC RACT requirements for industrial cleaning solvents applicable to affected sources in the Bexar County area. Owners or operators of affected sources in the Bexar County ozone nonattainment area must comply with the applicable requirements of the division beginning January 1, 2025.

Adopted language is added to the contingency rule definitions in §115.460(b) to clarify and support new industrial cleaning solvent contingency rule provisions. Adopted revisions to existing §115.460(b) contain new and amended definitions for the following: application device; application line; blanket; blanket wash; cured coating, cured ink, or cured adhesive; electronic component, electron beam ink; facility; grams of VOC per liter of material; graphic arts; gravure printing; high precision optic; hot-line tool; letterpress printing; liquid-tight food container; lithographic printing; maintenance cleaning; manufacturing process; medical device; medical or pharmaceutical work surface; non-absorbent container; on-press component; on-press screen cleaning; packaging printing; pharmaceutical product; photocurable resin; printing; removable press component; repair cleaning; repair process; roller wash; scientific instrument; screen printing; solvent cleaning operation; solvent flushing; specialty flexographic printing; stereolithography; stripping; surface preparation; and ultraviolet ink. Additionally, some of the existing definitions in §115.460 are reordered and renumbered alphabetically.

The adopted new definition for medical device is a replacement of the previous version to improve readability. The adopted revised definition for electrical and electronic components includes new language specifying how electronic component and electrical component are defined differently for the purpose of the contingency measure provisions of the division. This allows continued use of the existing definition for existing uses while specifying a different definition as used in the rules of other states when describing use in the contingency measure portions of this division. The term solvent cleaning operation also receives additional adopted phrasing in its definition that is applicable only in the context of the contingency measure provisions to harmonize with its use in the rules of other states.

§115.461 Exemptions

The commission adopts the renumbering of the former §115.461(e) aerosol can exemption as §115.461(f) and concurrently adopts a new subsection (e) that specifies exemption provisions that will become applicable to affected sources or activities in the DFW area, the HGB area, or both, if the contingency requirements of Subchapter E, Division 6 are triggered as provided for in adopted new §115.469(d), for the DFW area, in §115.469(e) for the HGB area.

Upon triggering of the contingency requirements under adopted new §115.463(e), these new exemptions under adopted new §115.461(e) will replace those in existing §115.461(a) - (d). The commission makes clear that the provisions of adopted new subsection (e) will apply if contingency requirements are triggered, and adopted renumbered (f) will also continue to apply; otherwise, the existing provisions of subsections (a) - (d), and now adopted renumbered (f), will apply. Adopted revisions to the last sentence of existing §115.461(a) will reflect that industrial cleaning solvent emissions currently exempted under existing §115.461(b) - (d) and (e), which is concurrently adopted as renumbered (f), will continue to not count towards the 3.0 tons of VOC per calendar year exemption limit under §115.461(a).

Adopted new subsection (e)(1) specifies the types of cleaning that will be exempt in the DFW area, through adopted new subparagraphs (A) - (L), and adopted new subsection (e)(2) specifies the types of cleaning that will be exempt in the HGB area, through adopted new subparagraphs (A) - (L). In a change from proposal, §115.461(e)(2) is revised to refer to the correct cleaning solvent content limits for the HGB area in §115.463(e)(2).

For owners or operators of affected sources in the Bexar County ozone nonattainment area that become newly subject to the requirements of Subchapter E, Division 6, affected persons will be able to claim applicable exemptions beginning January 1, 2025.

§115.463 Control Requirements

Existing §115.463(a)(1) and (2) provisions limit the industrial cleaning solvent VOC content to 0.42 pounds per gallon (lb VOC/gal), which is equivalent to 50 grams/liter (g/l) or a composite partial pressure of 8.0 millimeters of mercury (mmHg) at 20 degrees Celsius, respectively. The adopted rulemaking adds a new §115.463(e) to include new requirements concerning SIP contingency measures and requirements. Adopted new §115.463(e) contains new VOC content limits listed in adopted new Figure: 30 TAC §115.463(e) that will become effective upon EPA publication of a notice in the *Federal Register* that the specified area(s) failed to attain the applicable ozone NAAQS by the attainment date or failed to demonstrate RFP, and the commission's subsequent publication in the *Texas Register* confirming that compliance with the DFW and/or HGB contingency measures is required. Compliance will be required by no later than 270 days after *Texas Register* publication as stated in §115.469 Compliance Schedules. The commission adopts the replacement of "nine months" in proposed section §115.463 with "270 days" in the adopted section in order to clarify the compliance date for contingency measures in the event that they are triggered. Number of days is more precise than months and allows for consistency in application and alleviates confusion associated with calculating a nine-month period that may begin and/or end outside of a defined calendar month.

Owners or operators of affected sources in the Bexar County ozone nonattainment area must comply with the applicable control requirements of this division beginning January 1, 2025.

§115.465 Approved Test Methods and Testing Requirements

Minor revisions are adopted in §115.465 to update the section references to align with the structure of adopted Subchapter E, Division 6. Existing test methods and requirements in §115.465 are adopted to incorporate test methods and testing requirements for the industrial cleaning solvent contingency control measure. This includes industrial cleaning solvent VOC content and vapor pressure test methods. These requirements exist for other ozone nonattainment areas currently subject to Subchapter E, Division 6. Owners or operators of affected sources in the Bexar County 2015 ozone NAAQS nonattainment area must use these methods and procedures beginning January 1, 2025.

§115.468 Monitoring and Recordkeeping Requirements

Revisions to the existing monitoring and recordkeeping requirements in §115.468 are adopted to incorporate recordkeeping requirements for the industrial cleaning solvents contingency control measure. The recordkeeping requirements in §115.468(b)(1) are amended to specify that records must be

kept that demonstrate continuous compliance with the applicable new §115.463(e) requirements. Owners or operators of affected sources in the Bexar County ozone nonattainment area are subject to the monitoring and recordkeeping requirements of this division beginning January 1, 2025.

§115.469 Compliance Schedules

The commission adopts to combine existing §115.469(a) and (b) under adopted §115.469(a) to clarify that compliance requirements that are applicable to Wise County are identical to the requirements that are applicable to the nonattainment counties comprising the 10-County DFW nonattainment area for the 2008 severe ozone NAAQS. These same compliance requirements for the 10-county DFW 2008 ozone NAAQS severe nonattainment area are also identical to the requirements that are applicable to the eight-county HGB 2008 ozone NAAQS severe nonattainment area. In all these counties, the compliance date has passed and compliance is required, except for the adopted contingency measures, as stated in adopted new subsections (d) and (e) of this section.

The commission adopts a new §115.469(b) that establishes a compliance schedule for newly affected sources located in the Bexar County ozone nonattainment area that will become subject to the requirements of Subchapter E, Division 6 on January 1, 2025. Owners or operators of newly affected sources subject to the industrial cleaning solvent requirements of the division must comply with all applicable requirements of the division no later than January 1, 2025.

This adopted rulemaking removes existing §115.469(d) because Wise County's attainment status has been resolved, and Wise County remains designated nonattainment for the 2008 eight-hour ozone NAAQS.

The commission adopts new §115.469(d) and (e) that establishes the compliance schedules for the SIP contingency requirements concerning industrial cleaning solvents that, if triggered, will be applicable in the DFW and/or HGB area. Adopted new subsection (d) and adopted new subsection (e) specify that applicable operations in the affected area(s) will be required to comply with the new contingency control requirements adopted in new §115.463(e) for industrial cleaning solvents by no later than 270 days after the commission publishes notification in the *Texas Register* that the contingency measure is necessary. Adopted new subsection (d) will apply in the DFW area, and adopted new subsection (e) will apply in the HGB area. The commission adopts the replacement of "nine months" in proposed section §115.469 with "270 days" in the adopted section in order to clarify the compliance date for contingency measures in the event that they are triggered. Number of days is more precise than months and allows for consistency in application and alleviates confusion associated with calculating a nine-month period that may begin and/or end outside of a defined calendar month.

Division 7. Miscellaneous Industrial Adhesives

The commission adopts changes to make the current surface coating process VOC RACT requirements in this division applicable to affected sources in the Bexar County area beginning January 1, 2025.

The commission also amends Subchapter E, Division 7 to establish a new limit for industrial adhesives to be implemented in the DFW and/or HGB 2008 ozone NAAQS nonattainment areas if triggered for SIP contingency purposes.

During review of comments submitted, TCEQ staff realized that they had omitted a portion of the intended VOC content limit tables from this proposed rulemaking, as published in the *Texas Register* on December 15, 2023 (48 TexReg 7290). The omitted content limits were included in the emissions reductions calculation in the concurrently proposed DFW and HGB Attainment Demonstration and RFP SIP revisions. In addition, staff inadvertently used inconsistent VOC content limits in the proposed rule language and the emissions reductions calculations.

As proposed and adopted in this rulemaking and the concurrently adopted DFW and HGB Attainment Demonstration and RFP SIP revisions, the VOC emissions reductions from the industrial adhesives contingency measure are documented as 1.05 tons per day (tpd) in the DFW area and 0.99 tpd in the HGB area. The Executive Director intends to immediately initiate an Industrial Adhesives Contingency Measure Corrections rulemaking (corrections rulemaking) for commission consideration to amend the adhesive VOC content limits in this newly adopted rulemaking to match the originally intended limits and to add additional source categories that were inadvertently excluded from the industrial adhesives category.

If adopted, the potential corrections rulemaking would result in additional VOC emissions reductions of 2.26 tpd in the DFW area and 2.13 tpd in the HGB area resulting in final emissions reductions of 3.31 tpd in the DFW area and 3.12 tpd in the HGB area. Therefore, if adopted, the corrections rulemaking would restore the emissions reductions to the amounts described in the contingency plan narratives in the concurrently proposed and adopted DFW AD SIP revision (Project 2023-107-SIP-NR), the HGB AD SIP revision (Project 2023-110-SIP-NR), and the DFW-HGB RFP SIP revision (Project 2023-108-SIP-NR).

If proposed and adopted, the corrections rulemaking would amend Table 1 of Figures 30 TAC §115.473(e) and (f) as shown below by adding underlined text, deleting text marked with strikethrough, and revising the first column name for clarity. If proposed and adopted, the corrections rulemaking would also add definitions to 30 TAC §115.470(b) for adhesive categories inadvertently omitted.

Since the fiscal note information published in the proposal for the 30 TAC Chapter 115 rulemaking (Project No. 2023-116-115-AI), reflected the cost per ton of VOC to achieve the intended emissions reductions, as documented in the concurrently proposed DFW and HGB Attainment Demonstration and RFP SIP revisions, the public has already been informed of all expected costs to affected businesses that would result if the corrections rulemaking were proposed and adopted.

§115.470 Applicability and Definitions

The commission adopts the addition of the Bexar County area in §115.450(a) to make these current industrial adhesives VOC RACT requirements applicable to affected sources in the Bexar County area beginning January 1, 2025.

Adopted language is added to expand applicability from application processes in §115.473(a) to all of §115.473 with the adopted revision of the citation in §115.470(a) from §115.473(a) to §115.473. This expansion allows applicability to be extended to the adopted new adhesives contingency measure, if triggered. Also, under §115.470, a new term and definition are adopted as §115.470(b)(43) for specialty adhesives, and the existing definitions are renumbered accordingly.

§115.471 Exemptions

Exceptions to the existing exemptions in §115.471(a)- (c) are adopted to allow for the potential that existing exemptions will not apply under a contingency scenario, and the term "applicable" is added to existing subsection (c) to clarify that the appropriate VOC content limit must be considered to determine whether an adhesive application process qualifies for exemption. Adopted new §115.471(d) is added to stipulate that the exemptions in §115.471(a)- (c) will no longer be available under a contingency scenario in either the DFW or HGB area, or both areas, and to allow exemptions for applicable processes if the adhesives contingency control requirements apply. Adopted exemptions are listed in new paragraphs (1) and (2) of adopted new §115.471(d) and include an exemption in new paragraph (1) from all but the applicable monitoring and recordkeeping requirements if it can be demonstrated that the total volume of noncompliant products is less than 55 gallons per calendar year. Adopted new paragraph (1) also stipulates that the paragraph may not be used to exclude noncompliant adhesives used in architectural applications; contact adhesives; special purpose contact adhesives; adhesives used on porous substrates; rubber vulcanization adhesives, and top and trim adhesives. Finally, adopted new paragraph (2) provides exemptions for 10 adhesive application processes if the adhesives contingency control requirements apply.

§115.473 Control Requirements

Adopted contingency control requirements are added to §115.473 for adhesive application processes. To allow for the contingency control requirements to apply, an adopted provision is added to the existing subsection (a) requirements to clarify that the requirements in that subsection will be replaced by the contingency requirements in adopted new subsections (e) or (f) if they are required for contingency purposes in the DFW area or HGB area, respectively. Adopted emissions limits for contingency are added as subsection (e) for the DFW area and (f) for the HGB area. The adopted contingency control requirements are the same for both areas and establish VOC emissions limits for application processes specified in the tables in adopted §115.473(e) and §115.473(f) for which adhesives and adhesive primers are used. The adopted control requirements also specify that the limits must be met by applying low-VOC adhesives or adhesive primers.

§115.475 Approved Test Methods and Testing Requirements

Revisions to the existing test methods and requirements in §115.475 are adopted to incorporate test methods and testing requirements for the adhesives contingency control measure. This includes test methods for reactive adhesives, subparagraph (B), and all other applicable adhesives, paragraph (1).

§115.478 Monitoring and Recordkeeping Requirements

Revisions to the existing monitoring and recordkeeping requirements in §115.468 are adopted to incorporate recordkeeping requirements for the miscellaneous industrial adhesives contingency control measure. The recordkeeping requirements in §115.478(b)(1) are amended to specify that records must be kept that demonstrate continuous compliance with the applicable new §115.473(e)- (f) requirements.

§115.479 Compliance Schedules

The commission adopts removal of former subsection (b) and adds Wise County to the list of counties covered under existing subsection (a) to further specify that the compliance date for all listed counties has passed, and compliance is required, except for the adopted contingency measures, as stated in adopted new subsections (c) and (d) of this section. Former subsection (c) is concurrently adopted to be renumbered as subsection (b).

This adopted rulemaking removes existing §115.479(d) because Wise County's attainment status has been resolved, and Wise County remains designated nonattainment for the 2008 eight-hour ozone NAAQS. The removal of this language allows for greater clarity in the rules for this division and removes any doubt concerning the nonattainment status of Wise County.

Adopted new subsections (c) and (d) are added to establish the compliance schedules for the adhesives contingency requirements that, if a triggered as contingency, will be applicable in the DFW area, the HGB area, or both areas. Adopted new subsections (c) and (d) provide that applicable operations in the affected area(s) must comply with the adhesives contingency control requirements by no later than 270 days after the commission publishes notification in the *Texas Register* that the contingency measure is required. Adopted new subsection (c) will apply in the DFW area, and adopted new subsection (d) will apply in the HGB area. The commission adopts the replacement of "nine months" in proposed section §115.479 with "270 days" in the adopted section in order to clarify the compliance date for contingency measures in the event that they are triggered. Number of days is more precise than months and allows for consistency in application and alleviates confusion associated with calculating a nine-month period that may begin and/or end outside of a defined calendar month.

The commission adopts a new §115.479(e) rule to establish a compliance schedule for the new Bexar County area industrial adhesives nonattainment rules. Owners or operators of affected sources that become subject to the applicable requirements of Subchapter E, Division 7 must demonstrate compliance with all applicable requirements of the division beginning January 1, 2025.

Subchapter F. Miscellaneous Industrial Sources.

Division 1. Use Of Asphalt

The commission adopts amended Subchapter F, Division 1 to change the name from "Cutback Asphalt" to "Use of Asphalt." Since its inception, the division has contained requirements pertaining to the use of both cutback and emulsified asphalt, not just cutback asphalt. This name change brings the division title in line with its content and alleviates confusion with its applicability to the production of various types of asphalt.

Contingency Measure: Emulsified Asphalt

The commission adopts amended Subchapter F, Division 1 to define and establish a new contingency rule limit for emulsified asphalt in the DFW and/or HGB 2008 ozone nonattainment areas.

§115.510 Cutback Asphalt Definitions

The commission adopts the deletion of "Cutback Asphalt" and "Cutback" from the title and first line of adopted §115.510, respectively, to clarify that both cutback and emulsified asphalt materials are subject to the commission's adopted Subchapter F, Division 1 requirements. The commission adopts insertion of "Use of" immediately after "relating to" in the first line of adopted §115.510 for clarification purposes. The commission also adopts a revision to the existing §115.510(1) definition to clarify that emulsified asphalt is an interchangeable term for asphalt emulsion.

§115.512 Control Requirements

The commission adopts the division of §115.512 into subsections (a) and (b) that contain existing control provisions and new contingency control requirements, respectively. The commission adopts the addition of the Bexar County area to §115.512(a) and makes these existing cutback asphalt VOC RACT control requirements applicable to affected sources in the Bexar County area. Additionally, the commission adopts the addition of the Bexar County area to §115.512(a)(2) and makes these existing cutback asphalt VOC RACT control requirements applicable to affected sources in the Bexar County area.

The commission adopts new language at the beginning of §115.512(a)(3) to clarify that the existing rule for emulsified asphalt VOC content limits no longer applies when a VOC contingency rule is triggered. Finally, non-substantive changes are adopted in §115.512(a)(3)(B)- (D) to align terms in the existing asphalt emulsion VOC limits with industry standard terminology and with terms used in the adopted contingency measure subsection §115.512(b).

The commission adopts new subsection (b) language to establish and differentiate more stringent contingency rule control requirements from existing §115.512(a) VOC content limits during the local ozone season. Adopted new §115.512(b) language specifies that the asphalt contingency rule VOC content limits are applicable when the commission publishes notification in the *Texas Register.* Newly Adopted §115.512(b)(1) and (2) provisions establish an emulsified asphalt 0.5% by volume VOC contingency limit in the DFW and HGB areas during their unique ozone season, respectively. The non-ozone season emulsified asphalt limits for the DFW area are the same as §115.512(a)(3) and are repeated in §115.512(b)(1) as new subparagraphs (A)- (D) for clarity. The non-ozone season limits include the same industry standard terminology updates adopted in §115.512(a)(3)(B)- (D). Since the HGB area has a year-round ozone season, there is no need to specify non-ozone season limits. The DFW area ozone season is March 1 through November 30. This is a change from the applicability period for the current non-contingency cutback asphalt regulations of April 15 to September 15. This change is necessary to align applicability of the two limits and to update the DFW ozone season to the current EPA definition.

§115.515 Testing Requirements

The commission adopts the division of §115.515 into subsections (a) and (b) that contain current test method language updates and new contingency test methods, respectively. Subsection (a) contains clarification language for existing test methods and renumbers existing paragraph (3), which allows minor test method modifications approved by the executive director, to paragraph (4). Former paragraph (3) is replaced with language allowing the use of additional test methods validated by 40 CFR 63, Appendix A, Test Method 301 and approved by the executive director.

The commission adopts new §115.515(b) to establish test methods for the contingency measure in this division. These new contingency test methods are specified in adopted §115.515(b)(1), (2), and (3). Use of American Association of State Highway and Transportation Officials (AASHTO) Test Method AASHTO T 59 is adopted because it is used in state and local emulsified asphalt specifications to quantify VOC content by volume percent.

§115.516 Recordkeeping Requirements

The commission adopts the addition of the Bexar County area to §115.516 and makes the current cutback asphalt or asphalt emulsion recordkeeping requirements applicable to affected sources in the Bexar County area. The requirements are already applicable to affected cutback asphalt or asphalt emulsion sources in the Nueces, Bastrop, Caldwell, Hays, Travis, and Williamson Counties and the Beaumont-Port Arthur, Dallas-Fort Worth, El Paso, and Houston-Galveston areas under current VOC RACT rules.

§115.517 Exemptions

The commission adopts the addition of the Bexar County area to §115.517 and provides affected sources in the Bexar County area with the exemptions that are already applicable to affected asphalt sources located in other ozone nonattainment areas currently covered under Subchapter F, Division 1.

§115.519 Counties and Compliance Schedules

The commission adopts the consolidation of some expired DFW area RACT compliance schedules, the deletion of outdated subsections and language, the insertion of Bexar County RACT compliance schedule, and the addition of new contingency rule compliance schedules to §115.519, to harmonize the section title with the standard form used in other divisions of this chapter.

The adopted rulemaking clarifies in §115.519(a) that control requirements for cutback asphalt remain in place if a contingency measure is triggered. Compliance requirements for all ozone nonattainment counties for which the compliance date has passed are consolidated into revised §115.519(a) by adding Ellis, Johnson, Kaufman, Parker, and Rockwall Counties from current §115.519(c) and Wise County from current §115.519(d). The adopted rulemaking removes current §115.519(c) and (d) as part of the adopted consolidation.

This adopted rulemaking also removes existing §115.519(e) because Wise County's attainment status has been resolved, and Wise County remains designated nonattainment for the 2008 eight-hour ozone NAAQS. The removal of this language allows for greater clarity in the rules for this division and removes any doubt concerning the nonattainment status of Wise County.

Adopted new subsections (c) and (d) are added to establish the compliance schedules for the emulsified asphalt contingency requirements applicable in the DFW and/or HGB areas. Adopted subsections (c) and (d) provide that applicable operations in the affected area(s) must comply with the emulsified asphalt contingency control requirements by no later than 270 days after the commission publishes notification in the *Texas Register* that the contingency measure is necessary. Adopted new subsection (c) will apply in the DFW area and adopted new subsection (d) will apply in the HGB area. The commission adopts the replacement of "nine months" in proposed section §115.519 with "270 days" in the adopted section in order to clarify the compliance date for contingency measures in the event that they are triggered. Number of days is more precise than months and allows for consistency in application and alleviates confusion associated with calculating a nine-month period that may begin and/or end outside of a defined calendar month.

The commission adopts a new §115.519(e) to establish a compliance schedule for the new Bexar County area asphalt nonattainment rules. The new compliance schedule requires compliance with the division by no later than January 1, 2025.

The commission adopts a new §115.519(f) to establish a compliance schedule for persons newly subject to the division after the applicable compliance date. Such persons have 60 days to achieve compliance after becoming subject to this division. This

provision is adopted to be consistent with compliance schedule provisions in the other divisions of this subchapter.

Division 2. Pharmaceutical Manufacturing Facilities

§115.531 Emission Specifications

The commission adopts the addition of Bexar County to §115.531(a) and requires affected sources in the Bexar County area to meet emission specifications applicable to synthesized pharmaceutical manufacturing facilities. These same emission specifications currently apply to similar facilities located in other ozone nonattainment areas covered by Subchapter F, Division 1 to satisfy VOC RACT requirements.

§115.532 Control Requirements

The commission adopts the addition of Bexar County in §115.532(a) and makes affected Bexar County sources subject to current nonattainment area pharmaceutical manufacturing facility VOC RACT control requirements beginning January 1, 2025.

§115.534 Inspection Requirements

The commission adopts the addition of Bexar County to §115.534(a) and makes affected sources in the Bexar County area subject to existing inspection requirements of the subsection. These requirements currently apply to affected sources located in other ozone nonattainment areas covered by the division. This adopted change is necessary to ensure that owners or operators of affected sources in the Bexar County area use the appropriate procedures necessary to show compliance with the applicable emission specifications and control requirements of the division.

§115.535 Testing Requirements

The commission adopts the addition of Bexar County in §115.535(a) and makes affected sources in the Bexar County area subject to existing nonattainment area pharmaceutical manufacturing facility VOC RACT testing requirements.

§115.536 Monitoring and Recordkeeping Requirements

The commission adopts the addition of Bexar County to §115.536(a) and requires an owner or operator of an affected source located in the Bexar County ozone nonattainment area to conduct the appropriate monitoring and to develop and maintain the appropriate records necessary to demonstrate compliance with applicable emission specifications and control requirements of Subchapter F, Division 2. These same requirements apply to affected sources located in other ozone nonattainment areas covered by the division.

§115.537 Exemptions

The commission adopts the addition of Bexar County to §115.537(a) and makes the pharmaceutical manufacturing facility exemptions available to affected sources located in the Bexar County ozone nonattainment area. These same exemptions are currently available to affected sources located in other ozone nonattainment areas covered under Subchapter F, Division 2.

§115.539 Counties and Compliance Schedules

The commission adopts a new §115.539(c) rule to establish a compliance schedule for the adopted Bexar County area pharmaceutical manufacturing facility requirements that is added to this division. The new §115.539(c) requires affected persons in Bexar County to comply with requirements in Subchapter F, Division 2 as soon as practicable, but no later than January 1, 2025.

Subchapter J. Administrative Provisions

Division 1. Alternate Means Of Control

§115.901 Insignificant Emissions

The commission adopts to insert the language "as defined in §115.10 of this title (relating to Definitions)" immediately after "Travis Counties" in §115.901 and specify that this section no longer applies in Bexar County after December 31, 2024 when it no longer meets the definition of a covered attainment county. This clarifies that adopted §115.901, which authorizes the executive director to provide an exemption for certain insignificant emissions, no longer applies in Bexar County once Bexar County is required to comply with the VOC requirements beginning on January 1, 2025.

§115.911 Criteria for Approval of Alternate Means of Control Plans

The commission adopts the addition of a reference to the definitions in §115.10 after each specific ozone nonattainment area reference in §115.911(3) for clarification purposes. The commission adopts the increase of the appropriate applicable emission reduction factor in §115.911(3)(B) to 1.3, since the Dallas-Fort Worth area has been reclassified as severe nonattainment for ozone under the 2008 standard. The commission adopts the renumbering of existing §115.911(3)(E) as §115.911(3)(F) and inserts a new §115.911(3)(E) provision that specifies the appropriate Bexar County area 1.15 emission reduction factor for a moderate ozone nonattainment area.

Final Regulatory Impact Determination

The commission reviewed the rule adoption in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rule adoption does not meet the definition of a major environmental rule as defined in that statute, and in addition, if it did meet the definition, will 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 rule adoption does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Tex. Gov't Code Ann., §2001.0225(a). Section 2001.0225 of the Texas Government Code applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The specific intent of these adopted rules is to comply with federal requirements for the implementation of control strategies necessary to attain and maintain the National Ambient Air Quality Standards (NAAQS) for ozone mandated by 42 United States Code (USC), 7410, Federal Clean Air Act (FCAA), §110, and required to be included in operating permits by 42 USC, §7661a, FCAA, §502, as specified elsewhere in this preamble. The adopted rule addresses contingency measure requirements

for the DFW and HGB 2008 eight-hour ozone nonattainment areas, RACT requirements for the Bexar County 2015 eight-hour ozone nonattainment area, and clarifications to rules previously adopted to address EPA's 2016 control techniques guidelines for oil and gas sources, as discussed elsewhere in this preamble. 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 preamble to the proposed rulemaking associated with this adopted rulemaking action, the adopted rules are not anticipated to add any significant additional costs to affected individuals or businesses, beyond what is necessary to attain the ozone NAAQS, on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

If a state does not comply with its obligations under 42 USC, §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) or mandatory sanctions under 42 USC, §7509, FCAA, §179; as well as the imposition of a federal implementation plan (FIP) under 42 USC, §7410, FCAA, §110l. Under 42 USC, §7661a, FCAA, §502, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including enforceable emission limitations and other control measures, means, or techniques, which are required under 42 USC, §7410, FCAA, §110. Similar to requirements in 42 USC, §7410, FCAA, §110, states are not free to ignore requirements in 42 USC, §7661a, FCAA, §502 and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Lastly, states are also subject to the imposition of sanctions under 42 USC, §7661a(d) and (i), FCAA, §502(d) and (i) for failure to submit an operating permits program, the disapproval of any operating permits program, or failure to adequately administer and enforce the approved operating permits program.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th legislative session in 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. Requiring a full RIA for all federally required rules is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the 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 demonstrate attainment of the ozone NAAQS 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, 4 89 (Tex. App. Austin 1995), writ denied with per curiam opinion respecting another issue, 960 S.W.2d 617 (Tex. 1997); Bullock v. Marathon Oil Co., 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ). Cf. Humble Oil & Refining Co. v. Calvert, 414 S.W.2d 172 (Tex. 1967); Dudney v. State Farm Mut. Auto Ins. Co., 9 S.W.3d 884, 893 (Tex. App. Austin 2000); Southwestern Life Ins. Co. v. Montemayor, 24 S.W.3d 581 (Tex. App. Austin 2000, pet. denied); and Coastal Indust. Water Auth. v. Trinity Portland Cement Div., 563 S.W.2d 916 (Tex. 1978).) The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard.

As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225. The 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 attain the ozone NAAQS and are required to be included in permits under 42 USC, §7661a, FCAA, §502, and will not exceed any standard set by state or federal law. These 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 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, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AU-

THORITY section of this preamble, including Texas Health and Safety Code, §§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. No comments were received regarding the regulatory impact analysis determination.

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 implementation of control strategies necessary to attain and maintain the National Ambient Air Quality Standards (NAAQS) for ozone mandated by 42 United States Code (USC), 7410, Federal Clean Air Act (FCAA), §110, and required to be included in operating permits by 42 USC, §7661a, FCAA, §502. The adopted rule addresses contingency measure requirements for the DFW and HGB 2008 eight-hour ozone nonattainment areas, RACT requirements for the Bexar County 2015 eight-hour ozone nonattainment area, and clarifications to rules previously adopted to address EPA's 2016 control techniques guidelines for oil and gas sources, as discussed elsewhere in this preamble.

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. If a state does not comply with its obligations under 42 USC, §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) or mandatory sanctions under 42 USC, §7509, FCAA, §179; as well as the imposition of a FIP under 42 USC, §7410, FCAA, §110(c). Under 42 USC, §7661a, FCAA, §502, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including enforceable emission limitations and other control measures, means, or techniques, which are required under 42 USC, §7410, FCAA, §110. Similar to requirements in 42 USC, §7410, FCAA, §110, regarding the requirement to adopt and implement plans to attain and maintain the national ambient air quality standards, states are not free to ignore requirements in 42 USC, §7661a, FCAA, §502 and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Lastly, states are also subject to the imposition of sanctions under 42 USC, §7661a(d) and (i), FCAA, §502(d) and (i) for failure to submit an operating permits program, the disapproval of any operating permits program, or failure to adequately administer and enforce the approved operating permits program.

The adopted rules will not create any additional burden on private real property beyond what is required under federal law, as the rules, when 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 will 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 will otherwise exist in the absence of the governmental action. Therefore, the adopted rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the adopted rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). The CMP policy applicable to the adopted rulemaking is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32). The adopted rulemaking will not increase emissions of air pollutants and is therefore consistent with the CMP goal in 31 TAC §501.12(1) and the CMP policy in 31 TAC §501.32. Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 115 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. Once adopted, owners or operators of affected sites subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 115 requirements.

Public Comment

The commission held a public hearing on January 4, 2024, in Houston and a public hearing on January 11, 2024, in Arlington. A hearing was also offered on January 9, 2024, in San Antonio. The comment period opened on December 1, 2023, and closed on January 16, 2024. The commission received comments from Baker Botts LLP (Baker Botts) on behalf of their clients in the Dallas Fort Worth ozone nonattainment area, Environmental Protection Agency (EPA) Region 6, Green Environmental Consulting, Inc, North Central Texas Council of Governments (NCTCOG), Office of the Harris County Attorney, the Texas Pipeline Association (TPA), and one individual. Two commenters were in support of the proposed rulemaking action. Two commenters were against portions of the proposed rulemaking action concerning adequacy, timing and implementation of contingency measures. Five commenters provided suggested changes concerning the correction of errors in or clarification of definitions and exemptions, revisions to proposed rules to make them consistent with the CTG or align TCEQ rules with federal rules, and revisions to allow more flexibility for fugitive monitoring with new technologies.

Response to Comments

Comment: Baker Botts commented that the 30 TAC §115.171(9)(B) definition of pneumatic controllers contained an error and should be revised in accordance with EPA's 2016 CTG guidance to specify that intermittent pneumatic controller emissions are not subject to 30 TAC §115.174(b) standards. Baker Botts proposed revisions to the 30 TAC §115.171(9)(B) intermittent pneumatic controller definition that would accomplish this objective.

Response: The commission reviewed the existing description for intermittent bleed or snap-acting pneumatic controller in 30 TAC §115.171(9)(B) as well as EPA's 2016 Oil and Natural Gas Industry CTG guidance. Based on review of the CTG and EPA's guidance and recommendations, TCEQ concluded that the CTG did not intend for intermittent pneumatic controller VOC emissions from required control valve activation activities to be considered when evaluating compliance for pneumatic pumps or pneumatic controllers at locations other than a natural gas processing plant. EPA's guidance recommends a bleed rate limit applies to continuous bleed pneumatic controllers, and EPA's guidance explains that intermittent controllers are assumed to have zero bleed emission due to how these controllers function. These intermittent controllers do not have a continuous flow of natural gas, only emitting VOC during intermittent actuation, thus there is no continuous bleeding of natural gas. To ensure consistency with the CTG and EPA guidance, the commission amends the description of an intermittent bleed or snap-acting pneumatic controller in 30 TAC §115.171(9)(B) and adds a provision clarifying that these devices are not subject to the bleed rate limits in 30 TAC §115.174(b)(2).

Comment: Baker Botts commented that TCEQ should authorize more fugitive monitoring technology flexibility in Oil and Natural Gas Industry CTG regulations in order to take advantage of improvements in fugitive monitoring technology. Baker Botts proposed alternative fugitive monitoring methodology language that would authorize substituting New Source Performance Standard (NSPS) OOOOb or other TCEQ approved alternative fugitive monitoring methodologies and frequencies in place of current 30 TAC §115.177(b) provisions.

Response: The commission reviewed EPA's 2016 oil and gas CTG to determine if it contained provisions to authorize alternative fugitive monitoring methodology or frequencies in addition to those in current 30 TAC §115.177(b) or §115.358. TCEQ did not locate recommendations for fugitive monitoring technologies or frequencies to satisfy fugitive monitoring requirements other than those already authorized under current 30 TAC §115.177(b) or §115.358. The commission notes that the CTG recommends either optical gas imaging (OGI) or Method 21 fugitive monitoring be performed to satisfy affected monitoring requirements at well site and boosting and gathering stations. No changes were made to the rule in response to this comment.

Comment: TPA commented that current rule fugitive monitoring requirements go beyond CTG recommendations and should not apply to well sites and gathering and boosting stations due to the undue burden they impose on small and unmanned facilities. TPA further requested that TCEQ limit fugitive monitoring requirements to CTG recommendations and allow OGI technology to be used to satisfy all monitoring activities. TPA commented that by expanding fugitive monitoring requirement applicability to encompass well sites and gathering and boosting stations and by lowering the major source threshold, additional sites previously not subject will become subject to §115.177.

Response: The commission has no control over the major source threshold, which is stipulated in the federal Clean Air Act and cannot be changed. Only sites intended to be regulated according to the CTG are being regulated under the current TCEQ Chapter 115 rules. The well site and gathering and boosting station fugitive monitoring requirements are derived from pages 9-40 and 9-41 of the CTG recommendations. As provided in existing 30 TAC §115.177(b)(11)(C), the commission already allows an OGI fugitive monitoring option that may be employed for all monitoring activities at well sites and gathering and boosting stations because §115.177(b)(11)(C) does not require annual Method 21 monitoring at well sites or gathering and boosting stations. No changes were made to the rule in response to this comment.

Comment: TPA raised a concern about the clarity of exemptions in §115.172(e) and (f), as well as other §115.172 provisions. TPA commented that current §115.172 exemptions have overly broad and unclear references that make them difficult to be fully understood. TPA requested that §115.172 exemptions list each individual citation from which an affected owner is exempt using section and subsection references to avoid ambiguity.

Response: The exemptions in §115.172(e) and (f) apply to wellhead only sites and pressure relief valves vented to a closed-vent-system and control device components, respectively, which would otherwise be subject to §115.177(b). In response to this comment, the commission revised proposed §115.172(e) and (f) to specify that sites or components are only exempt from the monitoring requirements in §115.177(b), the provision in §115.177 that contains actual fugitive monitoring requirements. Section 115.177(a) provisions require a monitoring plan that must include a list of exemptions. Section 115.177(a) is not covered by the §115.172 exemption provisions. TCEQ has chosen to specify the exemption at the subsection level which includes all rule elements within the subsection rather than each individual citation as requested. This is standard TCEQ rule writing practice. No other changes were made in response to this comment.

Comment: Green Environmental Consulting, Inc. recommended a revision to the proposed new definition for "Industrial Maintenance Coating" in §115.450(c)(3) to clarify that it only applies to stationary structures and does not include materials or

associated activities that meet the definition of "Miscellaneous Metal Parts and Coatings".

Response: TCEQ agrees with the recommendation and, in response to this comment, updated the §115.450(c)(3) definition to clarify that "Industrial Maintenance Coatings" only applies to stationary structures and does not apply to surface coating of items that meet the definition of "Miscellaneous Metal Parts and Products". The proposed definition listed various stationary structures without explicitly describing them as stationary and did not describe coating of items meeting the definition of "Miscellaneous Metal Parts and Products". Explicitly including this phrasing is acceptable.

Comment: Green Environmental Consulting, Inc. recommended that the commission adjust the proposed VOC limit for industrial maintenance coatings to the EPA's 3.8 lb VOC/gal limit cited in 40 CFR §59.402 Subpart D, Table 1. The commenter indicated that the commission's limit of 2.1 lb of VOC/gal would be exceedingly difficult to attain given the availability of coatings with VOC concentrations below this limit. In addition, it was stated that the coatings below the proposed limit are not sufficiently capable of performing their functions under extreme conditions.

Response: TCEQ's research on surface coatings provides evidence that the proposed VOC limit is attainable. Similar limits have been established in other states, including Maryland and New York, where manufacturers have been able to meet the proposed VOC limit for surface coatings. No changes were made to the rule in response to this comment.

Comment: The Office of the Harris County Attorney commented that the six proposed VOC contingency measures are insignificant, not sufficient to enable the DFW and/or HGB 2008 ozone nonattainment areas to demonstrate RFP or attain the 2008 ozone NAAQS and only sufficient to fulfill the federal Clean Air Act requirement to include contingency measures in an AD SIP revision. They additionally requested that since the proposed contingency measures do not conform to EPA guidance, they should be revised to be more effective.

Response: The commission disagrees that the proposed contingency measures require revision. The measures conform to EPA's 2008 eight-hour ozone standard SIP requirements rule, which requires measures to achieve sufficient VOC reductions to meet the calculated target amount. The 2008 eight-hour ozone standard SIP requirements rule sets the emission reduction amount at a level that EPA claims is sufficient to assist progress toward attainment, which fulfills the FCAA requirement for contingency measures. The 2008 eight-hour ozone standard SIP requirements rule does not require contingency measures to be sufficient for a nonattainment area to attain the NAAQS, but rather to assist progress toward attainment. Control measures designed to accomplish attainment are addressed in attainment demonstration SIP revisions. See the concurrent DFW AD SIP Revision (2023-107-SIP-NR) and HGB AD SIP Revision (2023-110-SIP-NR) for discussion of the need for such measures. Staff inadvertently omitted some source categories and incorrectly stated multiple VOC content limits for other source categories in the industrial adhesives contingency measure rule proposal. This resulted in less emissions reductions available to fulfill contingency requirements in the DFW and HGB areas. The Executive Director intends to immediately initiate rulemaking for commission consideration to restore the missing and incorrect VOC content limits to achieve the reductions originally intended. No changes were made to the rule in response to this comment.

Comment: The Office of the Harris County Attorney commented regarding the timeframe and scope of TCEQ contingency measures. The commentor also stated that after EPA publishes a notice of finding of failure to attain or meeting RFP in the *Federal Register,* TCEQ must publish a notice in the *Texas Register* stating that compliance with contingency measures is required. The Office of the Harris County Attorney also noted that TCEQ's proposed rules require compliance with these contingency measures no more than nine months after the *Texas Register* publication, whereas new EPA guidance, published in March 2023, recommends contingency measure implementation within 60 days of EPA's publication. The Office of the Harris County Attorney also requested that the rules be revised to align with EPA's guidance and the intended purpose of contingency measures.

Response: EPA's draft guidance states "actions needed to affect full implementation" of the contingency measures should occur within 60 days of EPA notification of failure to attain. However, EPA states that one year is generally an appropriate timeframe for contingency measures to achieve emission reductions. Contingency measures are intended to bridge the gap between failure to attain or meet an RFP milestone and subsequent corrective action, and 60 days is suggested as a timeline for completion of appropriate administrative and supportive components of a contingency measure. Publication in the *Texas Register* is intended to meet EPA's 60 day requirement to take action to affect full implementation, and the 270 day compliance period is intended to comply with EPA guidance to assure that reductions occur within one year. No changes were made to the rule in response to this comment.

Comment: TPA recommended that TCEQ evaluate Texas air quality regulations for consistency with new federal regulations like NSPS OOOOb and incorporate changes to CTG-recommended requirements to match other newly promulgated federal rules. TPA specifically requested that the requirement to change reciprocating compressor rod packing every three years or 26,000 operating hours, as recommended in the CTG, be revised to match NSPS OOOOb, which only requires the reciprocating compressor rod packing to be monitored after 8,760 operating hours. TPA noted that NSPS OOOOb only requires the reciprocating compressor rod packing to be changed if warranted by the inspection.

Response: The 40 CFR part 60, subpart OOOOb rule was published on March 8, 2024, after publication of this proposed Chapter 115 rulemaking to meet RACT and contingency measures requirements. TCEQ may evaluate opportunities to revise RACT requirements to more closely align with other federal requirements, where appropriate, during future rulemaking actions. No changes were made to the rule in response to this comment.

Comment: EPA commented that TCEQ's process for implementation of contingency measures within the required 60 days was unclear and requested clarification.

Response: EPA's draft contingency measure guidance states "As discussed in Section 2, in the 1992 General Preamble, EPA did address the question of how soon the for ozone should take effect, and acknowledged that certain actions, such as notification of sources, modification of permits, etc., would probably be needed before a measure could be implemented effectively. There, EPA concluded that in general, actions needed to affect full implementation of the measures should occur within 60 days after EPA notifies the State of its failure (to attain or meet RFP)."

