TEXAS REGISTER

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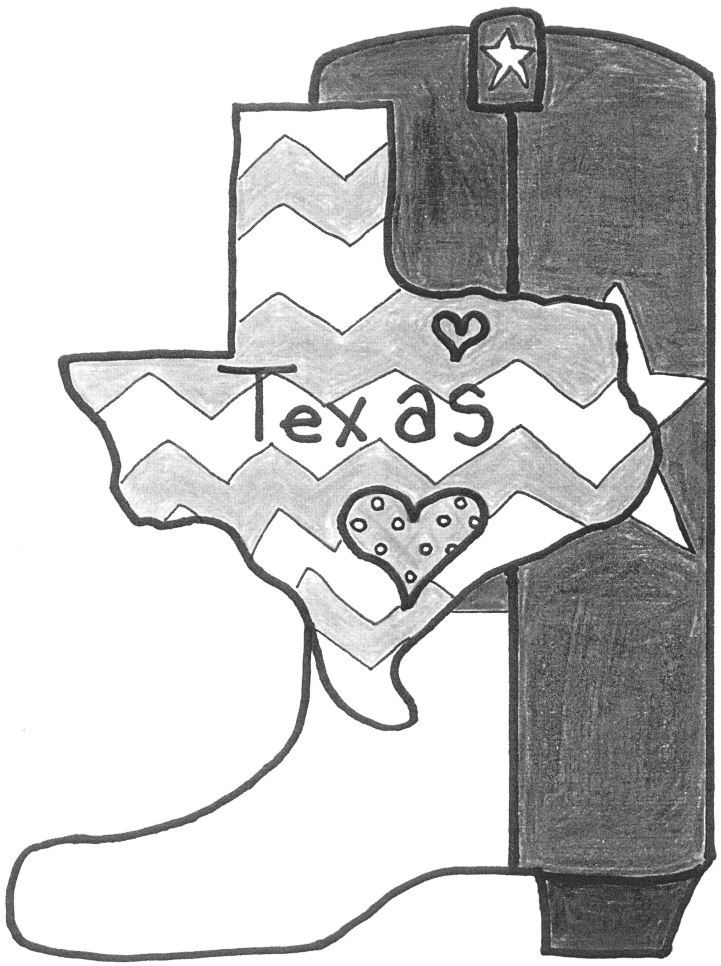
Texas

THE GOVERNOR

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

Appointments

Appointments for October 24, 2024

Appointed to the One-Call Board of Texas for a term to expire August 31, 2026, William O. "Bill" Geise of Austin, Texas (Mr. Geise is being reappointed).

Appointed to the Lavaca-Navidad River Authority Board of Directors for a term to expire May 1, 2028, Bryan L. Churan of Palacios, Texas (replacing Terri Lynn Parker of Ganado, whose term expired).

Appointments for October 28, 2024

Appointed to the Commercial Oyster Mariculture Advisory Board for a term to expire February 1, 2025, Brian K. "Keith" Miears of Rockport, Texas.

Appointed to the Commercial Oyster Mariculture Advisory Board for a term to expire February 1, 2026, Eric S. Davis of Mont Belivieu, Texas.

Appointed to the Commercial Oyster Mariculture Advisory Board for a term to expire February 1, 2027, Carlos S. "Shane" Bonnot of Lake Jackson, Texas.

Appointed to the Commercial Oyster Mariculture Advisory Board for a term to expire February 1, 2027, Lauren M. Dunlap of Austin, Texas.

Appointed to the Commercial Oyster Mariculture Advisory Board for a term to expire February 1, 2028, Bradley S. "Brad" Lomax of Corpus Christi, Texas.

Appointed to the Commercial Oyster Mariculture Advisory Board for a term to expire February 1, 2029, Larry D. McKinney, Ph.D. of Corpus Christi, Texas.

Appointments for October 29, 2024

Appointed to the Texas Ethics Commission for a term to expire November 11, 2027, Sean Gorman of Houston Texas (replacing Mary K. "Katie" Kennedy of Houston, whose term expired).

Appointed to the Texas Opioid Abatement Fund Council for a term to expire June 15, 2025, Ronald P. "Ronnie" Enriquez, Jr. of Leander, Texas (Mr. Enriquez is being reappointed).

Appointed to the Texas Opioid Abatement Fund Council for a term to expire June 15, 2025, John G. Mills, D.O. of Port Bolivar, Texas (Dr. Mills is being reappointed).

Appointed to the Texas Opioid Abatement Fund Council for a term to expire June 15, 2025, Katherine L. Yoder of Austin, Texas (Ms. Yoder is being reappointed).

Appointments for October 30, 2024

Appointed to the State Pension Review Board for a term to expire at January 31, 2029, Roel "Roy" Rodriguez of McAllen, Texas (replacing Maria del Rosario "Rossy" Fariña-Strauss of Austin, whose term expired).

Greg Abbott, Governor

TRD-202405166

♦ ♦ ♦

Proclamation 41-4147

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on July 8, 2022, as amended and renewed in a number of subsequent proclamations, certifying that exceptional drought conditions posed a threat of imminent disaster in several counties; and

WHEREAS, the Texas Division of Emergency Management has confirmed that those same drought conditions continue to exist in these and other counties in Texas, with the exception of Comal, Comanche, Denton, Gillespie, Hamilton, Hemphill, and Lipscomb Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby amend and renew the aforementioned proclamation and declare a disaster in Aransas, Archer, Atascosa, Bandera, Bastrop, Bee, Bexar, Blanco, Brewster, Burnet, Caldwell, Calhoun, Cameron, Childress, Clay, Collingsworth, Colorado, Cottle, Culberson, Delta, Donley, El Paso, Fannin, Foard, Grayson, Guadalupe, Hall, Hardeman, Hays, Hidalgo, Hopkins, Hudspeth, Irion, Jeff Davis, Jim Wells, Karnes, Kendall, Kerr, King, Kleberg, Lampasas, Lamar, Lavaca, Live Oak, Llano, Loving, Lubbock, Matagorda, Maverick, Medina, Midland, Mitchell, Montague, Nueces, Pecos, Presidio, Real, Reeves, San Patricio, Smith, Terrell, Tom Green, Travis, Uvalde, Val Verde, Victoria, Ward, Washington, Wharton, Wichita, Wilbarger, Willacy, Williamson, Wood, and Zapata Counties.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 26th day of October, 2024.

Greg Abbott, Governor

TRD-202405151

♦ ♦ ♦

Proclamation 41-4148

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, Greg Abbott, Governor of Texas, issued a disaster proclamation on May 31, 2021, certifying under Section 418.014 of the Texas Government Code that the surge of individuals unlawfully crossing the Texas-Mexico border posed an ongoing and imminent threat of disaster for a number of Texas counties and for all state agencies affected by this disaster; and

WHEREAS, I amended the aforementioned proclamation in a number of subsequent proclamations, including to modify the list of affected counties and therefore declare a state of disaster for those counties and for all state agencies affected by this disaster; and

WHEREAS, the certified conditions continue to exist and pose an ongoing and imminent threat of disaster as set forth in the prior proclamations; and

WHEREAS, a disaster has been declared at the local level by Calhoun County;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the aforementioned proclamation and declare a disaster for Aransas, Atascosa, Bee, Brewster, Brooks, Caldwell, Calhoun, Cameron, Chambers, Coleman, Colorado, Crane, Crockett, Culberson, DeWitt, Dimmit, Duval, Edwards, El Paso, Frio, Galveston, Goliad, Gonzales, Hidalgo, Hudspeth, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Lavaca, Live Oak, Mason, Maverick, McCulloch, McMullen, Medina, Menard, Midland, Pecos, Presidio, Real, Refugio, San Jacinto, San Patricio, Schleicher, Shackelford, Sutton, Terrell, Throckmorton, Uvalde, Val Verde, Victoria, Webb, Wharton, Wilbarger, Wilson, Zapata, and Zavala Counties and for all state agencies affected by this disaster. All orders, directions, suspensions, and authorizations provided in the Proclamation of May 31, 2021, as amended and renewed in subsequent proclamations, are in full force and effect.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 26th day of October, 2024.

Greg Abbott, Governor

TRD-202405152

♦ ♦ ♦

Proclamation 41-4149

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, I, GREG ABBOTT, Governor of the State of Texas, issued a disaster proclamation on Tuesday, April 30, 2024, as amended on Thursday, May 2, 2024, Tuesday, May 7, 2024, Wednesday, May 15, 2024, Monday, May 20, 2024, Sunday, May 26, 2024, Thursday, May 30, 2024, Wednesday, June 5, 2024, Thursday, June 13, 2024, and Friday, June 28, 2024, certifying that the severe storms and flooding that began on April 26, 2024, and included heavy rainfall, flash flooding, river flooding, large hail, and hazardous wind gusts caused widespread and severe property damage, injury, or loss of life in Anderson, Angelina, Austin, Bailey, Bandera, Bastrop, Baylor, Bell, Bexar, Blanco, Bosque, Bowie, Brazos, Brown, Burleson, Burnet, Caldwell, Calhoun, Cass, Chambers, Cherokee, Clay, Cochran, Coke, Coleman, Collin, Colorado, Comal, Concho, Cooke, Coryell, Dallas, Delta, Denton, DeWitt, Dickens, Eastland, Ellis, Falls, Fannin, Fayette, Freestone, Galveston, Gillespie, Gonzales, Gregg, Grimes, Guadalupe, Hamilton, Hardin, Harris, Haskell, Hays, Henderson, Hill, Hockley, Hood, Hopkins, Houston, Hunt, Jasper, Jefferson, Johnson, Jones, Karnes, Kaufman, Kendall, Kerr, Kimble, Knox, Lamar, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Llano, Lynn, Madison, Mason, McCulloch, McLennan, Medina, Menard, Midland, Milam, Mills, Montague, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola, Polk, Rains, Red River, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Shelby, Smith, Somervell, Sterling, Sutton, Tarrant, Terrell, Titus, Travis, Trinity, Tyler, Van Zandt, Walker, Waller, Washington, Wharton, Wichita, Williamson, and Wilson Counties;

NOW, THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the aforementioned proclamation.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 26th day of October, 2024.

Greg Abbott, Governor

TRD-202405153

♦ ♦ ♦

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §371.1, concerning Definitions; §371.3, concerning Purpose and Authority; §371.31, concerning Federal Felony Match; §371.1011, concerning Recommendation Criteria; §371.1305, concerning Preliminary Investigation; §371.1613, concerning Informal Resolution Process; §371.1663, concerning Managed Care; §371.1669, concerning Self-Dealing; and §371.1709, concerning Payment Hold.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update citations in the rules to reflect changes in the organization of the Texas Government Code sections that become effective on April 1, 2025. The proposed amendments update the affected citations to the Texas Government Code and revise Texas Administrative Code references.

