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

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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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 815-1887

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

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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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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.

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Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7322

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.

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Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
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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.

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Doug Jennings
General Counsel
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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.

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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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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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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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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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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

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

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.

TRD-202401822
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

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.

TRD-202401823
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: May 16, 2024
Proposal publication date: February 16, 2024
For further information, please call: (512) 427-6182

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.

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) 427-6537

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.

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) 427-6537

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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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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Nichole Bunker-Henderson
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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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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.

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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.

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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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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.

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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.

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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.

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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.

Filed with the Office of the Secretary of State on April 24, 2024.

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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

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.

Filed with the Office of the Secretary of State on April 22, 2024.

TRD-202401705

Ralph Harper
Executive Director
Texas Board of Physical Therapy Examiners
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For further information, please call: (512) 305-6900

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

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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.

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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

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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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, §110I. 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.

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 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.

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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.

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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.

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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.

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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.

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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.

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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.

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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 multi-component 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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For further information, please call: (512) 239-0634

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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Deputy Director, Environmental Law Division
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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.

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

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Texas Commission on Environmental Quality

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For further information, please call: (512) 239-6087

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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Charmaine Backens
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Texas Commission on Environmental Quality
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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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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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Charmaine Backens
Deputy Director, Environmental Law Division
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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.

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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.

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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.

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Charmaine Backens
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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
General Counsel
Texas Board of Pardons and Paroles
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For further information, please call: (512) 406-5478

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

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
Chief Deputy General Counsel
Texas Department of Criminal Justice
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For further information, please call: (512) 463-9899

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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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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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 onsite 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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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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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 non-profit 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.

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