The commission agrees in this situation that "actions needed to affect full implementation of the measures" can occur within 60 days of the EPA notice. For these contingency measures, this action would be notification to affected sources in the *Texas Register* that the measures have been triggered. Permit modifications are not anticipated to be required to reduce emissions by using materials with lower VOC content such as coatings, degreasing and cleaning solvents, adhesives, and emulsified asphalt because, if mentioned at all, the permit would set a maximum VOC content, not a minimum.

The draft guidance also states, "EPA continues to believe that 1 year is generally the appropriate timeframe for CMs to achieve reductions because of the intended purpose of is to provide emissions reductions to bridge the gap between the failure and the subsequent corrective action." The commission is adopting a compliance date requiring compliance with the contingency measures within 270 days after notice in the *Texas Register*. TCEQ chose to require compliance within 270 days rather than a year to allow time between the EPA notification and the TCEQ notification. The commission is not requiring compliance within 60 days of EPA notice for three reasons. First, the EPA notice would be of EPA's determination of failure to attain or failure to meet an RFP milestone, but a separate notice is required from TCEQ to notify affected sources regarding which contingency measures will be triggered in which nonattainment areas. The TCEQ notice requires additional time, potentially consuming a substantial portion of a 60-day period. Second, once notified, affected sources may need additional time to acquire a supply of compliant, lower VOC materials. Third, the EPA draft guidance recommends that contingency measure reductions occur within one year of EPA notification and the 270-day compliance period will allow sources sufficient time to adjust their operations while assuring that sources are achieving reductions within one year. No changes were made in response to this comment.

SUBCHAPTER A. DEFINITIONS

30 TAC §115.10

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air.

The adopted amendments implement TWC, §§5.102, 5.103, 5.105 and 7.002; and THSC, §§382.002, 382.011, 382.012, and 382.017.

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. GENERAL VOLATILE ORGANIC COMPOUND SOURCES
DIVISION 1. STORAGE OF VOLATILE ORGANIC COMPOUNDS

30 TAC §§115.110 - 115.112, 115.114 - 115.119

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.111. Exemptions.

(a) The following exemptions apply in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas as defined in §115.10 of this title (relating to Definitions), except as noted in paragraphs (2), (4), (6), (7), and (9) - (11) of this subsection.

(1) Except as provided in §115.118 of this title (relating to Recordkeeping Requirements), a storage tank storing volatile organic compounds (VOC) with a true vapor pressure less than 1.5 pounds per

square inch absolute (psia) is exempt from the requirements of this division.

(2) A storage tank with storage capacity less than 210,000 gallons storing crude oil or condensate prior to custody transfer in the Beaumont-Port Arthur, Bexar County, or El Paso areas, is exempt from the requirements of this division. This exemption no longer applies in the Dallas-Fort Worth area beginning March 1, 2013.

(3) A storage tank with a storage capacity less than 25,000 gallons located at a motor vehicle fuel dispensing facility is exempt from the requirements of this division.

(4) A welded storage tank in the Beaumont-Port Arthur, Bexar County, El Paso, and Houston-Galveston-Brazoria areas with a mechanical shoe primary seal that has a secondary seal from the top of the shoe seal to the tank wall (a shoe-mounted secondary seal) is exempt from the requirement for retrofitting with a rim-mounted secondary seal if the shoe-mounted secondary seal was installed or scheduled for installation before August 22, 1980.

(5) An external floating roof storage tank storing waxy, high pour point crude oils is exempt from any secondary seal requirements of §115.112(a), (d), and (e) of this title (relating to Control Requirements).

(6) A welded storage tank in the Beaumont-Port Arthur, Bexar County, El Paso, and Houston-Galveston-Brazoria areas storing VOC with a true vapor pressure less than 4.0 psia is exempt from any external floating roof secondary seal requirement if any of the following types of primary seals were installed before August 22, 1980:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(7) A welded storage tank in the Beaumont-Port Arthur, Bexar County, El Paso, and Houston-Galveston-Brazoria areas storing crude oil with a true vapor pressure equal to or greater than 4.0 psia and less than 6.0 psia is exempt from any external floating roof secondary seal requirement if any of the following types of primary seals were installed before December 10, 1982:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(8) A storage tank with storage capacity less than or equal to 1,000 gallons is exempt from the requirements of this division.

(9) In the Houston-Galveston-Brazoria area, a storage tank or tank battery storing condensate, as defined in §101.1 of this title (relating to Definitions), prior to custody transfer with a condensate throughput exceeding 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(d)(4) or (e)(4)(A) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title (relating to Approved Test Methods), that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 25 tons per year on a rolling 12-month basis.

(10) In the Dallas-Fort Worth area, except Wise County, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(B) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 50 tons per year on a rolling 12-month basis. This exemption no longer applies on November 7, 2025.

(11) In the Dallas-Fort Worth area, except in Wise County, on or after November 7, 2025, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(B) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 25 tons per year on a rolling 12-month basis.

(12) In Wise County, prior to July 20, 2021, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 6,000 barrels (252,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(C)(i) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 100 tons per year on a rolling 12-month basis.

(13) In Wise County until November 7, 2025, , a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 3,000 barrels (126,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(C)(ii) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 50 tons per year on a rolling 12-month basis.

(14) In Wise County beginning November 7, 2025, a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 1,500 barrels (63,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(D) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 25 tons per year on a rolling 12-month basis.

(15) In the Bexar County area beginning January 1, 2025 a storage tank or tank battery storing condensate prior to custody transfer with a condensate throughput exceeding 6,000 barrels (252,000 gallons) per year on a rolling 12-month basis is exempt from the requirement in §115.112(e)(4)(E) of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 100 tons per year on a rolling 12-month basis. of this title, to control flashed gases if the owner or operator demonstrates, using the test methods specified in §115.117 of this title, that uncontrolled VOC emissions from the individual storage tank, or from the aggregate of storage tanks in a tank battery, are less than 100 tons per year on a rolling 12-month basis.

(16) In the Bexar County, Dallas-Fort Worth, and Houston-Galveston-Brazoria areas, beginning when compliance is achieved with Division 7 of this subchapter (relating to Oil and Natural Gas Service in Ozone Nonattainment Areas) but no later than its initial §115.183 compliance deadline, a storage tank storing crude oil or con-

densate that is subject to the compliance requirements of Division 7 of this subchapter is exempt from all requirements in this division.

(b) The following exemptions apply in Gregg, Nueces, and Victoria Counties.

(1) Except as provided in §115.118 of this title, a storage tank storing VOC with a true vapor pressure less than 1.5 psia is exempt from the requirements of this division.

(2) A storage tank with storage capacity less than 210,000 gallons storing crude oil or condensate prior to custody transfer is exempt from the requirements of this division.

(3) A storage tank with storage capacity less than 25,000 gallons located at a motor vehicle fuel dispensing facility is exempt from the requirements of this division.

(4) A welded storage tank with a mechanical shoe primary seal that has a secondary seal from the top of the shoe seal to the tank wall (a shoe-mounted secondary seal) is exempt from the requirement for retrofitting with a rim-mounted secondary seal if the shoe-mounted secondary seal was installed or scheduled for installation before August 22, 1980.

(5) An external floating roof storage tank storing waxy, high pour point crude oils is exempt from any secondary seal requirements of §115.112(b) of this title.

(6) A welded storage tank storing VOC with a true vapor pressure less than 4.0 psia is exempt from any external secondary seal requirement if any of the following types of primary seals were installed before August 22, 1980:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(7) A welded storage tank storing crude oil with a true vapor pressure equal to or greater than 4.0 psia and less than 6.0 psia is exempt from any external secondary seal requirement if any of the following types of primary seals were installed before December 10, 1982:

(A) a mechanical shoe seal;

(B) a liquid-mounted foam seal; or

(C) a liquid-mounted liquid filled type seal.

(8) A storage tank with storage capacity less than or equal to 1,000 gallons is exempt from the requirements of this division.

(c) The following exemptions apply in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties. The exemptions in this subsection no longer apply in Bexar County beginning January 1, 2025.

(1) A storage tank storing VOC with a true vapor pressure less than 1.5 psia is exempt from the requirements of this division.

(2) Slotted guidepoles installed in a floating roof storage tank are exempt from the provisions of §115.112(c) of this title.

(3) A storage tank with storage capacity between 1,000 gallons and 25,000 gallons is exempt from the requirements of §115.112(c)(1) of this title if construction began before May 12, 1973.

(4) A storage tank with storage capacity less than or equal to 420,000 gallons is exempt from the requirements of §115.112(c)(3) of this title.

(5) A storage tank with storage capacity less than or equal to 1,000 gallons is exempt from the requirements of this division.

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

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DIVISION 2. VENT GAS CONTROL

30 TAC §§115.121 - 115.123, 115.125 - 115.127, 115.129

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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

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DIVISION 3. WATER SEPARATION

30 TAC §§115.131, 115.132, 115.135 - 115.137, 115.139

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.131. Emission Specifications.

(a) For all persons in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas as defined in §115.10 of this title (relating to Definitions), any volatile organic compound (VOC) water separator equipped with a vapor recovery system in order to comply with §115.132(a) of this title (relating to Control Requirements) shall reduce emissions such that the true partial pressure of the VOC in vent gases to the atmosphere will not exceed a level of 0.5 psia (3.4 kPa).

(b) For all persons in Gregg, Nueces, and Victoria Counties, any VOC water separator equipped with a vapor recovery system in order to comply with §115.132(b) of this title shall reduce emissions such that the partial pressure of the VOC in vent gases to the atmosphere will not exceed a level of 1.5 psia (10.3 kPa).

(c) For all persons in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, any VOC water separator equipped with a vapor recovery system in order to comply with §115.132(c) of this title shall reduce emissions such that the true partial pressure of the VOC in vent gases to the atmosphere will not exceed a level of 1.5 psia (10.3 kPa). The emission specifications of this subsection no longer apply for sources located in Bexar County beginning January 1, 2025.

§115.132. Control Requirements.

(a) For the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, no person shall use any single or multiple compartment volatile organic compound (VOC) water separator which separates materials containing VOC obtained from any equipment which is processing, refining, treating, storing, or handling VOC, unless each compartment is controlled in one of the following ways:

(1) the compartment totally encloses the liquid contents and has all openings (such as roof seals and access doors) sealed such that the separator can hold a vacuum or pressure without emissions to the atmosphere, except through a pressure relief valve. All gauging and sampling devices shall be vapor-tight except during gauging or sampling. The pressure relief valve must be designed to open only as necessary to allow proper operation, and must be set at the maximum possible pressure necessary for proper operation, but such that the valve will not vent continuously;

(2) the compartment is equipped with a floating roof or internal floating cover which will rest on the surface of the contents and be equipped with a closure seal or seals to close the space between the roof edge and tank wall. All gauging and sampling devices shall be vapor-tight except during gauging or sampling;

(3) the compartment is equipped with a vapor recovery system which satisfies the provisions of §115.131(a) of this title (relating to Emission Specifications);

(4) any water separator that becomes subject to the provisions of paragraph (1), (2), or (3) of this subsection by exceeding provisions of §115.137(a) of this title (relating to Exemptions) will remain subject to the provisions of this subsection, even if throughput or emissions later fall below the exemption limits unless and until emissions are reduced to no more than the controlled emissions level existing before implementation of the project by which throughput or emission rate was reduced to less than the applicable exemption limits in §115.137(a) of this title; and

(A) the project by which throughput or emission rate was reduced is authorized by any permit or permit amendment or standard permit or permit by rule required by Chapter 116 or Chapter 106 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification; and Permits by Rule). If a permit by rule is available for the project, compliance with this subsection must be maintained for 30 days after the filing of documentation of compliance with that permit by rule; or

(B) if authorization by permit, permit amendment, standard permit, or permit by rule is not required for the project, the owner/operator has given the executive director 30 days' notice of the project in writing.

(b) For Gregg, Nueces, and Victoria Counties, no person shall use any single or multiple compartment VOC water separator which separates materials containing VOC obtained from any equipment which is processing, refining, treating, storing, or handling VOC, unless each compartment is controlled in one of the following ways:

(1) the compartment totally encloses the liquid contents and has all openings (such as roof seals and access doors) sealed such that the separator can hold a vacuum or pressure without emissions to the atmosphere, except through a pressure relief valve. All gauging and sampling devices shall be vapor-tight except during gauging or sampling. The pressure relief valve must be designed to open only as necessary to allow proper operation, and must be set at the maximum

possible pressure necessary for proper operation, but such that the valve will not vent continuously;

(2) the compartment is equipped with a floating roof or internal floating cover which will rest on the surface of the contents and be equipped with a closure seal or seals to close the space between the roof or cover edge and tank wall. All gauging and sampling devices shall be vapor-tight, except during gauging or sampling;

(3) the compartment is equipped with a vapor recovery system which satisfies the provisions of §115.131(b) of this title.

(c) For Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, no person shall use any single or multiple compartment VOC water separator which separates materials containing VOC obtained from any equipment which is processing, refining, treating, storing, or handling VOC, unless each compartment is controlled in one of the following ways. The control requirements of this subsection no longer apply for sources located in Bexar County beginning January 1, 2025.

(1) The compartment totally encloses the liquid contents and has all openings (such as roof seals and access doors) sealed such that the separator can hold a vacuum or pressure without emissions to the atmosphere, except through a pressure relief valve. All gauging and sampling devices shall be vapor-tight except during gauging or sampling. The pressure relief valve must be designed to open only as necessary to allow proper operation, and must be set at the maximum possible pressure necessary for proper operation, but such that the valve will not vent continuously.

(2) The compartment is equipped with a floating roof or internal floating cover which will rest on the surface of the contents and be equipped with a closure seal or seals to close the space between the roof or cover edge and tank wall. All gauging and sampling devices shall be vapor-tight except during gauging or sampling.

(3) The compartment is equipped with a vapor recovery system which satisfies the provisions of §115.131(c) of this title.

§115.139. Counties and Compliance Schedules.

(a) Except as specified in subsection (e) of this section, in Aransas, Bexar, Brazoria, Calhoun, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Matagorda, Montgomery, Nueces, Orange, San Patricio, Tarrant, Travis, Victoria, and Waller Counties, the compliance date has passed and the owner or operator of each volatile organic compound (VOC) water separator shall continue to comply with this division.

(b) The owner or operator of each VOC water separator in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

(c) The owner or operator of each VOC water separator in Wise County shall comply with this division as soon as practicable, but no later than January 1, 2017.

(d) The owner or operator of a water separator in Bexar, Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties that becomes subject to this division on or after the applicable compliance date in subsection (a), (b) or (c) of this section, shall be in compliance with the requirements in this division as soon as practicable, but no later than 60 days after becoming subject.

(e) The owner or operator of each VOC water separator in the Bexar County area subject to the requirements of this division shall comply with the requirements of §115.131(c), §115.132(c), and §115.137(c) of this title (relating to Emission Specifications; Control Requirements; and Exemptions) through December 31, 2024 and all other applicable requirements of this division by no later than January 1, 2025.

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DIVISION 4. INDUSTRIAL WASTEWATER

30 TAC §§115.142, 115.144, 115.146, 115.147, 115.149

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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DIVISION 6. BATCH PROCESSES

30 TAC §§115.161, 115.162, 115.164 - 115.167, 115.169

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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DIVISION 7. OIL AND NATURAL GAS SERVICE IN OZONE NONATTAINMENT AREAS

30 TAC §§115.170 - 115.173, 115.177, 115.183

Statutory Authority

The new and amended rules are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new and amended rules are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The new and amended adopted rules implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.171. Definitions.

Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, or 115.10 of this title (relating to Definitions, respectively), the terms in this division have the meanings commonly used in the field of air pollution control. The following meanings apply in this division unless the context clearly indicates otherwise.

(1) Centrifugal compressor--A piece of equipment for raising the pressure of natural gas by drawing in low-pressure natural gas and discharging significantly higher-pressure natural gas by means of mechanical rotating vanes or impellers. Screw, sliding vane, and liquid ring compressors are not centrifugal compressors.

(2) Closure device--A piece of equipment that covers an opening in the roof of a fixed roof storage tank and either can be temporarily opened or has a component that provides a temporary opening. Examples of closure devices include, but are not limited to, thief hatches, pressure relief valves, pressure-vacuum relief valves, and access hatches.

(3) Difficult-to-monitor--Equipment that cannot be inspected without elevating the inspecting personnel more than two meters above a support surface.

(4) Fugitive emission components--Except for vents as defined in §101.1 of this title (relating to Definitions) and sampling systems, equipment as defined in subparagraphs (A) and (B) of this paragraph that has the potential to leak volatile organic compounds (VOC) emissions.

(A) At a natural gas processing plant, equipment considered fugitive components include, but are not limited to, any pump, pressure relief device, open-ended valve or line, valve, flange, or other

connector that is in VOC service or wet gas service, and any closed vent system or control device not subject to another section in this division that specifies one or more instrument monitoring requirements for the system or device. A compressor or sampling connection system that is exempt from the fugitive monitoring requirements in §115.352 and §115.354 of this title (relating to Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas) on or before December 31, 2022 is excluded as a fugitive monitoring component under this subparagraph.

(B) At a well site or gathering and boosting station from equipment considered fugitive emissions components include, but are not limited to, valves, compressors, connectors, pressure relief devices, open-ended lines, flanges, instruments, meters, or other openings that are not on a storage tank subject to §115.175 of this title (relating to Storage Tank Control Requirements), and any closed vent system or control device not subject to another section in this division that specifies one or more instrument monitoring requirements for the system or device. A compressor seal at a gathering and boosting station that is addressed in §115.173 of this title (relating to Compressor Control Requirements) is not included as a fugitive emission component.

(5) Gathering and boosting station--Any permanent combination of one or more compressors that collects natural gas from well sites and moves the natural gas at increased pressure into gathering pipelines to a natural gas processing plant or into the pipeline. The combination of one or more compressors located at a well site, or located at an onshore natural gas processing plant, is not a gathering and boosting station.

(6) Heavy liquid service--Equipment is in heavy liquid service if the heavy liquid process fluid contains VOC having a true vapor pressure equal to or less than 0.044 pounds per square inch absolute (psia) (0.3 kiloPascals) at 68 degrees Fahrenheit (20 degrees Celsius).

(7) Light liquid service--A piece of equipment contains a liquid that meets the following conditions.

(A) The vapor pressure of one or more of the organic components is greater than 1.2 inches water at 68 degrees Fahrenheit (0.3 kiloPascals at 20 degrees Celsius).

(B) The total concentration of the pure organic components having a vapor pressure greater than 1.2 inches water at 68 degrees Fahrenheit (0.3 kiloPascals at 20 degrees Celsius) is equal to or greater than 20.0% by weight.

(C) The fluid is a liquid at operating conditions.

(D) An equipment is in light liquid service if the weight percent evaporated is greater than 10.0% at 302 degrees Fahrenheit (150 degrees Celsius) as determined by ASTM Method D86-96.

(8) Natural gas processing plant--any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both. A Joule-Thompson valve, a dew point depression valve, or an isolated or standalone Joule-Thompson skid is not a natural gas processing plant.

(9) Pneumatic controller--An automated instrument that is actuated by a compressed gas and is used to maintain a process condition such as liquid level, pressure, pressure differential and temperature. When actuated by natural gas, pneumatic controllers are characterized primarily by their emission characteristics.

(A) Continuous bleed pneumatic controllers receive a continuous flow of pneumatic natural gas supply and are used to modulate flow, liquid level, or pressure. Gas is vented continuously at a rate that may vary over time. Continuous bleed controllers are further subdivided into two types based on their bleed rate, which for the purposes of this section means the rate at which natural gas is continuously vented from a pneumatic controller and measured in standard cubic feet per hour (scfh):

(i) low bleed controllers have a bleed rate of less than or equal to 6.0 scfh; and

(ii) high bleed controllers have a bleed rate of greater than 6.0 scfh.

(B) Intermittent bleed or snap-acting pneumatic controllers release natural gas intermittently only during control system actuation periods when they open, close, or throttle the gas flow to a control valve for actuation purposes. Intermittent bleed or snap-acting pneumatic controllers, as defined in this section, are not subject to 30 TAC §115.174(b)(2) bleed rate limits measured in scfh.

(C) Zero-bleed pneumatic controllers do not bleed natural gas to the atmosphere. These pneumatic controllers are self-contained devices that release gas to a downstream pipeline instead of to the atmosphere.

(10) Pneumatic pump--A positive displacement pump powered by pressurized natural gas that uses the reciprocating action of flexible diaphragms in conjunction with check valves to pump a fluid.

(11) Reciprocating compressor--A piece of equipment that increases the pressure of a natural gas by positive displacement, employing linear movement of the driveshaft.

(12) Rod packing--A series of flexible rings in machined metal cups that fit around the reciprocating compressor piston rod to create a seal limiting the amount of compressed natural gas that escapes to the atmosphere, or other mechanism that provides the same function.

(13) Route to a process--The emissions are:

(A) conveyed via a closed vent system to any enclosed portion of a process where it is predominantly recycled or consumed in the same manner as a material that fulfills the same function in the process or is transformed by chemical reaction into materials that are not regulated materials or incorporated into a product; or

(B) recovered.

(14) Storage tank--A tank, stationary vessel, or a container that contains an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water, and that is constructed primarily of non-earthen materials.

(15) Unsafe-to-monitor--Equipment that exposes monitoring personnel to an imminent or potential danger as a consequence of conducting an inspection.

(16) Vapor recovery unit--A device that transfers hydrocarbon vapors to a fuel liquid or gas system, a sales liquid or gas system, or a liquid storage tank.

(17) Wellhead--the piping, casing, tubing and connected valves protruding above the earth's surface for an oil and/or natural gas well. The wellhead ends where the flow line connects to a wellhead valve. The wellhead does not include other equipment at the well site except for any conveyance through which gas is vented to the atmosphere.

(18) Well site--A parcel of land with one or more surface sites, which means sites with any combination of one or more graded pad sites, gravel pad sites, foundations, platforms, or the immediate physical location upon which equipment is physically affixed, that are constructed for the drilling and subsequent operation of one or more

oil, natural gas, or injection wells. The meaning of "site" and "sites" in this definition is limited to this division.

(19) Wet gas service--A piece of equipment which contains or contacts the field gas before the extraction step at a gas processing plant process unit.

§115.172. Exemptions.

(a) The following exemptions apply to the equipment specified in §115.170 of this title (relating to Applicability) that is subject to this division. Records to support exemption qualification must be kept in accordance with the requirements in §115.180 of this title (relating to Recordkeeping Requirements). Additional requirements apply where specified.

(1) Boilers and process heaters are exempt from the testing requirements of §115.179 of this title (relating to Approved Test Methods and Testing Requirements) and the monitoring requirements of §115.178 of this title (relating to Monitoring and Inspection Requirements) if:

(A) a vent gas stream from equipment subject to this division is introduced with the primary fuel or is used as the primary fuel; or

(B) the boiler or process heater has a design heat input capacity equal to or greater than 44 megawatts or 149.6 million British thermal units per hour.

(2) Any pneumatic pump at a well site that operates fewer than 90 days per calendar year is exempt from the requirements of this division.

(3) Except for the control requirements in §115.175(b) or (c) of this title (relating to Storage Tank Control Requirements), any storage tank that meets one of the following conditions is exempt from the requirements in this division:

(A) a storage tank with the potential to emit of less than 6.0 tons per year of volatile organic compounds (VOC) emissions, which must be calculated in accordance with §115.175(c)(2) of this title;

(B) a storage tank with uncontrolled actual VOC emissions of less than 4.0 tons per year, which must be calculated in accordance with §115.175(c)(1) of this title;

(C) a process vessel such as a surge control vessel, bottom receiver, or knockout vessel;

(D) a pressure vessel designed to operate in excess of 29.7 pounds per square inch absolute and designed to operate without emissions to the atmosphere; and

(E) a vessel that is skid-mounted or permanently attached to something that is mobile (such as trucks, railcars, barges, or ships) and is intended to be located at a site for less than 180 consecutive days.

(4) Fugitive emission components at a natural gas processing plant that contact a process fluid that contains less than 1.0% VOC by weight are exempt from the requirements of this division.

(5) All pumps and compressors, other than those specified in §115.173 and §115.174 of this title (relating to Compressor Control Requirements and Pneumatic Controller and Pump Controller Requirements, respectively), that are equipped with a shaft sealing system that prevents or detects emissions of VOC from the seal are exempt from the fugitive monitoring requirements of §115.177 of this title (relating to Fugitive Emission Component Requirements). These seal systems may include, but are not limited to, dual pump seals with barrier fluid at higher pressure than process pressure, seals degassing to vent control systems kept in good working order, or seals equipped with an automatic seal failure detection and alarm system.

(6) At a natural gas processing plant, components that are insulated, making them inaccessible to monitoring with a hydrocarbon gas analyzer, are exempt from the hydrocarbon gas analyzer monitoring requirements of §115.177 and §115.178 of this title. Inspections using audio, visual, and olfactory means must still be conducted in accordance with the appropriate requirements of §115.177 and §115.178 of this title.

(7) At a natural gas processing plant, sampling connection systems, as defined in 40 Code of Federal Regulations (CFR) §63.161 (as amended January 17, 1997 (62 FR 2788)), that meet the requirements of 40 CFR §63.166(a) and (b) (as amended June 20, 1996 (61 FR 31439)) are exempt from the requirements of this division, except from the recordkeeping requirement in §115.180(2) of this title.

(8) Fugitive emission components located at a well site with one or more wells that produce on average 15-barrel equivalents or less per day are exempt from the requirements of this division, except from the recordkeeping requirement in §115.180(2) of this title.

(9) Natural gas processing plant pump, valve and connector fugitive components that contact a heavy liquid process fluid containing VOC having a true vapor pressure equal to or less than 0.044 pounds per square inch absolute (psia) (0.3 kiloPascals) at 68 degrees Fahrenheit (20 degrees Celsius) are exempt from the instrument monitoring (with a hydrocarbon gas analyzer) requirements of §115.177(b) of this title (relating to Monitoring and Inspection Requirements) if the components are inspected by visual, audio, and/or olfactory means according to the minimum inspection schedules specified in §115.177(b) of this title and the following procedures are followed when the inspection indicates that a leak may be present.

(A) The owner or operator shall monitor the heavy liquid service component within five days by the method specified in 115.177(b) and shall comply with the requirements of subparagraphs (B) through (D) of this paragraph.

(B) The owner or operator shall eliminate the visual, audible, olfactory, or other indication of a potential leak within five calendar days of detection.

(C) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(i) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in 115.177(b).

(ii) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(D) First attempts at repair include, but are not limited to, the best operating practices described under 40 CFR §60.482-2a(c)(2) and §60.482-7a(e).

(10) Natural gas processing plant pressure relief devices routed through a closed vent system to a control device, process or fuel gas system are exempt from the instrument monitoring (with a hydrocarbon gas analyzer) requirements of §115.177(b) of this title (relating to Monitoring and Inspection Requirements) if the owner or operator inspects components by visual, audio, and/or olfactory means according to the minimum inspection schedules specified in §115.177(b) of this title and complies with procedures specified in either §115.172(a)(10)(A), (C) and (D) or §115.172(a)(10)(B).

(A) The owner or operator shall monitor the light liquid service component within five days by the method specified in 115.177(b) and shall comply with the requirements of paragraphs (C) through (D) of this subsection.

(B) The owner or operator shall eliminate the visual, audible, olfactory, or other indication of a potential leak within five calendar days of detection.

(C) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(i) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in 115.177(b).

(ii) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(D) First attempts at repair include, but are not limited to, the best operating practices described under 40 CFR §60.482-2a(c)(2) and §60.482-7a(e).

(b) Equipment used only for materials outside the product stream from a crude oil or natural gas production well or after the point of custody transfer to a crude oil or natural gas distribution or storage segment is exempt from the requirements of this division.

(c) After the appropriate compliance date in §115.183 of this title (relating to Compliance Schedules) and upon the date that the wet seals on a centrifugal compressor subject to subsection (a) of this section are retrofitted with a dual mechanical or other equivalent dry seal control system, the compressor no longer meets the applicability of this division.

(d) After the appropriate compliance date in §115.183 of this title, if changes are made to a pneumatic pump or controller are such that the pump or controller does not meet the appropriate definitions in this division, the requirements of §115.174(a) or (b) of this title no longer apply. The change in applicability status must be documented in accordance with the recordkeeping requirements in §115.180 of this title. For example, a pneumatic controller converted to a solar-powered controller no longer meets the applicability of a pneumatic controller regulated by this division.

(e) Well sites that only contain one or more wellheads and do not contain additional equipment are exempt from the monitoring requirements of §115.177(b).

(f) Pressure relief valves vented to a process, fuel gas system, or equipped with a closed vent system routed to a control device that meet the requirements of §115.175(a)(2) and (4) are exempt from the monitoring requirements of §115.177(b), provided the closed vent system is monitored in accordance with §115.177.

§115.173. Compressor Control Requirements.

(a) Owners or operators of centrifugal compressors with wet seal fluid degassing systems must comply with the following requirements.

(1) Vapors must be routed from the wet seal fluid degassing system through a closed vent system that is designed and operated under normal operations to route all gases, vapors, and/or fumes from the wet seal fluid degassing system to a control device that meets the requirements of subsection (c) of this section. The closed vent system must operate under negative pressure at the inlet for vapors.

(2) The compressor must be equipped with a seal cover that forms a continuous impermeable barrier over the entire liquid surface area, and the cover must remain in a sealed position (e.g., covered by a gasketed lid or cap) except during periods necessary to inspect, maintain, repair, or replace equipment.

(b) Owners or operators of reciprocating compressors must comply with paragraph (1), (2) or (3) of this subsection.

(1) Replace the compressor rod packing on or before the compressor has operated for 26,000 hours from the most recent rod packing replacement. The number of hours the compressor operates must be continuously recorded beginning on the appropriate compliance date in §115.183 of this title (relating to Compliance Schedule).

(2) Replace the compressor rod packing within 36 months from the most recent rod packing replacement beginning from the appropriate compliance date in §115.183 of this title.

(3) Operate a closed vent system under negative inlet pressure that captures and routes rod packing vapor to a control device that meets the requirements of subsection (c) of this section.

(c) A control device, other than a device specified in paragraphs (3) or (4) of this subsection, may be used and must maintain a VOC control efficiency of at least 95% or a VOC concentration of equal to or less than 275 parts per million by volume (ppmv), as propane, on a wet basis corrected to 3% oxygen. The 95% VOC control efficiency and 275 ppmv VOC concentration are calculated from the gas stream at the control device outlet.

(1) The control device must be operated at all times when gases, vapors, or fumes are vented from the closed vent system to the control device. For a boiler or process heater used as the control device, the vent gas stream must be introduced into the flame zone of the boiler or process heater. Multiple vents may be routed to the same control device. Control devices and closed vent systems must comply with §115.178 of this title (relating to Monitoring and Inspection Requirements) and §115.179 of this title (relating to Approved Test Methods and Testing Requirements).

(2) Control devices must operate with no visible emissions, as determined through a visible emissions test conducted according to United States Environmental Protection Agency (EPA) Method 22, 40 Code of Federal Regulations (CFR) Part 60, Appendix A-7, Section 11, except for periods not to exceed a total of one minute during any 15-minute observation period.

(3) A flare may be used and must be designed and operated in accordance with 40 CFR §60.18(b) - (f) (as amended through December 22, 2008 (73 *Federal Register* (FR) 78209)). The flare must be lit at all times when VOC vapors are routed to the flare. Multiple vents may be routed to the same control device.

(4) VOC emissions may be routed to a process if the emissions are compatible with the process and would be retained within the process. Routing to a process is considered equivalent to a 95% control efficiency.

(5) A bypass installed on a closed vent system able to divert any portion of the flow from entering a control device or routing to a process must be in compliance with subparagraphs (A) or (B) of this paragraph.

(A) A flow indicator must be installed, calibrated, and maintained at the inlet of each bypass. The flow indicator must take a reading at least once every 15 minutes and initiate an alarm notifying operators to take prompt remedial action when bypass flows are present.

(B) Each bypass valve must be secured in the non-diverting position using a car-seal or a lock-and-key type configuration.

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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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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30 TAC §115.173

Statutory Authority

The repealed rule is adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The repeal is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted repeal implements TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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. VOLATILE ORGANIC COMPOUND TRANSFER OPERATIONS
DIVISION 1. LOADING AND UNLOADING OF VOLATILE ORGANIC COMPOUNDS

30 TAC §§115.211 - 115.214, 115.216, 115.217, 115.219

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.219. Counties and Compliance Schedules.

(a) In Aransas, Bexar, Brazoria, Calhoun, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Matagorda, Montgomery, Nueces, Orange, San Patricio, Tarrant, Travis, Victoria, and Waller Counties, the compliance date has passed and the owner or operator of each volatile organic compound (VOC) transfer operation shall continue to comply with this division. Bexar County is only subject to this division's covered attainment requirements in accordance with this compliance schedule until January 1, 2025, when the area must comply with nonattainment area requirements in accordance with subsection (f) of this section and is no longer required to meet the covered attainment requirements.

(b) In the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), the compliance date has passed and the owner or operator of each gasoline bulk plant shall continue to comply with this division.

(c) In the covered attainment counties, as defined in §115.10 of this title, the compliance date has passed and the owner or operator of each gasoline terminal shall continue to comply with this division.

(d) The owner or operator of each gasoline terminal, gasoline bulk plant, or VOC transfer operation in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

(e) The owner or operator of each gasoline terminal, gasoline bulk plant, or VOC transfer operation in Wise County shall comply with this division as soon as practicable, but no later than January 1, 2017. The owner or operator of each gasoline terminal or gasoline bulk plant in Wise County shall continue to comply with the applicable requirements in §§115.211(2), 115.212(b), and 115.214(b) of this title (relating to Emission Specifications; Control Requirements; and Inspection Requirements) until the facility achieves compliance with the applicable requirements in §§115.211(1), 115.212(a), and 115.214(a) of this title.

(f) The owner or operator of each VOC transfer operation, transport vessel, and marine vessel in the Bexar County area shall be in compliance with the nonattainment area requirements in this division no later than January 1, 2025.

(g) The owner or operator of an affected source that becomes subject to the requirements of this division on or after the applicable compliance date in this section, shall be in compliance with the requirements in this division as soon as practicable, but no later than 60 days after becoming subject.

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

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DIVISION 2. FILLING OF GASOLINE STORAGE VESSELS (STAGE I) FOR MOTOR VEHICLE FUEL DISPENSING FACILITIES

30 TAC §§115.221, 115.222, 115.224, 115.226, 115.227, 115.229

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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DIVISION 3. CONTROL OF VOLATILE ORGANIC COMPOUND LEAKS FROM TRANSPORT VESSELS

30 TAC §§115.234, 115.235, 115.237, 115.239

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement Texas Water Code, §§5.102, 5.103 and 7.002; and Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.234. Inspection Requirements.

(a) No person in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), shall allow a tank-truck tank to be filled with or emptied of gasoline at any facility subject to §115.214(a)(1)(C) or §115.224(2) of this title (relating to Inspection Requirements; and Inspection Requirements), or filled with non-gasoline volatile organic compounds (VOC) having a true vapor pressure greater than or equal to 0.5 pounds per square inch absolute under actual storage conditions at any facility subject to §115.214(a)(1)(C) of this title, unless the tank-truck tank has passed a leak-tight test within the past year as evidenced by a prominently displayed certification affixed near the United States Department of Transportation certification plate which:

(1) shows the date the tank-truck tank last passed the leak-tight test required by §115.235 of this title (relating to Approved Test Methods); and

(2) shows the identification number of the tank-truck tank.

(b) No person in the covered attainment counties, as defined in §115.10 of this title, shall allow a gasoline tank-truck tank to be filled or emptied at any facility subject to §115.214(b)(1)(C) or §115.224(2) of this title unless the tank-truck tank has passed a leak-tight test within the past year as evidenced by a prominently displayed certification affixed near the United States Department of Transportation certification plate which:

(1) shows the date the gasoline tank-truck tank last passed the leak-tight test required by §115.235 of this title; and

(2) shows the identification number of the tank-truck tank.

§115.235. Approved Test Methods.

(a) In the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas, the following testing requirements apply.

(1) The owner or operator of any tank-truck which is filled with or emptied of gasoline at any facility subject to §115.214(a)(1)(C) or §115.224(2) of this title (relating to Inspection Requirements; and Inspection Requirements), or which is filled with non-gasoline volatile organic compounds (VOC) at any facility subject to §115.214(a)(1)(C) of this title shall cause each such tank to be tested annually to ensure that the tank is vapor-tight.

(2) Any tank failing to meet the testing criteria of paragraph (1) of this subsection shall be repaired and retested within 15 days.

(3) Testing required in paragraph (1) of this subsection shall be conducted in accordance with the following test methods, as appropriate:

(A) Test Method 27 (40 Code of Federal Regulations (CFR) 60, Appendix A) for determining vapor-tightness of gasoline delivery tank using pressure-vacuum test such that the pressure in the tank must change no more than three inches of water (0.75 kPa) in five minutes when pressurized to a gauge pressure of 18 inches of water (4.5 kPa) and when evacuated to a vacuum of six inches of water (1.5 kPa); or

(B) minor modifications to these test methods approved by the executive director.

(4) For tank-truck tanks which are filled with non-gasoline VOC at a facility subject to §115.214(a)(1)(C) of this title, annual testing using the leakage test method described in 49 CFR 180.407(h) for specification cargo tanks is an acceptable alternative to Test Method 27 (40 CFR 60, Appendix A).

(b) In the covered attainment counties, the following testing requirements shall apply.

(1) The owner or operator of any tank-truck which is filled or emptied at any facility subject to §115.214(b)(1)(C) or §115.224(2) of this title shall cause each such tank to be tested annually to ensure that the tank is vapor-tight.

(2) Any tank failing to meet the testing criteria of paragraph (1) of this subsection shall be repaired and retested within 15 days.

(3) Testing required in paragraph (1) of this subsection shall be conducted in accordance with the following test methods, as appropriate:

(A) Test Method 27 (40 CFR 60, Appendix A) for determining vapor tightness of gasoline delivery tank using pressure-vacuum test such that the pressure in the tank must change no more than three inches of water (0.75 kPa) in five minutes when pressurized to a gauge pressure of 18 inches of water (4.5 kPa) and when evacuated to a vacuum of six inches of water (1.5 kPa); or

(B) minor modifications to these test methods approved by the executive director.

§115.237. Exemptions.

(a) The following exemptions apply in the Beaumont-Port Arthur, Bexar County, Dallas-Fort Worth, El Paso, and Houston-Galveston-Brazoria areas.

(1) Any tank-truck tank which is used exclusively to transport volatile organic compounds (VOC) with a true vapor pressure less than 0.5 pounds per square inch absolute under actual storage conditions is exempt from the requirements of this division (relating to Control of Volatile Organic Compound Leaks From Transport Vessels).

(2) Transport vessels other than tank-trucks are exempt from the requirements of this division.

(3) Any tank-truck tank that is a portable tank, as defined in 49 Code of Federal Regulations 171.8, is exempt from the requirements of this division.

(b) In the covered attainment counties, transport vessels other than tank-trucks are exempt from the requirements of this division.

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

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SUBCHAPTER D. PETROLEUM REFINING, NATURAL GAS PROCESSING, AND PETROCHEMICAL PROCESSES

DIVISION 1. PROCESS UNIT TURNAROUND AND VACUUM-PRODUCING SYSTEMS IN PETROLEUM

30 TAC §§115.311, 115.312, 115.315, 115.316, 115.319

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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DIVISION 3. FUGITIVE EMISSION CONTROL IN PETROLEUM REFINING, NATURAL GAS/GASOLINE PROCESSING, AND PETROCHEMICAL PROCESSES IN OZONE NONATTAINMENT AREAS

30 TAC §§115.352 - 115.357, 115.359

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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SUBCHAPTER E. SOLVENT-USING PROCESSES

DIVISION 1. DEGREASING PROCESSES

30 TAC §§115.410 - 115.413, 115.415, 115.416, 115.419

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of

the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.419. Counties and Compliance Schedules.

(a) In Bexar, Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Montgomery, Nueces, Orange, Tarrant, Victoria, and Waller, Counties, the compliance date has passed and all affected persons shall continue to comply with this division.

(b) All affected persons in Bastrop, Caldwell, Comal, Guadalupe, Hays, Travis, Williamson, and Wilson Counties shall comply with this division as soon as practicable, but no later than December 31, 2005.

(c) All affected persons in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

(d) All affected persons of a degreasing process in Wise County shall comply with this division as soon as practicable, but no later than January 1, 2017.

(e) All affected persons of a degreasing process in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties that becomes subject to this division on or after the applicable compliance date in subsection (a), (c), or (d) of this section shall comply with the requirements in this division as soon as practicable, but no later than 60 days after becoming subject.

(f) All affected owners or operators of a degreasing process in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties shall be in compliance with §115.412(b) of this title (relating to Control Requirements) by no later than 270 days after the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).

(g) All affected owners or operators of a degreasing process in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall be in compliance with §115.412(c) of this title by no later than 270 days after the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).

(h) The owner or operator of a degreasing process or operation in the Bexar County area subject to the requirements of this division shall comply with the requirements of this division by no later than January 1, 2025. All affected persons of a degreasing process or operation in the Bexar County area that becomes subject to this division on or after the applicable compliance date in this subsection shall comply with the requirements of this division by but no later than 60 days after becoming subject.

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DIVISION 2. SURFACE COATING PROCESSES

30 TAC §§115.420, 115.422, 115.423, 115.425 - 115.427, 115.429

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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DIVISION 3. FLEXOGRAPHIC AND ROTOGRAVURE PRINTING

30 TAC §§115.430 - 115.432, 115.435, 115.436, 115.439

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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DIVISION 4. OFFSET LITHOGRAPHIC PRINTING

30 TAC §§115.440 - 115.443, 115.445. 115.446, 115.449

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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DIVISION 5. CONTROL REQUIREMENTS FOR SURFACE COATING PROCESSES

30 TAC §§115.450, 115.451, 115.453, 115.458, 115.459

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.450. Applicability and Definitions.