FISCAL NOTE

Trey Wood, HHSC Chief Financial Officer, has determined that for each year of the first five years that the amended rules will be in effect, enforcing or administering the amended rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

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

(6) the proposed rules will not expand, limit, or repeal existing regulations;

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

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules because the amendments only update references to existing laws.

LOCAL EMPLOYMENT IMPACT

The proposed rule amendments will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules do not impose a cost on regulated persons and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rules.

PUBLIC BENEFIT AND COSTS

Erik Cary, HHSC Office of Inspector General (HHSC OIG) Chief Counsel, has determined that for each year of the first five years the rules are in effect, the public will benefit from rules that accurately cite the laws governing HHSC, Medicaid, and other social services.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the amendments only update references to existing statutes.

TAKINGS IMPACT ASSESSMENT

The HHSC OIG has determined that the proposal does not restrict or limit an owner's right to the owner's property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code § 2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to HHSC Office of Inspector General - Chief Counsel Division, P.O. Box 85200, Austin, Texas 78708, or street address 4601 W. Guadalupe St., Austin, Texas 78751-3146; or by email to IG_Rules_Comments_Inbox@hhsc.state.tx.us.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R088" in the subject line.

SUBCHAPTER B. OFFICE OF INSPECTOR GENERAL

1 TAC §§371.1, 371.3, 371.31

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; and Texas Government Code § 531.102, which provides that the Executive Commissioner of HHSC shall work in consultation with the HHSC OIG whenever the executive commissioner is required by law to adopt a rule or policy necessary to implement a power or duty of the office.

The amendments affect Texas Government Code §§531.0055, 531.008, 531.001, 531.02115, 531.102, 531.1021, 531.1032, and 531.113.

§371.1. Definitions.

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

(1) Abuse--A practice by a provider that is inconsistent with sound fiscal, business, or medical practices and that results in an unnecessary cost to the Medicaid program; the reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care; or a practice by a recipient that results in an unnecessary cost to the Medicaid program.

(2) Address of record--

(A) An HHS provider's current mailing or physical address, including a working fax number, as provided to the appropriate HHS program's claims administrator or as required by contract, statute, or regulation; or

(B) a non-HHS provider's last known address as reflected by the records of the United States Postal Service or the Texas Secretary of State's records for business organizations, if applicable.

(3) Affiliate; affiliate relationship--A person who:

(A) has a direct or indirect ownership interest (or any combination thereof) of five percent or more in the person;

(B) is the owner of a whole or part interest in any mortgage, deed of trust, note or other obligation secured (in whole or in part) by the entity whose interest is equal to or exceeds five percent of the value of the property or assets of the person;

(C) is an officer or director of the person, if the person is a corporation;

(D) is a partner of the person, if the person is organized as a partnership;

(E) is an agent or consultant of the person;

(F) is a consultant of the person and can control or be controlled by the person or a third party can control both the person and the consultant;

(G) is a managing employee of the person, that is, a person (including a general manager, business manager, administrator or director) who exercises operational or managerial control over a person or part thereof, or directly or indirectly conducts the day-to-day operations of the person or part thereof;

(H) has financial, managerial, or administrative influence over the operational decisions of a person;

(I) shares any identifying information with another person, including tax identification numbers, social security numbers, bank accounts, telephone numbers, business addresses, national provider numbers, Texas provider numbers, and corporate or franchise names; or

(J) has a former relationship with another person as described in subparagraphs (A) - (I) of this definition, but is no longer described, because of a transfer of ownership or control interest to an immediate family member or a member of the person's household of this section within the previous five years if the transfer occurred after the affiliate received notice of an audit, review, investigation, or potential adverse action, sanction, board order, or other civil, criminal, or administrative liability.

(4) Agent--Any person, company, firm, corporation, employee, independent contractor, or other entity or association legally acting for or in the place of another person or entity.

(5) Allegation of fraud--Allegation of Medicaid fraud received by HHSC from any source that has not been verified by the state, including an allegation based on:

(A) a fraud hotline complaint;

(B) claims data mining;

(C) data analysis processes; or

(D) a pattern identified through provider audits, civil false claims cases, or law enforcement investigations.

(6) Applicant--An individual or an entity that has filed an enrollment application to become a provider, re-enroll as a provider, or enroll a new practice location in a Medicaid program or the Children's Health Insurance Program as described in paragraph [~~subsection~~] (23) of this subsection [~~section~~].

(7) At the time of the request--Immediately upon request and without delay.

(8) Audit--A financial audit, attestation engagement, performance audit, compliance audit, economy and efficiency audit, effectiveness audit, special audit, agreed-upon procedure, nonaudit service, or review conducted by or on behalf of the state or federal government. An audit may or may not include site visits to the provider's place of business.

(9) Auditor--The qualified person, persons, or entity performing the audit on behalf of the state or federal government.

(10) Business day--A day that is not a Saturday, Sunday, or state legal holiday. In computing a period of business days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or state legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or state legal holiday.

(11) C.F.R.--The Code of Federal Regulations.

(12) CHIP--The Texas Children's Health Insurance Program or its successor, established under Title XXI of the federal Social Security Act (42 U.S.C. §§1397aa et seq.) and Chapter 62 of the Texas Health and Safety Code.

(13) Claim--

(A) A written or electronic application, request, or demand for payment by the Medicaid or other HHS program for health care services or items; or

(B) A submitted request, demand, or representation that states the income earned or expense incurred by a provider in providing a product or a service and that is used to determine a rate of payment under the Medicaid or other HHS program.

(14) Claims administrator--The entity an operating agency has designated to process and pay Medicaid or HHS program provider claims.

(15) Closed-end contract--A contract or provider agreement for a specific period of time. It may include any specific requirements or provisions deemed necessary by the OIG to ensure the protection of the program. It must be renewed for the provider to continue to participate in the Medicaid or other HHS program.

(16) CMS--The Centers for Medicare & Medicaid Services or its successor. CMS is the federal agency responsible for administering Medicare and overseeing state administration of Medicaid and CHIP.

(17) Complete Application--A provider enrollment application that contains all the required information, including:

(A) all questions answered completely, including correct dates of birth, social security numbers, license numbers, and all requirements per provider type defined in the Texas Medicaid Provider Procedures Manual;

(B) IRS Form W-9, if required;

(C) signed and certified provider agreements;

(D) Provider Information Form (PIF-1);

(E) Principal Information Forms (PIF-2) on all persons required to be disclosed, if required;

(F) full disclosure of all criminal history, including copies of complete dispositions on all criminal history;

(G) full disclosure of all board or licensing orders, including documentation of compliance with current board orders;

(H) full disclosure of all corporate compliance agreements, settlement agreements, state or federal debt, and sanctions;

(I) documentation of an active license that is not subject to expiration within 30 days of submission of the enrollment application, if required;

(J) completion of a pre-enrollment site visit by HHSC, if required, and all required current documentation (e.g., liability insurance);

(K) documentation of fingerprints of a provider or any person with a five percent or more direct or indirect ownership in the provider, if required; and

(L) any additional documentation related to the addition of a practice location, if required or requested by HHSC.

(18) Conviction or convicted--Means that:

(A) a judgment of conviction has been entered against an individual or entity by a federal, state, or local court, regardless of whether:

(i) there is a post-trial motion or an appeal pending; or

(ii) the judgment of conviction or other record relating to the criminal conduct has been expunged or otherwise removed;

(B) a federal, state, or local court has made a finding of guilt against an individual or entity;

(C) a federal, state, or local court has accepted a plea of guilty or nolo contendere by an individual or entity; or

(D) an individual or entity has entered into participation in a first offender, deferred adjudication, pre-trial diversion, or other program or arrangement where judgment of conviction has been withheld.

(19) Credible allegation of fraud--An allegation of fraud that has been verified by the state. An allegation is considered to be credible when HHSC has carefully reviewed all allegations, facts, and evidence and has verified that the allegation has indicia of reliability. HHSC acts judiciously on a case-by-case basis.

(20) DADS--The Texas Department of Aging and Disability Services, its successor, or designee; the state agency responsible for administering long-term services and support for people who are aging and people with intellectual and physical disabilities.

(21) Day--A calendar day.

(22) Delivery of a health care item or service--Providing any item or service to an individual to meet his or her physical, mental or emotional needs or well-being, whether or not reimbursed under Medicare, Medicaid, or any federal health care program.

(23) Enrollment--The HHSC process that a provider or applicant follows to enroll or re-enroll as a provider or enroll a new practice location.

(24) Enrollment application--Documentation required by HHSC that an applicant submits to HHSC to enroll or re-enroll as a provider or to add a practice location. An enrollment application includes any supplemental forms used to add practice locations for Medicare-enrolled or limited-risk providers, as determined by HHSC.

(25) Exclusion--The suspension of a provider or any person from being authorized under the Medicaid program to request reimbursement of items or services furnished by that specific provider.

(26) Executive Commissioner--The HHSC Executive Commissioner.

(27) False statement or misrepresentation--Any statement or representation that is inaccurate, incomplete, or untrue.

(28) Federal health care program--Any plan or program that provides health benefits, whether directly, through insurance, or

otherwise, which is funded directly, in whole or in part, by the United States government (other than the federal employee health insurance program under Chapter 89 of Title 5, U.S.C.).

(29) Fraud--Any intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to that person or some other person. The term does not include unintentional technical, clerical, or administrative errors.

(30) Full investigation--Review and development of evidence to support an allegation or complaint to resolution through dismissal, settlement, or formal hearing.

(31) Furnished--Items or services provided or supplied, directly or indirectly, by any person. This includes items and services manufactured, distributed, or otherwise provided by persons that do not directly submit claims to Medicare, Medicaid, or any federal health care program, but that supply items or services to providers, practitioners, or suppliers who submit claims to these programs for such items or services. This term does not include persons that submit claims directly to these programs for items and services ordered or prescribed by another person.

(A) Directly--The provision of items and services by individuals or entities (including items and services provided by them, but manufactured, ordered, or prescribed by another individual or entity) who submit claims to Medicare, Medicaid, or any federal health care program.

(B) Indirectly--The provision of items and services manufactured, distributed, or otherwise supplied by individuals or entities who do not directly submit claims to Medicare, Medicaid, or other federal health care programs, but that provide items and services to providers, practitioners, or suppliers who submit claims to these programs for such items and services.

(32) Health information--Any information, whether oral or recorded in any form or medium, that is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse, and that relates to:

(A) the past, present, or future physical or mental health or condition of an individual;

(B) the provision of health care to an individual; or

(C) the past, present, or future payment for the provision of health care to an individual.