(a) Applicability. In the Bexar County, Dallas-Fort Worth and Houston-Galveston-Brazoria areas, as defined in §115.10 of this title (relating to Definitions), the requirements in this division apply to the following surface coating processes, except as specified in paragraphs (6) through (8) of this subsection:

(1) large appliance surface coating;

(2) metal furniture surface coating;

(3) miscellaneous metal parts and products surface coating, miscellaneous plastic parts and products surface coating, pleasure craft surface coating, and automotive/transportation and business machine plastic parts surface coating at the original equipment manufacturer and off-site job shops that coat new parts and products or that re-coat used parts and products;

(4) motor vehicle materials applied to miscellaneous metal and plastic parts specified in paragraph (3) of this subsection, at the original equipment manufacturer and off-site job shops that coat new metal and plastic parts or that re-coat used parts and products;

(5) paper, film, and foil surface coating lines with the potential to emit from all coatings greater than or equal to 25 tons per year of volatile organic compounds (VOC) when uncontrolled;

(6) in the Bexar County and Dallas-Fort Worth areas, automobile and light-duty truck assembly surface coating processes conducted by the original equipment manufacturer and operators that conduct automobile and light-duty truck surface coating processes under contract with the original equipment manufacturer;

(7) as of the compliance date specified in §115.459(e) or (g) of this title (relating to Compliance Schedules), industrial maintenance coatings in the Dallas-Fort Worth area and/or the Houston-Galveston-Brazoria area if the commission has published notice for the applicable area in the *Texas Register,* as provided in §115.459(e) or (g) of this title, to require compliance with the applicable contingency measure control requirements of §115.453(f) or (g) of this title (relating to Control Requirements); and

(8) as of the compliance date specified in §115.459(f) or (h) of this title, traffic marking coatings in the Dallas-Fort Worth area and/or the Houston-Galveston-Brazoria area if the commission has published notice for the applicable area in the *Texas Register,* as provided in §115.459(f) or (h) of this title, to require compliance with the applicable contingency measure control requirements of §115.453(h) or (i) of this title.

(b) General definitions. Unless specifically defined in the Texas Clean Air Act (Texas Health and Safety Code, Chapter 382) or in §§3.2, 101.1, or 115.10 of this title (relating to Definitions), the terms in this division have the meanings commonly used in the field of air pollution control. In addition, the following meanings apply in this division unless the context clearly indicates otherwise.

(1) Aerosol coating (spray paint)--A hand-held, pressurized, non-refillable container that expels an adhesive or a coating in a finely divided spray when a valve on the container is depressed.

(2) Air-dried coating--A coating that is cured at a temperature below 194 degrees Fahrenheit (90 degrees Celsius). These coatings may also be referred to as low-bake coatings.

(3) Baked Coating--A coating that is cured at a temperature at or above 194 degrees Fahrenheit (90 degrees Celsius). These coatings may also be referred to as high-bake coatings.

(4) Coating application system--Devices or equipment designed for the purpose of applying a coating material to a surface. The devices may include, but are not be limited to, brushes, sprayers, flow coaters, dip tanks, rollers, knife coaters, and extrusion coaters.

(5) Coating line--An operation consisting of a series of one or more coating application systems and associated flash-off area(s), drying area(s), and oven(s) wherein a surface coating is applied, dried, or cured. The coating line ends at the point the coating is dried or cured, or prior to any subsequent application of a different coating.

(6) Coating solids (or solids)--The part of a coating that remains on the substrate after the coating is dried or cured.

(7) Daily weighted average--The total weight of volatile organic compounds (VOC) emissions from all coatings subject to the same VOC limit in §115.453 of this title (relating to Control Requirements), divided by the total volume or weight of those coatings (minus water and exempt solvent), where applicable, or divided by the total volume or weight of solids, delivered to the application system on each coating line each day. Coatings subject to different VOC content limits in §115.453 of this title may not be combined for purposes of calculating the daily weighted average.

(8) Multi-component coating--A coating that requires the addition of a separate reactive resin, commonly known as a catalyst or hardener, before application to form an acceptable dry film. These coatings may also be referred to as two-component coatings.

(9) Normally closed container--A container that is closed unless an operator is actively engaged in activities such as adding or removing material.

(10) One-component coating--A coating that is ready for application as it comes out of its container to form an acceptable dry film. A thinner, necessary to reduce the viscosity, is not considered a component.

(11) Pounds of volatile organic compounds (VOC) per gallon of coating (minus water and exempt solvent)--The basis for content limits for surface coating processes that can be calculated by the following equation:
Figure: 30 TAC §115.450(b)(11) (No change.)

(12) Pounds of volatile organic compounds (VOC) per gallon of solids--The basis for emission limits for surface coating processes that can be calculated by the following equation:
Figure: 30 TAC §115.450(b)(12) (No change.)

(13) Spray gun--A device that atomizes a coating or other material and projects the particulates or other material onto a substrate.

(14) Surface coating processes--Operations that use a coating application system.

(c) Specific surface coating definitions. The following meanings apply in this division unless the context clearly indicates otherwise.

(1) Automobile and light-duty truck manufacturing--The following definitions apply to this surface coating category.

(A) Adhesive--Any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.

(B) Automobile and light-duty truck adhesive--An adhesive, including glass-bonding adhesive, used in an automobile or light-duty truck assembly surface coating process and applied for the purpose of bonding two vehicle surfaces together without regard to the substrates involved.

(C) Automobile and light-duty truck bedliner--A multicomponent coating used in an automobile or light-duty truck assembly surface coating process and applied to a cargo bed after the application of topcoat and outside of the topcoat operation to provide additional durability and chip resistance.

(D) Automobile and light-duty truck cavity wax--A coating, used in an automobile or light-duty truck assembly surface coating process, applied into the cavities of the vehicle primarily for the purpose of enhancing corrosion protection.

(E) Automobile and light-duty truck deadener--A coating used in an automobile or light-duty truck assembly surface coating process and applied to selected vehicle surfaces primarily for the purpose of reducing the sound of road noise in the passenger compartment.

(F) Automobile and light-duty truck gasket/gasket sealing material--A fluid used in an automobile or light-duty truck assembly surface coating process and applied to coat a gasket or replace and perform the same function as a gasket. Automobile and light-duty truck gasket/gasket sealing material includes room temperature vulcanization seal material.

(G) Automobile and light-duty truck glass-bonding primer--A primer, used in an automobile or light-duty truck assembly surface coating process, applied to windshield or other glass, or to body openings, to prepare the glass or body opening for the application of glass-bonding adhesives or the installation of adhesive-bonded glass. Automobile and light-duty truck glass-bonding primer includes glass-bonding/cleaning primers that perform both functions (cleaning and priming of the windshield or other glass, or body openings) prior to the application of an adhesive or the installation of adhesive-bonded glass.

(H) Automobile and light-duty truck lubricating wax/compound--A protective lubricating material used in an automobile or light-duty truck assembly surface coating process and applied to vehicle hubs and hinges.

(I) Automobile and light-duty truck sealer--A high viscosity material used in an automobile or light-duty truck assembly surface coating process and generally, but not always, applied in the paint shop after the body has received an electrodeposition primer coating and before the application of subsequent coatings (e.g., primer-surfacer). The primary purpose of automobile and light-duty truck sealer is to fill body joints completely so that there is no intrusion of water, gases, or corrosive materials into the passenger area of the body compartment. Such materials are also referred to as sealant, sealant primer, or caulk.

(J) Automobile and light-duty truck trunk interior coating--A coating used in an automobile or light-duty truck assembly surface coating process outside of the primer-surfacer and topcoat operations and applied to the trunk interior to provide chip protection.

(K) Automobile and light-duty truck underbody coating--A coating used in an automobile or light-duty truck assembly surface coating process and applied to the undercarriage or firewall to prevent corrosion or provide chip protection.

(L) Automobile and light-duty truck weather strip adhesive--An adhesive used in an automobile or light-duty truck assembly surface coating process and applied to weather-stripping materials for the purpose of bonding the weather-stripping material to the surface of the vehicle.

(M) Automobile assembly surface coating process--The assembly-line coating of new passenger cars, or passenger car derivatives, capable of seating 12 or fewer passengers.

(N) Electrodeposition primer--A process of applying a protective, corrosion-resistant waterborne primer on exterior and interior surfaces that provides thorough coverage of recessed areas. Electrodeposition primer is a dip-coating method that uses an electrical field to apply or deposit the conductive coating onto the part; the object being painted acts as an electrode that is oppositely charged from the particles of paint in the dip tank. Electrodeposition primer is also referred to as E-Coat, Uni-Prime, and ELPO Primer.

(O) Final repair--The operation(s) performed and coating(s) applied to completely assembled motor vehicles or to parts that are not yet on a completely assembled vehicle to correct damage or imperfections in the coating. The curing of the coatings applied in these operations is accomplished at a lower temperature than that used for curing primer-surfacer and topcoat. This lower temperature cure avoids the need to send parts that are not yet on a completely assembled vehicle through the same type of curing process used for primer-surfacer and topcoat and is necessary to protect heat-sensitive components on completely assembled vehicles.

(P) In-line repair--The operation(s) performed and coating(s) applied to correct damage or imperfections in the topcoat on parts that are not yet on a completely assembled vehicle. The curing of the coatings applied in these operations is accomplished at essentially the same temperature as that used for curing the previously applied topcoat. In-line repair is also referred to as high-bake repair or high-bake reprocess. In-line repair is considered part of the topcoat operation.

(Q) Light-duty truck assembly surface coating process--The assembly-line coating of new motor vehicles rated at 8,500 pounds gross vehicle weight or less and designed primarily for the transportation of property, or derivatives such as pickups, vans, and window vans.

(R) Primer-surfacer--An intermediate protective coating applied over the electrodeposition primer and under the topcoat. Primer-surfacer provides adhesion, protection, and appearance properties to the total finish. Primer-surfacer is also referred to as guide coat or surfacer. Primer-surfacer operations may include other coatings (e.g., anti-chip, lower-body anti-chip, chip-resistant edge primer, spot primer, blackout, deadener, interior color, basecoat replacement coating, etc.) that are applied in the same spray booth(s).

(S) Topcoat--The final coating system applied to provide the final color or a protective finish. The topcoat may be a monocoat color or basecoat/clearcoat system. In-line repair and two-tone are part of topcoat. Topcoat operations may include other coatings

(e.g., blackout, interior color, etc.) that are applied in the same spray booth(s).

(T) Solids turnover ratio (RT')--The ratio of total volume of coating solids that is added to the electrodeposition primer system (EDP) in a calendar month divided by the total volume design capacity of the EDP system.

(2) Automotive/transportation and business machine plastic parts--The following definitions apply to this surface coating category.

(A) Adhesion prime--A coating that is applied to a polyolefin part to promote the adhesion of a subsequent coating. An adhesion prime is clearly identified as an adhesion prime or adhesion promoter on its accompanying material safety data sheet.

(B) Automotive/transportation plastic parts--Interior and exterior plastic components of automobiles, trucks, tractors, lawnmowers, and other mobile equipment.

(C) Black coating--A coating that has a maximum lightness of 23 units and a saturation less than 2.8, where saturation equals the square root of A2 + B2. These criteria are based on Cielab color space, 0/45 geometry. For spherical geometry, specular included, maximum lightness is 33 units.

(D) Business machine--A device that uses electronic or mechanical methods to process information, perform calculations, print or copy information, or convert sound into electrical impulses for transmission. This definition includes devices listed in Standard Industrial Classification codes 3572, 3573, 3574, 3579, and 3661 and photocopy machines, a subcategory of Standard Industrial Classification code 3861.

(E) Clear coating--A coating that lacks color and opacity or is transparent and that uses the undercoat as a reflectant base or undertone color.

(F) Coating of plastic parts of automobiles and trucks--The coating of any plastic part that is or will be assembled with other parts to form an automobile or truck.

(G) Coating of business machine plastic parts--The coating of any plastic part that is or will be assembled with other parts to form a business machine.

(H) Electrostatic prep coat--A coating that is applied to a plastic part solely to provide conductivity for the subsequent application of a prime, a topcoat, or other coating through the use of electrostatic application methods. An electrostatic prep coat is clearly identified as an electrostatic prep coat on its accompanying material safety data sheet.

(I) Flexible coating--A coating that is required to comply with engineering specifications for impact resistance, mandrel bend, or elongation as defined by the original equipment manufacturer.

(J) Fog coat--A coating that is applied to a plastic part for the purpose of color matching without masking a molded-in texture. A fog coat may not be applied at a thickness of more than 0.5 mil of coating solids.

(K) Gloss reducer--A coating that is applied to a plastic part solely to reduce the shine of the part. A gloss reducer may not be applied at a thickness of more than 0.5 mil of coating solids.

(L) Red coating--A coating that meets all of the following criteria:

(i) yellow limit: the hue of hostaperm scarlet;

(ii) blue limit: the hue of monastral red-violet;

(iii) lightness limit for metallics: 35% aluminum flake;

(iv) lightness limit for solids: 50% titanium dioxide white;

(v) solid reds: hue angle of -11 to 38 degrees and maximum lightness of 23 to 45 units; and

(vi) metallic reds: hue angle of -16 to 35 degrees and maximum lightness of 28 to 45 units. These criteria are based on Cielab color space, 0/45 geometry. For spherical geometry, specular included, the upper limit is 49 units. The maximum lightness varies as the hue moves from violet to orange. This is a natural consequence of the strength of the colorants, and real colors show this effect.

(M) Resist coat--A coating that is applied to a plastic part before metallic plating to prevent deposits of metal on portions of the plastic part.

(N) Stencil coat--A coating that is applied over a stencil to a plastic part at a thickness of 1.0 mil or less of coating solids. Stencil coats are most frequently letters, numbers, or decorative designs.

(O) Texture coat--A coating that is applied to a plastic part which, in its finished form, consists of discrete raised spots of the coating.

(P) Vacuum-metalizing coatings--Topcoats and basecoats that are used in the vacuum-metalizing process.

(3) Industrial maintenance coating--A high performance maintenance coating, including primers, sealers, undercoaters, intermediate coats, and topcoats, that is not applied to items meeting the definition for miscellaneous metal parts and products in §115.450(c)(6)(Q) of this section, and is formulated for application to stationary source substrates, including floors, exposed to one or more of the following extreme environmental conditions.

(A) Immersion in water, wastewater, or chemical solutions (aqueous and non-aqueous solutions), or chronic exposures of interior surfaces to moisture condensation; or

(B) Acute or chronic exposure to corrosive, caustic, or acidic agents, or to chemicals, chemical fumes, or chemical mixtures or solutions; or

(C) Frequent exposure to temperatures above 121°C (250°F); or

(D) Frequent heavy abrasion, including mechanical wear and frequent scrubbing with industrial solvents, cleansers, or scouring agents; or

(E) Exterior exposure of metal structures and structural components.

(4) Large appliance coating--The coating of doors, cases, lids, panels, and interior support parts of residential and commercial washers, dryers, ranges, refrigerators, freezers, water heaters, dishwashers, trash compactors, air conditioners, and other large appliances.

(A) Extreme high-gloss coating--A coating which, when tested by the American Society for Testing Material Test Method D523 adopted in 1980, shows a reflectance of 75% or more on a 60 degree meter.

(B) Extreme performance coating--A coating used on a metal surface where the coated surface is, in its intended use, subject to:

(i) chronic exposure to corrosive, caustic or acidic agents, chemicals, chemical fumes, chemical mixtures, or solutions;

(ii) repeated exposure to temperatures in excess of 250 degrees Fahrenheit (121 degrees Celsius);

(iii) repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial grade solvents, cleansers, or scouring agents; or

(iv) exposure to extreme environmental conditions, such as continuous outdoor exposure.

(C) Heat-resistant coating--A coating that must withstand a temperature of at least 400 degrees Fahrenheit (204 degrees Celsius) during normal use.

(D) Metallic coating--A coating that contains more than 0.042 pounds of metal particles per gallon of coating as applied. Metal particles are pieces of a pure elemental metal or a combination of elemental metals.

(E) Pretreatment coating--A coating that contains no more than 12% solids by weight and at least 0.50% acid by weight; is used to provide surface etching; and is applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.

(F) Solar-absorbent coating--A coating that has as its prime purpose the absorption of solar radiation.

(5) Metal furniture coating--The coating of metal furniture including, but not limited to, tables, chairs, wastebaskets, beds, desks, lockers, benches, shelves, file cabinets, lamps, and other metal furniture products or the coating of any metal part that will be a part of a nonmetal furniture product.

(A) Extreme high-gloss coating--A coating which, when tested by the American Society for Testing Material Test Method D523 adopted in 1980, shows a reflectance of 75% or more on a 60 degree meter.

(B) Extreme performance coating--A coating used on a metal surface where the coated surface is, in its intended use, subject to:

(i) chronic exposure to corrosive, caustic or acidic agents, chemicals, chemical fumes, chemical mixtures, or solutions;

(ii) repeated exposure to temperatures in excess of 250 degrees Fahrenheit (121 degrees Celsius);

(iii) repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial grade solvents, cleansers, or scouring agents; or

(iv) exposure to extreme environmental conditions, such as continuous outdoor exposure.

(C) Heat-resistant coating--A coating that must withstand a temperature of at least 400 degrees Fahrenheit (204 degrees Celsius) during normal use.

(D) Metallic coating--A coating containing more than 5.0 grams of metal particles per liter of coating as applied. Metal particles are pieces of a pure elemental metal or a combination of elemental metals.

(E) Pretreatment coating--A coating that contains no more than 12% solids by weight and at least 0.50% acid by weight; is used to provide surface etching; and is applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.

(F) Solar-absorbent coating--A coating that has as its primary purpose the absorption of solar radiation.

(6) Miscellaneous metal and plastic parts--The following definitions apply to this surface coating category.

(A) Camouflage coating--A coating used, principally by the military, to conceal equipment from detection.

(B) Clear coat--A coating that lacks opacity or is transparent and may or may not have an undercoat that is used as a reflectant base or undertone color.

(C) Drum (metal)--Any cylindrical metal shipping container with a capacity equal to or greater than 12 gallons but equal to or less than 110 gallons.

(D) Electric-dissipating coating--A coating that rapidly dissipates a high-voltage electric charge.

(E) Electric-insulting varnish--A non-convertible-type coating applied to electric motors, components of electric motors, or power transformers, to provide electrical, mechanical, and environmental protection or resistance.

(F) EMI/RFI shielding--A coating used on electrical or electronic equipment to provide shielding against electromagnetic interference (EMI), radio frequency interference (RFI), or static discharge.

(G) Etching filler--A coating that contains less than 23% solids by weight and at least 0.50% acid by weight and is used instead of applying a pretreatment coating followed by a primer.

(H) Extreme high-gloss coating--A coating which, when tested by the American Society for Testing and Materials Test Method D523 adopted in 1980, shows a reflectance of 75% or more on a 60 degree meter.

(I) Extreme performance coating--A coating used on a metal or plastic surface where the coated surface is, in its intended use, subject to one of the following conditions. Extreme performance coatings include, but are not limited to, coatings applied to locomotives, railroad cars, farm machinery, marine shipping containers, downhole drilling equipment, and heavy-duty trucks:

(i) chronic exposure to corrosive, caustic or acidic agents, chemicals, chemical fumes, chemical mixtures, or solutions;

(ii) repeated exposure to temperatures in excess of 250 degrees Fahrenheit (121 degrees Celsius);

(iii) repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial grade solvents, cleansers, or scouring agents; or

(iv) exposure to extreme environmental conditions, such as continuous outdoor exposure.

(J) Heat-resistant coating--A coating that must withstand a temperature of at least 400 degrees Fahrenheit (204 degrees Celsius) during normal use.

(K) High performance architectural coating--A coating used to protect architectural subsections and meets the requirements of the American Architectural Manufacturers Association's publication number AAMA 2604-05 (Voluntary Specification, Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels) or 2605-05 (Voluntary Specification, Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels).

(L) High temperature coating--A coating that is certified to withstand a temperature of 1000 degrees Fahrenheit (538 degrees Celsius) for 24 hours.

(M) Mask coating--A thin film coating applied through a template to coat a small portion of a substrate.

(N) Metallic coating--A coating containing more than 5.0 grams of metal particles per liter of coating as applied. Metal particles are pieces of a pure elemental metal or a combination of elemental metals.

(O) Military specification coating--A coating that has a formulation approved by a United States Military Agency for use on military equipment.

(P) Mold-seal coating--The initial coating applied to a new mold or a repaired mold to provide a smooth surface that when coated with a mold release coating, prevents products from sticking to the mold.

(Q) Miscellaneous metal parts and products--Parts and products considered miscellaneous metal parts and products include:

(i) large farm machinery (harvesting, fertilizing, and planting machines, tractors, combines, etc.);

(ii) small farm machinery (lawn and garden tractors, lawn mowers, rototillers, etc.);

(iii) small appliances (fans, mixers, blenders, crock pots, dehumidifiers, vacuum cleaners, etc.);

(iv) commercial machinery (computers and auxiliary equipment, typewriters, calculators, vending machines, etc.);

(v) industrial machinery (pumps, compressors, conveyor components, fans, blowers, transformers, etc.);

(vi) fabricated metal products (metal-covered doors, frames, etc.); and

(vii) any other category of coated metal products, including, but not limited to, those that are included in the Standard Industrial Classification Code major group 33 (primary metal industries), major group 34 (fabricated metal products), major group 35 (nonelectrical machinery), major group 36 (electrical machinery), major group 37 (transportation equipment), major group 38 (miscellaneous instruments), and major group 39 (miscellaneous manufacturing industries). Excluded are those surface coating processes specified in §115.420(c)(1) - (8) and (10) - (16) of this title (relating to Surface Coating Definitions) and paragraphs (1) - (4) and (6) - (8) of this subsection.

(R) Miscellaneous plastic parts and products--Parts and products considered miscellaneous plastic parts and products include, but are not limited to:

(i) molded plastic parts;

(ii) small and large farm machinery;

(iii) commercial and industrial machinery and equipment;

(iv) interior or exterior automotive parts;

(v) construction equipment;

(vi) motor vehicle accessories;

(vii) bicycles and sporting goods;

(viii) toys;

(ix) recreational vehicles;

(x) lawn and garden equipment;

(xi) laboratory and medical equipment;

(xii) electronic equipment; and

(xiii) other industrial and household products. Excluded are those surface coating processes specified in §115.420(c)(1) - (16) of this title and paragraphs (1) - (4) and (6) - (8) of this subsection.

(S) Multi-colored coating--A coating that exhibits more than one color when applied, is packaged in a single container, and applied in a single coat.

(T) Off-site job shop--A non-manufacturer of metal or plastic parts and products that applies coatings to such products at a site under contract with one or more parties that operate under separate ownership and control.

(U) Optical coating--A coating applied to an optical lens.

(V) Pail (metal)--Any cylindrical metal shipping container with a capacity equal to or greater than 1 gallon but less than 12 gallons and constructed of 29 gauge or heavier material.

(W) Pan-backing coating--A coating applied to the surface of pots, pans, or other cooking implements that are exposed directly to a flame or other heating elements.

(X) Prefabricated architectural component coating--A coating applied to metal parts and products that are to be used as an architectural structure.

(Y) Pretreatment coating--A coating that contains no more than 12% solids by weight and at least 0.50% acid by weight; is used to provide surface etching; and is applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.

(Z) Repair coating--A coating used to re-coat portions of a previously coated product that has sustained mechanical damage to the coating following normal surface coating processes.

(AA) Safety-indicating coating--A coating that changes physical characteristics, such as color, to indicate unsafe conditions.

(BB) Shock-free coating--A coating applied to electrical components to protect the user from electric shock. The coating has characteristics of being low-capacitance and high-resistance and having resistance to breaking down under high voltage.

(CC) Silicone-release coating--A coating that contains silicone resin and is intended to prevent food from sticking to metal surfaces such as baking pans.

(DD) Solar-absorbent coating--A coating that has as its primary purpose the absorption of solar radiation.

(EE) Stencil coating--A pigmented coating or ink that is rolled or brushed onto a template or stamp in order to add identifying letters, symbols, or numbers.

(FF) Touch-up coating--A coating used to cover minor coating imperfections appearing after the main surface coating process.

(GG) Translucent coating--A coating that contains binders and pigment and formulated to form a colored, but not opaque, film.

(HH) Vacuum-metalizing coating--The undercoat applied to the substrate on which the metal is deposited or the overcoat

applied directly to the metal film. Vacuum metalizing or physical vapor deposition is the process whereby metal is vaporized and deposited on a substrate in a vacuum chamber.

(7) Motor vehicle materials--The following definitions apply to this surface coating category.

(A) Motor vehicle bedliner--A multi-component coating used in a process that is not an automobile or light-duty truck manufacturing coating process and is applied to a cargo bed after the application of topcoat to provide additional durability and chip resistance.

(B) Motor vehicle cavity wax--A coating used in a process that is not an automobile or light-duty truck manufacturing coating process and is applied into the cavities of the vehicle primarily for the purpose of enhancing corrosion protection.

(C) Motor vehicle deadener--A coating used in a process that is not an automobile or light-duty truck manufacturing coating process and is applied to selected vehicle surfaces primarily for the purpose of reducing the sound of road noise in the passenger compartment.

(D) Motor vehicle gasket/sealing material--A fluid used in a process that is not an automobile or light-duty truck manufacturing coating process and is applied to coat a gasket or replace and perform the same function as a gasket. Automobile and light-duty truck gasket/gasket sealing material includes room temperature vulcanization seal material.

(E) Motor vehicle lubricating wax/compound--A protective lubricating material used in a process that is not an automobile or light-duty truck manufacturing coating process and is applied to vehicle hubs and hinges.

(F) Motor vehicle sealer--A high viscosity material used in a process that is not an automobile or light-duty truck manufacturing coating process and is generally, but not always, applied in the paint shop after the body has received an electrodeposition primer coating and before the application of subsequent coatings (e.g., primer-surfacer). The primary purpose of motor vehicle sealer is to fill body joints completely so that there is no intrusion of water, gases, or corrosive materials into the passenger area of the body compartment. Such materials are also referred to as sealant, sealant primer, or caulk.

(G) Motor vehicle trunk interior coating--A coating used in a process that is not an automobile or light-duty truck manufacturing coating process and is applied to the trunk interior to provide chip protection.

(H) Motor vehicle underbody coating--A coating used in a process that is not an automobile or light-duty truck manufacturing coating process and is applied to the undercarriage or firewall to prevent corrosion or provide chip protection.

(8) Paper, film, and foil coating--The coating of paper and pressure-sensitive tapes (regardless of substrate and including paper, fabric, and plastic film), related web coating processes on plastic film (including typewriter ribbons, photographic film, and magnetic tape), metal foil (including decorative, gift wrap, and packaging), industrial and decorative laminates, abrasive products (including fabric coated for use in abrasive products), and flexible packaging.

(A) Paper, film, and foil coating includes the application of a continuous layer of a coating material across the entire width or any portion of the width of a paper, film, or foil web substrate to:

(i) provide a covering, finish, or functional or protective layer to the substrate;

(ii) saturate the substrate for lamination; or

(iii) provide adhesion between two substrates for lamination.

(B) Paper, film, and foil coating excludes coating performed on or in-line with any offset lithographic, screen, letterpress, flexographic, rotogravure, or digital printing press; or size presses and on-machine coaters that function as part of an in-line papermaking system.

(9) Pleasure craft--Any marine or fresh-water vessel used by individuals for noncommercial, nonmilitary, and recreational purposes that is less than 65.6 feet in length. A vessel rented exclusively to, or chartered for, individuals for such purposes is considered a pleasure craft.

(A) Antifoulant coating--A coating applied to the underwater portion of a pleasure craft to prevent or reduce the attachment of biological organisms, and registered with the United States Environmental Protection Agency as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (7 United States Code, §136).

(B) Antifoulant sealer/tie coating--A coating applied over an antifoulant coating to prevent the release of biocides into the environment or to promote adhesion between an antifoulant coating and a primer or other antifoulants.

(C) Extreme high-gloss coating--A coating that achieves at least 90% reflectance on a 60 degree meter when tested by American Society for Testing and Materials Method D523-89.

(D) Finish primer-surfacer--A coating applied with a wet film thickness less than 10 mils prior to the application of a topcoat for purposes of providing corrosion resistance, adhesion of subsequent coatings, a moisture barrier, or promotion of a uniform surface necessary for filling in surface imperfections.

(E) High-build primer-surfacer--A coating applied with a wet film thickness of 10 mils or more prior to the application of a topcoat for purposes of providing corrosion resistance, adhesion of subsequent coatings, or a moisture barrier, or promoting a uniform surface necessary for filling in surface imperfections.

(F) High-gloss coating--A coating that achieves at least 85% reflectance on a 60 degree meter when tested by American Society for Testing and Materials Test Method D523-89.

(G) Pleasure craft coating--A marine coating, except unsaturated polyester resin (fiberglass) coatings, applied by brush, spray, roller, or other means to a pleasure craft.

(H) Pretreatment wash primer--A coating that contains no more than 25% solids by weight and at least 0.10% acids by weight; used to provide surface etching; and applied directly to fiberglass and metal surfaces to provide corrosion resistance and adhesion of subsequent coatings.

(I) Repair coating--A coating used to re-coat portions of a previously coated product that has sustained mechanical damage to the coating following normal surface coating processes.

(J) Topcoat--A final coating applied to the interior or exterior of a pleasure craft.

(K) Touch-up coating--A coating used to cover minor coating imperfections appearing after the main surface coating process.

(10) Traffic marking coating--A coating labeled and formulated for marking and striping streets, highways, or other traffic surfaces including, but not limited to, curbs, berms, driveways, parking lots, sidewalks, and airport runways.

§115.459. Compliance Schedules.

(a) The owner or operator of a surface coating process in Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, and Waller Counties subject to this division shall comply with the requirements of this division, except as specified in §115.453(f) - (i) of this title (relating to Control Requirements), no later than March 1, 2013.

(b) The owner or operator of a surface coating process in Wise County shall comply with the requirements in this division, except as specified in §115.453(f) - (i) of this title, no later than January 1, 2017.

(c) The owner or operator of a surface coating process in the Bexar County area subject to the requirements of this division shall comply with the requirements in this division no later than January 1, 2025.

(d) The owner or operator of a surface coating process that becomes subject to this division on or after the applicable compliance date of this section shall comply with the requirements in this division no later than 60 days after becoming subject.

(e) The owner or operator of a surface coating process in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties shall comply with §115.453(f) of this title by no later than 270 days after the commission publishes notification in the *Texas Register* of its determination that this industrial maintenance coating contingency rule is necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).

(f) The owner or operator of a surface coating process in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties shall comply with §115.453(h) of this title by no later than 270 days after the commission publishes notification in the *Texas Register* of its determination that this traffic marking coating contingency rule is necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).

(g) The owner or operator of a surface coating process in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall be in compliance with §115.453(g) of this title by no later than 270 days after the commission publishes notification in the *Texas Register* of its determination that this industrial maintenance coating contingency rule is necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).

(h) The owner or operator of a surface coating process in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall be in compliance with §115.453(i) of this title by no later than 270 days after the commission publishes notification in the *Texas Register* of its determination that this traffic marking coating contingency rule is necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failure to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).

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

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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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DIVISION 6. INDUSTRIAL CLEANING SOLVENTS

30 TAC §§115.460, 115.461, 115.463, 115.465, 115.468, 115.469

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.461. Exemptions.

(a) Solvent cleaning operations located on a property with total actual volatile organic compounds (VOC) emissions of less than 3.0 tons per calendar year from all cleaning solvents, when uncontrolled, are exempt from the requirements of this division, except as specified in §115.468(b)(2) of this title (relating to Monitoring and Recordkeeping Requirements). When calculating the VOC emissions, solvents used for solvent cleaning operations that are exempt from this division under subsections (b) - (d) and (f) of this section are excluded.

(b) The owner or operator of any process or operation subject to another division of this chapter that specifies solvent cleaning operation requirements related to that process or operation is exempt from the requirements in this division.

(c) A solvent cleaning operation is exempt from this division if:

(1) the process or operation that the solvent cleaning operation is associated with is subject to another division in this chapter; and

(2) the VOC emissions from the solvent cleaning operation are controlled in accordance with an emission specification or control requirement of the division that the process or operation is subject to.

(d) The following are exempt from the VOC limits in §115.463(a) of this title (relating to Control Requirements:

(1) electrical and electronic components;

(2) precision optics;

(3) numisimatic dies;

(4) resin mixing, molding, and application equipment;

(5) coating, ink, and adhesive mixing, molding, and application equipment;

(6) stripping of cured inks, cured adhesives, and cured coatings;

(7) research and development laboratories;

(8) medical device or pharmaceutical preparation operations;

(9) performance or quality assurance testing of coatings, inks, or adhesives;

(10) architectural coating manufacturing and application operations;

(11) magnet wire coating operations;

(12) semiconductor wafer fabrication;

(13) coating, ink, resin, and adhesive manufacturing;

(14) polyester resin operations;

(15) flexographic and rotogravure printing processes;

(16) screen printing operations; and

(17) digital printing operations.

(e) If the commission publishes notice in the *Texas Register,* as provided in §115.469(d) of this title (relating to Compliance Schedules) for the Dallas-Fort Worth area, or §115.469(e) of this title for the Houston-Galveston-Brazoria area, or both areas, to require compliance with the contingency measure control requirements of §115.463(e) of this title, then the exemptions in subsections (a) - (d) of this section are no longer available, and the following exemptions apply in the applicable area as of the compliance date specified in §115.469(d) or (e) of this title.

(1) In the Dallas-Fort Worth area, in accordance with the schedule specified in §115.469(d) of this title, the following types of cleaning are exempt from the VOC content limits in §115.463(e)(1) of this title:

(A) Cleaning of solar cells, laser hardware, scientific instruments, and high-precision optics;

(B) Cleaning conducted with performance laboratory tests on coatings, adhesives, or inks; research and development programs; and laboratory tests in quality assurance laboratories;

(C) Cleaning of paper-based gaskets, and clutch assemblies where rubber is bonded to metal by means of an adhesive;

(D) Cleaning of cotton swabs to remove cottonseed oil before cleaning of high-precision optics;

(E) Medical device and pharmaceutical facilities using up to 1.5 gallons per day of solvents;

(F) The cleaning of photocurable resins from stereolithography equipment and models;

(G) Cleaning of adhesive application equipment used for thin metal laminating operations provided the clean-up solvent used contains no more than 950 grams of VOC per liter;

(H) Cleaning of electronic or electrical cables provided the clean-up solvent used contains no more than 400 grams of VOC per liter;

(I) Touch up cleaning performed on printed circuit boards where surface mounted devices have already been attached provided that the solvent used contains no more than 800 grams of VOC per liter;

(J) Cleaning carried out in batch loaded cold cleaners, vapor degreasers, conveyorized degreasers, or motion picture film cleaning equipment;

(K) Janitorial cleaning, including graffiti removal; and

(L) Stripping of cured coatings, cured ink, or cured adhesives.

(2) In the Houston-Galveston-Brazoria area, in accordance with the schedule specified in §115.469(e) of this title, the following types of cleaning are exempt from the VOC content limits in §115.463(e)(2) of this title:

(A) Cleaning of solar cells, laser hardware, scientific instruments, and high-precision optics;

(B) Cleaning conducted with performance laboratory tests on coatings, adhesives, or inks; research and development programs; and laboratory tests in quality assurance laboratories;

(C) Cleaning of paper-based gaskets, and clutch assemblies where rubber is bonded to metal by means of an adhesive;

(D) Cleaning of cotton swabs to remove cottonseed oil before cleaning of high-precision optics;

(E) Medical device and pharmaceutical facilities using up to 1.5 gallons per day of solvents;

(F) The cleaning of photocurable resins from stereolithography equipment and models;

(G) Cleaning of adhesive application equipment used for thin metal laminating operations provided the clean-up solvent used contains no more than 950 grams of VOC per liter;

(H) Cleaning of electronic or electrical cables provided the clean-up solvent used contains no more than 400 grams of VOC per liter;

(I) Touch up cleaning performed on printed circuit boards where surface mounted devices have already been attached provided that the solvent used contains no more than 800 grams of VOC per liter;

(J) Cleaning carried out in batch loaded cold cleaners, vapor degreasers, conveyorized degreasers, or motion picture film cleaning equipment;

(K) Janitorial cleaning, including graffiti removal; and

(L) Stripping of cured coatings, cured ink, or cured adhesives.

(f) Cleaning solvents supplied in aerosol cans are exempt from the VOC limits in §115.463(a) of this title if total aerosol use for the property is less than 160 fluid ounces per day.

§115.469. Compliance Schedules.

(a) In Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, Waller, and Wise Counties the compliance date has passed for control requirements in §115.463(a) - (d) of this title (relating to Control Requirements) and all associated requirements, and the owner or operator of a solvent cleaning operation shall continue to comply with the requirements in this division, except as specified in subsection (d) and (e) of this section.

(b) The owner or operator of a solvent cleaning operation in the Bexar County area subject to the requirements of this division shall comply with the requirements in this division no later than January 1, 2025.

(c) The owner or operator of a solvent cleaning operation that becomes subject to this division on or after the applicable compliance date in this section shall comply with the requirements in this division no later than 60 days after becoming subject.

(d) The owner or operator of a solvent cleaning operation in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties shall be in compliance with the requirements of §115.463(e) of this title (relating to Control Requirements) no later than 270 days after the commission publishes notification in the *Texas Register* of its determination that the industrial cleaning solvent contingency requirements are necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the federal Clean Air Act, §172(c)(9).

(e) The owner or operator of a solvent cleaning operation in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall be in compliance with the requirements of §115.463(e) of this title no later than 270 days after the commission publishes notification in the *Texas Register* of its determination that the contingency requirements are necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the federal Clean Air Act.

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

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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0634

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DIVISION 7. MISCELLANEOUS INDUSTRIAL ADHESIVES

30 TAC §§115.470, 115.471, 115.473, 115.475, 115.478, 115.479

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.479. Compliance Schedules.

(a) In Brazoria, Chambers, Collin, Dallas, Denton, Ellis, Fort Bend, Galveston, Harris, Johnson, Kaufman, Liberty, Montgomery, Parker, Rockwall, Tarrant, Waller, and Wise Counties, the compliance date has passed and the owner or operator of an application process shall continue to comply with this division except as specified in subsections (c) and (d) of this section.

(b) The owner or operator of an application process that becomes subject to this division on or after the applicable compliance date in this section shall comply with the requirements in this division no later than 60 days after becoming subject.

(c) The owner or operator of an application process in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties shall comply with §115.473(e) of this title (relating to Control Requirements) by no later than 270 days after the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of EPA publication

of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).

(d) The owner or operator of an application process in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall be in compliance with §115.473(f) of this title by no later than 270 days after the commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).

(e) The owner or operator of an application process in the Bexar County area subject to the requirements of this division shall comply with the requirements of this division no later than January 1, 2025.

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 F. MISCELLANEOUS INDUSTRIAL SOURCES
DIVISION 1. CUTBACK ASPHALT

30 TAC §§115.510, 115.512, 115.515 - 115.517, 115.519

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§115.519. Counties and Compliance Schedules.

(a) In Brazoria, Chambers, Collin, Dallas, Denton, Ellis, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Johnson, Kaufman, Liberty, Montgomery, Nueces, Orange, Parker, Rockwall, Tarrant, Waller, and Wise Counties, the compliance date has passed for control requirements in 115.512(a) of this title (relating to Control Requirements) and all associated requirements, and all affected persons shall continue to comply with this division, except as specified in subsections (c) and (d) of this section. The compliance date for ozone attainment counties which have been added voluntarily to this division remain listed in §115.519(b).

(b) All affected persons in Bastrop, Caldwell, Hays, Travis, and Williamson Counties shall comply with this division no later than December 31, 2005.

(c) All affected persons in Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties shall be in compliance with the requirements of §115.512(b)(1) of this title no later than 270 days after the commission publishes notification in the *Texas Register* of its determination that the contingency requirements are necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).

(d) All affected persons in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall be in compliance with the requirements of §115.512(b)(2) of this title no later than 270 days after the commission publishes notification in the *Texas Register* of its determination that the contingency requirements are necessary as a result of EPA publication of a notice in the *Federal Register* that the specified area failed to attain the applicable National Ambient Air Quality Standard for ozone by the attainment deadline or failed to demonstrate reasonable further progress as set forth in the 1990 Amendments to the Federal Clean Air Act.

(e) All affected persons in the Bexar County area shall comply with this division no later than January 1, 2025.

(f) All affected persons that become subject to this division on or after the applicable compliance date in this section shall comply with the requirements in this division no later than 60 days after becoming subject.

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

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DIVISION 2. PHARMACEUTICAL MANUFACTURING FACILITIES

30 TAC §§115.531, 115.532, 115.534 - 115.537, 115.539

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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SUBCHAPTER J. ADMINISTRATIVE PROVISIONS

DIVISION 1. ALTERNATE MEANS OF CONTROL

30 TAC §115.901, §115.911

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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CHAPTER 117. CONTROL OF AIR POLLUTION FROM NITROGEN COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §§117.200, 117.203, 117.205, 117.230, 117.235, 117.240, 117.245, 117.252, 117.1100, 117.1103, 117.1105, 117.1120, 117.1140, 117.1145, 117.1152, 117.3124, 117.9010, and 117.9110; and amendments to §§117.10, 117.310, 117.340, 117.410, 117.440, 117.2010, 117.2035, 117.2110, 117.2135, 117.3000, 117.3103, 117.3110, 117.3120, 117.3145, 117.9030, 117.9300, 117.9320, and 117.9800.

New §§117.203, 117.1120, and 117.1140 are adopted with changes to the proposed text as published in the December 15, 2023, issue of the *Texas Register* (48 TexReg 7439) and, therefore, will be republished. All other new and amended sections are adopted without changes to the proposed text as published in the December 15, 2023, issue of the *Texas Register* (48 TexReg 7439) and, therefore, will not be republished.