(33) HHS--Health and human services. Means:

(A) a health and human services agency under the umbrella of HHSC, including HHSC;

(B) a program or service provided under the authority of HHSC, including Medicaid and CHIP; or

(C) a health and human services agency, including those agencies delineated in Texas Government Code §521.0001 [~~§531.001~~].

(34) HHSC--The Texas Health and Human Services Commission, its successor, or designee.

(35) HIPAA--Collectively, the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§1320d et seq., and regulations adopted under that act, as modified by the Health Information Technology for Economic and Clinical Health Act (HITECH) (P.L. 111-105), and regulations adopted under that act at 45 C.F.R. Parts 160 and 164.

(36) Immediate family member--An individual's spouse (husband or wife); natural or adoptive parent; child or sibling; stepparent, stepchild, stepbrother or stepsister; father-, mother-, daughter-, son-, brother- or sister-in-law; grandparent or grandchild; or spouse of a grandparent or grandchild.

(37) Indirect ownership interest--Any ownership interest in an entity that has an ownership interest in another entity. The term includes an ownership interest in any entity that has an indirect ownership interest in the entity at issue.

(38) Inducement--An attempt to entice or lure an action on the part of another in exchange for, without limitation, cash in any amount, entertainment, any item of value, a promise, specific performance, or other consideration.

(39) Inspector General--The individual appointed to be the director of the OIG by the Texas Governor in accordance with Texas Government Code §544.0101 [~~§531.102(a-1)~~].

(40) "Item" or "service" means--

(A) Any item, device, medical supply or service provided to a patient:

(i) that is listed in an itemized claim for program payment or a request for payment; or

(ii) for which payment is included in other federal or state health care reimbursement methods, such as a prospective payment system; and

(B) In the case of a claim based on costs, any entry or omission in a cost report, books of account, or other documents supporting the claim.

(41) Jurisdiction--An issue or matter that the OIG has authority to investigate and act upon.

(42) Knew or should have known--A person, with respect to information, knew or should have known when the person had or should have had actual knowledge of information, acted in deliberate ignorance of the truth or falsity of the information, or acted in reckless disregard of the truth or falsity of the information. Proof of a person's specific intent to commit a program violation is not required in an administrative proceeding to show that a person acted knowingly.

(43) Managed care plan--A plan under which a person undertakes to provide, arrange for, pay for, or reimburse, in whole or in part, the cost of any health care service. A part of the plan must consist of arranging for or providing health care services as distinguished from indemnification against the cost of those services on a prepaid basis through insurance or otherwise. The term does not include an insurance plan that indemnifies an individual for the cost of health care services.

(44) Managing employee--An individual, regardless of the person's title, including a general manager, business manager, administrator, officer, or director, who exercises operational or managerial control over the employing entity, or who directly or indirectly conducts the day-to-day operations of the entity.

(45) MCO--Managed care organization. Has the meaning described in §353.2 of this title (relating to Definitions) and for purposes of this chapter includes an MCO's special investigative unit under Texas Government Code §544.0352(a)(1) [~~§531.113(a)(1)~~], and any entity with which the MCO contracts for investigative services under Texas Government Code §544.0352(a)(2) [~~§531.113(a)(2)~~].

(46) MCO provider--An association, group, or individual health care provider furnishing services to MCO members under contract with an MCO.

(47) Medicaid or Medicaid program--The Texas medical assistance program established under Texas Human Resources Code Chapter 32 and regulated in part under Title 42 C.F.R. Part 400 or its successor.

(48) Medicaid-related funds--Any funds that:

(A) a provider obtains or has access to by virtue of participation in Medicaid; or

(B) a person obtains through embezzlement, misuse, misapplication, improper withholding, conversion, or misappropriation of funds that had been obtained by virtue of participation in Medicaid.

(49) Medical assistance--Includes all of the health care and related services and benefits authorized or provided under state or federal law for eligible individuals of this state.

(50) Member of household--An individual who is sharing a common abode as part of a single-family unit, including domestic employees, partners, and others who live together as a family unit.

(51) OAG--Office of the Attorney General of Texas or its successor.

(52) OIG--HHSC Office of the Inspector General, its successor, or designee.

(53) OIG's method of finance--The sources and amounts authorized for financing certain expenditures or appropriations made in the General Appropriations Act.

(54) Operating agency--A state agency that operates any part of the Medicaid or other HHS program.

(55) Overpayment--The amount paid by Medicaid or other HHS program or the amount collected or received by a person by virtue of the provider's participation in Medicaid or other HHS program that exceeds the amount to which the provider or person is entitled under §1902 of the Social Security Act or other state or federal statutes for a service or item furnished within the Medicaid or other HHS programs. This includes:

(A) any funds collected or received in excess of the amount to which the provider is entitled, whether obtained through error, misunderstanding, abuse, misapplication, misuse, embezzlement, improper retention, or fraud;

(B) recipient trust funds and funds collected by a person from recipients if collection was not allowed by Medicaid or other HHS program policy; or

(C) questioned costs identified in a final audit report that found that claims or cost reports submitted in error resulted in money paid in excess of what the provider is entitled to under an HHS program, contract, or grant.

(56) Ownership interest--A direct or indirect ownership interest (or any combination thereof) of five percent or more in the equity in the capital, stock, profits, or other assets of a person or any mortgage, deed, trust, note, or other obligation secured in whole or in part by the person's property or assets.

(57) Payment hold (suspension of payments)--An administrative sanction that withholds all or any portion of payments due a provider until the matter in dispute, including all investigation and legal proceedings, between the provider and HHSC or an operating agency are resolved. This is a temporary denial of reimbursement under Medicaid for items or services furnished by a specified provider.

(58) Person--Any legally cognizable entity, including an individual, firm, association, partnership, limited partnership, corporation, agency, institution, MCO, Special Investigative Unit, CHIP participant, trust, non-profit organization, special-purpose corporation, limited liability company, professional entity, professional association, professional corporation, accountable care organization, or other organization or legal entity.

(59) Person with a disability--An individual with a mental, physical, or developmental disability that substantially impairs the individual's ability to provide adequately for the person's care or his or her own protection, and:

(A) who is 18 years of age or older; or

(B) who is under 18 years of age and who has had the disabilities of minority removed.

(60) Physician--An individual licensed to practice medicine in this state, a professional association composed solely of physicians, a partnership composed solely of physicians, a single legal entity authorized to practice medicine owned by two or more physicians, or a nonprofit health corporation certified by the Texas Medical Board under Chapter 162, Texas Occupations Code.

(61) Practitioner--An individual licensed or certified under state law to practice the individual's profession.

(62) Preliminary investigation--A review by the OIG undertaken to verify the merits of a complaint/allegation of fraud, waste, or abuse from any source. The preliminary investigation determines whether there is sufficient basis to warrant a full investigation.

(63) Prima facie--Sufficient to establish a fact or raise a presumption unless disproved.

(64) Professionally recognized standards of health care--Statewide or national standards of care, whether in writing or not, that professional peers of the individual or entity whose provision of care is an issue, recognize as applying to those peers practicing or providing care within the state of Texas.

(65) Program violation--A failure to comply with a Medicaid or other HHS provider contract or agreement, the Texas Medicaid Provider Procedures Manual or other official program publications, or any state or federal statute, rule, or regulation applicable to the Medicaid or other HHS program, including any action that constitutes grounds for enforcement as delineated in this subchapter.

(66) Provider--Any person, including an MCO and its subcontractors, that:

(A) is furnishing Medicaid or other HHS services under a provider agreement or contract with a Medicaid or other HHS operating agency;

(B) has a provider or contract number issued by HHSC or by any HHS agency or program or its designee to provide medical assistance, Medicaid, or any other HHS service in any HHS program, including CHIP, under contract or provider agreement with HHSC or an HHS agency; or

(C) provides third-party billing services under a contract or provider agreement with HHSC.

(67) Provider agreement--A contract, including any and all amendments and updates, with Medicaid or other HHS program to subcontract services, or with an MCO to provide services.

(68) Provider screening process--The process in which a person participates to become eligible to participate and enroll as a provider in Medicaid or other HHS program. This process includes enrollment under this chapter or Chapter 352 of this title (relating to Medicaid and Children's Health Insurance Program Provider Enrollment), 42 C.F.R Part 1001, or other processes delineated by statute, rule, or regulation.

(69) Reasonable request--Request for access, records, documentation, or other items deemed necessary or appropriate by the OIG or a requesting agency to perform an official function, and made by a properly identified agent of the OIG or a requesting agency during hours that a person, business, or premises is open for business.

(70) Recipient--A person eligible for and covered by the Medicaid or any other HHS program.

(71) Records and documentation--Records and documents in any form, including electronic form, which include:

(A) medical records, charting, other records pertaining to a patient, radiographs, laboratory and test results, molds, models, photographs, hospital and surgical records, prescriptions, patient or client assessment forms, and other documents related to diagnosis, treatment, or service of patients;

(B) billing and claims records, supporting documentation such as Title XIX forms, delivery receipts, and any other records of services provided to recipients and payments made for those services;

(C) cost reports and documentation supporting cost reports;

(D) managed care encounter data and financial data necessary to demonstrate solvency of risk-bearing providers;

(E) ownership disclosure statements, articles of incorporation, bylaws, corporate minutes, and other documentation demonstrating ownership of corporate entities;

(F) business and accounting records and support documentation;

(G) statistical documentation, computer records, and data;

(H) clinical practice records, including patient sign-in sheets, employee sign-in sheets, office calendars, daily or other periodic logs, employment records, and payroll documentation related to items or services rendered under an HHS program; and

(I) records affidavits, business records affidavits, evidence receipts, and schedules.

(72) Recoupment of overpayment--A sanction imposed to recover funds paid to a provider or person to which the provider or person was not entitled.

(73) Requesting agency--The OIG; the OAG's Medicaid Fraud Control Unit or Civil Medicaid Fraud Division; any other state or federal agency authorized to conduct compliance, regulatory, or program integrity functions on a provider, a person, or the services rendered by the provider or person.

(74) Risk analysis--The process of defining and analyzing the dangers to individuals, businesses, and governmental entities posed by potential natural and human-caused adverse events. A risk analysis can be either quantitative, which involves numerical probabilities, or qualitative, which involves observations that are not numerical in nature.

(75) Sanction--Any administrative enforcement measure imposed by the OIG pursuant to this subchapter other than administrative actions defined in §371.1701 of this chapter [~~subchapter~~] (relating to Administrative Actions).

(76) Sanctioned entity--An entity that has been convicted of any offense described in 42 C.F.R §§1001.101 - 1001.401 or has been terminated or excluded from participation in Medicare, Medicaid in Texas, or any other state or federal health care program.

(77) Services--The types of medical assistance specified in §1905(a) of the Social Security Act (42 U.S.C. §1396d(a)) and other HHS program services authorized under federal and state statutes that are administered by HHSC and other HHS agencies.

(78) SIU--A Special Investigative Unit of an MCO as defined under Texas Government Code §544.0352(a)(1) [~~§531.113(a)(1)~~].

(79) Social Security Act--Legislation passed by Congress in 1965 that established the Medicaid program under Title XIX of the Act and created the Medicare program under Title XVIII of the Act.

(80) Solicitation--Offering to pay or agreeing to accept, directly or indirectly, overtly or covertly, any remuneration in cash or in kind to or from another for securing a patient or patronage for or from a person licensed, certified, or registered or enrolled as a provider or otherwise by a state health care regulatory or HHS agency.

(81) State health care program--A State plan approved under Title XIX, any program receiving funds under Title V or from an allotment to a State under such Title, any program receiving funds under Subtitle I of Title XX or from an allotment to a State under Subtitle I of Title XX, or any State child health plan approved under Title XXI.

(82) Substantial contractual relationship--A relationship in which a person has direct or indirect business transactions with an entity that, in any fiscal year, amounts to more than $25,000 or five percent of the entity's total operating expenses, whichever is less.

(83) Suspension of payments (payment hold)--An administrative sanction that withholds all or any portion of payments due a provider until the matter in dispute, including all investigation and legal proceedings, between the provider and HHSC or an operating agency or its agent(s) are resolved. This is a temporary denial of reimbursement under the Medicaid or other HHS program for items or services furnished by a specified provider.

(84) System recoupment--Any action to recover funds paid to a provider or other person to which they were not entitled, by means other than the imposition of a sanction under these rules. It may include any routine payment correction by an agency or an agency's fiscal agent to correct an overpayment that resulted without any alleged wrongdoing.

(85) TEFRA--The Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982, a federal law that allows states to make medical assistance available to certain children with disabilities without counting their parent's income.

(86) Terminated--Means:

(A) with respect to a Medicaid or CHIP provider, the revocation of the billing provider's Medicaid or CHIP billing privileges after the provider has exhausted all applicable appeal rights or the timeline for appeal has expired; and

(B) with respect to a Medicare provider, supplier, or eligible professional, the revocation of the provider's, supplier's, or eligible professional's Medicare billing privileges after the provider, sup-

plier, or eligible professional has exhausted all applicable appeal rights or the timeline for appeal has expired.

(87) Terminated for cause--Termination based on allegations related to fraud, program violations, integrity, or improper quality of care.

(88) Title V--Title V (Maternal and Child Health Services Block Grant) of the Social Security Act, codified at 42 U.S.C. §§701 et seq.

(89) Title XVIII--Title XVIII (Medicare) of the Social Security Act, codified at 42 U.S.C. §§1395 et seq.

(90) Title XIX--Title XIX (Medicaid) of the Social Security Act, codified at 42 U.S.C. §§1396-1 et seq.

(91) Title XX--Title XX (Social Services Block Grant) of the Social Security Act, codified at 42 U.S.C. §§1397 et seq.

(92) Title XXI--Title XXI (State Children's Health Insurance Program (CHIP)) of the Social Security Act, codified at 42 U.S.C. §§1397aa et seq.

(93) TMRP--The Texas Medical Review Program, which is the inpatient hospital utilization review process HHSC uses for hospitals reimbursed under HHSC's prospective payment system.

(94) U.S.C.--United States Code.

(95) Vendor hold--Any legally authorized hold or lien by any state or federal governmental unit against future payments to a person. Vendor holds may include tax liens, state or federal program holds, liens established by the OAG Collections Division, and State Comptroller voucher holds.

(96) Waste--Practices that a reasonably prudent person would deem careless or that would allow inefficient use of resources, items, or services.

§371.3. Purpose and Authority.

(a) The OIG is responsible for preventing, detecting, auditing, inspecting, reviewing, and investigating fraud, waste, and abuse in Medicaid and other HHS programs. In addition, the OIG is responsible for enforcing state law relating to the provision of HHS in Medicaid and other HHS programs.

(b) The statutory authority for this chapter is provided by Texas Human Resources Code Chapters 32 and 36; Texas Government Code Chapters 540 and 544 [~~Chapter 531~~], and federal law (Social Security Act) and regulations (42 C.F.R.).

§371.31. Federal Felony Match.

The OIG has a system to cross-reference data collected for the programs identified in Texas Government Code §544.0454 [~~§531.008(c) of the Texas Government Code~~] with the list of fugitive felons maintained by the federal government. The purpose of the data match is to identify fugitive felons who may be enrolled as recipients in programs that are referenced in Texas Government Code §544.0454 [~~§531.008(c) of the Texas Government Code~~].

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

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Karen Ray
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SUBCHAPTER E. PROVIDER DISCLOSURE AND SCREENING

1 TAC §371.1011

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; and Texas Government Code § 531.102, which provides that the Executive Commissioner of HHSC shall work in consultation with the HHSC OIG whenever the executive commissioner is required by law to adopt a rule or policy necessary to implement a power or duty of the office.

The amendment affects Texas Government Code §§531.0055, 531.008, 531.001, 531.02115, 531.102, 531.1021, 531.1032, and 531.113.

§371.1011. Recommendation Criteria.

(a) A felony or misdemeanor conviction, as defined in 42 C.F.R. §1001.2, under Texas law, the laws of another state, or federal law, may affect a provider's and/or person's ability to participate.

(b) The OIG may recommend denial of an enrollment application of the applicant or a person required to be disclosed in accordance with §371.1005 of this subchapter (relating to Disclosure Requirements) on the basis of information revealed through a background check on the applicant, provider, or a person required to be disclosed. A background check may include:

(1) information concerning the licensing status of the health care professional;

(2) information contained in the criminal history record information check performed in accordance with Texas Government Code §544.0153 [~~§531.1032~~];

(3) a review of federal databases;

(4) the pendency of an open investigation by the OIG; and

(5) any other reason that the OIG determines appropriate.

(c) On a case-by-case basis, the OIG may recommend approval of an enrollment application despite the existence of a criminal history.

(1) When evaluating criminal history record information, the OIG takes into consideration:

(A) the extent to which the conduct relates to the services provided or to be provided under Medicaid;

(B) the degree to which the provider, applicant, or person required to be disclosed does or will interact with Medicaid recipients as a provider; and

(C) any previous evidence that the provider, applicant, or person required to be disclosed engaged in fraud, waste, or abuse under Medicaid.

(2) The OIG also considers the following circumstances:

(A) the number of criminal convictions as defined in 42 C.F.R. §1001.2;

(B) the nature and seriousness of the crime;

(C) whether the individual or entity has completed the sentence, punishment, or other requirements that were imposed for the crime and, if so, the length of time since completion;

(D) in the case of an individual, the age of the individual at the time the crime was committed;

(E) whether the crime was committed in connection with the individual's or entity's participation in Medicaid or other HHS programs;

(F) the extent of the individual's or entity's rehabilitation efforts and outcome;

(G) the conduct of the individual or entity, and the work history of the individual, both before and after the crime;

(H) the relationship of the crime to the individual or entity's fitness or capacity to remain a provider or become a provider;

(I) whether approving the individual or entity would offer the individual or entity the opportunity to engage in further criminal activity;

(J) the extent to which the individual or entity provides relevant information or otherwise demonstrates that approval should be granted; and

(K) any other circumstances that HHSC determines are relevant to the individual or entity's eligibility.

(3) The provider is responsible for providing to HHSC or to the OIG, within three business days of an IG request, information related to the degree to which a person could interact with Medicaid recipients as a provider.

(4) In all instances, the OIG takes into consideration evidence of multiple or repeated instances of the same or similar conduct.

(d) In addition to the considerations outlined in subsection (c) of this section, the OIG specifically takes into consideration the following conduct that may be contained in criminal history record information of providers, applicants, or persons required to be disclosed:

(1) for provider types that have or may have direct access to recipients in their capacity as a provider:

(A) conduct involving healthcare fraud;

(B) conduct involving abuse of patients, minors, the elderly, or the disabled;

(C) conduct involving prohibited sexual conduct or involving children as victims;

(D) conduct against the person such as homicide, kidnapping, or assault;

(E) conduct involving perjury or crimes of other falsification, such as tampering with physical evidence or governmental record;

(F) conduct involving insurance fraud;

(G) conduct involving illegal manufacture, use, possession or distribution of controlled substances; and

(H) conduct involving theft, including theft by check;

(2) for provider types that may transport recipients and guardians in their capacity as a provider:

(A) conduct involving healthcare fraud;

(B) conduct involving abuse of patients, minors, the elderly, or the disabled;

(C) conduct involving prohibited sexual conduct or involving children as victims;

(D) conduct against the person such as homicide, kidnapping, or assault;

(E) conduct involving perjury or tampering with a governmental record;

(F) conduct involving intoxication and operating a motor vehicle, including driving while intoxicated, intoxication assault, and intoxication manslaughter;

(G) conduct involving illegal manufacture, use, possession, or distribution of controlled substances;

(H) conduct involving criminal trespass;

(I) conduct involving extortion; and

(J) conduct involving promotion of prostitution or human trafficking;

(3) for provider types that may have interaction with or access to recipients, recipients' homes, or recipients' property in their capacity as a provider:

(A) conduct involving healthcare fraud;

(B) conduct involving abuse of patients, minors, the elderly, or the disabled;

(C) conduct involving prohibited sexual conduct or involving children as victims;

(D) conduct against the person such as homicide, kidnapping, or assault;

(E) conduct against property such as theft, burglary, property damage, or criminal trespass;

(F) conduct involving breach of fiduciary duty;

(G) conduct involving illegal manufacture, use, possession, or distribution of controlled substances; and

(4) for provider types that have no recipient interaction or access:

(A) conduct involving healthcare fraud;

(B) conduct involving breach of fiduciary duty or a deceptive business practice; and

(C) conduct involving theft, including theft by check.

(e) The OIG may recommend permanent denial of an enrollment application if:

(1) the applicant, provider, or a person required to be disclosed has been convicted, as defined in 42 C.F.R. §1001.2, of an offense arising from a fraudulent act under Medicaid or other HHS programs; and

(2) that fraudulent act resulted in injury to an elderly person, a person with a disability, or a person younger than 18 years of age.