The amended sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the State Implementation Plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rules

Reasonably Available Control Technology (RACT) Rules for Major Sources

The 1990 federal Clean Air Act (FCAA) Amendments (42 United States Code (USC), §§7401 et seq.) require EPA to establish primary National Ambient Air Quality Standards (NAAQS) that protect public health and to designate areas as either in attainment or nonattainment with the NAAQS, or as unclassifiable. States are primarily responsible for ensuring attainment and maintenance of the NAAQS once established by the EPA. Each state is required to submit a SIP to the EPA that provides for attainment and maintenance of the NAAQS.

Nonattainment areas classified as moderate and above are required to meet the mandates of the FCAA under §172(c)(1) and §182(b)(2) and (f). FCAA, §172(c)(1) requires that the SIP incorporate all reasonably available control measures, including RACT, as expeditiously as practicable for major sources of volatile organic compounds (VOC) and for all VOC sources covered by EPA-issued control techniques guidelines. FCAA, §182(f) requires the state to submit a SIP revision that implements RACT for all major sources of nitrogen oxides (NO_x).

The EPA defines RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility (44 *Federal Register* (FR) 53761, September 17, 1979). RACT requirements for moderate and higher classification nonattainment areas are included in the FCAA to assure that significant source categories at major sources of ozone precursor emissions are controlled to a reasonable extent, but not necessarily to best available control technology (BACT) levels expected of new sources or to maximum achievable control technology (MACT) levels required for major sources of hazardous air pollutants. Although the FCAA requires the state to implement RACT, EPA guidance provides states with the flexibility to determine the most technologically and economically feasible RACT requirements for a nonattainment area. A major source is any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit a specific amount of NO_x emissions based on the area's nonattainment classification.

The adopted rulemaking will implement RACT requirements for major sources of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area (DFW) and in Bexar County. TCEQ evaluated the existing major sources in the DFW area and in Bexar County and considered state and federal rules to determine what rules are necessary to fulfill FCAA RACT requirements. The adopted rules are necessary so that all major NO_x emission sources in the DFW area and Bexar County are subject to rules in 30 Texas Administrative Code (TAC) Chapter 117, or other federally enforceable measures, that meet or exceed the applicable RACT requirements. Additional NO_x controls on major sources were determined to be either not economically feasible or not technologically feasible, as documented in the concurrently adopted SIP revisions for Bexar County and the DFW and Bexar County areas (Project Nos. 2023-107-SIP-NR and 2023-132-SIP-NR, respectively).

Bexar County RACT

Bexar County is currently classified as moderate nonattainment for the 2015 eight-hour ozone NAAQS (87 FR 60897, October 7, 2022). Bexar County must attain the 2015 eight-hour ozone NAAQS by September 24, 2024 (87 FR 60897). The SIP revision to address FCAA requirements, including RACT, was due to the EPA by January 1, 2023, but the commission was unable to complete the review prior to the submission deadline. On October 18, 2023, EPA published a finding of failure to submit required SIP revisions for the 2015 eight-hour ozone NAAQS moderate nonattainment areas, effective November 17, 2023 (88 FR 71757). On October 12, 2023, Texas Governor Greg Abbott signed and submitted a letter to EPA to reclassify the Bexar County, DFW, and HGB moderate 2015 eight-hour ozone NAAQS nonattainment areas to serious. EPA's proposal to reclassify these areas to serious in accordance with Governor Abbott's letter was published on January 26, 2024 (89 FR 5145). EPA proposes that a number of moderate classification requirements are still due, including a RACT demonstration for Bexar County. This rulemaking and the concurrent Bexar County RACT SIP revision (Project No. 2023-132-SIP-NR) satisfy the NO_x RACT demonstration portion of the outstanding moderate area classification requirements for the 2015 eight-hour ozone NAAQS.

In Bexar County, a major source is any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit at least 100 tons per year (tpy) of NO_x. To identify all major sources of NO_x emissions in Bexar County, TCEQ reviewed the point source emissions inventory and Title V databases. All sources in the Title V database that were listed as a major source for NO_x emissions were included in the RACT analysis. Since the point source emissions inventory database reports actual emissions rather than potential to emit, TCEQ reviewed sources that reported actual emissions as low as 50 tpy of NO_x to account for the difference between actual and potential emissions. Sites from the emissions inventory database with emissions of 50 tpy or more of NO_x that were not identified in the Title V database and could not be verified as minor sources by other means are also included in the RACT analysis. The existing Chapter 117 rules, rules in other states, and federal rules were considered to evaluate what rules will be necessary to fulfill RACT requirements.

The adopted rulemaking implements RACT requirements for major sources of NO_x in Bexar County. The adopted provisions include emission standards, exemptions, monitoring, recordkeeping, reporting, and testing requirements that will apply to engines, turbines, boilers, and cement kilns at major sources of NO_x emissions in Bexar County. Affected sources will have to comply with these rules by January 1, 2025. The adoption includes new divisions or sections in 30 TAC Chapter 117, Subchapter B, Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas; Subchapter C, Combustion Control at Major Utility Electric Generation Sources in Ozone Nonattainment Areas; and Sub-

chapter H, Administrative Provisions, Division 1, Compliance Schedule. In support of the new requirements, revisions will be adopted to Subchapter A, Definitions; Subchapter E, Multi-Region Combustion Control; and Subchapter H, Administrative Provisions, Division 2, Compliance Flexibility.

DFW RACT

The DFW area (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, Tarrant, and Wise Counties) was reclassified as severe for the 2008 eight-hour ozone NAAQS (87 FR 60926, October 7, 2022). The DFW area must attain the 2008 eight-hour ozone NAAQS by July 20, 2027 (87 FR 60926). The SIP revision to address severe nonattainment area requirements is due to the EPA on May 7, 2024.

In the DFW 2008 severe ozone NAAQS nonattainment area, a major source is any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit at least 25 tpy of NO_x. TCEQ reviewed the point source emissions inventory and Title V databases to identify all major sources of NO_x emissions in the DFW area. All sources in the Title V database that were listed as a major source for NO_x emissions were included in the RACT analysis. Since the point source emissions inventory database reports actual emissions rather than potential to emit, the TCEQ reviewed sources that reported actual emissions as low as 10 tpy of NO_x to account for the difference between actual and potential emissions. Sites from the emissions inventory database with emissions of 10 tpy or more of NO_x that were not identified in the Title V database and could not be verified as minor sources by other means are also included in the RACT analysis.

The existing Chapter 117 rules were compared to rules in other states and federal rules to determine whether the existing rules continue to fulfill RACT requirements. Chapter 117 rules that are consistent with or more stringent than controls implemented in other nonattainment areas were determined to fulfill RACT requirements. Federally approved state rules and rule approval dates can be found in 40 Code of Federal Regulations (CFR) §52.2270(c), *EPA Approved Regulations in the Texas SIP.* Emission sources subject to the more stringent BACT or MACT requirements were determined to also fulfill RACT requirements.

The commission reviewed the emission sources in the DFW area and the applicable Chapter 117 rules to verify that all major emission sources in the DFW area are subject to requirements that meet or exceed the applicable RACT requirements, or that further emission controls on the sources were either not economically feasible or not technologically feasible. The current EPA-approved Chapter 117 rules continue to fulfill RACT requirements. Additional NO_x controls on major sources were determined to be either not economically feasible or not technologically feasible.

The adopted rule project implements RACT requirements for major sources of NO_x in the DFW area. The adopted rulemaking will revise the definitions in Chapter 117, Subchapter A and compliance schedules in Subchapter H, Division 1 to lower the major source threshold from 50 tpy NO_x to 25 tpy of NO_x. Because the DFW area was previously classified as serious nonattainment for the 2008 eight-hour ozone standard, sources that emit or have the potential to emit at least 50 tpy NO_x are already required to comply with Chapter 117 RACT rules. This adopted rulemaking will extend implementation of RACT to all major sources of NO_x that emit or have the potential to emit at least 25 tpy NO_x. The adopted rulemaking will require major sources of NO_x to comply with new emission limits, control requirements, or operating requirements as well as other associated rule provisions necessary to implement any required NO_x control measures, such as monitoring, testing, recordkeeping, reporting, and exemptions by no later than November 7, 2025.

Rule Petition Revisions for the DFW and Houston-Galveston-Brazoria (HGB) Areas

On May 10, 2023, the commissioners directed the Executive Director to initiate a rulemaking to examine the issues raised in a rulemaking petition filed with the TCEQ on March 13, 2023, by Baker Botts LLP, on behalf of the Texas Industry Project under 30 TAC §20.15. As directed by the commission, the Executive Director reviewed the issues raised in the March 13, 2023, rulemaking petition. This adopted rulemaking will revise 30 TAC Chapter 117 for sources in the DFW and HGB areas to remove the requirements for certain engines to monitor NO_x emissions using continuous emissions monitoring systems (CEMS) or a predictive emissions monitoring system (PEMS), to adjust the applicable ammonia emission limit to be consistent with typical operation of diesel engines, and to remove the ammonia monitoring requirements for these engines. Although the Chapter 117 ammonia standards are not part of the SIP, both the NO_x and ammonia monitoring requirements are included as part of the SIP. Therefore, the rule changes will be submitted as part of the SIP.

The existing rules for major sources of NO_x in the DFW and HGB areas require the owner or operator of units that use a chemical reagent for reduction of NO_x emissions to install a CEMS or PEMS to monitor exhaust NO_x emissions (see §117.340(c)(1)(D) and §117.440(c)(1)(C)). The existing rules for major and minor sources of NO_x in the DFW and HGB areas require the owner or operator of units that use a chemical reagent for reduction of NO_x emissions (to comply with an ammonia emission specification and therefore) to monitor ammonia emissions from the unit using one of the ammonia monitoring procedures specified in §117.8130 (see §§117.340(d), 117.440(d), 117.2035(e)(2), and 117.2135(d)(2)). These monitoring requirements are used to verify that affected units meet the applicable NO_x and ammonia emission limits and provide additional assurance that NO_x and ammonia emission rates will not increase due to variation in the operation of the SCR systems.

Manufacturer-certified Tier 4 engines rely on selective catalytic reduction (SCR) with a chemical reagent (such as urea or ammonia) to meet the federal limits in 40 CFR Part 1039, Subpart B.

These engines are not manufactured with pre-installed CEMS because they are designed, tested, and certified to ensure that NO_x emissions conform to federal Tier 4 standards during all normal operating conditions. The engine and emission control system are designed to minimize or exclude adjustable operating parameters and all adjustable parameters include restrictions, limits, stops, or other means of inhibiting adjustment to prevent adjusting parameters to settings outside the tested ranges. Tier 4 engines with SCR systems are designed to ensure the system operates within the certified parameters and equipped with an engine diagnostic system that issues a warning if the quality or quantity of the reductant does not meet the design specifications. Ensuring the proper operation of the emission control system also ensures that ammonia emissions remain low.

Given that the engine and emission control system cannot be manipulated by operators due to the certified engine design

and considering the significant cost of installing and operating a CEMS and the logistics of installing a building for the monitoring system for a unit that may be moved from one location to another, the commission adopts that a CEMS or PEMS is not necessary under Chapter 117 to provide reasonable assurance of compliance with the applicable NO_x and ammonia emission specifications for stationary diesel engines subject to the requirements of 40 CFR Part 1039, Subpart B, and the commission adopts to exempt these engines from the CEMS and PEMS NO_x monitoring requirements and the ammonia monitoring requirements in Chapter 117.

The existing rules for major and minor sources of NO_x in the DFW and HGB areas require the owner or operator of units subject to an ammonia emission specification under Chapter 117 to demonstrate initial compliance with the applicable ammonia specification (see §§117.340(d), 117.440(d), 117.2035(e)(2), and 117.2135(d)(2)). Because these units will not be equipped and operating with a CEMS or PEMS, owners or operators of these affected units will be required to conduct a stack test according to one of the allowed test methods under existing §117.8000(c)(4). The adopted rules also require these engines to be equipped with an engine diagnostic system that measures the quantity and quality of reductant to ensure proper operation of the SCR control system based on the requirements of existing 40 CFR Part 1039, Subpart B, §1039.110.

Existing Chapter 117 rules require that ammonia emissions must not exceed 10 parts per million by volume (ppmv) at 3.0% oxygen (O_2), dry, for all units that inject urea or ammonia into the exhaust stream for NO_x control. The commission adopts that correcting ammonia concentrations to the 3.0% O_2 level currently required is inappropriate for diesel engines that operate at significantly higher excess air in the exhaust stream and is adopting revisions to allow diesel engines to use the 15% O_2 correction consistent with the Chapter 117 standards for other equipment that also operates with higher O_2 in the exhaust gas (see §§117.310(c)(2), 117.410(c)(2), 117.2010(i)(2), 117.2110(h)(2)).

Demonstrating Noninterference Under FCAA §110(l)

The adopted changes are not expected to adversely impact Texas's progress in attaining the eight-hour ozone NAAQS. These manufacturer-certified Tier 4 engines remain subject to the NO_x and ammonia emission limits in Chapter 117. The engines are also required to comply with NO_x monitoring and testing requirements and ammonia testing requirements that will provide for the accurate accounting of emissions and provide reasonable assurance of compliance with the applicable NO_x and ammonia emission specifications for these stationary diesel engines. The adopted requirement for the diagnostic system to alert the owner or operator when the reductant material quality is not within material concentration specifications, as established by the SCR control system equipment manufacturer, will also provide confidence that the NO_x emission controls are properly functioning. All of these requirements will ensure no backsliding from the current SIP-approved requirements.

Section by Section Discussion

Subchapter A, Definitions

The commission adopts a revision to the definition of applicable ozone nonattainment area in §117.10(2) to include the Bexar County ozone nonattainment area, which consists of Bexar County, and then re-letters the definitions for the subsequent areas as necessary to put the list in alphabetical order.

The adoption revises the definition of electric power generating system in §117.10(14) to include adopted new Subchapter C, Division 2 for Bexar County Ozone Nonattainment Area Utility Electric Generation Sources and to exclude Bexar County sources from existing rules for Utility Electric Generation in East and Central Texas in Subchapter E, Division 1 after December 31, 2024. This change ensures that EGUs in Bexar County will remain in compliance with the existing rule until they are required to comply with the adopted new rule. Portions of the existing definition will be re-numbered as necessary to keep the list in alphabetical order.

The adoption revises the §117.10(29) definition of major source to include any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit at least 100 tpy of NO_x and is in the Bexar County ozone nonattainment area. The definition will also be revised to ensure that for the purposes of Chapter 117 Bexar County sources are only included in the major source definition contained in 40 CFR §52.21 (as amended June 3, 1993, effective June 3, 1994) until December 31, 2024, when sources are required to comply with the adopted new rule. The adoption also revises the definition of major source in §117.10(29) to lower the major source threshold from 50 tpy to 25 tpy of NO_x for sources in the DFW area. The change is necessary to account for the area's severe classification for the 2008 eight-hour ozone NAAQS. Major sources affected by the adopted rulemaking are required to comply with all applicable Chapter 117 rules by November 7, 2025, as stated in adopted changes to §117.9030. Minor sources that are currently subject to Chapter 117, Subchapter D, Division 2 remain subject to that division until they are required to comply with the major source rule in Chapter 117, Subchapter B, Division 4. This is necessary since engines at sources that emit or have the potential to emit more than 25 tpy NO_x but no more than 50 tpy NO_x will be transitioning from compliance with the minor source rule to compliance with the major source rule. The adopted compliance date was selected based on the RACT due date from EPA's severe reclassification final rule (87 FR 60931, October 7, 2022). Portions of the existing definition will be re-lettered as necessary to keep the list in alphabetical order.

The adopted rule revises the §117.10(51) definition of unit to reflect the adopted new requirements for Bexar County. The adopted change adds that for the purposes of §117.205 and associated requirements, a unit is any stationary gas turbine (including any duct burner used in the turbine exhaust duct) or gas-fired lean-burn stationary reciprocating internal combustion engine. The adopted rule also adds that for the purposes of §117.1105 and associated requirements, a unit is any utility boiler, auxiliary steam boiler, or stationary gas turbine (including any duct burner used in turbine exhaust ducts).

Subchapter B, Combustion Control at Major Industrial, Commercial, and Institutional Major Sources in Ozone Nonattainment Areas

Division 2, Bexar County Ozone Nonattainment Area Major Sources

The adopted rulemaking adds new Subchapter B, Division 2 to include RACT rules for major sources in Bexar County as required by FCAA §172(c)(1) and §182(f). The adopted new division sets NO_x emission limits for major sources in Bexar County and includes requirements necessary to demonstrate compliance with these limits, including monitoring, testing, reporting, and recordkeeping requirements. The adopted requirements are

based on and are consistent with EPA-approved requirements for other nonattainment areas in the state.

Adopted new §117.200 specifies the rule applicability for the division. The adopted new division applies to stationary gas turbines, duct burners used in turbine exhaust ducts, and gas-fired lean-burn stationary reciprocating internal combustion engines located at any major stationary source of NO_x in Bexar County.

Adopted new §117.203 lists the units that are exempt from this division, except for the monitoring, testing, recordkeeping, and reporting requirements in adopted new §§117.240(i), 117.245(f)(4) and (9), and 117.252, which are necessary to document that the unit meets the exemption criteria. The adopted rule exempts stationary gas turbines and gas-fired lean-burn stationary reciprocating internal combustion engines that are used: in research and testing of the unit; for purposes of performance verification and testing of the unit; solely to power other gas turbines or engines during startups; exclusively in emergency situations, except that operation for testing or maintenance purposes of the gas turbine or engine is allowed for up to 100 hours per year, based on a rolling 12-month basis; or in response to and during the existence of any officially declared disaster or state of emergency. The adopted rule also exempts gas-fired lean-burn stationary reciprocating internal combustion engines with a horsepower (hp) rating less than 50 hp, and stationary gas turbines with a maximum rated capacity less than 10.0 million British thermal units per hour (MMBtu/hr). These adopted exemptions are consistent with EPA-approved exemptions for these same sources in other ozone nonattainment areas in Texas. The adopted rule also clarifies that units located at a major source that is subject to the adopted requirements for electric generating units in Subchapter C, Division 2 are exempt from this division. TCEQ adopts non-substantive changes to this new rule to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, and establish consistency in the rules.

Adopted new §117.205 lists the NO_x emission specifications for RACT for affected units at major sources in Bexar County. Adopted subsection (a) limits NO_x emissions from stationary gas turbines to 0.55 pound per million British thermal unit (lb/MMBtu); limits NO_x emissions from duct burners used in turbine exhaust ducts to 0.55 lb/MMBtu; and limits NO_x emissions from gas-fired lean-burn stationary reciprocating internal combustion engines to 0.5 gram per horsepower-hour. The adopted limits are the same as limits for RACT sources in other nonattainment areas in Texas and are achievable using technologically and economically feasible controls. Adopted subsection (b) states that the emission specifications apply on a block one-hour average, in the units of the applicable emission specification, or if the unit is operated with a NO_x CEMS or PEMS the limits apply on a rolling 30-day average, in the units of the applicable emission specification. Adopted subsection (c) clarifies that the owner or operator may use emission credits for compliance with these emission specifications in accordance with §117.9800. This option is consistent with compliance options provided for RACT sources in other nonattainment areas in the state. Adopted subsection (d) lists requirements that are intended to prevent circumvention of these rules. Adopted subsection (d) specifies that the maximum rated capacity used to determine the applicability of the emission specifications in this section and the other associated requirements in this division must be the greater of the maximum rated capacity as of December 31, 2019; the maximum rated capacity after December 31, 2019; or the maximum rated capacity authorized by a permit issued under 30 TAC Chapter 116 after December 31, 2019. Adopted subsection (d) also states that the unit's classification is determined by the most specific classification applicable to the unit as of December 31, 2019. For example, a unit that is classified as a gas-fired lean-burn stationary reciprocating internal combustion engine as of December 31, 2019, but subsequently is authorized to operate as a dual-fuel engine, is classified as a gas-fired lean-burn stationary reciprocating internal combustion engine for the purposes of this chapter. Adopted subsection (d) also requires that a source that met the definition of major source on December 31, 2019, is always classified as a major source for purposes of this chapter. A source that did not meet the definition of major source (i.e., was a minor source, or did not yet exist) on December 31, 2019, but becomes a major source at any time after December 31, 2019, is from that time forward always classified as a major source for purposes of this chapter. December 31, 2019, was selected since 2019 is the emissions inventory year used in the attainment demonstration SIP modeling.

Adopted new §117.230 lists the operating requirements for units subject to the §117.205 RACT limits and requires all units to be operated to minimize NO_x emissions over the unit's operating or load range during normal operations. The adopted rule requires each unit controlled with post-combustion control techniques to be operated such that the reducing agent injection rate is maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity. The adopted rule also requires each gas-fired lean-burn stationary reciprocating internal combustion engine to be checked for proper operation in accordance with the engine monitoring requirements in to §117.8140(b). These adopted operating requirements are consistent with EPA-approved requirements for these same sources in other ozone nonattainment areas in Texas.

Adopted new §117.235 contains the requirements for the initial demonstration of compliance with the adopted new §117.205 RACT limits. Adopted subsection (a) requires the owner or operator of any unit subject to the emission specifications in §117.205 to test the unit for NO_x and oxygen (O_2) emissions while firing gaseous fuel or, as applicable, liquid, and solid fuel. Adopted subsection (b) requires the initial demonstration of compliance testing to be performed in accordance with the compliance schedule in adopted new §117.9010. Adopted subsection (c) requires the initial demonstration of compliance tests to use the methods referenced in subsection (d) or (e). The adoption requires the tests be used for determination of initial compliance with the RACT emission specifications and requires test results to be reported in the units of the applicable emission specifications and averaging periods. Adopted new subsection (d) specifies that any CEMS or PEMS required by §117.240 must be installed and operational before conducting the required tests. The adoption specifies that verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device or system. Adopted new subsection (e) states that for units operating without CEMS or PEMS, compliance with the emission specifications must be demonstrated according to the stack testing requirements in §117.8000. Adopted new subsection (f) states that for units operating with CEMS or PEMS, initial compliance with the emission specifications must be demonstrated after monitor certification testing using the CEMS or PEMS. For units complying with a NO_x emission specification

on a block one-hour average, every one-hour period while operating at the maximum rated capacity (or as near thereto as practicable) is used to determine compliance with the NO_x emission specification. Adopted new subsection (g) requires compliance stack test reports to include the information required in §117.8010. These adopted requirements are consistent with EPA-approved requirements for these same sources in other ozone nonattainment areas in Texas.

Adopted new §117.240 includes the requirements for continuous demonstration of compliance with the RACT emission specifications. Adopted new subsection (a) requires units to have totalizing fuel flow meters, with an accuracy of ± 5%, to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. The owner or operator must continuously operate the totalizing fuel flow meter at least 95% of the time when the unit is operating during a calendar year. For the purpose of compliance with this subsection for units having pilot fuel supplied by a separate fuel system or from an unmonitored portion of the same fuel system, the fuel flow to pilots may be calculated using the manufacturer's design flow rates rather than measured with a fuel flow meter. The calculated pilot fuel flow rate must be added to the monitored fuel flow when fuel flow is totaled. Adopted subsection (a) also provides alternatives to the fuel flow monitoring requirements. The adopted alternative for units operating with a NO_x and diluent CEMS may monitor stack exhaust flow using the flow monitoring specifications of 40 CFR Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A. Units that vent to a common stack with a NO_x and diluent CEMS may use a single totalizing fuel flow meter. Gas-fired lean-burn stationary reciprocating internal combustion engines and gas turbines equipped with a continuous monitoring system that continuously monitors horsepower and hours of operation are not required to install totalizing fuel flow meters. The continuous monitoring system for such units must be installed, calibrated, maintained, and operated according to manufacturers' recommended procedures.

Adopted new subsection (b) specifies the requirements for NO_x monitors. The adoption requires using a CEMS or PEMS to monitor exhaust NO_x for units with a rated heat input greater than or equal to 100 MMBtu per hour; stationary gas turbines with a megawatt (MW) rating greater than or equal to 30 MW operated more than 850 hours per year; units that use a chemical reagent for reduction of NO_x; and units that the owner or operator elects to comply with the NO_x emission specifications of §117.205(a) using a pound per MMBtu limit on a 30-day rolling average. The adoption specifies that units subject to the NO_x CEMS requirements of 40 CFR Part 75 are not required to install CEMS or PEMS under this subsection. The adoption provides options that the owner or operator must use to provide substitute emissions compliance data during periods when the NO_x monitor is off-line. The adoption requires that if the NO_x monitor is a CEMS subject to 40 CFR Part 75, the missing data procedures specified in 40 CFR Part 75, Subpart D must be to provide substitute emissions compliance data during periods when the NO_x monitor is off-line. The adoption requires that if the NO_x monitor is a CEMS subject to subject to 40 CFR Part 75, Appendix E, the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 must be used to provide substitute emissions compliance data during periods when the NO_x monitor is off-line. The adoption requires that if the NO_x monitor is a PEMS, the methods specified in 40 CFR Part 75, Subpart D or calculations in accordance with §117.8110(b) must be used to provide substitute emissions compliance data during periods when the NO_x monitor is off-line. The owner or operator can monitor operating parameters for each unit in accordance with 40 CFR Part 75, Appendix E, §1.1 or §1.2 and calculate NO_x emission rates based on those procedures. Lastly, the owner or operator can use the maximum block one-hour emission rate as measured during the initial demonstration of compliance required in §117.235.

Adopted new subsection (c) requires the owner or operator of any CEMS used to meet a pollutant monitoring requirement of this section to comply with the emission monitoring system requirements of §117.8100(a). Adopted new subsection (d) requires any PEMS used to meet a pollutant monitoring requirement of this section must predict the pollutant emissions in the units of the applicable emission limit and must meet the emission monitoring system requirements of §117.8100(b). Adopted new subsection (e) requires the owner or operator of any gas-fired lean-burn stationary reciprocating internal combustion engine subject to the emission specifications in §117.205 to stack test engine NO_x emissions as specified in §117.8140(a). Adopted new subsection (f) requires the owner or operator of any stationary gas turbine or gas-fired lean-burn stationary reciprocating internal combustion engine claimed exempt using the exemption of §117.203(1)(D) to record the operating time with a non-resettable elapsed run time meter in order to the unit meets the exemption criteria. Adopted new subsection (g) requires that after the initial demonstration of compliance required by §117.235, the methods required in this section must be used to determine compliance with the emission specifications. For enforcement purposes, the executive director may also use other commission compliance methods to determine whether the unit is in compliance with applicable emission specifications. Adopted new subsection (h) requires the owner or operator of units that are subject to the emission specifications in §117.205 to test the units as specified in §117.235 in accordance with the applicable schedule specified in §117.9010. The adoption also requires the owner or operator of any unit not equipped with CEMS or PEMS that are subject to the emission specifications of §117.205 to retest the unit as specified in §117.235 within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate.

Adopted new section §117.245 includes the notification, recordkeeping, and reporting requirements necessary to demonstrate compliance with this division. Adopted new subsection (a) requires that for units subject to the startup and/or shutdown provisions of §101.222, hourly records must be made of startup and/or shutdown events and maintained for a period of at least two years. Records must be available for inspection by the executive director, the EPA, and any local air pollution control agency having jurisdiction upon request. These records must include but are not limited to: type of fuel burned; quantity of each type of fuel burned; and the date, time, and duration of the procedure. Adopted new subsection (b) requires the owner or operator of a unit subject to the emission specifications of §117.205 to submit written notification of any CEMS or PEMS relative accuracy test audit (RATA) conducted under §117.240 or any testing conducted under §117.235 at least 15 days in advance of the date of the RATA or testing to the appropriate regional office and any local air pollution control agency having jurisdiction. Adopted new subsection (c) requires the owner or operator of a unit subject to the emission specifications of §117.205(a) to furnish the Office of Compliance and Enforcement, the appropriate regional office, and any local air pollution control agency having jurisdiction a copy of any testing conducted under §117.235 and any CEMS

or PEMS RATA conducted under §117.240 within 60 days after completion of such testing or evaluation and not later than the compliance date specified in §117.9010.

Adopted new §117.245(d) requires the owner or operator of a unit required to install a CEMS or PEMS under §117.240 to report in writing to the executive director on a semiannual basis any exceedance of the applicable emission specifications of this division and the monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period (i.e., July 30 and January 30). The adoption specifies that the written reports must include the magnitude of excess emissions computed in accordance with 40 CFFR §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period. The reports must specifically identify each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted. The reports must include the date and time identifying each period when the continuous monitoring system was inoperative (except for zero and span checks), the nature of the system repairs or adjustments, and periods when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted. The adoption specifies that only a summary report form (as outlined in the latest edition of the commission's Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports) must be submitted, unless otherwise requested by the executive director, if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS or PEMS downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total unit operating time for the reporting period or the CEMS or PEMS downtime for the reporting period is greater than or equal to 5.0% of the total unit operating time for the reporting period, a summary report and an excess emission report must both be submitted.

Adopted new subsection (e) requires the owner or operator of any gas-fired engine subject to the emission specifications in §117.205 to report in writing to the executive director on a semiannual basis any excess emissions and the air-fuel ratio monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period (i.e., July 30 and January 30). The adoption specifies that the written reports must include the magnitude of excess emissions (based on the quarterly emission checks of §117.230(a)(2)) and the biennial emission testing required in accordance with §117.240(e), computed in pounds per hour and grams per horsepower-hour, any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the engine operating time during the reporting period. The report must also specifically identify, to the extent feasible, of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the engine or emission control system, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

Adopted new subsection (f) requires the owner or operator of a unit subject to the requirements of this division to maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the EPA, or local air pollution control agencies having jurisdiction. The adoption specifies that the records must include records of annual fuel usage for each unit subject to §117.240(a). For each unit using a CEMS or PEMS in accordance with §117.240, the records must include monitoring records of hourly emissions and fuel usage (or stack exhaust flow) for units complying with an emission specification enforced on a block one-hour average; or daily emissions and fuel usage (or stack exhaust flow) for units complying with an emission specification enforced on a daily or rolling 30-day average. Emissions must be recorded in units of pounds per million British thermal units (lb/MMBtu) heat input and pounds or tons per day. The adoption requires that for each stationary internal combustion engine subject to the emission specifications of this division, records must include emissions measurements required by §117.230(2) and §117.240(e) of this title; catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken; and daily average horsepower and total daily hours of operation for each engine that the owner or operator elects to use the alternative monitoring system allowed under §117.240(a)(2)(C). The adoption requires that for units claimed exempt from emission specifications using the exemption in §117.203(a)(1)(D), records must include monthly hours of operation. In addition, for each turbine or engine claimed exempt under §117.203(a)(1)(D) or (E), written records must be maintained of the purpose of turbine or engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation. The adoption requires records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS or PEMS. The adoption also requires records of the results of performance testing, including initial demonstration of compliance testing conducted in accordance with §117.235.

Adopted new §117.252 contains the control plan procedures for RACT. The adoption requires the owner or operator of any unit subject to §117.205 to maintain a control plan report to show compliance with the requirements of §117.205. The report must include a list of all units that are subject to §117.205 that specifies: the facility identification number and emission point number as submitted to the Emissions Assessment Section of the commission; the emission point number as listed on the Maximum Allowable Emissions Rate Table of any applicable commission permit; the maximum rated capacity; the method of NO_x control for each unit; the emissions measured by testing required in §117.235; the compliance stack test report or monitor certification report required by §117.235; and the use of any compliance flexibility in accordance with §117.9800. The report must also list all units with a claimed exemption from the emission specification of §117.205 and the specific rule citation claimed as the basis for any that exemption. The adoption requires the report to be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Office of Air by the applicable date specified for control plans in §117.9010. The adoption also specifies that for any unit that becomes subject to §117.205 after the applicable date specified in §117.9010, the report must be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Office of Air no later than 60 days after becoming subject. The adoption specifies that if any of the information changes in a control plan report submitted in accordance with the section, including the installation of

functionally identical replacement units, the control plan must be updated no later than 60 days after the change occurs. Written or electronic records of the updated control plan must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the EPA, or local air pollution control agencies having jurisdiction.

Division 3, Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources

The adopted rulemaking amends §117.310(c)(2) to specify that for diesel engines that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions must not exceed 10 ppmv at 15% O_2, dry instead of 3% O_2, dry, as currently in effect. The existing rules require that ammonia emissions must not exceed 10 parts per million at 3.0% O_2, dry, for certain units that inject urea or ammonia into the exhaust stream for NO_x control. Correcting ammonia concentrations to the 3.0% O_2 level currently required is inappropriate for diesel engines that operate at significantly higher excess air in the exhaust stream. The adopted rule change to allow diesel engines to use the 15% O_2 correction consistent with the Chapter 117 standards for other equipment that also operates with higher O_2 in the exhaust gas.

The adoption also amends §117.340(c)(2) to add adopted new subparagraph (C) to specify that CEMS and PEMS are not required to be installed on stationary diesel engines equipped with SCR systems using a reductant other than the engine's fuel with a diagnostic system that monitors reductant quality and tank levels and alerts operators to the need to refill the reductant tank before it is empty, or to replace the reductant if it does not meet applicable concentration specifications. The adoption states that if the SCR uses input from an exhaust NO_x sensor (or other sensor) to alert operators when reductant quality is inadequate, reductant quality does not need to be monitored separately. The adoption also requires the reductant tank level to be monitored in accordance with the manufacturer's design to demonstrate compliance. The existing Chapter 117 requirement to monitor exhaust NO_x concentrations using CEMS or PEMS on units using a chemical reagent to reduce NO_x was included in the rule to ensure compliance with the applicable NO_x standards for units that rely on reagent-based emissions control systems that can be adjusted by the operator. Manufacturer-certified Tier 4 engines are designed to meet certain federal NO_x emissions limits and, as such, include SCR systems designed to monitor several parameters over which the operator has no control. The engines are intended to be tamper-resistant and not subject to alteration. Tier 4 engines are not manufactured with pre-installed CEMS because these inherent design standards ensure NO_x emissions conform to the Tier 4 standards. Given that the control system cannot be manipulated and considering the significant cost of installing and operating a CEMS, a CEMS or PEMS is not necessary to provide reasonable assurance of compliance with the NO_x emission standards. At proposal, the commission requested comment on any changes that need to be made to the language to ensure it applies to all of the engines intended to be covered by this exemption. No comments were received.

The adoption will also amend §117.340(d) to exempt these engines from the ammonia monitoring requirement in this subsection. It is not necessary to install CEMS or PEMS or monitor ammonia emissions from these engines since these engines are intended to be tamper resistant and not subject to alteration.

Division 4, Dallas-Fort Worth Ozone Nonattainment Area Major Sources

The adopted rulemaking amends §117.410(c)(2) to specify that for diesel engines that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions must not exceed 10 ppmv at 15% O_2, dry instead of 3% O_2, dry. The existing rules require that ammonia emissions must not exceed 10 parts per million at 3.0% O_2, dry, for certain units that inject urea or ammonia into the exhaust stream for NO_x control. However, correcting ammonia concentrations to the 3.0% O_2 level currently required is inappropriate for diesel engines that operate at significantly higher excess air in the exhaust stream. The adopted rule change to allow diesel engines to use the 15% O_2 correction consistent with the Chapter 117 standards for other equipment that also operates with higher O_2 in the exhaust gas.

The adoption also amends §117.440(c)(2) to include the existing reference to NO_x CEMS requirements of 40 CFR Part 75 as new subparagraph (A) and add adopted new subparagraph (B) to specify that CEMS and PEMS are not required to be installed on stationary diesel engines equipped with SCR systems using a reductant other than the engine's fuel with a diagnostic system that monitors reductant quality and tank levels and alerts operators to the need to refill the reductant tank before it is empty, or to replace the reductant if it does not meet applicable concentration specifications. The adoption states that if the SCR uses input from an exhaust NO_x sensor (or other sensor) to alert operators when reductant quality is inadequate, reductant quality does not need to be monitored separately. The adoption also requires the reductant tank level to be monitored in accordance with the manufacturer's design to demonstrate compliance. The existing Chapter 117 requirement to monitor exhaust NO_x concentrations using CEMS or PEMS on units using a chemical reagent to reduce NO_x was included in the rule to ensure compliance with the applicable NO_x standards for units that rely on reagent-based emissions control systems that can be adjusted by the operator. Manufacturer-certified Tier 4 engines are designed to meet certain federal NO_x emissions limits and, as such, include SCR systems designed to monitor several parameters over which the operator has no control. The engines are intended to be tamper-resistant and not subject to alteration. Tier 4 engines are not manufactured with pre-installed CEMS because these inherent design standards ensure NO_x emissions conform to the Tier 4 standards. Given that the control system cannot be manipulated and considering the significant cost of installing and operating a CEMS, a CEMS or PEMS is not necessary to provide reasonable assurance of compliance with the NO_x emission standards. At proposal, the commission requested comment on any changes that need to be made to the language to ensure it applies to all the engines intended to be covered by this exemption. No comments were received.

The adoption will also amend §117.440(d) to exempt these engines from the ammonia monitoring requirement in this subsection. It is not necessary to install CEMS or PEMS or monitor ammonia emissions from these engines since these engines are intended to be tamper resistant and not subject to alteration.

Subchapter C, Combustion Control at Major Utility Electric Generation Sources in Ozone Nonattainment Areas

Division 2, Bexar County Ozone Nonattainment Area Utility Electric Generation Sources

Adopted new §117.1100 specifies the rule applicability for the division. The adopted new division applies to utility boilers, auxiliary steam boilers, stationary gas turbines, and duct burners used in turbine exhaust ducts used in an electric power generating system in Bexar County. The adopted rule states that this

division is applicable for the life of each affected unit in an electric power generating system or until this division or sections of this title that are applicable to an affected unit are rescinded.

Adopted new §117.1103 lists the units that are exempt from this division, except the monitoring, recordkeeping and reporting requirements that are necessary to document that the unit meets the exemption criteria. The adopted exemption applies to (1) any utility boiler or auxiliary steam boiler with an annual heat input less than or equal to 220,000 MMBtu per year; (2) any stationary gas turbines that operate less than 850 hours per year, based on a rolling 12-month basis; and (3) any stationary gas turbines that are used solely to power other gas turbines or engines during startups.

Adopted new §117.1105 contains the emission specifications RACT that sources must comply with in accordance with the applicable schedule in adopted new §117.9110. The emission specifications were determined to be both technologically and economically feasible. The emission rates are consistent with EPA-approved RACT limits for similar sources in the other nonattainment areas in the state and permit limits for this type of unit. The adopted new subsection (a)(1) limits NO_x emissions from stationary gas turbines, including duct burners used in turbine exhaust ducts, to 0.032 lb/MMBtu heat input on a rolling 30-day average basis. The adopted new subsection (a)(2) limits NO_x emissions from utility boilers or auxiliary steam boilers, while firing natural gas or a combination of natural gas and oil, to 0.2 lb/MMBtu heat input on a rolling 30-day average basis. The adopted new subsection (a)(3) limits NO_x emissions from utility boilers or auxiliary steam boilers controlled with SCR, while firing coal, to 0.069 lb/MMBtu heat input on a rolling 30-day average basis. The adopted new subsection (a)(4) limits NO_x emissions from utility boilers or auxiliary steam boilers not controlled with SCR, while firing coal, to 0.20 lb/MMBtu heat input on a rolling 30-day average basis. The adopted new subsection (a)(5) limits NO_x emissions from utility boilers or auxiliary steam boilers, while firing oil only to 0.30 lb/MMBtu heat input on an hourly basis. Compliance with adopted emission specifications on a rolling 30-day average beginning on January 1, 2025, will be based on CEMS or PEMS data from the previous 30 operating days. The adopted new subsection (b) provides compliance flexibility by including options for sources to meet a system cap or use emission credits to comply with the NO_x emission specifications of this section.

The adoption adds new §117.1120 to add a system cap option for affected sources. The adopted new subsection (a) allows an owner or operator of an electric generating facility (EGF) to achieve compliance with the NO_x emission specifications in §117.1105 by achieving equivalent NO_x emission reductions obtained by compliance with a 30-day system cap emission limitation in accordance with the requirements of this section. Adopted new subsection (b) requires each EGF within an electric power generating system that started operation before January 1, 2025 (the adopted compliance date for this division), and is subject to §117.1105, to be included in the system cap. Adopted new subsection (c) provides an equation to calculate the rolling 30-day system cap. The 30-day rolling average NO_x emission cap in pounds per day is the product of the applicable emission specification in §117.1105 for each EGF times the average of the daily heat input for each EGF in the emission cap in MMBtu per day for any system 30-day period in 2019, 2020, 2021, 2022, or 2023 (the same 30-day period must be used for all EGFs in the emission cap). This value is then summed for all EGFs in the electric power generating system. Adopted new subsection (d) indicates that compliance with the system cap must be demonstrated in accordance with the requirements in adopted new §117.1140. Adopted new subsection (e) indicates that records, including semiannual reports for the monitoring systems, must be retained in accordance with adopted new §117.1145. Adopted new subsection (f) is revised in response to comments received on the proposal. The adopted rule requires the owner or operator to report any exceedance of the system cap emission limit to the appropriate regional office within three calendar days instead of the proposed 48 hours. Adopted new subsection (f) is also revised to require the owner or operator to then follow up no later than 60 calendar days after the exceedance, instead of the proposed 21 days, with a written report to the regional office that includes an analysis of the cause for the exceedance with appropriate data to demonstrate the amount of emissions in excess of the system cap and the necessary corrective actions taken by the company to assure future compliance. Additionally, the owner or operator shall submit semiannual reports for the monitoring systems in accordance with §117.1145 of this title. Adopted new subsection (g) requires sources to comply with the system cap in accordance with the schedule specified in adopted new §117.9110. Adopted new subsection (h) allows an EGF that is permanently retired or decommissioned and rendered inoperable to continue to be included in the system cap emission limit provided that the permanent shutdown occurred on or after the January 1, 2025 compliance date for this division. Adopted new subsection (i) prohibits emission reductions from shutdowns or curtailments that have been used for netting or offset purposes for an air permit issued under 30 TAC Chapter 116 from being included in the in the calculation of the system cap. Adopted new subsection (j) indicates that for the purposes of determining compliance with the system cap, the contribution of each affected EGF that is operating during a startup, shutdown, or emissions event must be calculated from the NO_x emission rate measured by the NO_x monitor, if the monitor is operating properly, or if the NO_x monitor is not operating properly, the substitute data procedures identified in §117.1140 must be used. Adopted new subsection (k) allows emission credits may be used in accordance with the requirements of §117.9800 to exceed the system cap.

The adoption adds new §117.1140 to specify the requirements for demonstrating compliance with the adopted new emission limits. Adopted new subsection (a) requires owners or operators to install, calibrate, maintain, and operate a CEMS or PEMS to measure NO_x on an individual basis for all units subject to the adopted new emission specifications in §117.1105. The adoption requires each CEMS or PEMS to comply with the relative accuracy test audit relative accuracy (RATA) requirements of 40 CFR Part 75, Appendix B, Figure 2, except the concentration options (parts per million by volume (ppmv) and lb/MMBtu) do not apply. The adoption also requires each CEMS or PEMS to meet either the relative accuracy percent requirement of 40 CFR Part 75, Appendix B, Figure 2, or an alternative relative accuracy requirement of ± 2.0 ppmv from the reference method mean value. The adoption requires CEMS or PEMS to comply with the emission monitoring system requirements of §117.8110. The adoption requires PEMS to predict NO_x emissions in the units of the applicable emission limitations and requires that data and fuel flow meters to be used to demonstrate continuous compliance. Adopted new subsection (b) provides acid rain peaking units the option to monitor operating parameters for each unit in accordance with 40 CFR Part 75, Appendix E, and calculate NO_x emission rates based on those procedures instead of using a CEMS or PEMS.

Adopted new §117.1140(c) also requires units subject to the adopted new emission specifications in §117.1105 and units claiming exemption under adopted new §117.1103(1) to use totalizing fuel flow meters to individually and continuously measure the gas and liquid fuel usage unless the owner or operator opts to assume fuel consumption at maximum design fuel flow rates during hours of the unit's operation. The adoption indicates that a computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. Adopted new subsection (d) requires that a unit using the adopted exemption in §117.1103(2) record the operating time hours with an elapsed run time meter. Adopted new subsection (e) requires the owner or operator of any unit using the adopted new exemptions in §117.1103(1) or (2) to notify the executive director within seven days if the applicable limit is exceeded and to submit a plan for review and approval within 90 days after loss of the exemption that details the schedule to meet the applicable limit no later than 24 months after the exceedance. The adoption indicates that if the limit is exceeded, the exemption from the emission specifications of this division is permanently withdrawn.

Adopted new §117.1140(f) requires the methods in this section to be used to demonstrate compliance with the adopted new emission specifications of §117.1105 and the adopted new system cap in §117.1120. The adoption allows the executive director to use other commission compliance methods to determine compliance with applicable emission specifications for enforcement purposes. The adoption explains that for units complying with the NO_x emission specifications of §117.1105 in lb/MMBtu on a rolling 30-day average basis, the rolling 30-day average is calculated for each day that fuel was combusted in the unit and is the total pounds of NO_x emissions from the unit for the preceding 30 days that fuel was combusted in the unit divided by the total heat input (in MMBtu) for the unit during the same 30-day period. In response to comments, the adopted subsection (f)(2) has been revised to clarify that for any EGF complying with the system cap requirements in §117.1120 in pounds per day on a rolling 30-day average basis, the rolling 30-day average is calculated for each day and is the average of the total pounds of NO_x emissions per day from all EGFs included in the system cap for the preceding 30 days. Adopted new subsection (g) requires the missing data procedures specified in 40 CFR Part 75, Subpart D to be used to provide substitute emissions compliance data during periods when the NO_x monitor is off-line except that a peaking unit may use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 and a PEMS for units not subject to the requirements of 40 CFR Part 75 may use calculations in accordance with §117.8110(b). At proposal, the commission requested comment on any additional data substitution procedures that may be appropriate. No comments were received.

Adopted new §117.1145 adds notification, recordkeeping, and reporting requirements. Adopted new subsection (a) requires written notification of any CEMS or PEMS RATA conducted under §117.1140 to be submitted at least 15 days prior to such date and (b) requires a copy of the results of any CEMS or PEMS RATA conducted under §117.1140 to be submitted within 60 days after completion of such testing or evaluation. Adopted new subsection (c) requires units subject to the startup and/or shutdown provisions of §101.222, to maintain hourly records of startup and/or shutdown events (including but not limited to the type of fuel burned; quantity of each type of fuel burned; gross and net energy production in megawatt-hours; and the date, time, and duration of the event) for a period of at least two years. The adopted rule specifies that the records must be available for inspection upon request by the executive director, EPA, and any local air pollution control agency having jurisdiction.

Adopted new §117.1145(d) requires the owner or operator of a unit required to install a CEMS or PEMS under adopted new §117.1140 to report in writing to the executive director on a semiannual basis any exceedance of the applicable emission limitations in this division and the monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period (i.e., July 30 and January 30). The adoption requires the reports to include (1) the magnitude of excess emissions computed in accordance with 40 CFR §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period; (2) specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit, the nature and cause of any malfunction (if known) and the corrective action taken or preventative measures adopted; and (3) the date and time identifying each period when the continuous monitoring system was inoperative, except for zero and span checks and the nature of the system repairs or adjustments. The adoption indicates that when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information must be stated in the report. The adoption specifies that only a summary report form (as outlined in the latest edition of the commission's Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports) is required if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS or PEMS monitoring system downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period (unless otherwise requested by the executive director). The adoption requires both a summary report and an excess emission report to be submitted if the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total unit operating time for the reporting period or the CEMS or PEMS downtime for the reporting period is greater than or equal to 5.0% of the total unit operating time for the reporting period.

Adopted new §117.1145(e) lists the required records, which must be kept for at least five years and must be made available upon request by authorized representatives of the executive director, EPA, or local air pollution control agencies having jurisdiction. adopted new paragraph (1) requires the owner or operator of a unit complying with the NO_x emission specifications in §117.1105(a)(1) - (4) to maintain daily records indicating the NO_x emissions in lb; the quantity and type of each fuel burned; the heat input in MMBtu; and the rolling 30-day average NO_x emission rate in lb/MMBtu. Adopted new paragraph (2) requires the owner or operator of a unit complying with the NO_x emission specification in §117.1105(a)(5) to maintain hourly records indicating the NO_x emissions in lb; the quantity and type of each fuel burned; and the heat input in MMBtu. Adopted new paragraph (3) requires the owner or operator complying with the NO_x emission system cap in §117.1120 to maintain daily records for each EGF in the cap indicating the NO_x emissions in lb; the quantity and type of each fuel burned; and the heat input in MMBtu. In addition, the owner or operator shall maintain daily records indicating the total NO_x emissions in lb from all EGFs under the system cap and the rolling 30-day average NO_x emissions rate (in lb/day) for all EGFs under the system cap. Adopted new paragraph (4)

requires the owner or operator of a unit using the exemption in §117.1103(1) to maintain monthly records indicating the quantity and type of each fuel burned, the heat input in MMBtu; and the rolling 12-month average heat input in MMBtu. Adopted new paragraph (5) requires the owner or operator of a unit the exemption in §117.1103(2) to maintain monthly records indicating the operating hours and the rolling 12-month average operating hours. Adopted new paragraph (6) requires the owner or operator to maintain records of records of the results of testing, evaluations, calibrations, checks, adjustments, and maintenance of a CEMS or PEMS.

Adopted new §117.1152 contains the control plan procedures for RACT. Adopted new subsection (a) requires the owner or operator of any unit subject to §117.1105 to submit a control plan report to show compliance with the requirements of §117.1105. The report must include: (1) the rule section used to demonstrate compliance, either §117.1105, §117.1120, or §117.9800; (2) the specific rule citation for any unit with a claimed exemption under §117.1105; (3) for each affected unit: the method of NO_x control, the method of monitoring emissions, and the method of providing substitute emissions data when the NO_x monitoring system is not providing valid data; and (4) for sources complying with §117.1120, detailed calculation of the system cap that includes all data relied on for each electric generating facility included in the system cap equation in §117.1120(c). Adopted new subsection (b) requires the report to be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Office of Air by the applicable date specified for control plans in §117.9110. Adopted new subsection (c) specifies that for any unit that becomes subject to §117.1105 after the applicable date for control plans in §117.9110, the control plan must be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Office of Air no later than 60 days after becoming subject. Adopted new subsection (d) requires that if any of the information changes in a control plan report submitted in accordance with subsection (b) or (c), including the installation of functionally identical replacements, the control plan must be updated no later than 60 days after the change occurs. Written or electronic records of the updated control plan must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the EPA, or local air pollution control agencies having jurisdiction.

Subchapter D, Combustion Control at Minor Sources in Ozone Nonattainment Areas

Division 1, Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources

The adopted rulemaking amends §117.2010(i)(2) to specify that for diesel engines that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions must not exceed 10 ppmv at 15% O_2, dry instead of 3% O_2, dry. The existing rules require that ammonia emissions must not exceed 10 parts per million at 3.0% O_2, dry, for certain units that inject urea or ammonia into the exhaust stream for NO_x control. However, correcting ammonia concentrations to the 3.0% O_2 level currently required is inappropriate for diesel engines that operate at significantly higher excess air in the exhaust stream. The adopted rule change to allow diesel engines to use the 15% O_2 correction is consistent with the Chapter 117 standards for other equipment that also operate with higher O_2 in the exhaust gas.

The adoption will amend §117.2035(e)(2) to specify that the ammonia monitoring requirements in this paragraph do not apply to stationary diesel engines equipped with selective catalytic reduction systems that meet the following criteria. The SCR system must use a reductant other than the engine's fuel and operate with a diagnostic system that monitors reductant quality and tank levels. The diagnostic system must alert owners or operators to the need to refill the reductant tank before it is empty or to replace the reductant if the reductant does not meet applicable concentration specifications. If the SCR system uses input from an exhaust NO_x sensor (or other sensor) to alert owners or operators when the reductant quality is inadequate, the reductant quality does not need to be monitored separately by the diagnostic system. The reductant tank level must be monitored in accordance with the manufacturer's design to demonstrate compliance with this subparagraph. The method of alerting an owner or operator must be a visual or audible alarm.

Division 2, Dallas-Fort Worth Eight Hour Ozone Nonattainment Area Minor Sources

The adopted rulemaking amends §117.2110(h)(2) to specify that for diesel engines that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions must not exceed 10 ppmv at 15% O_2, dry instead of 3% O_2, dry. The existing rules require that ammonia emissions must not exceed 10 parts per million at 3.0% O_2, dry, for certain units that inject urea or ammonia into the exhaust stream for NO_x control. However, correcting ammonia concentrations to the 3.0% O_2 level currently required is inappropriate for diesel engines that operate at significantly higher excess air in the exhaust stream. The adopted rule change to allow diesel engines to use the 15% O_2 correction is consistent with the Chapter 117 standards for other equipment that also operate with higher O_2 in the exhaust gas.

The adoption will amend §117.2135(d)(2) to specify that the ammonia monitoring requirements in paragraph (2) do not apply to stationary diesel engines equipped with selective catalytic reduction systems that meet all of the criteria specified in adopted new subparagraphs (A) - (F). The SCR system must use a reductant other than the engine's fuel and operate with a diagnostic system that monitors reductant quality and tank levels. The diagnostic system must alert owners or operators to the need to refill the reductant tank before it is empty or to replace the reductant if the reductant does not meet applicable concentration specifications. If the SCR system uses input from an exhaust NO_x sensor (or other sensor) to alert owners or operators when the reductant quality is inadequate, the reductant quality does not need to be monitored separately by the diagnostic system. The reductant tank level must be monitored in all cases in accordance with the manufacturer's design to demonstrate compliance with this subparagraph. The method of alerting an owner or operator must be a visual or audible alarm.

Subchapter E, Multi-Region Combustion Control

Division 1, Utility Electric Generation in East and Central Texas

The adopted rule amends the applicability in §117.3000 to specify that this division no longer applies in Bexar County after December 31, 2024. This change ensures that units in Bexar County will remain in compliance with the existing rule until they are required to comply with the adopted new rules for EGUs in Subchapter C, Division 2.

Division 2, Cement Kilns

The adopted rule amends §117.3103 for portland cement kilns exempted from the provisions of this division, to include any portland cement kiln placed into service on or after December 31,

1999, except as specified in adopted new Bexar County RACT requirements in §117.3124. The adopted amendments also state that after the compliance date specified in §117.9320(c), portland cement kilns that are subject to §117.3124 are exempt from §117.3110 and §117.3120 of this title. These adopted changes are necessary to ensure that cement kilns in Bexar County will remain in compliance with the existing rule until they are required to comply with the adopted new RACT requirements in §117.3124.

The adopted rulemaking adds language to the emission specification in §117.3110 and the source cap requirements in §117.3120 to state that these sections no longer apply in Bexar County after December 31, 2024. These adopted changes are necessary to ensure that cement kilns in Bexar County are subject to these rules only until they are required to comply with the adopted new RACT requirements in §117.3124.

Adopted new §117.3124 lists the Bexar County control requirements for RACT.

The adopted rule limits NO_x emissions from each preheater-precalciner or precalciner kiln in Bexar County to 2.8 pounds per ton (lb/ton) of clinker produced on a 30-day rolling average beginning on the compliance date specified in §117.9320. This adopted limit is consistent with limits for this type of kiln in other state and federal rules. For one of the two affected kilns, this limit represents an approximate 40% reduction from the average NO_x emissions from 2017-2022. The other affected kiln is currently operating below this rate and at proposal, the commission requested comments on the technological and economic feasibility of the existing kiln located at Capital Cement to meet a limit of 1.95 lb/ton of clinker produced on a 30-day rolling average during both normal conditions and during maintenance, startup, and shutdown. No comments were received. The adopted new section clarifies that for the purposes of this section, the 30-day rolling average is an average, calculated for each day that fuel was combusted in the cement kiln, as the total of all the hourly emissions data (in pounds) for the preceding 30 days that fuel was combusted in the cement kiln, divided by the total number of tons of clinker produced in that kiln during the same 30-day period. The adopted rule also states that an owner or operator may use emission credits in accordance with §117.9800 to meet the NO_x emission control requirements of this section, in whole or in part.

The adopted rule amends the notification, recordkeeping, and reporting requirements in §117.3145 to require monitoring records for kilns subject to §117.3124 to include the hourly, daily, and rolling 30-day average NO_x emissions (in pounds); the hourly, daily, and rolling 30-day average production of clinker (in United States short tons); and the rolling 30-day average NO_x emission rate (in lb/ton of clinker produced). These records are necessary to demonstrate compliance with the adopted new RACT requirements for kilns in Bexar County.

Subchapter H, Administrative Provisions

Division 1, Compliance Schedules

The adoption adds new §117.9010 to include the compliance schedule for Bexar County ozone nonattainment area major sources. The adoption requires the owner or operator of any stationary source of NO_x in Bexar County that is a major source of NO_x and is subject to the requirements of Subchapter B, Division 2 to comply with the requirements of that division as soon as practicable, but no later than January 1, 2025. The adoption also requires the owner or operator of any stationary source of NO_x that becomes subject to the requirements of Subchapter B, Division 2 on or after January 1, 2025 to comply with the requirements of the division as soon as practicable, but no later than 60 days after becoming subject.

The adoption amends the compliance schedule for DFW area major sources in §117.9030 to add that for units subject to the emission specifications of §117.405(b) located at sources in Wise County that emit or have the potential to emit equal to or greater than 25 tpy but less than 50 tpy of NO_x, submission of the initial control plan required by §117.450(b) is required no later than May 7, 2025; and compliance with all other requirements of Subchapter B, Division 4 is required as soon as practicable, but no later than November 7, 2025. The adoption adds requirements for the owner or operator of any unit that is subject to the emission specifications in §117.410(a) located in the DFW area that emits or has the potential to emit equal to or greater than 25 tpy but less than 50 tpy of NO_x to submit the initial control plan required by §117.450(b) no later than May 7, 2025; and comply with all other requirements of Subchapter B, Division 4 as soon as practicable, but no later than November 7, 2025. The adoption also states that the owner or operator of any stationary source of NO_x that becomes subject to the emission specifications in §117.410(a) on or after the applicable compliance date specified in paragraph (2) must comply with the requirements of Subchapter B, Division 4 as soon as practicable, but no later than 60 days after becoming subject.

The adoption adds new §117.9110 to include the compliance schedule for Bexar County ozone nonattainment area utility electric generation sources. The adoption requires the owner or operator of each electric utility in Bexar County to comply with the requirements of Subchapter C, Division 2 as soon as practicable, but no later than January 1, 2025. The adoption also requires the owner or operator of any electric utility that becomes subject to the requirements of Subchapter C, Division 2 on or after January 1, 2025, to comply with the requirements of that division as soon as practicable, but no later than 60 days after becoming subject.

The adoption amends §117.9300 to specify that beginning January 1, 2025, sources in Bexar County are no longer required to comply with the requirements of Subchapter E, Division 1. This change ensures that sources must comply with these requirements only until compliance with the adopted new RACT rules in Subchapter C, Division 2 is required.

The adoption amends §117.9320 to require the owner or operator of each portland cement kiln in Bexar County to comply with the requirements of §117.3124 and the applicable requirements of §117.3145 as soon as practicable, but no later than January 1, 2025.

Division 2, Compliance Flexibility

The adoption amends §117.9800 to allow for the use of emission credits for compliance with the adopted new Bexar County RACT requirements in §§117.205, 117.1105, 117.1120, and 117.3124. The adoption also specifies that for units using reduction credits in accordance with this section that are subject to new, more stringent rule limitations, the owner or operator using the reduction credits must submit a revised final control plan to the executive director in accordance with §117.1152. These requirements are the same as the EPA-approved options provided for other nonattainment areas in the state.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of 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, will 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 Tex. Gov't Code Ann., §2001.0225(a). Section 2001.0225 of the Texas Government Code applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The specific intent of these adopted rules is to comply with federal requirements for the implementation of control strategies necessary to attain and maintain the NAAQS for ozone mandated by 42 USC, 7410, FCAA, §110, and required to be included in operating permits by 42 USC, §7661a, FCAA, §502, as specified elsewhere in this preamble. The adopted rule addresses RACT requirements for the Bexar County 2015 eight-hour ozone nonattainment area and the DFW 2008 eight-hour ozone nonattainment area as well as revisions to existing rules to remove specific monitoring requirements and adjust ammonia emission limits for certain engines as discussed elsewhere in this preamble. States are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. As discussed in the FISCAL NOTE portion of this preamble, the adopted rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is necessary to attain the ozone NAAQS on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

If a state does not comply with its obligations under 42 USC, §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) or mandatory sanctions under 42 USC, §7509, FCAA, §179; as well as the imposition of a federal implementation plan (FIP) under 42 USC, §7410, FCAA, §110(c). Under 42 USC, §7661a, FCAA, §502, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including enforceable emission limitations and other control measures, means, or techniques, which are required under 42 USC, §7410, FCAA, §110. Similar to requirements in 42 USC, §7410, FCAA, §110, states are not free to ignore requirements in 42 USC, §7661a, FCAA, §502 and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Lastly, states are also subject to the imposition of sanctions under 42 USC, §7661a(d) and (i), FCAA, §502(d) and (i) for failure to submit an operating permits program, the disapproval of any operating permits program, or failure to adequately administer and enforce the approved operating permits program.

The requirement to provide a fiscal analysis of regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th legislative session in 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement will seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that will require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule proposed by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. Requiring a full RIA for all federally required rules is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the 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 demonstrate attainment of the ozone NAAQS 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); *South-*

western Life Ins. Co. v. Montemayor, 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied);* and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978).) The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code, §2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard.

As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Texas Government Code, §2001.0225. The 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 attain the ozone NAAQS and are required to be included in permits under 42 USC, §7661a, FCAA, §502, and will not exceed any standard set by state or federal law. These 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, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.011, 382.012, and 382.017. Therefore, this 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. No comments were received regarding the regulatory impact analysis determination.

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, as discussed elsewhere in this preamble, is to meet federal requirements for the implementation of control strategies necessary to attain and maintain the NAAQS for ozone mandated by 42 USC, 7410, FCAA, §110, and required to be included in operating permits by 42 USC, §7661a, FCAA, §502. The adopted rule addresses RACT requirements for the Bexar County 2015 eight-hour ozone nonattainment area and the DFW 2008 eight-hour ozone nonattainment area as well as revisions to existing rules to remove specific monitoring requirements and adjust ammonia emission limits for certain engines as discussed elsewhere in this preamble.

States are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. If a state does not comply with its obligations under 42 USC, §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 USC, §7410(m) or mandatory sanctions under 42 USC, §7509, FCAA, §179; as well as the imposition of a federal implementation plan (FIP) under 42 USC, §7410, FCAA, §110(c). Under 42 USC, §7661a, FCAA, §502, states are required to have federal operating permit programs that provide authority to issue permits and assure compliance with each applicable standard, regulation, or requirement under the FCAA, including enforceable emission limitations and other control measures, means, or techniques, which are required under 42 USC, §7410, FCAA, §110. Similar to requirements in 42 USC, §7410, FCAA, §110, regarding the requirement to adopt and implement plans to attain and maintain the national ambient air quality standards, states are not free to ignore requirements in 42 USC, §7661a, FCAA, §502 and must develop and submit programs to provide for operating permits for major sources that include all applicable requirements of the FCAA. Lastly, states are also subject to the imposition of sanctions under 42 USC, §7661a(d) and (i), FCAA, §502(d) and (i) for failure to submit an operating permits program, the disapproval of any operating permits program, or failure to adequately administer and enforce the approved operating permits program.

The 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 will 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 will otherwise exist in the absence of the governmental action. Therefore, the adopted rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The adopted amendments are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource

areas, and the policy in 31 TAC §501.14(l), which requires that the commission protect air quality in coastal areas. The adopted rulemaking and SIP revision will ensure that the amendments comply with 40 CFR Part 50, National Primary and Secondary Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received regarding the CMP.

Effect on Sites Subject to the Federal Operating Permits Program

Chapter 117 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the adopted revisions to Chapter 117 are adopted, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 117 requirements.

Public Comment

The commission held public hearings in Houston on January 4, 2024, and in Arlington on January 11, 2024. The commission offered a public hearing in San Antonio on January 9, 2024. The comment period opened on December 1, 2023, and closed on January 16, 2024. The commission received comments from CPS Energy, EPA, Sierra Club, and Baker Botts LLP, on behalf of the Texas Industry Project (TIP). The comments expressed support for the proposal and provided suggested changes to the rules, including changes to the notification and reporting requirements, changes to the system cap for electric generation sources for shutdown units, and changes to the RACT limits for certain sources.

Any comments received regarding the Bexar County, DFW, and HGB attainment demonstration SIP revisions (Non-Rule Project Nos. 2023-107-SIP-NR, 2023-132-SIP-NR, and 2022-022-SIP-NR, respectively) are addressed in the Response to Comments portions of those attainment demonstration SIP revisions.

Response to Comments

Comment

CPS Energy supported the proposed §117.1105 NO_x rates in lb/MMBtu and supported the compliance mechanism of a system cap in proposed §117.1120.

Response

The commission appreciates the support.

Comment

CPS Energy requested changing the proposed reporting requirement for any exceedance of the system cap emission limit in §117.1120(f) from 48 hours to two business days. CPS Energy stated that its core compliance staff works Mondays through Thursdays on 10-hour shifts. Changing the requirement to two business days ensures those people responsible for reporting have sufficient time to report the exceedance. CPS Energy also requested changing the follow-up reporting time in proposed §117.1120(f) from 21 days to 60 days. CPS Energy stated that it has a very robust root cause analysis program, and 60 days would ensure the reports are properly investigated, developed, and reviewed.

Response

The commission agrees that the requested changes are reasonable and revised the rule. Adopted §117.1120(f) requires the owner or operator to report any exceedance of the system cap emission limit within three calendar days to the appropriate regional office. This change provides an additional day to accommodate the non-traditional work schedule. If an exceedance occurs on a Friday then the owner or operator is required to provide notice of the exceedance to the regional office by the end of the day Monday. The adopted rule was also revised to require the owner or operator to follow-up no later than 60 calendar days after the exceedance with a written report to the regional office that includes an analysis of the cause for the exceedance with appropriate data to demonstrate the amount of emissions in excess of the system cap and the necessary corrective actions taken by the company to assure future compliance. Since the system cap applies to multiple units located at multiple sites, the commission agrees that additional time may be needed to properly evaluate the cause of the exceedance. However, the commission expects the analysis of the exceedance to be prompt and the results to be provided as soon as practicable.

Comment

CPS Energy commented that 40 CFR Part 75 includes an exemption/waiver to the normal notification required to TCEQ if there are extraneous circumstances. CPS Energy requested that this option be incorporated into proposed §117.1145(a). CPS Energy stated that if it were to have a RATA fail, for example, CPS Energy would like to have the option to conduct another one immediately. Currently, RATA notifications are made ahead of the required time, but if an issue arises (e.g., the unit coming offline), the regional office is immediately notified of any date changes so the TCEQ can observe the test.

Response

The commission would not consider immediate retesting to be a new event that would require separate notification. After providing the initial written notification to the appropriate regional office, the owner or operator may elect to repeat a certification or recertification test immediately (without additional written notification) whenever the owner or operator has determined during the certification or recertification testing that a test was failed or must be stopped, or that a second test is necessary. The commission considers these multiple tests to be part of the same testing event. As mentioned in the comment, the owner or operator should communicate any schedule changes, including delays or extensions, to the TCEQ regional office to ensure TCEQ has the opportunity to observe the testing. In emergency situations, the owner or operator may contact the TCEQ regional office to request a waiver to this notification requirement. No changes have been made in response to this comment.

Comment

CPS Energy recommended revising proposed §117.1140(f)(2) to remove the condition "that fuel was combusted in the unit" from the calculation used to demonstrate compliance with the system cap. CPS Energy suggested that the rule should require a 30-day look back for all units in the CPS Energy generation fleet located in Bexar County regardless of whether they run or have fuel combusted (i.e., count zero values in the 30-day rolling average) to include non-operating days.

Response

TCEQ agrees with the commenters suggested change. The system cap option allows sources to reduce or stop operation in or-

der to meet the applicable limit. Therefore, non-operating days should be included in the compliance demonstration. Adopted §117.1140(f)(2) has been revised to clarify that for any EGF complying with the system cap in §117.1120, the rolling 30-day average is calculated for each day and is the average of the total pounds of NO_x emissions per day from all EGFs included in the system cap for the preceding 30 days.

Comment

EPA commented that for the system cap option for EGUs, a permanently retired or decommissioned and rendered inoperable EGU may not be included in the system cap emission limit. EPA commented that its 2001 guidance document "Improving Air Quality with Economic Incentive Programs (EIPs)" Section 7.2(a), Fundamental integrity elements, states "The terms surplus, quantifiable, enforceable, and permanent refer to the fundamental integrity elements that apply to emission reductions that qualify for inclusion in your emission averaging EIP. In emission averaging EIPs, the source-specific fundamental elements of surplus, enforceable, quantifiable, and permanent, as used with reference to the actions of the individual sources participating in the EIP, have special meanings..." Stationary-source shutdowns and production activity curtailments are not eligible as emission reductions".

Response

The system cap option in §117.1120 is not a type of emission averaging program, it is a source-specific emission cap program as described in Section 7.3 of the EPA's EIP guidance referenced in EPA's comment. EPA's guidance describes a source-specific emissions cap as an emission trading EIP that allows a specified stationary source or a limited group of sources that are subject to a rate-based emission limit to meet that requirement by accepting a mass-based emission limit, or cap, rather than complying directly with a rate-based limit. The system cap option in §117.1120 is a mass-based limit (in pounds per day) that takes the summation of multiple units in one electric power generating system to demonstrate compliance with rate-based RACT limits. The system cap includes all applicable units owned by one entity (e.g., an electric cooperative or municipality) within the Bexar County nonattainment area. Unlike an emission averaging program that applies to multiple sources across different sites, a source-specific emission cap program does allow shutdowns and curtailments to be included as reductions, so long as the unit being retired was originally included in the system cap program. EPA's guidance includes additional considerations to prevent a shutdown from merely shifting emissions elsewhere. The system cap in §117.1120 complies with the guidance for source-specific emission cap programs because a unit that is permanently retired or decommissioned and rendered inoperable may be included in the system cap only if the permanent shutdown occurred on or after the January 1, 2025, RACT compliance date. The rule also contains an additional limitation that prevents a facility from using a shutdown that is relied on for NSR netting or offsets from being included in the system cap. For these reasons, the Bexar County system cap in §117.1120 complies with EPA guidance. No changes were made in response to this comment.

Comment

TIP commented that it supports the TCEQ's proposed revisions to address its March 13, 2023, Petition for Rulemaking, which highlighted that Tier 4 engines are not manufactured with pre-installed CEMS because they are designed and manufactured with tamper-resistant controls to meet federal NO_x emission limits as set forth in 40 CFR Part 1039, Subpart B. Tier 4 engines are certified by manufacturers and rely on SCR systems which use a chemical reagent, such as ammonia, to meet federal standards. The same tamper-resistant design also ensures that ammonia emissions associated with SCR systems are controlled. TIP commented that the proposed rulemaking thus appropriately exempts Tier 4 engines from NO_x and ammonia monitoring requirements under Chapter 117 based on meeting certain criteria. TIP stated that the proposed rulemaking also properly adjusts the applicable ammonia emission limit to be consistent with other equipment with higher oxygen operation levels in exhaust gas. TIP stated that if finalized, the proposed rulemaking would align state rules with the federal Tier 4 engine standards, which preclude tampering or alteration, and therefore, as noted in the agency's preamble, provide reasonable assurance of compliance with the applicable NO_x and ammonia specifications.

Response

The TCEQ appreciates the support.

Comment

Sierra Club pointed to more stringent NO_x controls in other regions and recommended that TCEQ adopt similar RACT standards for Bexar County. EPA commented that TCEQ should evaluate RACT at lower than the proposed emission rates that are approved as RACT elsewhere in Texas nonattainment areas. Specifically, EPA commented that TCEQ should evaluate the following: (a) coal-fired EGUs with SCR at a rate lower than 0.069 lb/MMBtu since the J.K. Spruce 1 unit regularly operates at rates less than 0.069 lb/MMBtu, and the Emissions Specifications for Attainment Demonstration (ESAD) rate for the same source type in the HGB nonattainment area is 0.05 lb/MMBtu; (b) coal-fired EGUs without SCR for the implementation of both selective noncatalytic reduction and SCR since the J.K. Spruce 2 unit regularly operates at rates less than 0.2 lb/MMBtu, and the ESAD rate for the same source type in the HGB nonattainment area is 0.045 lb/MMBtu; and (c) gas-fired EGUs at emission rates lower than the proposed 0.20 lb/MMBtu since the DFW and HGB nonattainment areas have lower emission rates in place for the same source type.

Response

The Bexar County RACT determination does not need to set the lowest emission limit found elsewhere as RACT, but rather evaluate limits for technical feasibility and economic reasonableness for stationary sources in Bexar County.

TCEQ sets two tiers of emission limits. One for RACT and another that is beyond RACT. For NO_x, the beyond RACT tier is in sections of 30 TAC Chapter 117 with a title including "for Attainment Demonstration" and the RACT limits are in sections titled "Emission Specifications for Reasonably Available Control Technology (RACT)". EPA appears to confuse EGU RACT limits with ESAD limits. TCEQ is adopting RACT limits for EGUs in Bexar County that are equal to or more stringent than RACT limits on the same source categories in the HGB area, the only Texas nonattainment area with RACT emission limits on EGUs (30 TAC §117.1205).

For instance, the EGU RACT limit in HGB is 0.38 lb/MMBtu for tangential-fired units and 0.43 lb/MMBtu for wall-fired. The 0.05 lb/MMBtu limit that EPA cited is the ESAD limit in HGB for tangential-fired units. The 0.069 lb/MMBtu limit for coal-fired EGUs with SCR in Bexar County is less than the RACT limit in HGB.

The 0.2 lb/MMBtu RACT limit for coal-fired EGUs without SCR in Bexar County is less than the comparable RACT limit in HGB. The gas-fired EGU boiler RACT limit in HGB is the same 0.20 lb/MMBtu limit applied in Bexar County.

No changes were made in response to this comment.

Comment

Sierra Club asserted that installing SCR technology on coal-fired power plants such as J.K. Spruce Unit 1 is economically and technologically feasible due to widespread use, inclusion in other state and EPA regulations, and based on a modeling study report conducted by Sonoma Technology and submitted with the comment.

Response

The commission evaluated RACT for the Bexar County RACT SIP revision (Non-Rule Project No. 2023-107-SIP-NR) based on the 2015 eight-hour ozone standard SIP requirements rule (83 FR 62998). TCEQ considered economic and technological feasibility in its RACT determination and chose not to declare installing SCR to be RACT for J.K. Spruce Unit 1 for this Bexar County RACT SIP revision. The commission calculated the cost of installation of an SCR system capable of removing 90% of the NO_x on J.K. Spruce Unit 1 as $36,078/ton of NO_x removed. The commission concludes that installation of SCR technology on J.K. Spruce Unit 1 is economically infeasible at this time and is therefore not RACT for this unit. No changes were made in response to this comment.

Comment

Sierra Club suggested setting NO_x RACT limits for coal-fired EGU units with SCR such as J. K. Spruce Unit 2 aligned with the SCR system's full potential usage based on manufacturer guidelines and good engineering practices. Sierra Club recommended setting the RACT limit at 0.03 lb/MMBtu because it is the lowest rate achieved over the period October 2017 to October 2022.

Response

The commission evaluated RACT based on the 2015 eight-hour ozone standard SIP requirements rule (83 FR 62998). TCEQ considers economic and technological feasibility in its RACT determination. The 0.069 lb/MMBtu emission limit for J.K. Spruce Unit 2, an EGU boiler fired on coal and controlled by SCR, is the level set in its EPA-approved permit and measured as a 30-day rolling average. The commission also contends that an emission limit cannot be set at the lowest level a unit has ever achieved in any 30-day period, as commenters suggest, but must be set at a value the unit can achieve in all 30-day periods. In its comment, Sierra Club included a table showing that during the October 2017 to October 2022 period, J. K. Spruce Unit 2 emitted between 0.031 and 0.069 lb/MMBtu. This shows that the RACT limit of 0.069 lb/MMBtu is technologically feasible for all 30-day periods analyzed. No changes were made in response to this comment.

SUBCHAPTER A. DEFINITIONS

30 TAC §117.10

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air.

The adopted amendments implement TWC, §§5.102, 5.103, 5.105 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.017.

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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Deputy Director, Environmental Law Division
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For further information, please call: (512) 239-6087

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SUBCHAPTER B. COMBUSTION CONTROL AT MAJOR INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL SOURCES IN OZONE NONATTAINMENT AREAS
DIVISION 2. BEXAR COUNTY OZONE NONATTAINMENT AREA MAJOR SOURCES

30 TAC §§117.200, 117.203, 117.205, 117.230, 117.235, 117.240, 117.245, 117.252

Statutory Authority

The new rules are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new rules are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's

purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted new rules implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§117.203. Exemptions.

The following units are exempt from this division, except as specified in §§117.240(f), 117.245(f)(4) and (9), and 117.252 of this title (relating to Continuous Demonstration of Compliance; Notification, Recordkeeping, and Reporting Requirements; and Control Plan Procedures for Reasonably Available Control Technology (RACT)):

(1) stationary gas turbines and gas-fired lean-burn stationary reciprocating internal combustion engines that are used as follows:

(A) in research and testing of the unit;

(B) for purposes of performance verification and testing of the unit;

(C) solely to power other gas turbines or engines during startups;

(D) exclusively in emergency situations, except that operation for testing or maintenance purposes of the gas turbine or engine is allowed for up to 100 hours per year, based on a rolling 12-month basis; or

(E) in response to and during the existence of any officially declared disaster or state of emergency;

(2) gas-fired lean-burn stationary reciprocating internal combustion engines with a horsepower (hp) rating less than 50 hp;

(3) stationary gas turbines with a maximum rated capacity less than 10.0 million British thermal units per hour; and

(4) units located at a major source that is subject to Subchapter C, Division 2 of this chapter (related to Bexar County Ozone Nonattainment Area Utility Electric Generation Sources).

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

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DIVISION 3. HOUSTON-GALVESTON-BRAZORIA OZONE NONATTAINMENT AREA MAJOR SOURCES

30 TAC §117.310, §117.340

Statutory Authority

The amended rules are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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

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DIVISION 4. DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MAJOR SOURCES

30 TAC §117.410, §117.440

Statutory Authority

The amended rules are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its

powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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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Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER C. COMBUSTION CONTROL AT MAJOR UTILITY ELECTRIC GENERATION SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 2. BEXAR COUNTY OZONE NONATTAINMENT AREA UTILITY ELECTRIC GENERATION SOURCES

30 TAC §§117.1100, 117.1103, 117.1105, 117.1120, 117.1140, 117.1145, 117.1152

Statutory Authority

The new rules are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new rules are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted new rules implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

§117.1120. System Cap.

(a) An owner or operator of an electric generating facility (EGF), as defined in §117.10 of this title (relating to Definitions), may achieve compliance with the nitrogen oxides (NO_x) emission specifications in §117.1105 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) by achieving equivalent NO_x emission reductions obtained by compliance with a system cap emission limitation in accordance with the requirements of this section.

(b) Each EGF within an electric power generating system, as defined in §117.10 of this title, that started operation before January 1, 2025, and is subject to §117.1105 of this title, must be included in the system cap.

(c) The system cap must be calculated using the following equation.
Figure: 30 TAC §117.1120(c)

(d) Continuous compliance with the system cap must be demonstrated in accordance with the requirements in §117.1140 of this title (relating to Demonstration of Compliance).

(e) The owner or operator shall maintain daily records indicating the NO_x emissions and fuel usage from each EGF and summations of total NO_x emissions and fuel usage for all EGFs under the system cap on a daily basis. Records must also be retained in accordance with §117.1145 of this title (relating to Notification, Recordkeeping, and Reporting Requirements).

(f) The owner or operator shall report any exceedance of the system cap emission limit within three calendar days to the appropriate regional office. The owner or operator shall then follow up no later than 60 calendar days after the exceedance with a written report to the regional office that includes an analysis of the cause for the exceedance with appropriate data to demonstrate the amount of emissions in excess of the system cap and the necessary corrective actions taken by the company to assure future compliance. Additionally, the owner or operator shall submit semiannual reports for the monitoring systems in accordance with §117.1145 of this title.

(g) The owner or operator shall demonstrate compliance with the system cap in accordance with the schedule specified in §117.9110 of this title (relating to Compliance Schedule for Bexar County Ozone Nonattainment Area Utility Electric Generation Sources).

(h) An EGF that is permanently retired or decommissioned and rendered inoperable may be included in the system cap emission limit provided that the permanent shutdown occurred on or after January 1, 2025.

(i) Emission reductions from shutdowns or curtailments that have been used for netting or offset purposes under the requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) may not be included in the in the calculation of the system cap in subsection (c) of the section.

(j) For the purposes of determining compliance with the system cap, the contribution of each affected EGF that is operating during a startup, shutdown, or emissions event as defined in §101.1 of this title (relating to Definitions) must be calculated from the NO_x emission rate measured by the NO_x monitor, if the monitor is operating properly. If the NO_x monitor is not operating properly, the substitute data procedures identified in §117.1140 of this title must be used.

(k) Emission credits may be used in accordance with the requirements of §117.9800 of this title (relating to Use of Emission Credits for Compliance) to exceed the system cap.

§117.1140. Demonstration of Compliance.

(a) Nitrogen oxides (NO_x) monitoring. The owner or operator of each unit subject to the emission specifications in §117.1105 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) to measure NO_x on an individual basis.

(1) Each CEMS or PEMS is subject to the relative accuracy test audit relative accuracy requirements of 40 Code of Federal Regulations (CFR) Part 75, Appendix B, Figure 2, except the concentration options (parts per million by volume (ppmv) and pound per million British thermal units (lb/MMBtu)) do not apply. Each CEMS or PEMS must meet either the relative accuracy percent requirement of 40 CFR Part 75, Appendix B, Figure 2, or an alternative relative accuracy requirement of ± 2.0 ppmv from the reference method mean value.

(2) Each CEMS or PEMS is subject to the requirements of §117.8110 of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources).

(3) Each PEMS must predict NO_x emissions in the units of the applicable emission limitations of this division and PEMS and fuel flow meters must be used to demonstrate continuous compliance with the emission specifications of this division.

(b) Acid rain peaking units. In lieu of the NO_x monitoring requirements in subsection (a) of this section, the owner or operator of each peaking unit as defined in 40 CFR §72.2, may monitor operating parameters for each unit in accordance with 40 CFR Part 75, Appendix E, and calculate NO_x emission rates based on those procedures.

(c) Totalizing fuel flow meters. The owner or operator of each unit subject to the emission specifications in §117.1105 of this title and each unit using the exemption in §117.1103(1) of this title (relating to Exemptions) shall install, calibrate, maintain, and operate totalizing fuel flow meters to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. In lieu of installing a totalizing fuel flow meter on a unit, an owner or operator may opt to assume fuel consumption at maximum design fuel flow rates during hours of the unit's operation.

(d) Run time meters. The owner or operator of a unit using the exemption of §117.1103(2) of this title shall record the operating time hours with an elapsed run time meter.

(e) Loss of exemption. The owner or operator of any unit claimed exempt from the emission specifications of this division using the exemptions in §117.1103(1) or (2) of this title, shall notify the executive director within seven days if the applicable limit is exceeded.

(1) If the limit is exceeded, the exemption from the emission specifications of this division is permanently withdrawn.

(2) Within 90 days after loss of the exemption, the owner or operator shall submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible, but no later than 24 months after exceeding the limit. The plan must include a schedule of increments of progress for the installation of the required control equipment.

(3) The schedule is subject to the review and approval of the executive director.

(f) Data used for compliance. The methods required in this section must be used to demonstrate compliance with the emission specifications of §117.1105 of this title and the system cap in §117.1120 of this title (relating to System Cap). For enforcement purposes, the executive director may also use other commission compliance methods to determine whether the unit is in compliance with applicable emission specifications.