(f) The OIG may recommend denial of any enrollment application, regardless of provider type, if it determines in its discretion that the applicant may pose an increased risk for committing fraud, waste, or abuse or may demonstrate unfitness to provide or bill for medical assistance items or services. In addition to the applicant's criminal, regulatory, and administrative sanction history, the OIG considers all applicable circumstances, including the following, if applicable:

(1) the applicant, a person required to be disclosed, or a person with an ownership or control interest in the provider did not submit complete, timely, and accurate information, failed to cooperate with any provider screening methods, or refused to permit access for a site visit;

(2) the applicant or a person required to be disclosed has failed to repay overpayments to Medicaid, CHIP, or other HHS programs;

(3) the applicant, provider, or a person required to be disclosed pursuant to §371.1005 of this subchapter, has been suspended or prohibited from participating, excluded, terminated, or debarred from participating in any state Medicaid, CHIP or other HHS agency program;

(4) the applicant, provider, or a person required to be disclosed has participated in Medicaid or CHIP program and failed to bill for medical assistance or refer clients for medical assistance within the 12-month period prior to submission of the enrollment application;

(5) the applicant, provider, or a person required to be disclosed has falsified any information on the enrollment application; and

(6) The OIG is unable to verify the identity of the applicant, provider, or a person required to be disclosed.

(g) Healthcare professionals who are licensed and in good standing with a Texas licensing authority that requires the submission of fingerprints for the purpose of conducting a criminal history record information check are not subject to an additional criminal history record information check by the OIG for the purposes of determining eligibility to enroll, unless performing a criminal history record information check is required or appropriate for other reasons, including for conducting an investigation of fraud, waste, or abuse or where required by 42 C.F.R. §455.450.

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

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SUBCHAPTER F. INVESTIGATIONS

1 TAC §371.1305

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; and Texas Government Code § 531.102, which provides that the Executive Commissioner of HHSC shall work in consultation with the HHSC OIG whenever the executive commissioner is required by law to adopt a rule or policy necessary to implement a power or duty of the office.

The amendment affects Texas Government Code §§531.0055, 531.008, 531.001, 531.02115, 531.102, 531.1021, 531.1032, and 531.113.

§371.1305. Preliminary Investigation.

(a) The OIG may receive and investigate complaints related to fraud, waste, or abuse within HHSC or an HHS agency. The OIG prioritizes complaints for purposes of determining the order in which complaints are investigated, taking into account the seriousness of the allegations made in a complaint. The OIG may consider the following factors when opening cases and prioritizing cases for the efficient management of the OIG's workload:

(1) the highest potential for recovery or risk to the State;

(2) the history of noncompliance with applicable law and regulations;

(3) identified fraud trends;

(4) internal affairs investigations according to the seriousness of the threat to recipient or public safety or the risk to program integrity in terms of the amount or scope of fraud, waste, or abuse posed by the allegation that is the subject of the investigation;

(5) acts or the failure to act that potentially threatens the public health or may result in physical harm to the public; and

(6) the potential for or actual physical destruction of state property, including the loss, theft and destruction of State assets, property, benefits, or equipment.

(b) The OIG assesses complaints received by the OIG from any source to determine within 30 days of receipt whether it has:

(1) sufficient indicators of fraud, waste, or abuse; and

(2) jurisdiction.

(c) If the OIG has jurisdiction and sufficient information to justify an investigation, the OIG completes a preliminary investigation within 45 days of receipt of the complaint to determine whether there is sufficient basis to warrant a full investigation. The OIG may also collaborate with federal or other state authorities in conducting audits or investigations and in taking enforcement measures in response to program violations.

(1) After completing its preliminary investigation, the OIG may, at its discretion, initiate settlement discussions of an administrative case with the person who is the subject of the investigation. If the matter cannot reasonably be settled or if the OIG determines that further investigation is required before the propriety of settlement or other enforcement can be evaluated, the OIG may conduct a full investigation.

(2) If, at any point during its investigation, the OIG determines that an overpayment resulted without wrongdoing, the OIG may refer the matter for routine payment correction by HHSC's fiscal agent or an operating agency or may offer a payment plan.

(d) The OIG may also consider the following factors in determining whether to open a full investigation:

(1) the nature of the program violation;

(2) evidence of knowledge and intent;

(3) the seriousness of the program violation;

(4) the extent of the violation;

(5) prior noncompliance issues;

(6) prior imposition of sanctions, damages, or penalties;

(7) willingness to comply with program rules;

(8) efforts to interfere with an investigation or witnesses;

(9) recommendations of peer review groups;

(10) program violations within Medicaid, Medicare, Titles V, XIX, XX, CHIP, and other HHS programs;

(11) pertinent affiliate relationships;

(12) past and present compliance with licensure and certification requirements;

(13) history of criminal, civil, or administrative liability; and

(14) any other relevant information or analysis the OIG deems appropriate.

(e) In addition to the factors listed in subsection (d) of this section, the OIG may also consider the following factors in determining whether to close a preliminary investigation:

(1) the complainant is unavailable or unwilling to cooperate;

(2) information or evidence to substantiate the complaint is unavailable or unobtainable;

(3) the complaint is resolved after it is filed with the OIG;

(4) data regarding the subject of the complaint, such as claims or encounter data, does not support the allegations raised in the complaint;

(5) an investigation, audit, inspection, or other review regarding the complaint already exists;

(6) an analysis of the provider's billing patterns does not show that the provider's billing patterns vary significantly from those of comparable providers; or

(7) any other relevant information or analysis the OIG deems appropriate.

(f) Once the preliminary investigation is completed, the OIG reviews the allegations of fraud, waste, abuse, or questionable practices, and all facts and evidence relating to the allegation and prepares a preliminary report before the allegation of fraud or abuse proceeds to a full investigation. The preliminary report documents the following:

(1) the allegation that is the basis of the report;

(2) the evidence reviewed;

(3) the procedures used to conduct the preliminary investigation;

(4) the findings of the preliminary investigation; and

(5) whether a full investigation is warranted.

(g) The OIG maintains a record of all allegations of fraud, waste, or abuse against a provider containing the date each allegation was received or identified and the source of the allegation, if available. This record is confidential under Texas Government Code §544.0259(e) [~~§531.1021(g)~~] and subject to Texas Government Code §544.0259(f) [~~§531.1021(h)~~].

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SUBCHAPTER G. ADMINISTRATIVE ACTIONS AND SANCTIONS
DIVISION 1. GENERAL PROVISIONS

1 TAC §371.1613

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; and Texas Government Code § 531.102, which provides that the Executive Commissioner of HHSC shall work in consultation with the HHSC OIG whenever the executive commissioner is required by law to adopt a rule or policy necessary to implement a power or duty of the office.

The amendment affects Texas Government Code §§531.0055, 531.008, 531.001, 531.02115, 531.102, 531.1021, 531.1032, and 531.113.

§371.1613. Informal Resolution Process.

(a) A person who is served a notice of intent to impose a sanction or notice of a payment hold may request an informal resolution meeting (IRM) to discuss the issues identified by the OIG in the notice.

(b) A written request for an IRM must:

(1) be sent by certified mail to the address specified in the notice letter;

(2) arrive at the address specified in the notice of intent to impose the sanction no later than:

(A) for a payment hold, ten days after service on the person of the notice of payment hold;

(B) for any sanction other than a payment hold or notice of recoupment of overpayment or debt, 30 days after service on the person of the notice; or

(C) for a notice of recoupment or overpayment or debt, a person may request an IRM any time prior to the issuance of the final notice;

(3) include a statement as to the specific issues, findings, and/or legal authority in the notice letter with which the person disagrees, and, in the case of a payment hold, why an IRM would be beneficial for the resolution of the case;

(4) state the basis for the person's contention that the specific issues or findings and conclusions of the OIG are incorrect; and

(5) be signed by the person or an attorney for the person. No other person or party may request an IRM for or on behalf of the subject of the sanction.

(c) On timely request for an initial IRM:

(1) For any sanction other than a payment hold, the OIG schedules the IRM and gives notice of the time and place of the meeting.

(2) For a request based on a payment hold, the OIG decides whether to grant the provider's request for an IRM and, if the OIG decides to grant the IRM, the OIG schedules the IRM and notice of the time and place of the meeting.

(d) A person may also submit to the OIG any documentary evidence or written argument regarding whether the sanction is warranted. Documentary evidence or written argument that may be submitted is not necessarily controlling upon the OIG, however.

(e) A written request for an IRM may be combined with a request for an administrative hearing, if a person is entitled to such hearing, and if it meets the requirements of this subchapter. If both an IRM and an administrative hearing have been requested by a person entitled to both, the informal resolution process shall run concurrently with the administrative hearing process, and the administrative hearing process may not be delayed on account of the informal resolution process.

(f) Upon written request of a provider, the OIG provides for a recording of an IRM at no expense to the provider who requested the meeting. The recording of an IRM is made available to the provider who requested the meeting. The OIG does not record an IRM unless the OIG receives a written request from a provider.

(g) Notwithstanding Texas Government Code §544.0259(e) [~~§531.1021(g)~~], an IRM is confidential, and any information or materials obtained by the OIG, including the OIG's employees or agents, during or in connection with an IRM, including a recording, are privileged and confidential and may not be subject to disclosure under Chapter 552, Texas Government Code, or any other means of legal compulsion for release, including disclosure, discovery, or subpoena.

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

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Karen Ray
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DIVISION 2. GROUNDS FOR ENFORCEMENT

1 TAC §371.1663, §371.1669

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; and Texas Government Code § 531.102, which provides that the Executive Commissioner of HHSC shall work in consultation with the HHSC OIG whenever the executive commissioner is required by law to adopt a rule or policy necessary to implement a power or duty of the office.

The amendments affect Texas Government Code §§531.0055, 531.008, 531.001, 531.02115, 531.102, 531.1021, 531.1032, and 531.113.

§371.1663. Managed Care.