(1) For units complying with the NO_x emission specifications of §117.1105 of this title in pounds per million British thermal units (lb/MMBtu) on a rolling 30-day average basis, the rolling 30-day average is calculated for each day that fuel was combusted in the unit, and is the total NO_x emissions (in pounds) from the unit for the preceding 30 days that fuel was combusted in the unit, divided by the total heat input (in MMBtu) for the unit during the same 30-day period.

(2) For any electric generating facility (EGF) complying with the system cap in §117.1120 of this title (relating to System Cap) in pounds per day on a rolling 30-day average basis, the rolling 30-day average is calculated for each day and is the average of the total pounds of NO_x emissions per day from all EGFs included in the system cap for the preceding 30 days.

(g) Data Substitution. The missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures) must be used to provide substitute emissions compliance data during periods when the NO_x monitor is off-line except as follows.

(1) A peaking unit, as defined in 40 CFR §72.2, subject to 40 CFR Part 75, Appendix E, may use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures).

(2) A PEMS for units not subject to the requirements of 40 CFR Part 75 may use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources).

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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Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER D. COMBUSTION CONTROL AT MINOR SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 1. HOUSTON-GALVESTON-BRAZORIA OZONE NONATTAINMENT AREA MINOR SOURCES

30 TAC §117.2010, §117.2035

Statutory Authority

The amended rules are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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

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DIVISION 2. DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MINOR SOURCES

30 TAC §117.2110, §117.2135

Statutory Authority

The amended rules are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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. MULTI-REGION COMBUSTION CONTROL

DIVISION 1. UTILITY ELECTRIC GENERATION IN EAST AND CENTRAL TEXAS

30 TAC §117.3000

Statutory Authority

The amended rules are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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

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DIVISION 2. CEMENT KILNS

30 TAC §§117.3103, 117.3110, 117.3120, 117.3124, 117.3145

Statutory Authority

The new and amended rules are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new and amended rules are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted new and amended rules implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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

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SUBCHAPTER H. ADMINISTRATIVE PROVISIONS

DIVISION 1. COMPLIANCE SCHEDULES

30 TAC §§117.9010, 117.9030, 117.9110, 117.9300, 117.9320

Statutory Authority

The new and amended rules are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The new and amended rules are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements

for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted new and amended rules implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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

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DIVISION 2. COMPLIANCE FLEXIBILITY

30 TAC §117.9800

Statutory Authority

The amended rules are adopted under Texas Water Code (TWC), §5.102, concerning general powers; §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; TWC, §7.002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act.

The amendments are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning the State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; THSC, §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe reasonable requirements for measuring and monitoring the emissions of air contaminants; and THSC, §382.021, concerning Sampling Methods and Procedures.

The adopted amendments implement TWC, §§5.102, 5.103 and 7.002; and THSC, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.021.

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

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 146. REVOCATION OF PAROLE OR MANDATORY SUPERVISION

37 TAC §§146.4, 146.5, 146.7, 146.9, 146.10

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 146, Revocation of Parole or Mandatory Supervision, §§146.4, 146.5, 146.7, 146.9, and 146.10. The rules are adopted without change to the proposed text as published in the February 9, 2024, issue of the *Texas Register* (49 TexReg 629). The text of the rules will not be republished. The amendments are adopted for clarity and to provide edits for uniformity and consistency throughout the rules.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under Texas Government Code §§508.036(b), 508.0441(a)(5), 508.045(c), 508.281, 508.2811, and 508.283. Section 508.036(b) requires the Board to adopt rules relating to the decision-making processes used by the Board and parole panels. Section 508.0441(a)(5) vests the Board with the authority to determine the continuation, modification, and revocation of parole or mandatory supervision. Section 508.045(c) provides parole panels with the authority to conduct parole revocation and mandatory supervision revocation hearings; and to grant, deny, or revoke parole or mandatory supervision. Sections 508.281 and 508.2811 relate to hearings to determine violations of the releasee's parole or mandatory supervision. Sections 508.282 and 508.283 concern deadlines and sanctions for parole revocation and mandatory supervision revocation hearings.

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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Bettie Wells
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Texas Board of Pardons and Paroles
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For further information, please call: (512) 406-5478

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PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 151. GENERAL PROVISIONS

37 TAC §151.8

The Texas Board of Criminal Justice (board) adopts amendments to §151.8, concerning Advisory Committees, without changes to the proposed text as published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 988). The rule will not be republished.

The adopted amendments continue the existence of the Judicial Advisory Council (JAC) and the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments (ACOOMMI) to September 1, 2035, and make other minor clarifications.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.006, which establishes guidelines for board meetings and requires that the board shall allow the JAC chairman to present items relating to the operation of the community justice system that require the board's consideration at each meeting; §492.013, which authorizes the board to adopt rules; §493.003, which establishes the TDCJ Community Justice Assistance Division; §§510.011-.014, which establishes the Texas State Council for Interstate Adult Offender Supervision and establishes the composition, terms, and duties of the executive director and council; Chapter 2110, which establishes guidelines for state agency advisory committees; Texas Health and Safety Code §614.002, which establishes the composition and duties of the ACOOMMI; and §614.009, which establishes requirements for a biennial report providing details of ACOOMMI activities to the board.

Cross Reference to Statutes: None.

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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Jennifer Childress
Chief Deputy General Counsel
Texas Department of Criminal Justice
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For further information, please call: (512) 463-9899

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37 TAC §151.73

The Texas Board of Criminal Justice (board) adopts amendments to §151.73, concerning Texas Department of Criminal Justice Vehicle Assignments, without changes to the proposed text as published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 989). The rule will not be republished.

The adopted amendments remove redundant language stating TDCJ vehicles shall not be used to transport employee pets.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013, which authorizes the board to adopt rules; §2113.013, which establishes guidelines for the use of state-owned vehicles; §2101.0115, which establishes requirements of the annual financial report, to include information related to state-owned vehicles; §2171.1045, which establishes restrictions on the assignment of vehicles; and §2203.004; which establishes that state property may be used only for state purposes.

Cross Reference to Statutes: None.

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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Jennifer Childress
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For further information, please call: (512) 463-9899

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CHAPTER 156. INVESTIGATIONS

37 TAC §156.1

The Texas Board of Criminal Justice (board) adopts amendments to §156.1, concerning Investigations of Allegations of Abuse, Neglect, or Exploitation of an Elderly or Disabled Inmate, without changes to the proposed text as published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 990). The rule will not be republished.

The adopted amendments update language from "offender" to "inmate" and "allegations" to "complaints" throughout the rule, including the title, and updated references to agency directives.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013, which authorizes the board to adopt rules; and Texas Human Resources Code §48.301, which establishes guidelines related to reports of suspected abuse, neglect, or exploitation of an elderly person or a person with a disability.

Cross Reference to Statutes: None.

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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Jennifer Childress
Chief Deputy General Counsel
Texas Department of Criminal Justice
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For further information, please call: (512) 463-9899

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CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

37 TAC §163.34

The Texas Board of Criminal Justice (board) adopts amendments to §163.34, concerning Carrying of Weapons, without changes to the proposed text as published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 991). The rule will not be republished.

The adopted amendments clarify the authority for community supervision officers (CSOs) to carry handguns while engaged in the actual discharge of their duties; remove requirements for community supervision and corrections department (CSCD) policies authorizing CSOs to carry less than lethal equipment to be reviewed by the Community Justice Assistance Division (CJAD) director; remove a reference to the CJAD Weapons Procedures Guidebook; clarify notification procedures for certain incidents; and update other language and make organizational changes for clarity.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013, which authorizes the board to adopt rules; §509.003, which establishes standards and procedures that must be proposed by CJAD and adopted by the board, and Texas Occupations Code §1701.257, which establishes guidelines related to firearms training for supervision officers.

Cross Reference to Statutes: None.

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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Proposal publication date: February 23, 2024
For further information, please call: (512) 463-9899

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37 TAC §163.43

The Texas Board of Criminal Justice (board) adopts amendments to §163.43, concerning Funding and Financial Management, without changes to the proposed text as published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 993). The rule will not be republished.

The adopted amendments add language to address the allocation formula and distribution of community corrections program funding and make other language updates and organizational changes for clarity.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013, which authorizes the board to adopt rules; §493.003, which establishes the TDCJ Community Justice Assistance Division (CJAD); and §509.003, which establishes standards and procedures that must be proposed by CJAD and adopted by the board.

Cross Reference to Statutes: None.

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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37 TAC §163.45

The Texas Board of Criminal Justice (board) adopts the repeal of 37 Texas Administrative Code, Part 6 §163.45 without changes concerning Distribution of Community Corrections Funding, as published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 995). The repeal will not be republished.

The adopted repeal eliminates a rule whose language is being incorporated in §163.43, Funding and Financial Management.

No comments were received regarding the repeal.

The repeal is adopted under Texas Government Code §492.013, which authorizes the board to adopt rules; §493.003, which establishes the TDCJ Community Justice Assistance Division (CJAD); and §509.003, which establishes standards and procedures that must be proposed by CJAD and adopted by the board.

Cross Reference to Statutes: None.

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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37 TAC §163.46

The Texas Board of Criminal Justice (board) adopts the repeal of 37 Texas Administrative Code, Part 6 §163.46 concerning Allocation Formula for Community Corrections Program, as published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 995). The repeal is adopted without changes and will not be republished.

The adopted repeal eliminates a rule whose language is being incorporated in §163.43, Funding and Financial Management.

No comments were received regarding the repeal.

The repeal is adopted under Texas Government Code §492.013, which authorizes the board to adopt rules; §493.003, which establishes the TDCJ Community Justice Assistance Division (CJAD); and §509.003, which establishes standards and procedures that must be proposed by CJAD and adopted by the board.

Cross Reference to Statutes: None.

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

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 7. RAIL FACILITIES

SUBCHAPTER E. RAIL FIXED GUIDEWAY SYSTEM STATE SAFETY OVERSIGHT PROGRAM

The Texas Department of Transportation (department) adopts the repeal of §§7.82, 7.83, and 7.86, new §§7.82, 7.83, and 7.86, and amendments to §§7.80, 7.84, 7.85, and 7.87 - 7.95, concerning Rail Fixed Guideway System State Safety Oversight Program. The repeal of §§7.82, 7.83, and 7.86, new §§7.82, 7.83, and 7.86, and amendments to §§7.80, 7.84, 7.85, and 7.87 - 7.95 are adopted without changes to the proposed text as published in the February 2, 2024 issue of the *Texas Register* (49 TexReg 497) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Recent changes to Federal program requirements as a result of the Infrastructure Investment and Jobs Act (IIJA) necessitate an update to department rules. The IIJA updated 49 U.S.C §5329(d) and (k) to add additional requirements related to risk-based inspections (RBI), rail agency safety committees, training requirements, and public transportation agency safety plan contents. The United States Department of Transportation (USDOT) requires each State Safety Oversight Agency (SSOA) to develop and implement a risk-based inspection (RBI) program. The Federal Transit Administration (FTA) requires the department's draft RBI program document to be incorporated into the State Safety Oversight Program Standard and submitted for review no later than May 2024, to meet the October 21, 2024, FTA approval deadline. As a result of these updates and FTA requirements, amendments to Chapter 7 which establish standards for and implement state oversight of safety practices of rail fixed guideway systems are required.

Amendments to §7.80, Purpose, update the United States Code (U.S.C) reference to §5329 from the outdated §5330 reference.

Section §7.82, System Safety Program Plan, is repealed, as the contents of the section are obsolete.

New §7.82, Public Transportation Agency Safety Plan, contains the substance of existing §7.83, which is repealed by this rulemaking. The new section deletes as unnecessary the 11 listed requirements of former §7.83, substituting a reference to 49 U.S.C. §5329(d).

New §7.83, Modifications to a Public Transportation Agency Safety Plan, contains the substance of former §7.86, which is being repealed by this rulemaking.

Amendments to §7.84, Hazard Management Process, change the heading to "Safety Risk Management Process." Amendments to subsection (a) substitutes "public transportation agency safety plan" for "safety system program plan." Amendments to subsection (b) replace "hazard management process" with "safety risk management process" to align with federal requirements, while amendments to subsection (c) clarify the reporting standard for hazards in accordance with the State Safety Oversight Program Standard.

Amendments to §7.85, New State Rail Transit Agency Responsibilities, change the heading to "Ensuring Safety In New Rail Systems." The term "system safety program plan" is replaced with "public transportation agency safety plan" throughout the section. Changes are necessary to comply with new federal requirements for public transportation agency safety plans.

New §7.86, Risk Based Inspections, lays out requirements of the risk-based inspection (RBI) program document. It details requirements for conducting inspections in accordance with the RBI, to include using proper protective and safety equipment. The new section requires immediate reporting of safety concerns revealed through inspection activities and requires the department to issue a draft inspection report within 30 days after completion of a safety inspection. It also allows for a rail transit agency to submit written comments to the department's draft inspection report and requires the department to issue a final inspection report within 10 days of the comment deadline. Further, subsection (e) of the new section details the required elements of the inspection report. New subsection (f) requires rail transit authorities to submit data to the department for purposes of detecting changes in safety performance. Requirements for data submission are based on each agency's unique public transportation agency safety plan. The data format, type of data and submission schedule for rail transit agencies to follow will be identified in the risk-based inspection program document. New subsection (g) requires the department to review each rail agency's data at least annually. New subsection (h) requires the department to conduct on-going monitoring, to include at least four on-site inspections per year and other monitoring activities under 49 C.F.R. Part 674. The contents of this new section are necessary to comply with new federal requirements for risk-based inspections in 49 U.S.C §5329.

Amendments to §7.87, Rail Transit Agency's Annual Review, change the heading to "Rail Transit Agency's Annual Internal Safety Review." References to the system safety program plan are updated to public transportation agency safety plan throughout the section. Amendments also delete subsection (f) to remove the requirement for annual reports to be submitted with a formal letter from the chief executive. Changes are necessary to align with new federal requirements in 49 C.F.R. Part 674 that

remove the requirement of a formal letter from the chief executive.

Amendments to §7.88, Department System Safety Program Plan Audit, change the heading to "Triennial Review of Rail Transit Agencies." This update conforms to State Safety Oversight Program Standard terminology in 49 C.F.R. Part 674 and FTA program documentation. Amendments also include replacing system safety program plan throughout the section with public transportation agency safety plan. The timeframe for which an agency must provide corrective audit plans to the department after receipt of its final audit plan is reduced from the existing 45 days to 30 days. The timeframe is reduced from 45 to 30 days for increased clarity and to be consistent with the timeframe associated with the development of all other corrective action plans.

Amendments to §7.89, Accident Notification, changes the title to "Event Notification." In addition, amendments to §7.89(a)(3) replace the reference to "property damage" with "substantial damage" to align the rule with FTA's clarified program guidance that details thresholds requiring reporting to the TxDOT State Safety Oversight Program. Amendments to subsection (a)(3) also delete the reporting of the derailment of a transit vehicle as derailments are already cited in subsection (a)(6). Edits to subsection (d) include reporting each incident to FTA instead of the department and replace accident with incident throughout. Subsection (f) edits clarify reference to the State Safety Oversight Program Standard. Changes are necessary due to new federal requirements in 49 C.F.R. Part 674.

Amendments to §7.90, Accident Investigations, clarify that the department will investigate any accident as required under §7.89(a) or (b) but remove the reference to (d). Amendments also clarify that investigation personnel must be certified in accordance with the public transportation safety certification training program provided by the U.S. Department of Transportation. These amendments are necessary as a result of updates to federal rail safety requirements.

Amendments to §7.91, Corrective Action Plan, update the reference to safety reviews for clarity by removing the word "safety." These amendments are necessary as a result of updates to federal rail safety requirements.

Amendments to §7.92, Administrative Actions by the Department, remove the reference to 49 C.F.R. part 659 as this is an outdated federal reference and update the reference to system safety program plan in subsection (e) to public transportation agency safety plan. Changes are necessary to align with federal requirements in 49 C.F.R. Part 674.

Amendments to §7.93, Administrative Review, §7.94, Escalation of Enforcement Action, and §7.95, Emergency Order to Address Imminent Public Safety Concerns remove references to "system safety program plan" and replace them with "public transportation agency safety plan." Changes are necessary to align with federal requirements in 49 C.F.R. Part 674.

COMMENTS

No comments on the proposed repeal and amendments were received.

43 TAC §§7.80, 7.82 - 7.95

STATUTORY AUTHORITY

The new sections and amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department and more specifically Transportation Code, §455.060, which authorizes the commission to adopt rules for the oversight of rail fixed guideway systems.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING Transportation Code, Chapter 455, Subchapter B.

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

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Angie Parker
Senior General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8630

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43 TAC §§7.82, 7.83, 7.86

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department and more specifically Transportation Code, §455.060, which authorizes the commission to adopt rules for the oversight of rail fixed guideway systems.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING Transportation Code, Chapter 455, Subchapter B.

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

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

43 TAC §§9.11, 9.12, 9.15 - 9.18, 9.23 - 9.25, 9.27

The Texas Department of Transportation (department) adopts the amendments to §§9.11, 9.12, 9.15 - 9.18, and 9.23 - 9.25, and new §9.27 concerning Contracts for Highway Projects. The amendments to §§9.11, 9.12, 9.15 - 9.18, and 9.23 - 9.25, and

new §9.27 are adopted without changes to the proposed text as published February 2, 2024, issue of the *Texas Register* (49 TexReg 504) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION

Senate Bill (S.B.) 1021, 88th Regular Session, 2023, amended Transportation Code, Chapter 223 to increase the value of contracts for highway projects that the Texas Transportation Commission (commission) may permit a district engineer to let and award locally, from an estimated amount of less than $300,000 to less than $1 million. Similarly, S.B. 1021 increased the value of contracts for building construction projects that the commission may permit a division director to let and award locally, from an estimated amount of less than $300,000 to less than $1 million. The department's procedures for letting and awarding these contracts, given in Title 43, Part 1, Chapter 9, Subchapter B of the Texas Administrative Code, must be amended to use the additional authority provided by the changes made by S.B. 1021.

In conjunction with the increased threshold in Transportation Code, the department is making the corresponding update to the threshold for highway projects for which the highest level of bidder qualification may be waived.

Additional amendments include increasing the minimum bidding capacities granted for the differing levels of bidder qualification; removing the requirement for bids opened at the state level to be read publicly, in conformance with Transportation Code; updating Performance Review Committee rules regarding affiliates and appeal of remedial action; and aligning the rules with current business practices.

Amendments to §9.11, Definitions, repeal the definition of "routine maintenance contract," which is no longer used in these rules.

Amendments to §9.12, Qualification of Bidders, allow the highest level of bidder qualification to be waived for projects with an engineer's estimate of less than $1 million. Subsection (e) is amended to increase the minimum bidding capacity for the differing levels of bidder qualification: $2 million for qualification under a Confidential Questionnaire; $1 million for qualification under a Bidder's Questionnaire without compiled financial information; $1.5 million for qualification under a Bidder's Questionnaire with compiled financial information and at least one year of experience; $2 million for qualification under a Bidder's Questionnaire with compiled financial information and two years of experience, with additional capacity granted for additional years of experience ($6 million maximum); and $2 million for qualification under a Bidder's Questionnaire with reviewed financial information and at least three years of experience. The definition of "affiliated" is moved from §9.12 to new §9.27, Affiliated Entities. Subsection (g) is revised to clarify the process for determining whether bidders are independent from one another.

Amendments to §9.15, Acceptance, Rejection, and Reading of Bids, remove the requirement for bids opened at the state level to be read publicly, in accordance with Transportation Code §223.004, and permit highway and building contracts estimated under $1 million to be locally let by a district engineer or Division Director of the Support Services Division, respectively. The word "telegraph" is removed from subsections (c) and (d) because telegraphs are no longer used as a means for making requests to the department. This change is intended to be clean-up only and not a substantive change; telegraph requests still will not be accepted to request a change of a bid price after the bid has been manually submitted to the department. Finally, the section heading is simplified for clarity.

Amendments to §9.16, Tabulation of Bids, allow the executive director to make the determination of bid error for projects with an engineer's estimate less than $1 million.

Amendments to §9.17, Award of Contract, allow the executive director to award or reject contracts for projects with an engineer's estimate less than $1 million and allow the executive director to rescind the award of such a contract prior to execution upon a determination that it is in the best interest of the state. Allowing rescission of locally let contracts under the same authority as award or rejection, rather than requiring commission involvement, improves efficiency and will streamline the process.

Amendments to §9.18, Contract Execution, Forfeiture of Bid Guaranty, and Bond Requirements, remove the requirement for the low bidder to submit a list of all quoting subcontractors and suppliers at contract execution because the department has that information from another source. The amendments also add building contracts to the types of contracts that require a bidder to provide a certificate of insurance before the date that the contractor begins work. This change reflects current department policy.

Amendments to §9.23, Evaluation and Monitoring of Contract Performance, clarify the process used for the evaluation and monitoring of highway improvement contracts. Changes to subsection (b) clarify that the Director of the Support Services Division is responsible for the evaluations related to building contracts. The changes to the section provide that district engineers for highway improvement contracts, other than building contracts, will submit final evaluation scores to the division responsible for monitoring the contract, and the division will periodically review the final evaluation scores. This change formalizes current department policy and clarifies and simplifies the rules. Changes to subsection (d) remove the reference to the Chief Administrative Officer because under subsection (c) the Director of the Support Services Division is responsible for monitoring compliance with building contracts. Because the Support Services Division is the monitor of building contracts, it will already have the evaluations, recovery plans, and associated documentation. Amendments to the section also clarify that for a building contract, the Director of the Support Services Division may modify a proposed corrective action plan and adopt a final plan.

Amendments to §9.24, Performance Review Committee and Actions, allow the committee to recommend remedial action be applied to an entity identified as an affiliate under §9.27. This revision is intended to prevent circumvention of a remedial action by shifting bidding to an affiliated entity that is in existence before or created after the action.

Amendments to §9.25, Appeal of Remedial Action, clarify acceptable methods for delivery of an appeal to the executive director and remove the automatic stay of an imposed remedial action on a timely appeal. This revision is intended to comport with existing language in §9.24 that allows the Deputy Executive Director to take immediate action. Changes to subsection (d) clarify when notice of the executive director's final order on a remedial action is to be given.

New §9.27, Affiliated Entities, is comprised of existing language moved from §9.12 relating to the description of what make two entities affiliated.

In accordance with Government Code, §2001.036, the changes made by this rulemaking, including the addition of new §9.27, Affiliated Entities, take effect 20 days after the date on which the rules are filed in the office of the secretary of state, except that the amendments to §9.12, Qualification of Bidders, take effect on October 31, 2024.

COMMENTS

No comments on the proposed amendments and new sections were received.

STATUTORY AUTHORITY

The amendments and new rule are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.005, which authorizes the commission to adopt rules concerning bids on a contract estimated by the department to involve an amount less than $1 million.

The authority for the proposal is provided by S.B. No. 1021, 88th Regular Session, 2023. The primary author and the primary sponsor of that bill are Sen. Robert Nichols and Rep. Terry Canales, respectively.

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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Senior General Counsel
Texas Department of Transportation
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CHAPTER 31. PUBLIC TRANSPORTATION
SUBCHAPTER B. STATE PROGRAMS

43 TAC §31.11, §31.13

The Texas Department of Transportation (department) adopts the amendments to §31.11 and §31.13 concerning State Programs. The amendments to §31.11 and §31.13 are adopted with changes to the proposed text as published in the February 2, 2024, issue of the *Texas Register* (49 Tex Reg 514) and will be republished.

EXPLINATION OF ADOPTED AMENDMENTS

Due to 2020 Census changes and increased public transportation appropriations from the 88th Legislature, amendments to Chapter 31 governing the allocation of state public transportation grant program funding to transit districts serving rural, small urban, and large urban areas of the state are needed. The 2020 Census resulted in population changes and area designations changes throughout the state.

Proposed amendments to §31.11(a) clarify that an allocation of funds for public transportation is made on an annual basis, beginning at the first fiscal year of each biennium. This change aligns with current division practice of awarding state funds on an annual basis.

Proposed amendments to §31.11(b) clarify that the state funds formula allocation will be made at the beginning of each fiscal year in an amount equal to or less than the amount appropriated from all sources to the commission by the legislature for that biennium for public transportation. The aligns with current division practice of awarding state funds on an annual basis and allows the division flexibility to allocate certain amounts at the beginning of each fiscal year. All appropriated funding shall be allocated over the course of each biennium.

Proposed amendments to §31.11(b)(1) update appropriated funding amounts to include addition funding of $3,770,000 to mitigate Census 2020 impacts. The total appropriation amount is increased to $73,752,134 from $69,982,134. Funding allocations to large urban transit districts is amended from $7,000,000 to $10,365,694, while funding to small urban transit districts is amended to $15,927,748 from $20,118,748. Additionally, the allocation to rural transit districts is amended to $45,917,020 from $42,863,386. These changes are necessary due to the 2020 Census, which updated population figures and area designations throughout the state. The department has worked to ensure equitable funding to all district types post 2020 census, thus the updated allocation figures maintain equal per capita funding reductions across rural, small urban and large urban transit districts.

Proposed amendments to §31.11(b)(1)(A)(i) clarify the total appropriation is increased to $73,752,134 from $69,982,134. This amendment is necessary because of an increased appropriation in the amount of $3,770,000 from the 88th Legislature.

Proposed amendments to §31.11(b)(1)(A)(v) clarify that the commission may, in any year, waive or approve an alternative calculation for allocations under this paragraph to an urban transit district or group of urban transit districts based on unique conditions that negatively affect the performance of the district or group, including natural disaster, pandemic, or another event that specifically affects the service level of the district or group. This amendment clarifies unique conditions that may require an alternate calculation and specifies the department representative who can approve an alternate calculation.

Amendments to §31.11(b)(1)(B)(iii) clarify that the commission may, in any year, wave or approve an alternative calculation for allocations under this paragraph to a rural transit district or group of rural transit districts based on unique conditions that negatively affect the performance of the district or group, including natural disaster, pandemic, or another event that specifically affects the service level of the district or group. This amendment clarifies unique conditions that may require an alternate calculation and specifies the department representative who can approve an alternate calculation.

Amendments to §31.11(b)(2) delete obsolete language for a previous one-time allocation made in fiscal year 2018 to eligible urban and rural transit districts.

Amendments to §31.11(b)(3) renumber the paragraph to §31.11(b)(2). Amendments clarify that allocated funds may be used to address transit district service and capital development needs, changes in district boundaries, unforeseen funding anomalies, emergency services response and recovery needs, changes in economic conditions or availability of assets significantly impacting current year operations expenses, or other needs as determined by the commission. These changes allow more flexibility in the use of formula funds and more clearly define the types of situations that may require targeted funds,

such as emergency services response and recovery needs or changes in transit district boundaries. Proposed changes align with situation specific funding challenges that the division has witnessed over the past funding cycles.

Amendments to renumbered §31.11(d) delete the reference to money and replace it with funds. Amendments also clarify that unobligated funds not applied for before the November commission meeting in the second year of a state fiscal biennium may be administered by the commission under the discretionary program. This amendment allows maximum flexibility in use of the funds.

Amendments to §31.11(e) delete the reference to money and replace it with funds. Amendments also clarify that returned funds will be administered by the commission under the discretionary program if they are eligible for reallocation. This change clarifies that not all returned funds are eligible for reallocation.

Amendments to §31.11(f) clarify that the entire application must be certified, not just the statement regarding regional transportation planning implemented in accordance with 49 U.S.C. §5301.

Amendments to §31.13(b) clarify that if funds in excess of the amounts listed in §31.11(b)(1) are appropriated for purposes of public transportation, the commission can allocate those funds on a pro rata basis, competitively, a combination of both pro rata basis and competitively, or as a one-time award. This amendment allows more flexibility in the way funds may be awarded to entities when appropriated amounts are greater than those listed in 31.11(b).

COMMENTS

The department received one comment from the Texas Transit Association supporting the proposed revisions to §31.11 and §31.13. The department thanks the association for submitting its comment on these rules.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §456.022, which authorizes the commission to adopt rules necessary to allocate funding among eligible public transportation providers.

CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Texas Transportation Code Chapter 456, Subchapters A, B, and C

§31.11. Formula Program.

(a) Purpose. Transportation Code, Chapter 456 requires the commission to allocate, at the beginning of each state fiscal year, certain amounts appropriated for public transportation. This section sets out the policies, procedures, and requirements for that allocation.

(b) Formula allocation. At the beginning of each state fiscal year, an amount that does not exceed the amount appropriated from all sources to the commission by the legislature for that biennium for public transportation, other than federal funds and amounts specifically appropriated for coordination, technical support, or other costs of administration, will be allocated to urban and rural transit districts.

(1) If the appropriated amount to which this subsection applies is at least $73,752,134, the commission will allocate $10,365,694 to large urban transit districts, $15,927,748 to small urban transit districts, and $45,917,020 to rural transit districts. If the appropriated amount is less than $73,752,134, the amounts allocated by this paragraph will be reduced proportionately.

(A) Urban funds available under this section will be allocated to urban transit districts as provided by this subparagraph.

(i) If at least $73,752,134 is appropriated as described in paragraph (1) of this subsection, an urban transit district receiving funds under Transportation Code, Section 456.006(b), will be allocated for each year of the biennium an amount equal to the amount received by that district in Fiscal Year 1997. These districts include the cities of Arlington (amount $341,663), Grand Prairie (amount $170,584), Mesquite (amount $142,455), and North Richland Hills (amount $116,134). These allocations will be assigned from the small urban transit district funds. If less than $73,752,134 is appropriated, the amounts allocated by this clause will be reduced proportionately. If more than $73,752,134 is appropriated, an urban transit district to which this clause applies is not eligible for additional funds under paragraph (2) or (3) of this subsection.

(ii) One-half of the funds allocated to small urban transit districts will be based on population by using the latest census data available from the U.S. Census Bureau for each small urbanized area relative to the sum of all small urbanized areas. One-half of the funds allocated to small urban transit districts will be performance-based allocations.

(iii) One-half of the funds allocated to large urban transit districts will be based on population by using the latest census data available from the U.S. Census Bureau for each large urbanized area relative to the sum of all large urbanized areas served by urban transit districts. A large urban transit district with an urbanized area population of 300,000 or more will have the population adjusted to reflect a population level of 299,999. One-half of the funds allocated to large urban transit districts will be performance-based allocations.

(iv) An urban transit district is eligible for a performance-based allocation under clause (ii) or (iii) of this subparagraph, as appropriate, if it is in good standing with the department and has no deficiencies and no findings of noncompliance. The commission will award the performance-based funding based on the following weighted criteria: 30 percent for local funds per operating expense, 20 percent for ridership per capita, 30 percent for ridership per revenue mile, and 20 percent for revenue miles per operating expense. These criteria may be calculated using the urban transit district's annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

(v) The public transportation division director commission, in any year, may waive or approve an alternate calculation of an allocation under this paragraph to an urban transit district or a group of urban transit districts to mitigate unique conditions that negatively affect the performance of the district or group, including natural disaster, pandemic, or another event that specifically affects the service level of the district or group. The alternate calculation may be used in subsequent years at the discretion of the department.

(B) Rural funds allocated under this paragraph will be allocated only to rural transit districts in rural areas based upon need and performance as described in clauses (i) and (ii) of this subparagraph.

(i) Sixty-five percent of the funding under this subparagraph will be allocated to rural transit districts as a need based allocation giving consideration to population weighted at 75 percent and on land area weighted at 25 percent for each rural area relative to the sum of all rural areas.

(ii) Thirty-five percent of the funding under this subparagraph will be allocated to rural transit districts as a performance based allocation. A rural transit district is eligible for funding under this clause if it is in good standing with the department and has no deficiencies and no findings of noncompliance. The commission will award the funding by giving equal consideration to local funds per operating expense, ridership per revenue mile, and revenue miles per operating expense. These criteria may be calculated using the rural transit district's annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

(iii) The public transportation division director commission, in any year, may waive or approve an alternate calculation under this paragraph to a rural transit district or a group of rural transit districts to mitigate unique conditions that negatively affect the performance of the district or group, including natural disaster, pandemic, or another event that specifically affects the service level of the district or group. The alternate calculation may be used in subsequent years at the discretion of the department.

(C) Funds allocated under this section and any local funds may be used for any transit-related activity except that an urban transit district not included in a transit authority but located in an urbanized area that includes one or more transit authorities may use funds allocated under this section only to provide up to:

(i) 65 percent of the local share requirement for federally financed projects for capital improvements;

(ii) 50 percent of the local share requirement for projects for operating expenses and administrative costs;

(iii) 50 percent of the total cost of a public transportation capital improvement, if the urban transit district certifies that federal money is unavailable for the proposed project and the commission finds that the proposed project is vitally important to the development of public transportation in the state; and

(iv) 65 percent of the local share requirement for federally financed planning activities.

(D) Subject to available appropriation, no award to an urban or rural transit district under this paragraph will be less than 90 percent of the award to that transit district for the previous fiscal year. All allocations under subsection (b)(1)(A) and (B) of this section are subject to revision to comply with this standard.

(2) The commission will award on a pro rata basis, competitively, or using a combination of both, any appropriated amount that remains after other allocations made under this subsection. Funds awarded under this paragraph may be used to address transit district service and capital development needs, changes in transit district boundaries, unforeseen funding anomalies, emergency services response and recovery needs, changes in economic conditions or availability of assets significantly impacting current year operational expenses, or other needs determined by the commission. Awards under this paragraph are not subject to subsection (b)(1)(D) of this section in succeeding fiscal years.

(c) Change in service area. If part of an urban or rural transit district's service area is changed due to declaration by the U.S. Census Bureau, or if the service area is otherwise altered, the department and the urban or rural transit district shall negotiate an appropriate adjustment in the funding awarded to that urban or rural transit district for that funding year or any subsequent year, as appropriate. This negotiated adjustment is not subject to subsection (b)(1)(D) of this section.

(d) Unobligated funds. Any funds under this section that an urban or rural transit district has not applied for before the November commission meeting in the second year of a state fiscal biennium may be administered by the commission under the discretionary program described in §31.13 of this subchapter (relating to Discretionary Program).

(e) Returned funds. Any funds under this section that an urban or rural transit district agrees to return to the department, if eligible for reallocation, will be administered by the commission under the discretionary program described in §31.13 of this subchapter.

(f) Application. To receive funds allocated under this section, a transit district must first submit a completed and certified application, in the form prescribed by the department. The application must include a statement that the proposed public transportation project is consistent with continuing, cooperating, and comprehensive regional transportation planning implemented in accordance with 49 U.S.C. §5301. Federal approval of a proposed public transportation project will be accepted as a determination that all federal planning requirements have been met.

(g) Project evaluation. In evaluating a project under this section, the department will consider the need for fast, safe, efficient, and economical public transportation and the approval of the FTA, or its successor.

§31.13. Discretionary Program.

(a) Purpose. Transportation Code, Chapter 456 allows the commission to allocate any funds not obligated in accordance with the terms of §31.11 of this subchapter (relating to Formula Program) on a discretionary basis. This section sets out the policies, procedures, and requirements for that discretionary allocation.

(b) Discretionary allocation. In allocating funds in excess of the amounts listed in 31.11(b)(1) of this subchapter, the commission will calculate the allocation on a pro rata basis, competitive basis, or combination of pro rata and competitive basis, or as a one-time award to a local public entity, other than an authority, or to a private nonprofit organization that has the power to operate or maintain a public transportation system. Funds may be used for:

(1) the same purposes as described in §31.11(b) of this subchapter; and

(2) 80 percent of the cost of capital expenditures associated with ridesharing activities.

(c) Application. To receive funds under this section, an entity must first submit a completed and certified application, in the form prescribed by the department. The application must include:

(1) a description of the project, including estimates of the population that would benefit from the project and the anticipated date of project completion;

(2) a statement of the estimated cost of the project, including estimates of the federally financed portions of the project costs; and

(3) certifications that:

(A) local funds are available for local share requirements if required and that the proposed project is consistent with comprehensive regional transportation plans (federal approval of a proposed public transportation project will be accepted as a determination that all federal planning requirements have been met);

(B) federal funds are not available under §31.11 of this subchapter;

(C) equipment furnished by the applicant in connection with ridesharing activities will be used primarily for commuting purposes;

(D) ridesharing activities will be operated on a nonprofit basis without state subsidies and with accountability in operating the van pool equipment; and

(E) any funding available through the United States Department of Transportation to participate in the capitalized portion of state and locally supported ridesharing activities will be applied for and utilized to supplement the availability of local resources for the recapitalization of van pool equipment.

(d) Project evaluation. In evaluating a project under this section, the department will consider the need for fast, safe, efficient, and economical public transportation and the approval of the FTA, or its successor.

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 April 25, 2024.

TRD-202401753
Angie Parker
Senior General Counsel
Texas Department of Transportation
Effective date: May 15, 2024
Proposal publication date: February 2, 2024
For further information, please call: (512) 463-8630

Review Of Agency Rules

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Health and Human Services Commission

Title 1, Part 15

The Texas Health and Human Services Commission (HHSC) proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 1, Part 15, of the Texas Administrative Code:

Chapter 359, Medicare Savings Program

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 359, Medicare Savings Program, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to aes_policy_coordination@hhs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 359" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the chapter being reviewed will not be published but may be found in Title 1, Part 15, of the Texas Administrative Code on the Secretary of State's website at (www.sos.texas.gov).

TRD-202401772
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: April 26, 2024

♦ ♦ ♦

Texas Diabetes Council

Title 25, Part 9

The Texas Diabetes Council proposes to review and consider for readoption, revision, or repeal the chapter listed below, in its entirety, contained in Title 25, Part 9, of the Texas Administrative Code:

Chapter 651, Conduct of Council Meetings

This review is conducted in accordance with the requirements of Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 651, Conduct of Council Meetings, may be submitted to HHSC Rules Coordination Office, Mail Code 4102, P.O. Box 13247, Austin, Texas 78711-3247, or by email to diabetes@dshs.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review Chapter 651" in the subject line. The deadline for comments is on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published but may be found in Title 25, Part 9, of the Texas Administrative Code or on the Secretary of State's website at State Rules and Open Meetings (www.sos.texas.gov).

TRD-202401771
Jessica Miller
Director, Rules Coordination Office
Texas Diabetes Council
Filed: April 26, 2024

♦ ♦ ♦

Texas Board of Pardons and Paroles

Title 37, Part 5

The Texas Board of Pardons and Paroles proposes to review and consider for readoption, revision, or repeal the chapters listed below, in their entirety, contained in Title 37, Part 5, of the Texas Administrative Code:

Chapter 148 Sex Offender Conditions of Parole or Mandatory Supervision, and Chapter 150 Memorandum of Understanding and Board Policy Statements

This review is conducted in accordance with Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist. After reviewing its rules, the agency will readopt, readopt with amendments, or repeal its rules.

Comments on the review of Chapter 148, Sex Offender Conditions of Parole or Mandatory Supervision, and Chapter 150 Memorandum of Understanding and Board Policy Statement, may be submitted to Bettie L. Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701, or by email to Bettie.Wells@tdcj.texas.gov. When emailing comments, please indicate "Comments on Proposed Rule Review" in the subject title. The deadline for comments is on or before 5:00 p.m. central standard time on the 31st day after the date this notice is published in the *Texas Register*.

The text of the rule sections being reviewed will not be published, but may be found in Title 37, Part 5, of the Texas Administrative Code, or at the Texas Board of Pardons and Paroles website, www.tdcj.texas.gov/bpp/rules/rules.html.

TRD-202401765
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Filed: April 25, 2024

♦ ♦ ♦

Adopted Rule Reviews

Texas Health and Human Services Commission

Title 1, Part 15

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 1, Part 15, of the Texas Administrative Code:

Chapter 353, Medicaid Managed Care

Notice of the review of this chapter was published in the January 12, 2024, issue of the *Texas Register* (49 TexReg 149). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 353 in accordance with the Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agency determined that the original reasons for adopting rules in the chapter continue to exist and readopts Chapter 353, except for:

§353.1303, Quality Incentive Payment Program for Nursing Facilities before September 1, 2019.

The identified repeal and any amendment, if applicable, to Chapter 353 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 1 TAC Chapter 353 as required by the Texas Government Code §2001.039.

TRD-202401747
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: April 25, 2024

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The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 1, Part 15, of the Texas Administrative Code (TAC):

Chapter 372, Temporary Assistance for Needy Families and Supplemental Nutrition Assistance Programs

Notice of the review of this chapter was published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 1105). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 372 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 372. Any amendments, if applicable, to Chapter 372 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 1 TAC Chapter 372 as required by the Texas Government Code §2001.039.

TRD-202401904
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: April 30, 2024

♦ ♦ ♦

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) adopts the review of 19 Texas Administrative Code (TAC) Chapter 100, Charters, Subchapter A, Open-Enrollment Charter Schools, and Subchapter B, Home-Rule School District Charters, pursuant to Texas Government Code, §2001.039. The SBOE proposed the review of 19 TAC Chapter 100, Subchapters A and B, in the March 1, 2024 issue of the *Texas Register* (49 TexReg 1287).

Relating to the review of 19 TAC Chapter 100, Subchapters A and B, the SBOE finds that the reasons for adopting these subchapters continue to exist and readopts the rules. The SBOE received no comments related to the review.

This concludes the review of 19 TAC Chapter 100.

TRD-202401820
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: April 26, 2024

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Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), in its own capacity and on behalf of Texas Department of State Health Services (DSHS) adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code (TAC):

Chapter 2, Emergency Preparedness

Notice of the review of this chapter was published in the February 16, 2024, issue of the *Texas Register* (49 TexReg 881). HHSC received no comments concerning this chapter.

HHSC and DSHS have reviewed Chapter 2 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist. The agencies determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 2. Any appropriate amendments to Chapter 2 identified by HHSC and DSHS in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's and DSHS' review of 25 TAC Chapter 2 as required by the Texas Government Code §2001.039.

TRD-202401920
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: May 1, 2024

♦ ♦ ♦

Texas Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 213, Area Agencies on Aging

Notice of the review of this chapter was published in the March 15, 2024, issue of the *Texas Register* (49 TexReg 1740). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 213 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 213. Any amendments, if applicable, to Chapter 213 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 213 as required by the Texas Government Code §2001.039.