A person is subject to administrative action or sanctions if the person:

(1) is an MCO or an MCO provider and fails to provide a health care benefit, service, or item that the MCO or MCO provider is required to provide according to the terms of its contract with an operating agency, its fiscal agent, or other contractor to provide health care services to Medicaid or HHS program recipients;

(2) is an MCO or MCO provider and fails to provide to an individual a health care benefit, service, or item that the MCO or MCO provider is required to provide by state or federal law, regulation, or program rule;

(3) is an MCO and engages in actions that indicate a pattern of wrongful denial, excessive delay, barriers to treatment, authorization requirements that exceed professionally recognized standards of health care, or other wrongful avoidance of payment for a health care benefit, service or item that the organization is required to provide under its contract with an operating agency;

(4) is an MCO and engages in actions that cause a delay in making payment for a health care benefit, service or item that the organization is required to provide under its contract with an operating

agency, and the delay results in processing or paying the claim on a date later than that allowed by the MCO's contract;

(5) is an MCO or MCO provider and engages in fraudulent activity or misrepresents or omits material facts in connection with the enrollment in the MCO's managed care plan of an individual eligible for medical assistance or in connection with marketing the organization's services to an individual eligible for medical assistance;

(6) is an MCO or MCO provider and receives a capitation payment, premium, or other remuneration after enrolling a member in the MCO's managed care plan whom the MCO knows or should have known is not eligible for medical assistance;

(7) is an MCO or MCO provider and discriminates against MCO-enrollees or prospective MCO-enrollees in any manner, including marketing and disenrollment, and on any basis, including, without limitation, age, gender, ethnic origin, or health status;

(8) is an MCO or MCO provider and fails to comply with any term of a contract with a Medicaid or other HHS program or operating agency or other contract to provide health care services to Medicaid or HHS program recipients and the failure leads to patient harm, creates a risk of fiscal harm to the state, or results in fiscal harm to the state;

(9) is an MCO or an MCO provider and fails to provide, in the form requested, to the relevant operating agency or its authorized agent upon written request, accurate encounter data, accurate claims data, or other information contractually or otherwise required to document the services and items delivered by or through the MCO to recipients;

(10) is an MCO or an MCO provider and files a cost report or other report with the Medicaid or other HHS program that violates any of the cost report violations in §371.1665 of this division (relating to Cost Report Violations);

(11) is an MCO or MCO provider and misrepresents, falsifies, makes a material omission, or otherwise mischaracterizes any facts on a request for proposal, contract, report, or other document with respect to the MCO's ownership, provider network, credentials of the provider network, affiliated persons, solvency, special investigative unit, plan for detecting and preventing fraud, waste, or abuse, or any other material fact;

(12) is an MCO or MCO provider and fails to maintain the criteria and conditions supporting an application and grant of a waiver to HHSC, or fails to demonstrate the results that were contemplated, based upon representations by the MCO or provider in its proposal submissions or contract negotiations when the waiver was granted, if the failure is related to representations made by the MCO in its proposal, readiness review, contract, marketing materials, audit management responses, or other written representation submitted to the state, and the failure leads to patient harm, creates a risk of fiscal harm to the state, or results in fiscal harm to the state;

(13) is an MCO or MCO provider and misrepresents, falsifies, makes a material omission, or otherwise mischaracterizes any facts on a patient assessment or any other document that would have the effect of increasing the MCO's capitation or reimbursement rate, would increase incentive payments or premiums, would decrease the amount of capitation at risk, or would decrease the experience rebate owed to the Medicaid program;

(14) is an MCO or MCO provider and fails to simultaneously notify the OIG and the OAG in writing of the discovery of fraud, waste, or abuse in the Medicaid or CHIP program;

(15) is an MCO and fails to ensure that any payment recovery efforts in which the MCO engages are in accordance with applicable law, contract requirements, or other applicable procedures established by the Executive Commissioner or the OIG;

(16) is an MCO and engages in payment recovery of an amount sought that exceeds $100,000 and that is related to fraud, waste, or abuse in the Medicaid or CHIP program:

(A) without first notifying the OIG and the OAG in writing of the discovery of fraud, waste, or abuse in the Medicaid or CHIP program;

(B) within ten business days after notifying the OIG or the OAG of the discovery or fraud, waste, or abuse in the Medicaid or CHIP program; or

(C) after receipt of a notice from the OIG or the OAG indicating that the MCO is not authorized to proceed with recovery efforts;

(17) is an MCO and fails to timely submit an accurate monthly report to the OIG detailing the amount of money recovered after any and all payment recovery efforts engaged in as a result of the discovery of fraud, waste, or abuse in the Medicaid or CHIP program;

(18) notwithstanding the terms of any contract, is an MCO or MCO provider and fails to timely comply with the requirements of the Texas Medicaid Managed Care program or with the terms of the MCO contract with HHSC or other contract to provide health care services to Medicaid or HHS program recipients, and the failure leads to patient harm, creates a risk of fiscal harm to the state, or results in fiscal harm to the state;

(19) is an MCO or MCO provider and engages in marketing services in violation of Texas Government Code §545.0202 [~~§531.02115 of the Texas Government Code~~], the program rules or contract and has not received prior authorization from the program for the marketing campaign;

(20) is an MCO or an MCO provider and fails to use prior authorization and utilization review processes to reduce authorizations of unnecessary services and inappropriate use of services;

(21) is an MCO or MCO provider and commits or conspires to commit a violation of §32.039(b) of the Texas Human Resources Code;

(22) is an MCO and fails to implement or release a payment hold as directed by the OIG or to report accurate payment hold amounts to the OIG;

(23) is an MCO and fails to comply with any provision in Chapter 353, Subchapter F of this title (relating to Special Investigative Units) or Chapter 370, Subchapter F of this title (relating to Special Investigative Units); or

(24) is an MCO and releases information pertaining to an OIG investigation of a provider.

§371.1669. Self-Dealing.

A person is subject to administrative actions or sanctions if the person:

(1) rebates or accepts a fee or a part of a fee or charge for a Medicaid or other HHS program patient referral;

(2) solicits recipients or causes recipients to be solicited, through offers of transportation or otherwise, for the purpose of claiming payment related to those recipients;

(3) knowingly offers to pay or agrees to accept, directly or indirectly, overtly or covertly, any remuneration in cash or in kind to

or from another for securing or soliciting a patient or patronage for or from a person licensed, certified, or registered by a state health care regulatory agency or HHS agency;

(4) knowingly offers to pay or agrees to accept, directly or indirectly, overtly or covertly, any remuneration in cash or in kind to or from another for securing or soliciting a patient or patronage for or from a person licensed, certified, or registered by a state health care regulatory agency, subject to the exceptions enumerated in Chapter 102, Texas Occupations Code;

(5) solicits or receives, directly or indirectly, overtly or covertly, any remuneration, including any kickback, bribe, or rebate, in cash or in kind for referring an individual to a person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the Medicaid or other HHS program, provided that this paragraph does not prohibit the referral of a patient to another practitioner within a multispecialty group or university medical services research and development plan (practice plan) for medically necessary services;

(6) solicits or receives, directly or indirectly, overtly or covertly, any remuneration, including any kickback, bribe, or rebate, in cash or in kind for purchasing, leasing, or ordering, or arranging for or recommending the purchasing, leasing, or ordering of, any good, facility, service, or item for which payment may be made, in whole or in part, under the Medicaid or other HHS program;

(7) offers or pays, directly or indirectly, overtly or covertly, any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to refer an individual to another person for the furnishing of, or for arranging the furnishing of, any item or service for which payment may be made, in whole or in part, under the Medicaid or other HHS program, provided that this paragraph does not prohibit the referral of a patient to another practitioner within a multispecialty group or university medical services research and development plan (practice plan) for medically necessary services;

(8) offers or pays, directly or indirectly, overtly or covertly, any remuneration, including any kickback, bribe, or rebate, in cash or in kind to induce a person to purchase, lease, or order, or arrange for or recommend the purchase, lease, or order of, any good, facility, service, or item for which payment may be made, in whole or in part, under the Medicaid or other HHS program;

(9) provides, offers, or receives an inducement in a manner or for a purpose not otherwise prohibited by this section or §102.001, Texas Occupations Code, to or from a person, including a recipient, provider, employee or agent of a provider, third-party vendor, or public servant, for the purpose of influencing or being influenced in a decision regarding:

(A) selection of a provider or receipt of a good or service under the Medicaid or other HHS program;

(B) the use of goods or services provided under the Medicaid or other HHS program; or

(C) the inclusion or exclusion of goods or services available under the Medicaid program;

(10) is a physician and refers a Medicaid or other HHS program recipient to an entity with which the physician has a financial relationship for the furnishing of designated health services, payment for which would be denied under Title XVIII (Medicare) pursuant to 42 U.S.C. §1395nn, §1396b(s) (Stark I, II, and III), the federal Anti-Kickback Statute, the Affordable Care Act, or other state or federal law prohibiting self-dealing or self-referral;

(11) engages in marketing services in violation of Texas Government Code §545.0202 [~~§531.02115 of the Texas Government Code~~], program rules, or contract and has not received prior authorization from the program for the marketing campaign; or

(12) fails to disclose documentation of financial relationships necessary to establish compliance with §1877 and §1903(s) of the Social Security Act or 42 C.F.R. §§411.350 - .389 (Stark I, II, and III), the federal Anti-Kickback Statute, the Affordable Care Act, or other state or federal law prohibiting self-dealing or self-referral.

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

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Karen Ray
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DIVISION 3. ADMINISTRATIVE ACTIONS AND SANCTIONS

1 TAC §371.1709

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; Texas Government Code §531.033, which requires the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties under Chapter 531; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program; and Texas Government Code § 531.102, which provides that the Executive Commissioner of HHSC shall work in consultation with the HHSC OIG whenever the executive commissioner is required by law to adopt a rule or policy necessary to implement a power or duty of the office.

The amendment affects Texas Government Code §§531.0055, 531.008, 531.001, 531.02115, 531.102, 531.1021, 531.1032, and 531.113.

§371.1709. Payment Hold.

(a) Subject to subsections (c) and (d) of this section, the OIG imposes a payment hold against a provider only:

(1) to compel the production records or documents;

(2) when requested by the state's Medicaid Fraud Control Unit; or

(3) upon the determination a credible allegation of fraud exists.

(b) The OIG may elect not to impose a payment hold, to discontinue a payment hold, to impose a payment hold only in part, or to convert a payment hold imposed in whole to one imposed only in part, for any of the good cause exceptions enumerated in 42 C.F.R. §455.23 and in Texas Government Code §544.0301(d) [~~§531.102(g)(8)~~].

(c) The OIG may not impose a payment hold on claims for reimbursement submitted by a provider for medically necessary services for which the provider has obtained prior authorization from the commission or a contractor of the commission unless the OIG has evidence that the provider has materially misrepresented documentation relating to those services.

(d) Unless the OIG receives a request from a law enforcement agency to temporarily withhold notice pursuant to 42 C.F.R. §455.23, the OIG shall provide notice as required by 42 C.F.R. §455.23(b) and Texas Government Code §544.0302 [~~§531.102(g)~~].

(e) Scope and effect of payment hold.

(1) Once a person is placed on payment hold, payment of Medicaid claims for specific procedures or services is limited or denied as long as the payment hold is in effect.

(2) After a payment hold is terminated for any reason, the OIG may retain the funds accumulated during the payment hold to offset any overpayment, criminal restitution, penalty or other assessment, or agreed-upon amount that may result from ongoing investigation of the person, including any payment amount accepted by the prosecuting authorities made in lieu of a prosecution to reimburse the Medicaid or other HHS program.

(3) The payment hold may be terminated or partially lifted for the reasons outlined in 42 C.F.R. §455.23 or Texas Government Code §544.0301(d) [~~§531.102(g)(8)~~].

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

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CHAPTER 377. CHILDREN'S ADVOCACY PROGRAMS

SUBCHAPTER B. STANDARDS OF OPERATION FOR LOCAL COURT-APPOINTED VOLUNTEER ADVOCATE PROGRAMS

1 TAC §377.107, §377.113

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC) proposes amendments to §377.107, concerning Contract with Statewide Volunteer Advocate Organization, and §377.113, concerning Local Volunteer Advocate Program Administration.

BACKGROUND AND PURPOSE

The purpose of the proposal is to implement House Bill 474, 88th Legislature, Regular Session, 2023, which amends Texas Family Code §264.603 and §264.604, which requires HHSC to include in the contract measurable goals and objectives for the number of active and inactive volunteers in the program, and to ensure the statewide organization adopts a grievance process for complaints regarding negligence or misconduct by a volunteer advocate.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §377.107(c) clarifies that the contract must include measurable goals and objectives for both active and inactive volunteer advocates to provide more detailed data on the number of volunteers actively involved in a case as an advocate.

The proposed amendment to §377.113(a)(9) adds that the grievance procedure should also be available for current and former clients who received services from the volunteer advocate program.

FISCAL NOTE

Trey Wood, Chief Financial Officer, has determined that for each year of the first five years that the rules will be in effect, enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rules will be in effect:

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

(2) implementation of the proposed rules will not affect the number of HHSC employee positions;

(3) implementation of the proposed rules will result in no assumed change in future legislative appropriations;

(4) the proposed rules will not affect fees paid to HHSC;

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

(6) the proposed rules will expand existing regulations;

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

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Trey Wood has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rules do not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rules.

LOCAL EMPLOYMENT IMPACT

The proposed rules will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to these rules because the rules are necessary to protect the health, safety, and welfare of the residents of Texas, do not impose a cost on regulated persons, and are necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Crystal Starkey, Deputy Executive Commissioner for Family Health Services, has determined that for each year of the first five years the rules are in effect, the public benefit will be more transparency about access to and quality of volunteer advocate services for children and their families throughout the state.

Trey Wood has also determined that for the first five years the rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules because the proposed rules will not incur economic costs.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R082" in the subject line.

STATUTORY AUTHORITY

The amendments are authorized by Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Family Code §264.609, which authorizes the Executive Commissioner of HHSC to adopt rules governing the Court Appointed Volunteer Advocate Program.

The amendments affect Texas Government Code §531.0055 and Texas Family Code §264.609.

§377.107. Contract with Statewide Volunteer Advocate Organization.

(a) HHSC contracts with a single statewide volunteer advocate organization that satisfies subsection (b) of this section, to perform the following functions for local volunteer advocate programs:

(1) training;

(2) technical assistance; and

(3) evaluation services for the benefit of the local volunteer advocate programs.

(b) HHSC may contract only with a statewide volunteer advocate organization that:

(1) is exempt from federal income taxation under Internal Revenue Code of 1986 §501(a) and §501(c)(3); and

(2) is composed of individuals or groups of individuals who have expertise in the dynamics of child abuse and neglect, and with experience in operating local volunteer advocate programs.

(c) The contract must:

(1) include measurable goals and objectives relating to the number of:

(A) active and inactive volunteer advocates in the program; and

(B) children receiving services from the program; and

(2) follow practices to ensure compliance with standards referenced in the contract.

§377.113. Local Volunteer Advocate Program Administration.

(a) Required Written Documents. A local volunteer advocate program must have in writing:

(1) a mission and purpose statement approved by the statewide volunteer advocate organization;

(2) the local volunteer advocate program's goals and objectives, with an action plan and timeline for meeting those goals and objectives;

(3) a method for evaluating the progress of accomplishing the local volunteer advocate program's goals and objectives;

(4) a funding plan based on the local volunteer advocate program's goals and objectives;

(5) personnel policies and procedures;

(6) job descriptions for employees, directors, and volunteers;

(7) procedures for volunteer recruiting, screening, training, and appointment to cases;

(8) policies for support and supervision of volunteers;

(9) a grievance procedure for employees, volunteers, current and former clients, and community members;

(10) a media/crisis communication plan;

(11) a fidelity bond;

(12) accounting procedures;

(13) a weapons prohibition policy approved by the statewide volunteer advocate organization; and

(14) a memorandum of understanding between DFPS and the local volunteer advocate program that defines the working relationship between the local volunteer advocate program and DFPS.

(b) Personnel.

(1) A local volunteer advocate program must have a maximum volunteer-to-supervisor ratio of 30:1 and a maximum case-to-supervisor ratio of 45:1.

(2) A local volunteer advocate program must endeavor to provide equal employment opportunity regardless of race, color, religion, national origin, age, sex (including pregnancy), disability, or other status protected by law and must comply with all applicable laws and regulations regarding employment.

(3) A local volunteer advocate program must endeavor to be an inclusive organization whose employees, volunteers, and directors reflect the diversity of the children and community that the program

serves in terms of gender, ethnicity, and cultural and socio-economic backgrounds.

(c) Conduct.

(1) All volunteers, employees, and directors must conduct themselves in a professional manner.

(2) Volunteers, employees, and directors may not discriminate against any individual on the grounds of race, color, national origin, religion, sex (including pregnancy), age, disability, or other legally protected classes.

(3) A local volunteer advocate program may terminate a relationship with a volunteer, employee, or director who:

(A) does not act in accordance with the policies of the local volunteer advocate program; or

(B) has abused or neglected a position of trust.

(d) Confidentiality.

(1) Each local program must counsel volunteers, employees, and directors on what constitutes confidential information.

(2) A volunteer, employee, or director may not communicate any confidential information pertaining to an individual being served by a local volunteer advocate program to a person who is not authorized to possess the confidential information.

(e) Conflicts of Interest. Each local volunteer advocate program must have a written conflict-of-interest policy that:

(1) prohibits any personal, business, or financial interest that renders a volunteer, employee, or director unable or potentially unable to perform the duties and responsibilities assigned to that volunteer, employee, or director in an efficient and impartial manner; and

(2) prohibits a volunteer, employee, or director from using the position for private gain, or acting in a manner that creates the appearance of impropriety.

(f) Liability.

(1) A person is not liable for civil damages for a recommendation made or an opinion rendered in good faith, while acting in the official scope of the person's duties as a board member, staff member, or volunteer of a local volunteer advocate program.

(2) Neither HHSC nor the statewide volunteer advocate organization will be liable for the actions of local volunteer advocate program volunteers, employees, or directors. Volunteers, employees, and directors of local volunteer advocate programs must abide by the conduct, confidentiality, and conflict-of-interest requirements outlined in this section, as well as all other laws and regulations governing the prescribed conduct and activity.

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

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Karen Ray
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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 7. TEXAS FINANCIAL EDUCATION ENDOWMENT FUND

7 TAC §§7.101, 7.103 - 7.105

The Finance Commission of Texas (commission) proposes amendments to §7.101 (relating to Applicability and Purpose), §7.103 (relating to TFEE Grant Program), §7.104 (relating to TFEE Gifts and Donations), and §7.105 (relating to TFEE Fund Management) in 7 TAC Chapter 7, concerning Texas Financial Education Endowment Fund.

The rules in 7 TAC Chapter 7 govern the Texas Financial Education Endowment (TFEE). The Texas Legislature established TFEE in 2011, in order to support statewide financial education and consumer credit building activities and programs. The commission and the OCCC have established a grant program to promote the purposes of TFEE.

In general, the purpose of the proposed rule changes to 7 TAC Chapter 7 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 7 was published in the *Texas Register* on August 2, 2024 (49 TexReg 5783). The commission received no comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review. The OCCC received no informal precomments on the rule text draft.

The Texas Legislature passed SB 1371 in the 2023 regular legislative session. SB 1371 modernized, clarified, and corrected provisions of the Texas Finance Code administered by the OCCC. In particular, SB 1371 relocated and amended the statutory provision that establishes TFEE. SB 1371 relocated this section from previous Texas Finance Code, §393.628 to current Texas Finance Code, §14.113. SB 1371 also amended Texas Finance Code, §14.113(b) to specify that funds in TFEE will be invested under the prudent business person standard described by the Texas Constitution, replacing previous language that referred to investing funds in the same manner as funds of the Employees Retirement System of Texas (ERS).

A proposed amendment to §7.101(a) would replace a reference to Texas Finance Code, §393.628 with an updated reference to Texas Finance Code, §14.113. This amendment would correct the statutory reference and implement SB 1371's relocation of the section, as described earlier in this preamble.

Proposed amendments to §7.103(g) would specify requirements for the longitudinal report that grantees file after the end of a two-year grant cycle. The proposed amendments would specify that the longitudinal report is comprehensive, that the report must describe activity performed under the grant agreement, and that the report is due on June 30 following the end of the grant cycle. The proposed amendments are intended to clarify requirements for grantees and to provide a more specific deadline for the report.

Proposed amendments throughout §7.104(a) would replace references to Texas Finance Code, §393.628 with updated references to Texas Finance Code, §14.113. These amendments would correct statutory references and implement SB 1371's relocation of the section, as described earlier in this preamble.

A proposed amendment to §7.105 would replace a reference to Texas Finance Code, §393.628(b) with an updated reference to Texas Finance Code, §14.113(b). Another proposed amendment to §7.105 would replace the current reference to the ERS investment standard with a reference to the prudent person standard described by the Texas Constitution. These amendments would implement the changes contained in SB 1371, as described earlier in this preamble.

Mirand Diamond, Director of Licensing, Finance and Human Resources, has determined that for the first five-year period the proposed rule changes are in effect, there will be no fiscal implications for state or local government as a result of administering the rule changes.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of the changes will be that the commission's rules will be more easily understood by persons required to comply with the rules, and will be consistent with legislation recently passed by the Texas Legislature.

The OCCC does not anticipate that the proposed rule changes will result in any economic costs to persons who are required to comply with the proposed rule changes.

The OCCC is not aware of any adverse economic effect on small businesses, micro-businesses, or rural communities resulting from this proposal. But in order to obtain more complete information concerning the economic effect of these rule changes, the OCCC invites comments from interested stakeholders and the public on any economic impacts on small businesses, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, and rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. The proposal does not require an increase or decrease in fees paid to the OCCC. The proposal would not create a new regulation. The proposal would expand current §7.103 by specifying requirements for the six-month longitudinal report following the end of a grant programming cycle. The proposal would not limit or repeal an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rule's applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

Comments on the proposal may be submitted in writing to Matthew Nance, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before the 30th day after the date the proposal is published in the *Texas Register*. After the 30th day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The rule changes are proposed under Texas Finance Code, §14.113, which authorizes the commission to adopt rules to administer the Texas Financial Education Endowment. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapter 14.