TRD-202401919
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: May 1, 2024

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The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1 of the Texas Administrative Code (TAC):

Chapter 364, Primary Health Care Services Program

Notice of the review of this chapter was published in the March 1, 2024, issue of the *Texas Register* (49 TexReg 1289). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 364 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 364 except for:

§364.51, Purpose and Authority;

§364.53, Definitions;

§364.55, Provider Registration; and

§364.57, Duties of the Department.

The identified repeals and any amendments, if applicable, to Chapter 364 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 364 as required by the Texas Government Code, §2001.039.

TRD-202401819
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: April 26, 2024

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Texas Board of Pardons and Paroles

Title 37, Part 5

The Texas Board of Pardons and Paroles (Board) files this notice of readoption of 37 TAC, Part 5, Chapter 146, Revocation of Parole or Mandatory Supervision. The review was conducted pursuant to Government Code, §2001.039. Notice of the Board's intention to review was published in the October 21, 2022, issue of the *Texas Register* (47 TexReg 7071).

As a result of the review, the Board has determined that the original justifications for these rules continue to exist. The Board readopts §§146.4, 146.5, 146.7, 146.9, and 146.10 with amendments as published in the Adopted Rules section of this issue of the *Texas Register*. The Board readopts §146.6 and §146.8 with amendments as published in the Adopted Rules section of the October 19, 2023, issue of the *Texas Register*. The Board readopts the remainder of the sections in Chapter 146 without amendments.

No comments on the proposed review were received.

This concludes the review of 37 TAC Chapter 146, Revocation of Parole or Mandatory Supervision.

TRD-202401764
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Filed: April 25, 2024

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Texas Forensic Science Commission

Title 37, Part 15

Title 37, Part 15, Chapter 651, Subchapters A, B, C, and D.

The Texas Forensic Science Commission (Commission) has completed its review of 37 Texas Administrative Code Chapter 651, DNA, CODIS, Forensic Analysis, and Crime Laboratories, Subchapters A, B, C, and D, as required by Texas Government Code §2001.039, which requires a state agency to review and consider for readoption, readoption with amendments, or repeal each of its rules every four years.

The Commission published the notice of proposed rule review in the February 16, 2024, issue of the *Texas Register* (46 TexReg 882). The Commission received no comments regarding the proposed rule review.

After completing the review of 37 Texas Administrative Code Chapter 651, Subchapters A, B, C, and D, the Commission determined that the reasons for initially adopting these rules continue to exist and readopts these rules, without changes, pursuant to the requirements of Texas Government Code §2001.039, with the exception of the following:

Rules adopted at the January 26, 2024 meeting: 37 Texas Administrative Code §§651.3, 651.8, 651.11, 651.101-.106, 651.202, 651.207, 651.208, 651.209, 651.216, 651.222, 651.305-.309.

This notice concludes the Commission’s review of 37 Texas Administrative Code Chapter 651.

TRD-202401945
Leigh Tomlin
Associate General Counsel
Texas Forensic Science Commission
Filed: May 1, 2024

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Department of Aging and Disability Services

Title 40, Part 1

The Texas Health and Human Services Commission (HHSC), as the successor agency of the Texas Department of Aging and Disability Services, adopts the review of the chapter below in Title 40, Part 1, of the Texas Administrative Code (TAC):

Chapter 1, State Authority Responsibilities

Notice of the review of this chapter was published in the March 15, 2024, issue of the *Texas Register* (49 TexReg 1741). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 1 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting rules in the chapter do not continue to exist and the repeal of Chapter 1 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 40 TAC Chapter 1 as required by the Texas Government Code §2001.039.

TRD-202401922
Jessica Miller
Director, Rules Coordination Office
Department of Aging and Disability Services
Filed: May 1, 2024

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The Texas Health and Human Services Commission (HHSC), as the successor agency of the Texas Department of Aging and Disability Services, adopts the review of the chapter below in Title 40, Part 1, of the Texas Administrative Code (TAC):

Chapter 77, Employment Practices

Notice of the review of this chapter was published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1976). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 77 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting rules in the chapter do not continue to exist and the repeal of Chapter 77 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 40 TAC Chapter 77 as required by the Texas Government Code §2001.039.

TRD-202401921
Jessica Miller
Director, Rules Coordination Office
Department of Aging and Disability Services
Filed: May 1, 2024

♦ ♦ ♦

Texas Department of Transportation

Title 43, Part 1

The Texas Department of Transportation (department) files notice of the completion of review and the readoption of Title 43 TAC, Part 1, Chapter 1, Management, Chapter 5, Finance, Chapter 11, Design, Chapter 15, Financing and Construction of Transportation Projects, Chapter 21, Right of Way, and Chapter 27 Toll Projects.

This review and readoption has been conducted in accordance with Government Code, §2001.039. The Texas Transportation Commission (commission) has reviewed these rules and determined that the reasons for adopting them continue to exist. The department received no comments on the proposed rule review, which was published in the February 2, 2024, issue of the *Texas Register* (49 TexReg 571).

This concludes the review of Chapters 1, 5, 11, 15, 21, and 27.

TRD-202401748
Angie Parker
Senior General Counsel
Texas Department of Transportation
Filed: April 25, 2024

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Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure 1: 16 TAC Chapter 25 - Preamble

$$\text{PRF} = \frac{\Sigma\left(\frac{\text{RT Telemetered HSL} \times \text{Available Flag}}{\text{Obligated Capacity}}\right)}{\text{Total Evaluated Period Intervals}} \times 100$$

Figure 2: 16 TAC Chapter 25 - Preamble

$$\text{ARF} = \frac{\text{Total Evaluated Period Intervals}}{\text{Total Period Intervals}}$$

Figure: 16 TAC §25.511(b)(2)

$$ARF = \frac{Total\ Evaluated\ Period\ Intervals}{Total\ Period\ Intervals}$$

Figure: 16 TAC §25.511(b)(4)

$$PRF = \frac{\Sigma\left(\frac{RT\ Telemetered\ HSL \times Available\ Flag}{Obligated\ Capacity}\right)}{Total\ Evaluated\ Period\ Intervals} \times 100$$

Figure: 16 TAC §25.511(h)

$$Grant\ Payment = \begin{cases} 0, & if PRF \leq PRF_{50} \\ [1-10(1-ARF)^2]\left[\frac{1}{4}+\frac{3}{4}\left(\frac{PRF-PRF_{50}}{PRF_{90}-PRF_{50}}\right)\right]\delta, & if PRF_{50} < PRF < PRF_{90} \\ [1-10(1-ARF)^2]\delta, & if\ PRF \geq PRF_{90} \end{cases}$$

Where δ is equal to one-tenth of the applicant's completion bonus grant award based on the applicant's notice of eligibility, PRF_{50} denotes the median performance standard, and PRF_{90} denotes the optimal performance standard.

Figure: 16 TAC §25.511(h)(2)

Percentile	50^{th}	60^{th}	70^{th}	80^{th}	90^{th}	100^{th}
$\boldsymbol{PRF_{Year\ 1}}$	90	92	94	96	98	100
$\boldsymbol{PRF_{Year\ 2}}$	88	90	92	94	96	98
$\boldsymbol{PRF_{Year\ 3}}$	92	93	94	95	96	97

Test Period 1 -- The generation resource achieved a PRF of 92 and an ARF of 1.0. Its PRF is above the median value ($PRF_{50} = 90$) but below the optimal performance standard ($PRF_{90} = 98$). Therefore, its completion bonus grant payment for this test period would be:

$$[1 - 10(1 - 1)^2]\left[\frac{1}{4} + \frac{3}{4}\left(\frac{92 - 90}{98 - 90}\right)\right](\$1{,}200{,}000) = \$525{,}000$$

Test Period 2 -- The generation resource achieved a PRF of 85 and an ARF of 1.0. Its PRF is below the median value ($PRF_{50} = 88$). The applicant receives no grant payment for this test period.

Test Period 3 - The generation resource achieved a PRF of 96 and an ARF of 0.80. Its PRF is equal to the optimal performance standard ($PRF_{90} = 96$), but its payment will be discounted as a result of its ARF being less than 0.9. Its completion bonus grant payment for this test period would be:

$$[1 - 10(1 - 0.80)^2](\$1{,}200{,}000) = \$720{,}000$$

Figure: 19 TAC §4.54(b)

ASSESSMENT EXEMPTIONS					
Assessment Type	**Assessment Version**	**Minimum Score**	**Combined?**	**TSI Exemption?**	**Exemption Expiration**
ACT					
ACT Composite + English	Prior to 2/15/23	Composite 23 and English 19	May combine with scores on test administered after 2/15/23	English Language Arts and Reading (ELAR) Section	5 years from date of test
ACT Composite + Math	Prior to 2/15/23	Composite 23 and Math 19	N/A	Mathematics Section	5 years from date of test
ACT Math	After 2/15/23	Score of 22; No Composite	N/A	Mathematics Section	5 years from date of test
ACT English + Reading	After 2/15/23	Combined score of 40; No Composite	May combine with scores on test administered prior to 2/15/23	ELAR Section	5 years from date of test
SAT					
SAT Evidence-Based Reading & Writing (EBRW)	After 3/5/16	EBRW 480	Not allowable	ELAR Section	5 years from date of test
SAT Mathematics	After 3/5/16	Math 530	Not allowable	Mathematics Section	5 years from date of test
GED					
GED Mathematical Reasoning		Mathematical Reasoning 165	N/A	Mathematics Section	5 years from date of test
GED Reasoning Through Language Arts (RLA)		RLA 165	N/A	ELAR Section	5 years from date of test
HiSET					
HiSET Mathematics Subtest		Math Subtest minimum of 15	N/A	Mathematics Section	5 years from date of test

HiSET Reading Subtest, Writing Subtest, and Essay		Reading minimum of 15, Writing minimum of 15, and Essay minimum of 4.	N/A	ELAR Section	5 years from date of test
STAAR EOC					
STAAR EOC - English III		English III EOC 4000	N/A	ELAR Section	5 years from date of test
STAAR EOC – Algebra II		Algebra II EOC 4000	N/A	Mathematics Section	5 years from date of test

Figure: 19 TAC §4.54(c)

COURSE AND PROGRAM COMPLETION EXEMPTIONS				
Student Category	**Institution Where Course or Program Completed**	**Applicability**	**Exemption**	**Exemption Expiration**
High School Student who successfully completes College Prep Course (TEC 28.014)	School district partners with any public, private, independent institution of higher education	Applies at the institution of higher education that partners with the school district in which the student is enrolled to provide course(s), or at an institution that accepts the student as TSI-met based on course completion	Corresponding English Language Arts and Reading (ELAR) and/or Mathematics sections	24 months from date of high school graduation & student must enroll in college-level course in exempted content within first year of enrollment at institution
Student enrolled and met readiness standards in mathematics and/or ELAR by institution	Any Texas public, private, independent institution of higher education or accredited out-of-state institution	Student has met college readiness standards in mathematics, reading, or writing as determined by receiving institution	Corresponding ELAR and/or Mathematics sections	No Expiration
Student completed college level coursework with C or better	Any Texas public, private, independent institution of higher education or accredited out-of-state institution	A student with a transcribed grade of 'C' or better is not subject to TSI in accordance with Rule 4.52(b).	Corresponding ELAR and/or Mathematics sections	No Expiration

College level coursework in a dual credit course as defined by Rule 4.83(11), including a College Connect dual credit course offered under Rule 4.86, with C or better.	Any Texas public institution of higher education	A student with a transcribed grade of 'C' or better is not subject to TSI in accordance with Rule 4.54(c)(2)(b).	Corresponding ELAR and/or Mathematics sections	No Expiration
Student earned Texas First Diploma	Any Texas public institution of higher education	A student who has earned the Texas First Diploma is TSI-exempt under Rule 4.54(c)(3).	ELAR and Mathematics sections	No Expiration

Figure: 26[~~25~~] TAC §510.131(a)[~~§134.131(a)~~]

[~~TABLE (1)~~]

SOUND TRANSMISSION LIMITATIONS IN FACILITIES

	Airborne sound transmission class (STC)[1]	
	Partitions	**Floors**
New Construction		
Patient room to patient room	45	40
Public space to patient room [2]	55	40
Service areas to patient room [3]	65	45
Patient room access corridor [4]	45	45
Consultation room	50	40
Existing construction		
Patient room to patient room	35	40
Public space to patient room [2]	40	40
Service areas to patient room [3]	45	45

Types of wall construction and the associated STC ratings are given in Fire Resistance Design Manual available from Gypsum Association, 810 First Street NE, #510, Washington, DC 20002.

NOTE: The listed STC rating requirements are for a reasonable degree of privacy. Rooms requiring confidentiality, such as examination rooms and rooms with extraordinary noise sources, may require additional sound insulation including acoustical doors and seals.

1Sound transmission class (STC) shall be determined by tests in accordance with methods set forth in ASTM E90 and ASTM E4 13. Where partitions do not extend to the structure above, sound transmission through ceilings and composite STC performance must be considered.

2Public space includes corridors (except patient room access corridors), lobbies, dining rooms, recreation rooms, treatment rooms, and similar space.

3Service areas include kitchens, elevators, elevator machine rooms, laundries, garages, maintenance rooms, boiler and mechanical equipment rooms, and similar spaces of high noise. Mechanical equipment located on the same floor or above patient rooms, offices, nurses stations, and similar occupied space shall be effectively isolated from the floor.

4Patient room access corridors contain composite walls with door/windows and have direct access to patient rooms. Junctions and joints of walls and partitions shall be sealed to prevent sound leakage under, over, or through the separation. Outlets shall be insulated and separated. Openings around ducts, conduits and pipes shall be sealed to minimize sound transmission.

Figure: 26[~~25~~] TAC §510.131(b)[~~§134.131(b)~~]

[~~TABLE (2)~~]

FLAME SPREAD AND SMOKE PRODUCTION LIMITATIONS FOR INTERIOR FINISHES

		Flame Spread Rating	**Smoke Development Rating**
Walls and Ceilings[1]	Exit Access, Storage Rooms, and Areas of Unusual Fire Hazard	Class A[2] NFPA 255	450 or less NFPA 258[3]
	All other Areas	Class B[2] NFPA 255	450 or less NFPA 258[3]
Floors[4]		No requirements	No requirements

1Textile materials having a napped, tufted, looped, woven, non-woven, or similar surface shall not be applied to walls or ceilings unless such materials have a Class A rating and are installed in rooms or areas protected by an approved automatic sprinkler system. Cellular or foamed plastic materials shall not be used as interior wall and ceiling finishes.

2Products required to be tested in accordance with National Fire Protection Association 255, Standard Method of Test of Surface Burning Characteristics of Building Materials, 1996 edition, shall be Class A (flame spread 0-25) or class B (flame spread 26-75).

3Smoke development rating, an average of flaming and non flaming values as determined by National Fire Protection Association 258, Standard Research Test Method for Determining Smoke Generation of Solid Materials, 1997 Edition.

4 Refer to §510.122(d)(1)(F)[~~See §134.122(d)(1)(F)~~] of this title for requirements relative to carpeting in areas that may be subject to use by handicapped individuals. Such areas include offices and waiting spaces as well as corridors that might be used by handicapped employees, visitors, or staff.

Figure 26[~~25~~] TAC §510.131(c)[~~§134.131(c)~~]

[~~TABLE (3)~~]

VENTILATION REQUIREMENTS FOR FACILITIES[1]

Area designation	Air movement relationship to adjacent areas[2]	Minimum air changes of outdoor air per hour[3]	Minimum total air changes per hour[4]	All air exhausted directly to outdoors[5]	Recirculated by means of room units[6]	Relative humidity (%)[7]	Design temperature (degrees F)[8]
NURSING							
Patient room	---	2	2	---	---	---	70-75
Patient toilet room	In	---	10	Y	---	---	----
Airborne infection isolation room[9]	In	2	12	---	No	---	75
Isolation alcove or anteroom[9]	Out	---	10	Y	No	---	---
Patient corridor	---	---	2	---	---	---	---
ANCILLARY							
Radiology[10]							
X-ray (diagnostic and treatment)	---	---	6	---	---	---	75
Darkroom	In	---	10	Y	No	---	---
Laboratory							
General[10]	---	2	6	---	---	---	75
Sterilizing	In	---	10	Y	No	---	75
Pharmacy	Out	---	4	---	---	---	75
DIAGNOSTIC AND TREATMENT							
Examination room	---	---	6	---	---	---	75
Medication room	---	---	4	---	---	---	75
Treatment room	---	---	6	---	---	---	75
Physical therapy	In	---	6	---	---	---	75

and hydrotherapy							
Soiled workroom	In	---	10	Y	No	---	---
or holding							
Clean workroom or holding	Out	---	4	---	---	---	---
STERILIZING AND SUPPLY							
Sterilizer equipment room[2]	In	---	10	Y	No	---	---
Sterile storage	---	---	4	---	---	70 (max)	---
SERVICE							
Food preparation center[11]	---	10	---	---	No	---	---
Warewashing	In	---	10	Y	No	---	---
Dietary day storage	In	---	2	---	---	---	---
Laundry, general	--	---	10	Y	---	---	---
Soiled linen (sorting and storage)	In	---	10	Y	No	---	---
Clean Linen storage	--	---	2	---	---	---	---
Soiled linen and trash chute room	In	---	10	Y	No	---	---
Bedpan room	In	---	10	Y	---	---	---
Bathroom/Toilet room	--	---	10	Y	---	---	75
Janitor's closet	In	---	10	Y	No	---	---
ADMINISTRATIVE AND SUPPORT SERVICE	--	--	2	---	---	30(min)	68-73

1The ventilation rates in this table cover ventilation for comfort, as well as for asepsis and odor control in areas of facilities that directly affect patient care and are determined based on healthcare entities being predominantly "No Smoking" entities. Where smoking may be allowed, ventilation rates will need adjustment. Areas where specific ventilation rates are not given in the table shall be ventilated in accordance with American Society of Heating Refrigeration and Air-conditioning Engineers Standard 62-1989, Ventilation for Acceptable Indoor Air Quality, and American Society of Heating Refrigeration and Air-conditioning Engineers, Handbook of Applications, 1991 edition. Specialized patient care areas, including organ transplant units, burn units, specialty procedure rooms, etc., shall have additional ventilation provisions for air quality control as may be appropriate. Occupational Safety

and Health Administration (OSHA) standards and/or National Institute for Occupational Safety and Health (NIOSH) criteria require special ventilation requirements or employee health and safety within health care facilities.

2Design of the ventilation system shall provide air movement which is generally from clean to less clean areas. If any form of variable air volume or load shedding system is used for energy conservation, it must not compromise the corridor-to-room pressure balancing relationships or the minimum air changes required by the table. Except where specifically permitted by exit corridor plenum provisions of NFPA 90A, the volume of infiltration and exfiltration shall not exceed 15% of the minimum total air changes per hour, or 50 cfm, whichever is larger, as defined by the table.

3To satisfy exhaust needs, replacement air from the outside is necessary. Table 3 does not attempt to describe specific amounts of outside air to be supplied to individual spaces except for certain areas such as those listed. Distribution of the outside air, added to the system to balance required exhaust, shall be as required by good engineering practice. Minimum outside air quantities shall remain constant while the system is in operation.

4Number of air changes may be reduced when the room is unoccupied if provisions are made to ensure that the number of air changes indicated is reestablished any time the space is being utilized. Adjustments shall include provisions so that the direction of air movement shall remain the same when the number of air changes is reduced. Areas not indicated as having continuous directional control may have ventilation systems shut down when space is unoccupied and ventilation is not otherwise needed, if the maximum infiltration or exfiltration permitted in Note 2 is not exceeded and if adjacent pressure balancing relationships are not compromised.

5Air from areas with contamination and/or odor problems shall be exhausted to the outside and not recirculated to other areas. Note that individual circumstances may require special consideration for air exhaust to the outside.

6Recirculating room Heating, Ventilating, and Air Conditioning (HVAC) units refers to those local units that are used primarily for heating and cooling of air, and not disinfection of air. Because of cleaning difficulty and potential for buildup of contamination, recirculating room units shall not be used in areas marked "No." However, for airborne infection control, air may be recirculated within individual isolation rooms if 99.97% efficiency filters are used. Isolation and intensive care unit rooms may be ventilated by reheat induction units in which only the primary air supplied from a central system passes through the reheat unit. Gravity-type heating or cooling units such as radiators or convectors shall not be used in operating rooms and other special care areas. Recirculating devices with 99.97% efficiency filters may have potential uses in existing facilities as interim, supplemental environmental controls to meet requirements for the control of airborne infectious agents. Limitations in design must be recognized. The design of either portable or fixed systems should prevent stagnation and short circuiting of airflow. The supply and exhaust locations should direct clean air to areas where health care workers are likely to work, across the infectious source, and then to the exhaust, so the health care worker is not in a position between the infectious source and the exhaust location. The design of such systems should also allow for easy access for scheduled preventive maintenance and cleaning.

7The ranges listed are the minimum and maximum limits where control is specifically needed.

8Where temperature ranges are indicated, the systems shall be capable of maintaining the rooms at any point within the range. A single figure indicates a heating or cooling capacity of at least the indicated temperature. This is usually applicable when patients may be undressed and require a warmer environment. Additional heating may be required in these areas. Nothing in these rules shall be construed as precluding the use of temperatures lower than those noted when the patients' comfort and medical conditions make lower temperatures desirable. Unoccupied areas such as storage rooms shall have temperatures appropriate for the function intended.

9The infectious disease isolation room described here is to be used for isolating the airborne spread of infectious diseases, such as measles, varicella, or tuberculosis. The design of airborne infection isolation (AII) rooms should include the provision for normal patient care during periods not requiring isolation precautions. Supplemental recirculating devices may be used in the patient room, to increase the equivalent room air exchanges; however, such recirculating devices do not provide the outside air requirements. Air may be recirculated within individual isolation rooms if HEPA filters are used. Exhaust systems for infectious isolation rooms shall exhaust no other areas or rooms. Rooms with reversible airflow provisions for the purpose of switching between protective environment and AII functions are not acceptable.

10When required, appropriate hoods and exhaust devices for the removal of noxious gases or chemical vapors shall be provided. Laboratory hoods shall meet the following general standards:

1. Have an average face velocity of at least 75 feet per minute.
2. Be connected to an exhaust system to the outside which is separate from the building exhaust system.
3. Have an exhaust fan located at the discharge end of the system.
4. Have an exhaust duct system of noncombustible corrosion-resistant material as needed to meet the planned usage of the hood.

Laboratory hoods shall meet the following special standards:

1. Fume hoods and their associated equipment in the air stream, intended for use with perchloric acid and other strong oxidants, shall be constructed of stainless steel or other material consistent with special exposures, and be provided with a water wash and drain system to permit periodic flushing of duct and hood. Electrical equipment intended for installation within the duct shall be designed and constructed to resist penetration by water. Lubricants and seals shall not contain organic materials. When perchloric acid or other strong oxidants are only transferred from one container to another, standard laboratory fume hoods and associated equipment may be used in lieu of stainless steel construction. Fume hood intended for use with radioactive isotopes shall be constructed of stainless steel or other material suitable for the particular exposure and shall comply with National Fire Protection Association 801, Facilities for Handling Radioactive Materials, 1995 edition (NFPA 801).

   NOTE: RADIOACTIVE ISOTOPES USED FOR INJECTIONS, ETC., WITHOUT PROBABILITY OF AIRBORNE PARTICULATES OR GASES MAY BE PROCESSED IN A CLEAN WORKBENCH-TYPE HOOD WHERE ACCEPTABLE TO THE NUCLEAR REGULATORY COMMISSION.

2. In new installations and construction or major renovation work, each hood used to process infectious or radioactive materials shall have a minimum face velocity of 150 feet per minute with suitable static pressure operated dampers and alarms to alert staff of fan shutdown. Each hood shall have filters with an efficiency of 99.97% (based on on the dioctyl-phtalate test method) in the exhaust stream, and be designed and equipped to permit the removal, disposal, and replacement of contaminated filters. Filters shall be as close to the hood as practical to minimize duct contamination. Hoods that process radioactive materials shall meet the requirements of the Nuclear Regulatory Agency.

11Food preparation centers shall have ventilation systems whose air supply mechanisms are interfaced appropriately with exhaust hood controls or relief vents so that exfiltration or infiltration to or from exit corridors does not compromise the exit corridor restrictions of NFPA 90A, the pressure requirements of NFPA 96, or the maximum defined in the table. The number of air changes may be reduced or varied to any extent required for odor control when the space is not in use.

Figure: 26[~~25~~] TAC §510.131(d)[~~§134.131(d)~~]

[~~TABLE (4)~~]

FILTER EFFICIENCIES FOR CENTRAL VENTILATION AND AIR CONDITIONING SYSTEMS

Area Designation	Number of Filter Beds	Filter Efficiencies (%)	
		Filter Bed No. 1	Filter Bed No. 2
Patient care and treatment, diagnostic and related areas	2	25	90
Laboratories and sterile storage	1	80	
Administrative, bulk storage, soiled holding areas, food preparation areas, and laundries	1	30	

NOTES: Additional roughing or prefilters should be considered to reduce maintenance required for filters with efficiency higher than 75%. The filtration efficiency ratings are based on American Society of Heating Refrigeration and Air-conditioning Engineers, Standard 52-92, 1992 edition.

Figure: 26[~~25~~] TAC §510.131(e)[~~§134.131(e)~~]

[~~TABLE (5)~~]

HOT WATER USE

	Clinical	Dietary	Laundry
Gallons per hour per bed[1]	3	2	2
Temperature (°F)	110[2]	140[3]	140[4]

1Quantities indicated for design demand of hot water are for general reference minimums and shall not substitute for accepted engineering design procedures using actual number and types of fixtures to be installed. Design will also be affected by temperatures of cold water used for mixing, length of run, and insulation relative to heat loss. As an example, total quantity of hot water needed will be less when temperature available at the outlet is very nearly that of the source tank, and cold water used for tempering is relatively warm.

2Hot water temperature at point of use for handwashing and bathing

3Provisions shall be made to provide 180 F hot water at the laundry equipment when needed. (This may be by steam jet or separate booster heater.)

4However, it is emphasized that this does not imply that all water used will be at this temperature. Water temperatures required for acceptable laundry results shall vary according to type of cycle, time of operation, and formula of soap and bleach as well as type and degree of soil. Lower temperatures may be adequate for most procedures in many facilities but the higher 160 F should be available when needed for special conditions.

Figure: 26[~~25~~] TAC §510.131(f)[~~§134.131(f)~~]

[~~TABLE (6)~~]

STATION OUTLETS FOR OXYGEN, VACUUM, AND MEDICAL AIR SYSTEMS

Location	Number of Outlets*	
	Oxygen	Vacuum
Patient rooms	**1**	**1**
Examination/Treatment rooms	**1**	**1**
Isolation room	**1**	**1**
Emergency care secure holding area	**1**	**1**
Emergency care exam/treatment room	**1**	**1**

* Number of outlets indicated is required per each bed location or treatment unit.

Figure: 30 TAC §117.1120(c)

$$System\ Cap = \sum_{i=1}^{N} (H_i \times R_i)$$

Where:

System Cap = NO_x emission cap for an electric power generating system in pounds per day on a rolling 30-day average basis;

i = each EGF in the electric power generating system;

N = the total number of EGFs in the system cap;

Hi = the average of the daily heat input for each EGF in the system cap, in million British thermal units per day, as certified to the executive director, for any 30-day period in 2019, 2020, 2021, 2022, or 2023; the same 30-day period must be used for all EGFs in the emission cap; and

Ri = the applicable emission specification in §117.1105 of this title for each EGF.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Water Code and Texas Health and Safety Code
Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *State of Texas v. Exxon Mobil Corporation;* Cause No. D-1-GN-22-006534, in the 419th Judicial District, Travis County, Texas.

Background: Exxon Mobil Corporation owns and operates an olefin manufacturing plant located at 3525 Decker Drive, Baytown, Texas. From December 2018 to February 2022, the plant has experienced twenty unauthorized excessive emissions events, in addition to several incidences of failure to report deviations from its Title V operating permit, in violation of the Texas Clean Air Act and rules promulgated thereunder, as well as state and federal permits. Since September 2023, Exxon has begun implementing corrective actions to address the inadequacies at the plant.

Proposed Settlement: The State and Exxon Mobil Corporation propose an Agreed Final Judgment that awards the payment of $2,170,000 in civil penalties and $80,000 in attorney's fees to the State.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Brittany Wright, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC-066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911, email: Brittany.Wright@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202401745
Justin Gordon
General Counsel
Office of the Attorney General
Filed: April 24, 2024

♦ ♦ ♦

Comptroller of Public Accounts

Request for Public Comment on Standards for Underserved Broadband Serviceable Locations

The Texas Broadband Development Office (BDO) seeks public comment on the usefulness of the existing standards for the classification of broadband serviceable locations in this state as underserved locations on the Texas Broadband Development Map created under Government Code, §490I.0105. These comments are sought in light of the Federal Communications Commission (FCC) adopting standards for advanced telecommunications capability under 47 U.S.C., §1302 that raised the minimum standard for high-speed fixed broadband to download speeds of 100 megabits per second and upload speeds of 20 megabits per second. The BDO seeks public comment for the purpose of making a recommendation to the legislature regarding whether, and to what extent, the speed thresholds for underserved locations should be revised for the purpose of awarding broadband infrastructure grants using state funds.

You may submit comments to Greg Conte, Director, Broadband Development Office, at broadband@cpa.texas.gov or at P.O. Box 13528, Austin, Texas 78711-3528. The BDO must receive your comments no later than June 2, 2024.

TRD-202401924
Victoria North
General Counsel for Fiscal and Agency Affairs
Comptroller of Public Accounts
Filed: May 1, 2024

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003, §303.005, and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/06/24 - 05/12/24 is 18.00% for consumer[1] credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/06/24 - 05/12/24 is 18.00% for commercial[2] credit.

The monthly ceiling as prescribed by §303.005[3] and §303.009 for the period of 05/01/24 - 05/31/24 is 18.00%.

[1] Credit for personal, family, or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

[3] Only for variable rate commercial transactions, as provided by §303.004(a).

TRD-202401923
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 1, 2024

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code

(TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 11, 2024.** TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **June 11, 2024**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Ames Construction, Incorporated; DOCKET NUMBER: 2023-1394-WQ-E; IDENTIFIER: RN111290011; LOCATION: Cleveland, Liberty County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with construction activities; and TWC, §26.121(a)(2), by failing to prevent an unauthorized discharge of sediment into or adjacent to any water in the state; PENALTY: $37,500; ENFORCEMENT COORDINATOR: Taylor Williamson, (512) 239-2097; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: Aqua Texas, Incorporated; DOCKET NUMBER: 2023-0660-PWS-E; IDENTIFIER: RN101219947; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3)(C) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on a running annual average; PENALTY: $2,425; ENFORCEMENT COORDINATOR: Tessa Bond, (512) 239-1269; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(3) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2023-0158-PWS-E; IDENTIFIER: RN102681855; LOCATION: Valley View, Cooke County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; PENALTY: $1,125; ENFORCEMENT COORDINATOR: Nick Lohret-Froio, (512) 239-4495; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(4) COMPANY: Bayport Polymers LLC; DOCKET NUMBER: 2023-0968-AIR-E; IDENTIFIER: RN109845768; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), New Source Review Permit Numbers 122353, PSDTX1426, and GHGPSDTX114, Special Conditions Number 1, Federal Operating Permit (FOP) Number O4161, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 12, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1) and §122.143(4), FOP Number O4161, GTC and STC Number 2.F., and THSC, §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §101.201(c) and §122.143(4), FOP Number O4161, GTC and STC Number 2.F., and THSC, §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of the emissions event; PENALTY: $16,461; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $6,584; ENFORCEMENT COORDINATOR: Desmond Martin, (512) 239-2814; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(5) COMPANY: Bell County Water Control and Improvement District Number 2; DOCKET NUMBER: 2024-0257-MWD-E; IDENTIFIER: RN101610491; LOCATION: Little River-Academy, Bell County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011090001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; PENALTY: $12,150; ENFORCEMENT COORDINATOR: Taylor Williamson, (512) 239-2097; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Celanese Ltd.; DOCKET NUMBER: 2024-0060-AIR-E; IDENTIFIER: RN100227016; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 55046, Special Conditions Number 1, Federal Operating Permit Number O1986, General Terms and Conditions and Special Terms and Conditions Number 20, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $13,650; ENFORCEMENT COORDINATOR: Caleb Martin, (512) 239-2091; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: City of Orange Grove; DOCKET NUMBER: 2022-0387-MWD-E; IDENTIFIER: RN101920171; LOCATION: Orange Grove, Jim Wells County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010592001, Sludge Provisions, Section III. G. Reporting Requirements Numbers 6 and 9, by failing to complete the annual sludge report correctly; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010592001, Effluent Limitations Monitoring Requirements Numbers 2 and 6, by failing to maintain compliance with permitted effluent limitations; 30 TAC §305.125(1) and (4), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010592001 Permit Condition Number 2.d, by failing to prevent the discharge of sludge into the receiving stream; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010592001, Operational Requirements Number 1, by failing to ensure at all times that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; 30 TAC §305.125(1) and (5), TWC, §26.121(a)(1), and TPDES Permit Number WQ0010592001, Permit Conditions Number 2.g and Operational Requirements Number 1, by failing to prevent the unauthorized discharge of sewage into or adjacent to any water in the state; and 30 TAC §305.125(1) and §319.11(b) and TPDES Permit Number WQ0010592001, Monitoring and Reporting

Requirements Number 2.a, by failing to properly analyze effluent samples according to the permit; PENALTY: $54,225; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $54,225; ENFORCEMENT COORDINATOR: Mistie Gonzales, (254) 761-3056; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: CSWR-Texas Utility Operating Company, LLC; DOCKET NUMBER: 2023-1072-PWS-E; IDENTIFIER: RN102678885; LOCATION: Fort Worth, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.108(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 15 picoCuries per liter for gross alpha particle activity based on the running annual average; PENALTY: $17,900; ENFORCEMENT COORDINATOR: Margaux Ordoveza, (512) 239-1128; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(9) COMPANY: Devon Energy Production Company, L.P.; DOCKET NUMBER: 2024-0157-AIR-E; IDENTIFIER: RN106395460; LOCATION: Falls City, Karnes County; TYPE OF FACILITY: oil and gas production facility; RULES VIOLATED: 30 TAC §116.115(c) and §116.615(2), Standard Permit Registration Number 108546, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $12,500; ENFORCEMENT COORDINATOR: Christina Ferrara, (512) 239-5081; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2023-0702-AIR-E; IDENTIFIER: RN100215276; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 811B, Special Conditions Number 1, Federal Operating Permit Number O41308, General Terms and Conditions and Special Terms and Conditions Number 13, and Texas Health and Safety Code, §382.085(b), by failing to comply with the annual maximum allowable emissions rates; PENALTY: $5,625; ENFORCEMENT COORDINATOR: Desmond Martin, (512) 239-2814; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(11) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2022-0283-AIR-E; IDENTIFIER: RN102450756; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Flexible Permit Numbers 49138, PSDTX768M1, PSDTX799, PSDTX802, PSDTX932, and PSDTX992M1, Special Conditions Number 1, Federal Operating Permit (FOP) Number O2000, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Numbers 18.A and 22.A, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1)(B) and §122.143(4), FOP Number O2000, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to submit an initial notification for a reportable emissions event no later than 24 hours after the discovery of an emissions event; and 30 TAC §101.201(c) and §122.143(4), FOP Number O2000, GTC and STC Number 2.F, and THSC, §382.085(b), by failing to submit a final record for a reportable emissions event no later than two weeks after the end of the emissions event; PENALTY: $39,031; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $15,612; ENFORCEMENT COORDINATOR: Johnnie Wu, (512) 239-2524; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(12) COMPANY: GARY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2022-1646-PWS-E; IDENTIFIER: RN101436004; LOCATION: Gary, Panola County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Wyatt Throm, (512) 239-1120; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(13) COMPANY: Georgetown Independent School District; DOCKET NUMBER: 2023-1549-EAQ-E; IDENTIFIER: RN102134921; LOCATION: Georgetown, Williamson County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer Protection Plan prior to commencing regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $4,875; ENFORCEMENT COORDINATOR: Megan Crinklaw, (512) 239-1129; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(14) COMPANY: HASS ENTERPRISES, INCORPORATED dba Pay N Save; DOCKET NUMBER: 2023-1699-PST-E; IDENTIFIER: RN102399318; LOCATION: Alba, Wood County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,438; ENFORCEMENT COORDINATOR: Lauren Little, (817) 588-5888; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: JACKSON ELECTRIC COOPERATIVE, INCORPORATED; DOCKET NUMBER: 2022-1574-PWS-E; IDENTIFIER: RN105247654; LOCATION: Edna, Jackson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(1)(A) and Texas Health and Safety Code, §341.0351, by failing to notify the Executive Director and receive approval prior to making any significant change or addition where the change in the existing distribution system results in an increase or decrease in production, treatment, storage, or pressure maintenance; and 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; PENALTY: $550; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (361) 881-6990; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(16) COMPANY: Jones's River Bend Property Owners Association, Live Oak County, Incorporated; DOCKET NUMBER: 2023-0356-PWS-E; IDENTIFIER: RN111672994; LOCATION: George West, Live Oak County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Kaura Energy Incorporated dba On the Road 154; DOCKET NUMBER: 2023-0018-PST-E; IDENTIFIER: RN111161527; LOCATION: Goodrich, Polk County; TYPE OF FACILITY: convenience store; RULES VIOLATED: 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TAC §334.72 within 30 days; PENALTY: $5,650; ENFORCEMENT COORDINATOR: Eunice Adegelu, (512) 239-5082; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: MCKENZIE, SHAWN PATRICK; DOCKET NUMBER: 2024-0664-WOC-E; IDENTIFIER: RN111881926; LOCATION: Millersview, Concho County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Epi Villarreal, (361) 881-6991; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(19) COMPANY: RIGHT-WAY SAND COMPANY; DOCKET NUMBER: 2022-0938-WQ-E; IDENTIFIER: RN107949745; LOCATION: Highlands, Harris County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with industrial activities; and 30 TAC §342.25(d), by failing to renew the APO registration annually as regulated activities continued; PENALTY: $15,250; ENFORCEMENT COORDINATOR: Madison Stringer, (512) 239-1126; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(20) COMPANY: Shumard Corporation; DOCKET NUMBER: 2023-1096-WQ-E; IDENTIFIER: RN101340818; LOCATION: Haltom City, Tarrant County; TYPE OF FACILITY: fiberglass manufacturing facility; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with industrial activities; and TWC, §26.121(a), by failing to prevent the unauthorized discharge of waste into or adjacent to any water in the state; PENALTY: $18,688; ENFORCEMENT COORDINATOR: Shane Glantz, (325) 698-6124; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(21) COMPANY: SIFUENTES, EDILBERTO; DOCKET NUMBER: 2024-0588-OSI-E; IDENTIFIER: RN107717878; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §285.61(4), by failing to ensure that an authorization to construct has been issued prior to beginning construction of an on-site sewage facility; PENALTY: $175; ENFORCEMENT COORDINATOR: Nancy Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: SPRING ALDINE POST NUMBER 10352, VETERANS OF FOREIGN WARS OF THE UNITED STATES; DOCKET NUMBER: 2023-1281-PWS-E; IDENTIFIER: RN101226728; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(c) and (e), by failing to collect and report the results of nitrite level sampling to the executive director (ED) for the January 1, 2020 - December 31, 2020, monitoring period; 30 TAC §290.109(d)(4)(B), formerly 290.109(c)(4)(B), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive sample on January 22, 2017, at least one raw groundwater source *Escherichia coli* (E. coli) sample from each active groundwater source in use at the time the distribution coliform-positive samples were collected; 30 TAC §290.109(d)(4)(B), by failing to collect, within 24 hours of notification of the routine distribution total coliform-positive sample on June 6, 2021, at least one raw groundwater source E. coli sample from each active groundwater source in use at the time the distribution coliform-positive samples were collected; and 30 TAC §290.118(c) and (e), by failing to collect and report the results of secondary constituents sampling to the ED for the January 1, 2019 - December 31, 2021, monitoring period; PENALTY: $1,901; ENFORCEMENT COORDINATOR: Margaux Ordoveza, (512) 239-1128; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(23) COMPANY: The Premcor Refining Group Incorporated; DOCKET NUMBER: 2022-1354-AIR-E; IDENTIFIER: RN102584026; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §§101.20(1) and (3), 116.116(a)(1), and 122.143(4), 40 Code of Federal Regulations §60.102a(f)(3), New Source Review (NSR) Permit Numbers 6825A, GHGPSDTX167M1, N65, and PSDTX49M2, General Conditions Number 1, Federal Operating Permit (FOP) Number O1498, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 25, and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the representations with regard to construction plans and operation procedures in a permit application; 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4), NSR Permit Numbers 6825A, GHGPSDTX167M1, N65, and PSDTX49M2, Special Conditions (SC) Number 1, FOP Number O1498, GTC and STC Number 25, and THSC, §382.085(b), by failing to prevent unauthorized emissions, and failing to comply with the maximum allowable emissions rate; and 30 TAC §§101.20(3), 116.115(c), and 122.143(4), NSR Permit Numbers 6825A, GHGPSDTX167M1, N65, and PSDTX49M2, SC Number 29.A., FOP Number O1498, GTC and STC Number 25, and THSC, §382.085(b), by failing to degas liquid sulfur to an sulfur dioxide content of 100 ppm by weight or less prior to loading into tank trucks; PENALTY: $137,250; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $54,900; ENFORCEMENT COORDINATOR: Desmond Martin, (512) 239-2814; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(24) COMPANY: Town of Holiday Lakes; DOCKET NUMBER: 2022-1291-PWS-E; IDENTIFIER: RN102691359; LOCATION: Holiday Lakes, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(f)(2) and (3)(A)(i)(II), (B)(iv), (D)(ii), and (E)(iv), by failing to maintain water works operation and maintenance records and make them readily available for review by the Executive Director upon request; and 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; PENALTY: $275; ENFORCEMENT COORDINATOR: Ashley Lemke, (512) 239-1118; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(25) COMPANY: Two Guns Aggregate, LLC; DOCKET NUMBER: 2023-1711-WQ-E; IDENTIFIER: RN111244422; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §205.4(a) and TWC, §26.121(a)(1), by failing to obtain authorization to discharge wastewater and stormwater associated with industrial activity from ready-mixed concrete plants, concrete product plants, and their associated facilities; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Megan Crinklaw, (512) 239-1129; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(26) COMPANY: Undine Texas, LLC; DOCKET NUMBER: 2022-1667-PWS-E; IDENTIFIER: RN102689791; LOCATION: Oakhurst, San Jacinto County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3)(C) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.010 milligrams per liter for arsenic based on a running annual average; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (361) 881-6990; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401-0318, (361) 881-6900.

(27) COMPANY: Valley Crossing Pipeline, LLC; DOCKET NUMBER: 2024-0247-AIR-E; IDENTIFIER: RN109451393; LOCATION: Banquete, Nueces County; TYPE OF FACILITY: compressor station;

RULES VIOLATED: 30 TAC §116.615(2) and §122.143(4), Standard Permit Registration Number 144177, Federal Operating Permit Number O4069/General Operating Permit Number 512, Site-wide Requirements Number (b)(9)(E), and Texas Health and Safety Code, §382.085(b), by failing to comply with all representations with regard to construction plans, operating procedures, and maximum emission rates in any standard permit registration; PENALTY: $69,300; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $27,720; ENFORCEMENT COORDINATOR: Mackenzie Mehlmann, (512) 239-2572; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(28) COMPANY: West Cedar Creek Municipal Utility District; DOCKET NUMBER: 2024-0329-MWD-E; IDENTIFIER: RN101610723; LOCATION: Tool, Henderson County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011839001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $7,125; ENFORCEMENT COORDINATOR: Taylor Williamson, (512) 239-2097; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(29) COMPANY: Willie J. Moore; DOCKET NUMBER: 2023-0778-WQ-E; IDENTIFIER: RN111459822; LOCATION: Brenham, Washington County; TYPE OF FACILITY: surface mining facility; RULES VIOLATED: 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR05FV61, Part III, Sections A.1 and A.3.d, by failing to maintain a complete Stormwater Pollution Prevention Plan; and 30 TAC §281.25(a)(4), TWC, §26.121(a)(1), and TPDES General Permit Number TXR05FV61, Part III, Section A.4, by failing to install and maintain best management practices at the site which resulted in a discharge of pollutants into or adjacent to any water in the state; PENALTY: $4,200; ENFORCEMENT COORDINATOR: Harley Hobson, (512) 239-1337; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

TRD-202401903
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: April 30, 2024

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Cancellation of Public Meeting

The public meeting previously scheduled for May 2, 2024, regarding Gonzalez Brothers Batch Plant, LP; Proposed Registration No. 174578, has been cancelled. The public meeting will be rescheduled for a later date. Once the public meeting is scheduled, you will receive notice of the public meeting in the mail. If you have any questions, please contact Mr. Brad Patterson, Section Manager, Office of the Chief Clerk, at (512) 239-1201.

TRD-202401931
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 1, 2024

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Combined Notice of Public Meeting and Notice of Application and Preliminary Decision for Water Quality Land Application Permit for Municipal Wastewater New Proposed Permit No. WQ0016363001

APPLICATION AND PRELIMINARY DECISION. The Village at Grape Creek, LLC, 15119 Memorial Drive, Suite 113, Houston, Texas 77079, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016363001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. TCEQ received this application on July 5, 2023.

The facility will be located approximately 0.65 miles southwest of the intersection of Jenschke Lane and U.S. Highway 290, in Gillespie County, Texas 78624. The treated effluent will be discharged to an unnamed tributary, thence to Pedernales River in Segment No. 1414 of the Colorado River Basin. The unclassified receiving water use is minimal aquatic life use for the unnamed tributary. The designated uses for Segment No. 1414 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Pedernales River, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

https://gisweb.tceq.texas.gov/LocationMapper/?marker=-98.70998,30.214561&level=18

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Pioneer Memorial Library, 115 West Main Street, Fredericksburg, Texas.

ALTERNATIVE LANGUAGE NOTICE. Alternative language notice in Spanish is available at https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices. El aviso de idioma alternativo en español está disponible en https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments about this application. The TCEQ will hold a public meeting on this application because it was requested by local legislators.

The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made.

Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Thursday, June 13, 2024 at 7:00 p.m.

Inn on Barons Creek

308 South Washington Street

Fredericksburg, Texas 78624

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. **If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period.**

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment **within 30 days from the date of newspaper publication of this notice or by the date of the public meeting, whichever is later.**

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Search the database using the permit number for this application, which is provided at the top of this notice.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www.tceq.texas.gov/goto/comment, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, Texas 78711-3087. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from The Village at Grape Creek, LLC at the address stated above or by calling Ms. Kendall Longbotham, P.E., Water Resources Engineer, reUse Engineering, Inc., at (512) 755-9943.

Issuance Date: April 29, 2024

TRD-202401930
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 1, 2024

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Combined Notice of Public Meeting and Notice of Receipt of Application and Intent to Obtain Water Quality Permit (NORI) and Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater New Proposed Permit No. WQ0016334001

APPLICATIONAND PRELIMINARY DECISION. Harris County Municipal Utility District No. 531, 3200 Southwest Freeway, Suite

2600, Houston, Texas 77027, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016334001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. TCEQ received this application on April 28, 2023.

This combined notice is being issued to update the discharge route from what was stated in the NORI, and to include the public meeting.

The facility will be located approximately 0.5 miles southwest of the intersection of Mueschke Road and Schiel Road, in Harris County, Texas 77433. The treated effluent will be discharged via pipe to a detention pond, thence through a series of pipes to a detention pond, thence to Schiel Road storm sewer, **thence to a dry-bottom pond, thence to a ditch,** thence to Little Cypress Creek, thence to Cypress Creek in Segment No. 1009 of the San Jacinto River Basin. The unclassified receiving water uses are minimal aquatic life use for the detention ponds, the dry-bottom pond, and the ditch; and high aquatic life use for Little Cypress Creek. The designated uses for Segment No. 1009 are primary contact recreation, public water supply, and high aquatic life use. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (June 2010), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Little Cypress Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

https://gisweb.tceq.texas.gov/LocationMapper/?marker=-95.733,30.0089&level=18

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Northwest Branch Library, 11355 Regency Green Drive, Cypress, Texas.

ALTERNATIVE LANGUAGE NOTICE. Alternative language notice in Spanish is available at https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices. El aviso de idioma alternativo en español está disponible en https://www.tceq.texas.gov/permitting/wastewater/plain-language-summaries-and-public-notices.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The TCEQ will hold a public meeting on this application because it was requested by a local representative.

The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Monday, June 3, 2024 at 7:00 p.m.

SPJST Lodge 196 Jednota

17810 Huffmeister Road

Cypress, Texas 77429

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five business days prior to the meeting.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were

not subsequently withdrawn. **If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period.**

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment within 30 days from the date of newspaper publication of this notice, or by the date of the public meeting, whichever is later.

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Search the database using the permit number for this application, which is provided at the top of this notice.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www.tceq.texas.gov/goto/comment, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, Texas 78711-3087. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Harris County Municipal Utility District No. 531 at the address stated above or by calling Mrs. Ashley Broughton, P.E., LJA Engineering, Inc., at (713) 380-4431.

Issuance Date: April 26, 2024

TRD-202401926
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 1, 2024

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Enforcement Orders

An agreed order was adopted regarding Pulice Construction, Inc., Docket No. 2021-0543-WQ-E on April 30, 2024 assessing $7,087 in administrative penalties with $1,417 deferred. Information concerning any aspect of this order may be obtained by contacting Kolby Farren, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Charles David Thompson, Docket No. 2021-0782-MSW-E on April 30, 2024 assessing $1,125 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cynthia Sirois, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of New Summerfield, Docket No. 2021-1165-MWD-E on April 30, 2024 assessing $5,250 in administrative penalties with $1,050 deferred. Information concerning any aspect of this order may be obtained by contacting Samantha Smith, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding James E. Green, Docket No. 2022-0055-AIR-E on April 30, 2024 assessing $2,250 in administrative penalties with $450 deferred. Information concerning any aspect of this order may be obtained by contacting Desmond Martin, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Denali Water Solutions LLC and Fralise Farm and Ranch, LLC, Docket No. 2022-0890-SLG-E on April 30, 2024 assessing $4,875 in administrative penalties with $975 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TPG Pressure, Inc. dba Forterra Pressure Pipe Grand Prairie, Docket No. 2023-0160-PST-E on April 30, 2024 assessing $2,888 in administrative penalties with $577 deferred. Information concerning any aspect of this order may be obtained by contacting Tiffany Chu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shaleah L. Hill dba Mary Mead Water System and dba Rustic Hills Water, Docket No. 2023-0870-PWS-E on April 30, 2024 assessing $300 in administrative penalties with $60 deferred. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding HLH DEVELOPMENT, LLC, Docket No. 2023-1140-WQ-E on April 30, 2024 assessing $7,500 in administrative penalties with $1,500 deferred. Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Great Western Drilling Ltd., Docket No. 2023-1467-AIR-E on April 30, 2024 assessing $1,875 in administrative penalties with $375 deferred. Information concerning any aspect of this order may be obtained by contacting Christina Ferrara, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202401932
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 1, 2024

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Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility

Notice mailed on May 1, 2024 Registration Application No. 40340

Application. Safety-Kleen Systems, Inc. has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40340, to construct and operate a municipal solid waste medical waste transfer station. The proposed facility, Safety-Kleen Systems, will be located at 2203 Tower Road Suite A, Robstown, Texas 78380, in Nueces County. The Applicant is requesting authorization to store and transfer medical waste. All medical waste brought to the site will be transferred to an authorized medical waste treatment facility. The registration application is available for viewing and copying at the Nueces County Texas Public Library- Keach Family Library at 1000 Terry Shamsie Boulevard in Robstown, Texas 78680, and may be viewed online at https://www.safety-kleen.com/support/technical/regulatory-information. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: https://arcg.is/0jLG9G. For exact location, refer to application.

Alternative Language Notice/Aviso de Idioma Alternativo Alternative language notice in Spanish is available at www.tceq.texas.gov/goto/mswapps. El aviso de idioma alternativo en español está disponible en www.tceq.texas.gov/goto/mswapps.

Public Comment/Public Meeting. You may submit public comments or request a public meeting on this application. Written public comments or written requests for a public meeting must be submitted to the Office of the Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located, or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 30 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information Available Online. For details about the status of the application, visit the Commissioners' Integrated Database (CID) at www.tceq.texas.gov/goto/cid. Once you have access to the CID using the above link, enter the registration number for this application, which is provided at the top of this notice.

Mailing List. If you submit public comments, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

Agency Contacts and Information. All public comments and requests must be submitted either electronically at www14.tceq.texas.gov/epic/eComment/ or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. Please be aware that any contact information you provide, including your name, phone number, email address and physical address will become part of the agency's public record. For more information about this registration application or the registration process, please call the TCEQ's Public Education Program, Toll Free, at (800) 687-4040 or visit their webpage, www.tceq.texas.gov/goto/pep. General information regarding the TCEQ can be found on our website at www.tceq.texas.gov/. Si desea información en español, puede llamar al (800) 687-4040. Further information may also be obtained from Safety-Kleen Systems, Inc. at the mailing address 2203 Tower Road, Suite A Robstown, Texas 78380 or by calling Greg Van Stechelman at (941) 201-8176.

TRD-202401933
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 1, 2024

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Notices Issued April 25, 2024

NOTICE OF AN AMENDMENT TO A CERTIFICATE OF ADJUDICATION

APPLICATION NO. 04-4590C

Northeast Texas Municipal Water District (Owner/District), P.O. Box 955, Hughes Springs, Texas 75656, has applied to amend Certificate of Adjudication No. 04-4590 (Certificate) to authorize the use of the bed and banks of Dragoo Creek, Tankersley Creek, and Big Cypress Creek to convey up to 6,810 acre-feet of water originating from the Monticello Winfield South Mine facility in Titus County to Lake O' the Pines for subsequent diversion and use for municipal, domestic, industrial, and recreational purposes. Water authorized to be conveyed under this amendment will provide enhanced streamflow to support riparian habitat and will subsequently be utilized to firm up the District's existing water rights authorized in the Certificate without increasing the authorized diversion amounts or rates. More information on the application and how to participate in the permitting process is given below.

The Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain a special condition requiring the District to measure and record the amount of water discharged into Dragoo Creek and maintain the Development Agreement. The application, technical memoranda, and Executive Director's draft permit are available for viewing on the TCEQ web page at: https://www.tceq.texas.gov/permitting/water_rights/wr-permitting/view-wr-pend-apps Alternatively, you may request a copy of the documents by contacting the TCEQ Office of the Chief Clerk by phone at (512) 239-3300 or by mail at TCEQ OCC, Notice Team (MC-105), P.O. Box 13087, Austin, Texas 78711.

Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by May 28, 2024. A public meeting is intended for the taking of public comment and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by May 28, 2024. The Executive Director may approve the application unless a written request for a contested case hearing is filed by May 28, 2024.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at https://www14.tceq.texas.gov/epic/eComment/ by entering ADJ 4590 in the search field. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address.

For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040 o por el internet al http://www.tceq.texas.gov.

TRD-202401929
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 1, 2024

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Update to the Water Quality Management Plan (WQMP)

The Texas Commission on Environmental Quality (TCEQ) requests comments from the public on the draft April 2024 Update to the WQMP for the State of Texas.

Download the draft April 2024 WQMP Update at *https://www.tceq.texas.gov/permitting/wqmp/WQmanagement_updates.html* or view a printed copy at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

The WQMP is developed and promulgated in accordance with the requirements of the federal Clean Water Act, Section 208. The draft update includes projected effluent limits of specific domestic dischargers, which may be useful for planning in future permit actions. The draft update may also contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) revisions.

Once TCEQ certifies a WQMP update, it is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by TCEQ.

Deadline

All comments must be received at the TCEQ no later than 5:00 p.m. on June 11, 2024.

How to Submit Comments

Comments must be submitted in writing to:

Gregg Easley

Texas Commission on Environmental Quality

Water Quality Division, MC 150

P.O. Box 13087

Austin, Texas 78711-3087

Comments may also be faxed to (512) 239-4420 *or* emailed to Gregg Easley at *Gregg.Easley@tceq.texas.gov* but must be followed up with written comments by mail within five working days of the fax or email date or by the comment deadline, whichever is sooner.

For further information, or questions, please contact Mr. Easley at (512) 239-4539 or by email at *Gregg.Easley@tceq.texas.gov.*

TRD-202401927
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 1, 2024

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 8, 2024, to April 26, 2024. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.20(f), 30.30(h), and 30.40(e), the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, May 3, 2024. The public comment period for this project will close at 5:00 p.m. on Sunday June 2, 2024.

Federal License and Permit Activities:

Applicant: Jefferson County

Location: The project site is located in Keith Lake Fish Pass between Keith Lake and the Sabine Neches Waterway, in Jefferson County, Texas.

Latitude and Longitude: 29.772645, -93.945731

Project Description: The proposed project involves a request for modifications to previously authorized Department of the Army Permit SWG-2013-00841 to facilitate repairs and enhancements to the Keith Lake Fish Pass Baffle. The total footprint of the proposed project is approximately 9.412 acres, the majority of which is below Mean High Water (MHW) level (0.69 feet). Based on collected data there are approximately 1.538 acres of open water and 6.870 acres of wetlands within the project area. The purpose of the proposed modifications is to restore optimal functionality while preserving the original dimensions of the Keith Lake Fish Pass Baffle (310-foot-long by 156-foot-wide by 13-foot-tall). Of the resources identified, approximately 4.779 acres of Palustrine Emergent (PEM) wetlands, 0.0339 acres of Palustrine Scrub Shrub (PSS) wetlands, and 1.458 acres of open water would be permanently filled during construction resulting in a permanent loss. The remaining acreages (1.764 acres PEM wetlands, 0.292 acres PSS wetlands, and 0.079 acres of open water) would be subject to temporary impacts during construction. Areas subject to temporary impacts would be restored to existing grade and sprigged with smooth cordgrass plugs on a 1.5-foot by 1.5-foot grid spacing once construction is completed. Associated activities include the total excavation of approximately 27,056 cubic yards (CY) of material to facilitate placement of bedding stone and rock riprap to desired contours/dimensions during construction of rock riprap aprons on either side of the baffle and along the southern shore of the channel. Approximately 808.24 CY of the excavated material would consist of native material from open water, approximately 25,841.96 CY of excavated material would consist of wetlands, and approximately 405.62 CY of excavated material would consist of uplands. A total of 947.41 CY of the excavated native material would be placed in open water areas as fill to create an embankment with an elevation of -2.5 and a 4:1 slope along the southern shore of the channel. The remainder of the excavated material would be hauled off-site for disposal. Additionally, the permittee proposes to place a total of 10,708.33 CY of bedding stone (2,711.11 CY in open water (1,870.76 CY below mean high water MHW), 7,895 CY in wetlands, and 102.22 CY in uplands) in a 12-inch layer in the footprint of the apron and overlay the bedding stone with a total of 28,953.33 CY of rock riprap (6,776.11 CY in open water below MHW), 21,920.56 CY in wetlands, and 256.86 CY in uplands) in a 30- to 60-inch layer (depending on location). Rock riprap will be graded on a 4:1 slope to existing ground and the rock apron will have a top elevation of +1.0.

The applicant believes that the proposed project is self-mitigating and does not require additional mitigation measures due to the significant benefits it offers to the ecological health and resilience of the Keith Lake System. The repair and improvement of the Keith Lake Fish Pass Baffle are expected to reduce salinity levels, thereby preventing or slowing wetland conversion and loss within the system. Additionally, the project would preserve and enhance hundreds of acres of wetlands within the Keith Lake System over time post-construction. Analysis conducted by Michael Rezsutek, PhD, Texas Parks and Wildlife Department Upper Coast Wetland Ecosystem Project Leader, supports this assertion by estimating that approximately 80 acres of wetlands would be preserved per year once the baffle is functioning properly. As such, the applicant contends that the overall gain from repairing the baffle would outweigh any potential wetland impacts within the project footprint, making additional or supplemental mitigation unnecessary.

Type of Application: U.S. Army Corps of Engineers permit application #SWG-2013-00841. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 24-1223-F1

Applicant: TotalEnergies Petrochemicals & Refining USA, Inc.

Location: The project site is located in the Neches River, approximately 0.86 miles northwest of 6869 Rainbow Lane, in Port Arthur, Jefferson County, Texas.

Latitude and Longitude: 29.981261, -93.884558

Project Description: The applicant proposes modifications to previously authorized SWG-1995-02251. Modifications consist of a request for authorization to include dredge material placement areas 5, 8, 9, 11, 12, 17, 18, 22, 23, 24, 25 and 26. Additionally, the permittee requests a 10-year extension beyond the current permit expiration date of 16 August 2031. The permittee is not proposing any mitigation due to the nature of the proposed modifications. No new additional work or impacts to special are proposed.

Type of Application: U.S. Army Corps of Engineers permit application #SWG-1995-02251. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899.

CMP Project No: 24-1222-F1

Applicant: Space Exploration Technologies, Inc

Location: The project site is located in wetlands adjacent to Boca Chica Bay, at the existing SpaceX Vertical Launch Facility on State Highway 4, in Boca Chica, Cameron County, Texas.

Latitude and Longitude: 25.996, -97.154

Project Description: On 4 March 2021, the Corps published a public notice for SpaceX's proposed modification to the existing permit for the continued development of the SpaceX vertical launch area with the expansion and addition of test, orbital, and landing pads, integration towers, associated infrastructure, stormwater management features and vehicle parking. The proposed expansion would have impacted 10.94 acres of mud flats, 5.94 acres of estuarine wetlands, and 0.28 acres of non-tidal wetlands. The evaluation of the proposed modification was withdrawn by the Corps on 7 March 2022 to provide SpaceX time to develop an alternatives analysis and public interest review necessary to complete the Corps evaluation.

SpaceX reinitiated the permit application on 12 February 2024 with modified project plans requesting to fill a 0.16-acre wetland to construct a second orbital launchpad which will replace the current suborbital launch pad and test stand. The remaining special aquatic sites proposed in the 2021 public notice will be avoided. The permit modification will increase the total acreage of impact from 5.14 to 5.3 acres.

SpaceX has modified the project plans included in the 4 March 2022 public notice to reduce the proposed acreage from 17.16 acres to 0.16 acres. SpaceX has reduced impacts over the lifespan of the permit but did not reduce their compensatory mitigation. The proposed acreage would bring the total authorized impact back to 5.3 acres, which is below the 5.5 acres of impacts requiring mitigation in the approved compensatory mitigation.

Type of Application: U.S. Army Corps of Engineers permit application #SWG-2012-00381. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 24-1157-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public

Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202401928
Mark Havens
Chief Clerk
General Land Office
Filed: May 1, 2024

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Texas Department of Insurance

Company Licensing

Application to do business in the state of Texas for American Legacy Life Insurance Company, a foreign life, accident, and/or health company. The home office is in Columbus, Ohio.

Application to do business in the state of Texas for Stellar National Life Insurance Company, a foreign life, accident, and/or health company. The home office is in Phoenix, Arizona.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of John Carter, 1601 Congress Ave., Suite 6.900, Austin, Texas 78711.

TRD-202401935
Justin Beam
Chief Clerk
Texas Department of Insurance
Filed: May 1, 2024

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Texas Lottery Commission

Scratch Ticket Game Number 2575 "VIP MILLIONS"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2575 is "VIP MILLIONS". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2575 shall be $20.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2575.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 03, 04, 06, 07, 08, 09, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 2X SYMBOL, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, ARMORED CAR SYMBOL, BANK SYMBOL, BAR SYMBOL, BILL SYMBOL, CHIP SYMBOL, CROWN SYMBOL, GEM SYMBOL, KEY SYMBOL, MONEYBAG SYMBOL, MOON SYMBOL, NECKLACE SYMBOL, REGISTER SYMBOL, RING SYMBOL, STAR SYMBOL, VAULT SYMBOL, $20.00, $40.00, $50.00, $100, $150, $250, $500, $1,000, $10,000 and $1,000,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2575 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
03	THR
04	FOR
06	SIX
07	SVN
08	EGT
09	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON

32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX
47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FFON
52	FFTO
53	FFTH
54	FFFR
55	FFFV
56	FFSX
57	FFSV
58	FFET
59	FFNI
60	SXTY

61	SXON
62	SXTO
63	SXTH
64	SXFR
65	SXFV
66	SXSX
67	SXSV
68	SXET
69	SXNI
70	SVTY
71	SVON
72	SVTO
73	SVTH
74	SVFR
75	SVFV
76	SVSX
77	SVSV
2X SYMBOL	DBL
5X SYMBOL	WINX5
10X SYMBOL	WINX10
20X SYMBOL	WINX20
ARMORED CAR SYMBOL	ARMCAR
BANK SYMBOL	BANK
BAR SYMBOL	BAR
BILL SYMBOL	BILL
CHIP SYMBOL	CHIP
CROWN SYMBOL	CROWN
GEM SYMBOL	GEM
KEY SYMBOL	KEY

MONEYBAG SYMBOL	MONEYBAG
MOON SYMBOL	MOON
NECKLACE SYMBOL	NECKLACE
REGISTER SYMBOL	REGISTER
RING SYMBOL	RING
STAR SYMBOL	STAR
VAULT SYMBOL	VAULT
$20.00	TWY$
$40.00	FRTY$
$50.00	FFTY$
$100	ONHN
$150	ONFF
$250	TOFF
$500	FVHN
$1,000	ONTH
$10,000	10TH
$1,000,000	TPPZ

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2575), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 2575-0000001-001.

H. Pack - A Pack of the "VIP MILLIONS" Scratch Ticket Game contains 025 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 025 while the other fold will show the back of Ticket 001 and front of 025.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "VIP MILLIONS" Scratch Ticket Game No. 2575.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "VIP MILLIONS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose seventy-six (76) Play Symbols. VIP MILLIONS PLAY INSTRUCTIONS: If a player matches any of the YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If the player reveals a "2X" Play Symbol, the player wins DOUBLE the prize for that symbol. If the player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If the player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If the player reveals a "20X" Play Symbol, the player wins 20 TIMES the prize for that symbol. $50 BONUS: If the player reveals 2 matching Play Symbols in the $50 BONUS play area, the player wins $50. $100 BONUS: If the player reveals 2 matching Play Symbols in the $100 BONUS play area, the player wins §100. $150 BONUS: If the player reveals 2 matching Play Symbols in the $150 BONUS play area, the player wins $150.

$250 BONUS: If the player reveals 2 matching Play Symbols in the $250 BONUS play area, the player wins $250. $500 BONUS: If the player reveals 2 matching Play Symbols in the $500 BONUS play area, the player wins $500. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly seventy-six (76) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly seventy-six (76) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the seventy-six (76) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the seventy-six (76) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: A Ticket can win up to thirty-five (35) times in accordance with the prize structure.

B. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

C. GENERAL: The top Prize Symbol will appear on every Ticket, unless restricted by other parameters, play action or prize structure.

D. KEY NUMBER MATCH: Each Ticket will have six (6) different WINNING NUMBERS Play Symbols.

E. KEY NUMBER MATCH: Non-winning YOUR NUMBERS Play Symbols will all be different.

F. KEY NUMBER MATCH: Non-winning Prize Symbols will never appear more than five (5) times.

G. KEY NUMBER MATCH: The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

H. KEY NUMBER MATCH: The "2X" (DBL), "5X" (WINX5), "10X" (WINX10) and "20X" (WINX20) Play Symbols will never appear in the WINNING NUMBERS, $50 BONUS, $100 BONUS, $150 BONUS, $250 BONUS or $500 BONUS play spots.

I. KEY NUMBER MATCH: The "2X" (DBL), "5X" (WINX5), "10X" (WINX10) and "20X" (WINX20) Play Symbols will only appear on winning Tickets as dictated by the prize structure.

J. KEY NUMBER MATCH: Non-winning Prize Symbol(s) will never be the same as the winning Prize Symbol(s).

K. KEY NUMBER MATCH: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 40 and $40).

L. $50 BONUS/$100 BONUS/$150 BONUS/$250 BONUS/$500 BONUS: Matching Bonus Play Symbols will only appear on winning Tickets as dictated by the prize structure in the $50 BONUS, $100 BONUS, $150 BONUS, $250 BONUS and $500 BONUS play areas.

M. $50 BONUS/$100 BONUS/$150 BONUS/$250 BONUS/$500 BONUS: A Bonus Play Symbol will not be used more than one (1) time per Ticket across the $50 BONUS, $100 BONUS, $150 BONUS,

$250 BONUS and $500 BONUS play areas, unless used in a winning combination.

N. $50 BONUS/$100 BONUS/$150 BONUS/$250 BONUS/$500 BONUS: The Bonus Play Symbols will never appear in the WINNING NUMBERS or YOUR NUMBERS Play Symbol spots.

O. $50 BONUS/$100 BONUS/$150 BONUS/$250 BONUS/$500 BONUS: In the $50 BONUS, $100 BONUS, $150 BONUS, $250 BONUS and $500 BONUS play areas non-winning Bonus Play Symbols will not be the same as winning Bonus Play Symbols.

P. $50 BONUS/$100 BONUS/$150 BONUS/$250 BONUS/$500 BONUS: The $50 BONUS, $100 BONUS, $150 BONUS, $250 BONUS and $500 BONUS play areas will each be played separately.

2.3 Procedure for Claiming Prizes.

A. To claim a "VIP MILLIONS" Scratch Ticket Game prize of $20.00, $40.00, $50.00, $100, $150, $250 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $40.00, $50.00, $100, $150, $250 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "VIP MILLIONS" Scratch Ticket Game prize of $1,000, $10,000 or $1,000,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "VIP MILLIONS" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "VIP MILLIONS" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "VIP MILLIONS" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 8,040,000 Scratch Tickets in Scratch Ticket Game No. 2575. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2575 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$20.00	964,800	8.33
$40.00	241,200	33.33
$50.00	643,200	12.50
$100	251,250	32.00
$150	43,550	184.62
$250	60,300	133.33
$500	16,281	493.83
$1,000	268	30,000.00
$10,000	35	229,714.29
$1,000,000	4	2,010,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.62. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2575 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2575, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202401917

Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 30, 2024

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Middle Rio Grande Workforce Development Board

Request for Proposal for Management and Operations of the Workforce Solutions Middle Rio Grande One Stop Services

The Workforce Solutions Middle Rio Grande Board (WFSMRGB) is soliciting proposals from qualified entities to operate an integrated One-stop Service Delivery System to deliver Workforce Development services in the 9 counties of the Workforce Solutions Middle Rio Grande Board area. Workforce Development services provided through the Service Delivery System include, but are not limited to, those funded and governed by the Workforce Innovation and Opportunity Act, Wagner-Peyser Employment Services, Temporary Assistance for Needy Families and Choices, Supplemental Nutrition Assistance

Program Employment and Training. Proposers will be expected to demonstrate the capability to conduct workforce service delivery for all customers groups at the current level and effectively incorporate the Workforce Solutions Middle Rio Grande Board's stated priorities. The contract resulting from this procurement will be for a period of one (1) year beginning on October 1, 2024 and ending on September 30, 2025. The contract may be renewed for an additional three (3) one-year periods at the sole discretion of the Board and based on satisfactory performance and compliance with contractual obligations.

Release Request for Proposals - April 29, 2024

Deadline for Submission - May 31, 2024 at 3:00 p.m.

Board Meeting for Selection - June 13, 2024

A copy of the RFP may be accessed at the Board's web page at www.wfsmrg.org or by calling or emailing Board's Interim Executive Director at (830) 486-7507 or rosalind.lozano@wfsmrg.org and request a copy by mail.

Workforce Solutions Middle Rio Grande Board

P.O. Box 760

216 W Main Street, Ste A

Uvalde, Texas 78801

Attn: Rosie Lozano, Interim Executive Director

Questions regarding this procurement should be directed to Rosie Lozano, Interim Executive Director, at (830) 591-0141 or by email at rosalind.lozano@wfsmrg.org

TRD-202401902
Rosie Lozano
Interim Executive Director
Middle Rio Grande Workforce Development Board
Filed: April 30, 2024

♦ ♦ ♦

Supreme Court of Texas

Final Approval of Texas Rule of Appellate Procedure 34.5a and of Amendments to Texas Rules of Appellate Procedure 35.3 and 38.6

Supreme Court of Texas

Misc. Docket No. 24-9022

Final Approval of Texas Rule of Appellate Procedure 34.5a and of Amendments to Texas Rules of Appellate Procedure 35.3 and 38.6

ORDERED that:

1. On December 18, 2023, in Misc. Dkt. No. 23-9106, the Court preliminarily approved new Texas Rule of Appellate Procedure 34.5a and amendments to Texas Rules of Appellate Procedure 35.3 and 38.6 and invited public comment.

2. Following the comment period, the Court made revisions to Rule 34.5a. This Order incorporates the revisions and contains the final version of the new and amended rules, effective immediately.

3. The new rule and amendments apply only when a party files a notice of appeal on or after January 1, 2024.

4. The Clerk is directed to:

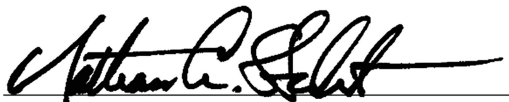
    a. file a copy of this Order with the Secretary of State;

    b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

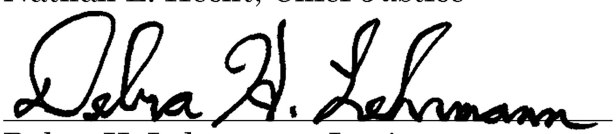
    c. send a copy of this Order to each elected member of the Legislature; and

    d. submit a copy of this Order for publication in the *Texas Register*.

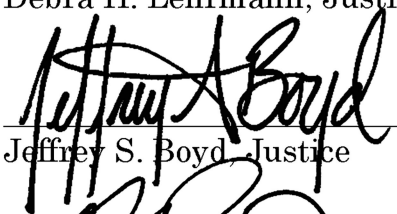
Dated: April 30, 2024.



Nathan L. Hecht, Chief Justice

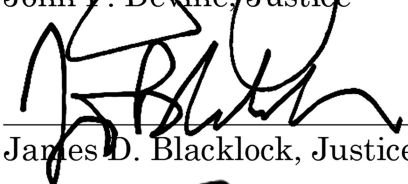


Debra H. Lehrmann, Justice

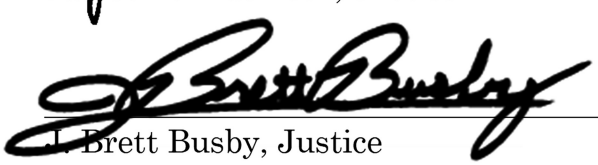


Jeffrey S. Boyd, Justice

John P. Devine, Justice



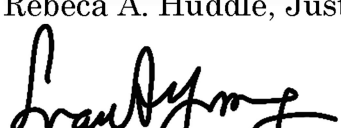
James D. Blacklock, Justice



J. Brett Busby, Justice

Jane N. Bland, Justice

Rebeca A. Huddle, Justice



Evan A. Young, Justice

TEXAS RULES OF APPELLATE PROCEDURE

Rule 34. Appellate Record (Clean Version)

***

34.5a Appendix in Lieu of Clerk's Record in a Civil Case

(a) *Notice of Election.* An appellant in a civil case may file a notice of election with the trial court and the court of appeals stating that the appellant will file an appendix that replaces the clerk's record for the appeal. The notice of election must be filed within 10 days after the date the appellant files a notice of appeal.

(b) *Time to File Original Appendix.* The appellant filing a notice of election under (a) must file the appendix at the same time as the appellant's brief. Except by order of the court under Rule 38.6(d), the brief and appendix must be filed within 30 days—or 20 days in an accelerated appeal—after the later of:

(1) the date the appellant filed the notice of election under (a); or

(2) the date the reporter's record, if any, is filed with the court of appeals.

(c) *Supplemental or Joint Appendices.* If the appellant files an appendix under (b), any other party may file a supplemental appendix at the same time as that party's brief. The parties may agree under Rule 6.6 to file a joint appendix.

(d) *Court-Directed Supplement.* The court of appeals may direct the appellant to file a supplemental appendix containing items described by the court of appeals. If the appellant fails to supplement as requested, and the record fails to establish the court of appeals' jurisdiction, the court of appeals may dismiss the appeal. In cases where the court of appeals has jurisdiction, and the appellant fails to supplement as requested, the court of appeals may presume that the missing items support the trial court's judgment.

(e) *Contents of Original Appendix.* The appendix filed under (b) must contain a copy of:

(1) each document required by Rule 34.5(a) for a civil case; and

(2) any other item referenced in the appellant's brief, except as provided by (f).

(f) *Contents of All Appendices.* When available, the contents of an appendix filed under this rule must be file-stamped. An appendix must not contain a document that was not filed with the trial court, except:

(1) if the document was issued by the trial court; or

(2) by agreement of the parties under Rule 6.6.

(g) *Filing Requirements for All Appendices.* An appendix filed under this rule must be filed separately from any other document, and the pages must be consecutively numbered. An appendix must meet the applicable filing requirements of Rules 9.4(h), 9.8, 9.9, and section 1.1 of Appendix C to these rules. A nonconforming appendix is subject to court action under Rule 9.4(k). A conforming appendix becomes a part of the appellate record under Rule 34.1

(h) *No Clerk's Record.* A court clerk must not prepare or file a clerk's record or assess a fee for preparing a clerk's record if a party files an appendix under this rule.

***

Notes and Comments

***

Comment to 2024 Change: New Rule 34.5a is added to implement Texas Civil Practice and Remedies Code section 51.018. It allows the parties in a civil case to file appendices in lieu of a clerk's record and applies only when a party files a notice of appeal on or after January 1, 2024.

Rule 35. Time to File Record; Responsibility for Filing Record (Redline Version)

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35.3. Responsibility for Filing Record

(a) *Clerk's Record.* Except when an appendix is filed under Rule 34.5a, ~~T~~the trial court clerk is responsible for preparing, certifying, and timely filing the clerk's record if:

(1) a notice of appeal has been filed, and in criminal proceedings, the trial court has certified the defendant's right of appeal, as required by Rule 25.2(d); and

(2) the party responsible for paying for the preparation of the clerk's record has paid the clerk's fee, has made satisfactory arrangements with the clerk to pay the fee, or is entitled to appeal without paying the fee.

***

Rule 38. Requisites of Briefs (Redline Version)

***

38.6. Time to File Briefs

(a) *Appellant's Filing Date.* Except in a habeas corpus or bail appeal, which is governed by Rule 31, or when an appendix is filed under Rule 34.5a, an appellant must file a brief within 30 days — 20 days in an accelerated appeal — after the later of:

(1) the date the clerk's record was filed; or

(2) the date the reporter's record was filed.

***

TRD-202401946
Jaclyn Daumerie
Rules Attorney
Supreme Court of Texas
Filed: May 1, 2024

♦ ♦ ♦

Texas Department of Transportation

Notice of Agreement on Identification of Future Transportation Corridors Within Collin County

The Texas Department of Transportation and Collin County, Texas, have entered into an agreement that identifies future transportation corridors within Collin County in accordance with Transportation Code, Section 201.619. Copies of the agreement and all plans referred to by the agreement are available at the department's Dallas District Office, 4777 East U.S. Highway 80, Mesquite, Texas 75150.

TRD-202401746
Angie Parker
Senior General Counsel
Texas Department of Transportation
Filed: April 25, 2024

♦ ♦ ♦

Public Hearing Notice - Connecting Texas 2050

The Texas Department of Transportation (TxDOT) will hold a statewide virtual public hearing on Connecting Texas 2050, the agency's latest update to the statewide long-range transportation plan, on Tuesday, May 28, 2024, at 5:30 p.m. Central Daylight Time (CDT) online and via phone.

On Tuesday, May 28, 2024, visit *www.txdot.gov/projects/planning/ttp/slrtp-public-involvement.html* for instructions on how to log onto the virtual public hearing. The log-in process will record your name, email address, and who you represent for the official record. Members of the public who do not have Internet access or wish to participate by phone, can call 1-800-717-1738 and input conference ID number 49101.

Connecting Texas 2050 is the agency's latest update to the statewide long-range transportation plan. Title 43, §16.54 of the Texas Administrative Code provides that TxDOT shall develop a statewide long-range transportation plan (SLRTP) and conduct a statewide virtual public hearing prior to final adoption of the SLRTP by the Texas Transportation Commission.

The purpose of the public hearing is for participants to learn about the process to prepare a statewide long-range transportation plan, review the draft statewide long-range transportation plan, and provide written or verbal comments.

Updated every four years, the statewide long-range transportation plan considers current and future transportation choices, and how they integrate as a system to serve Texans and our economy. With Connecting Texas 2050, TxDOT will establish the vision, goals, objectives, performance measures, and strategic recommendations for the state's multimodal transportation system through 2050. The current draft plan is a comprehensive report comprised of all the technical work performed and feedback received from the public and stakeholders since fall 2022.

The draft plan will be available to the public for review and feedback beginning Friday, May 10, 2024, at *www.txdot.gov/projects/planning/ttp/slrtp-public-involvement.html*. In addition, it will also be available for review Monday through Friday between the hours of 8 a.m. and 5 p.m. at the Texas Department of Transportation Stassney Campus, located 6230 E. Stassney Lane, Austin, Texas 78744, and at your local TxDOT District Office. For a complete list of district offices, visit *www.txdot.gov/about/districts.html* or call (512) 271-2025 for assistance.

The virtual public hearing will include a live presentation from TxDOT's Connecting Texas 2050 team. This presentation will include both audio and visual components. An opportunity for formal comment will be provided following the presentation.

Persons wishing to speak at the hearing (optional) may register in advance by notifying the Connecting Texas 2050 team at (512) 271-2025 and providing your full name with spelling and a phone number, no later than by 4 p.m. CDT Wednesday, May 22, 2024. Speakers will be taken in the order registered and will be limited to three minutes. During the hearing, speakers who do not register in advance may register and be added to the list of speakers to be taken at the end of the hearing. Instructions will be provided on how to register during the hearing. Please note, if you would like to make a verbal comment, you will be required to close the live webcast on your device and join by phone to limit auditory interference. Should you prefer to remain in the webcast on your device or if you do not wish to provide verbal comments, you can submit written comments through the live webcast platform or through the written comment methods listed below.

Any interested person may offer comments or testimony; however, questioning of witnesses will be reserved exclusively to the meeting's presiding officer as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony.

Responses to comments received during the hearing will be included as part of the virtual public hearing summary which will be made available online at *www.txdot.gov* once they have been prepared.

The virtual public hearing will be conducted in English. If you need interpretation or translation services, or you are a person with a disability who requires an accommodation to attend and participate, provide TxDOT advance notice at (512) 271-2025 by 4 p.m. CT no later than Wednesday, May 22, 2024. Please be aware that advance notice is required as some services and accommodations may require time for TxDOT to arrange.

Interested parties who are unable to participate may submit written and/or verbal comments regarding the draft plan in the following ways:

Written comments can be submitted via an online comment form accessed via a link on *www.txdot.gov/projects/planning/ttp/slrtp-public-involvement.html.*

Written comments may be submitted by email to ConnectingTexas2050@txdot.gov.

Written comments may be submitted by mail to: TxDOT TPP Connecting Texas 2050, Statewide Planning Branch Manager, P.O. Box 149217, Austin, Texas 78714-9217.

Members of the public may call (512) 271-2025 to provide verbal testimony via a voicemail message.

To be included in the draft plan comment log, comments must be received or postmarked by Sunday, June 9, 2024.

If you have any general questions or concerns regarding Connecting Texas 2050 or the virtual public hearing, please contact Giacomo Yaquinto, project manager, at ConnectingTexas2050@txdot.gov or (737) 308-9411.

TRD-202401883
Angie Parker
Senior General Counsel
Texas Department of Transportation
Filed: April 29, 2024

♦ ♦ ♦

How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 24 of Volume 49 (2024) is cited as follows: 49 TexReg 24.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "49 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 49 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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