§7.101. Applicability and Purpose

(a) Applicability. This chapter governs the administration of the Texas Financial Education Endowment (TFEE) fund as provided by Texas Finance Code, §14.113. [~~§393.628.~~]

(b) - (c) (No change.)

§7.103. TFEE Grant Program

(a) - (f) (No change.)

(g) Reporting and monitoring.

(1) General reporting requirements. To receive reimbursement of TFEE grant expenses, a grantee must:

(A) submit grant reports in a timely manner;

(B) maintain satisfactory compliance with the grant agreement and proposed grant activities;

(C) report performance measures; and

(D) track and report participant demographic information.

(2) Semi-annual reports. A grantee must submit semi-annual reports that demonstrate performance outcomes and financial information over the term of the grant in accordance with and by the deadlines set forth in the grant agreement.

(3) Six-month longitudinal report. A grantee must submit a comprehensive six-month longitudinal report after program completion to demonstrate program objectives and describe activity performed under the grant agreement. The longitudinal report is due on June 30 following the end of the grant programming cycle.

(4) Monitoring. The grant coordinator or GAC may use the following methods to monitor a grantee's performance and expenditures:

(A) Desk review. The grant coordinator or GAC may conduct a desk review of a grantee to review and compare individual source documentation and materials to summary data provided during the reporting process.

(B) Site visits and inspection reviews. The grant coordinator or GAC may conduct a scheduled site visit to a grantee's place of business to review compliance and performance issues. Site visits may be comprehensive or limited in scope.

(h) (No change.)

§7.104. TFEE Gifts and Donations

(a) Authorized gifts and donations.

(1) TFEE purpose. Under Texas Finance Code, §14.113(d), [~~§393.628(d),~~] the finance commission may solicit gifts, grants, and donations that fulfill the purpose of TFEE to support statewide financial education and consumer credit building activities

and programs in this state, including the specific purposes provided by Texas Finance Code, §14.113(c). [~~§393.628(c).~~]

(2) Consumer credit educational purpose. Under Texas Finance Code, §14.105(a), the commissioner may accept gifts, grants, and donations on behalf of the state for a purpose related to a consumer credit educational opportunity, unless prohibited by Texas Finance Code, §14.105(b) or other law. A consumer credit educational opportunity is also considered to be a consumer credit building activity under TFEE.

(3) From state agencies. Under Texas Finance Code, §14.113(e), [~~§393.628(e),~~] the finance commission may partner with other state agencies to administer the TFEE fund, including the acceptance of gifts and donations from other state agencies, for the purposes outlined in paragraphs (1) and (2) of this subsection.

(4) From other parties. Gifts and donations from parties other than state agencies must meet the same criteria required for grantees eligible under §7.103(b) of this title (relating to TFEE Grant Program).

(b) (No change.)

§7.105. TFEE Fund Management

In accordance with Texas Finance Code, §14.113(b), [~~§393.628(b),~~] TFEE funds will be remitted to the comptroller for deposit in the Texas Treasury Safekeeping Trust Company. TFEE funds may be invested and reinvested under the prudent person standard described by Texas Constitution, Article VII, Section 11b [~~in the same manner as funds of the Employees Retirement System of Texas under Texas Government Code, Chapter 815, Subchapter D~~].

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

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

TRD-202405057
Matthew Nance
General Counsel, Office of Consumer Credit Commissioner
Finance Commission of Texas
Earliest possible date of adoption: December 8, 2024
For further information, please call: (512) 936-7660

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CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §§115.1 - 115.6, 115.8 - 115.11, 115.16, 115.21, 115.22, 115.24

The Texas State Securities Board proposes a new rule and amendments to thirteen rules in Chapter 115. Specifically, the Board proposes amendments to §115.1, concerning General Provisions; §115.2, concerning Application Requirements; §115.3, concerning Examination; §115.4, concerning Evidences of Registration; §115.5, concerning Minimum Records; §115.6, concerning Registration of Persons with Criminal Backgrounds; §115.8, concerning Fee Requirements; §115.9, concerning Post-Registration Reporting Requirements; §115.10, concerning Supervisory Requirements; §115.11, concerning Finder Registration and Activities; §115.16, concerning Use of Senior-Specific Certifications and Professional Designations; §115.21, concerning System Addressing Suspected Financial Exploitation of Vulnerable Customers Pursuant to the Texas Securities Act, Section 45; and §115.22, concerning Electronic Submission of Forms and Fees; and proposes new §115.24, concerning Adoption by Reference of Conduct Rules.

The rules in 7 TAC Chapter 115 govern securities dealers and agents. The purpose of the proposed rule changes to this chapter is to implement changes pursuant to the agency's periodic review of its rules.

The references to sections of the Texas Securities Act (Act) in §§115.1, 115.3 -115.5, 115.8, 115.16, and 115.21 would be updated to refer to the correct sections in the codified version of the Act in the Texas Government Code. The codification was adopted by HB 4171, 86th Legislature, 2019 Regular Session, and became effective January 1, 2022 (HB 4171).

Sections 115.1 and 115.5 would also be amended to replace the references in those sections to the term "Securities and Exchange Commission" with the term "SEC." SEC is a defined term in §107.2, concerning Definitions.

Section 115.5 would also be amended to abbreviate a cite to the Code of Federal Regulations found in subsection (a). CFR is a defined term in §107.2, concerning Definitions.

Section 115.1 would also be amended to add "or 'in this state'" to paragraph (a)(8) to conform the definition of "within this state" to language used in the codified Act and to delete redundant language in subparagraph (b)(2)(D) that is also contained in subsection (d). In addition, paragraph (c)(2) would be amended to correct a cross reference.

Section 115.3 would also be amended to replace the reference to "North American Securities Administrators Association" with the term "NASAA" in paragraph (a)(1). NASAA is a defined term in §107.2, concerning Definitions. In addition, paragraph (b)(4) would be amended to update the names of two NASAA examinations.

Amendments to §§115.3(c)(3)(D), 115.5(b)(13), and 115.6(g) would be made to remove or update outdated language.

Section 115.5 would also be amended to abbreviate a reference to "Central Registration Depository" as "CRD" for consistency.

An additional proposed amendment to §115.1 relates to the definition of a dealer's branch office. The definition of a dealer's "branch office" set forth in §115.1(a)(2) would be amended to incorporate and recognize a new rule adopted by the Financial Industry Regulatory Authority (FINRA) establishing a new designated location category referred to as a "residential supervisory location" (or RSL). Dealer firms that are members of FINRA may designate certain locations where they do business as an RSL instead of a "branch office," if the firm and location meet specified criteria and conditions set forth in FINRA rules. A dealer that is registered in Texas must submit a notice filing for all of its Texas locations that meet the definition of "branch office" set forth in §115.(a)(2). Texas registered dealers do not submit notice filings for locations in Texas that are non-branch locations. This change would result in Texas locations that are designated by dealers registered in Texas as RSLs under FINRA rules being excluded from the definition of a dealer's "branch office." This change would also result in registered dealers no longer needing to make a notice filing with the agency for locations that are RSLs, which locations would be thereafter treated under the rules as non branch locations.

Section 115.2 would be reorganized, and a cross reference to §115.22 would be added to §115.2 to improve consistency and readability of provisions governing application requirements. In addition, subsection (d) would be amended to allow the agency registration staff the option to notify applicants by email (which is a faster and more reliable delivery method) rather than by certified mail of automatic withdrawal of applications that have been pending for more than 90 days. References to "certificate of formation" which is the name of the form used by the Texas Secretary of State for formation documents filed with it, would also be added to the respective lists of formation of organization documents (including articles of incorporation, partnership agreements, articles of association, and charters) found in §115.2(a)(2)(B), as well as in §115.5(e)(5), for clarity and to improve accuracy.

Generally applicants for registration are required to have passed various qualification examinations to become registered. Additional proposed amendments to §115.3 relate to waivers from these requirements. Specifically, section 115.3 would also be amended to add new subparagraphs (c)(5)(A) and (c)(5)(B) to recognize and grant waivers of examination or reexamination requirements for certain classes of applicants who are participating in FINRA or NASAA continuing education programs and meet other requirements. FINRA established a voluntary program in 2022 (the Maintaining Qualifications Program or MQP) that allows eligible individuals whose FINRA registration has terminated to maintain their FINRA qualifications for up to five years by completing annual continuing education requirements and by paying an enrollment fee to FINRA to participate in the MQP. Individuals participating in the MQP are not required to either take or retake a qualification exam, as applicable, to become registered with FINRA. Similarly, NASAA's voluntary Exam Validity Extension Program (EVEP) provides an opportunity for registered persons to extend their NASAA qualifications exams for up to five years by participating in the EVEP and maintaining certain continuing education requirements. Since there are no specific waiver provisions in the rules for applicants participating in the EVEP or the MQP, applicants (in the MQP or EVEP, as applicable) requesting waivers from examination requirements must be individually approved by the Securities Commissioner. The amendments to add additional waivers in the rule would reduce the application processing time for these eligible applicants.

Section 115.3 would also be amended to add subparagraph (c)(5)(C) to recognize and grant waivers of examination requirements for applicants who have received an examination waiver from FINRA. Recognizing the FINRA waiver in the rule would reduce the processing time for these types of waivers, provide more transparency, and reflect the agency's current practice of granting waivers of this type on request. In addition, updates and revisions to the Texas securities law examination process would be made to subsection (d) to more accurately reflect this process, and to specifically direct applicants with questions about the process to the Registration Division for information. The amendment would also impose a one-week waiting period to retake the examination for applicants who failed the exam to provide and encourage more time to study prior to retaking the exam.

Section 115.8, which relates to fee requirements, would also be amended to remove an incorrect reference in subsection (a) to fees for officers and partners of a securities dealer, to update the reference to the agency's website, and to clarify that persons seeking information on fee requirements may contact the Registration Division of the agency.

Section 115.9 sets out events that a registered dealer or agent must report to the Securities Commissioner after registration. Paragraph (a)(3) would be amended to clarify that misdemeanor offense actions that are listed in §115.6(c) must be reported. Section 115.6(c) provides a list of misdemeanors that directly relate to the duties and responsibilities of dealers and agents. The Securities Commissioner may revoke or suspend the registration of a person who has been convicted of a misdemeanor offense that directly relates to the person's duties and responsibilities. In addition, paragraph (a)(6) would be amended to clarify that registered entities must notify the Commissioner of changes in legal status of their entities. Applicants for registration are required to include their legal status in their registration application on Form BD, such as a sole proprietorship, partnership, corporation, or limited liability company.

Section 115.10, which relates to supervisory requirements of dealers, would be amended to incorporate and recognize another new FINRA rule that has established a pilot program (Remote Inspections Pilot Program (RIPP)) that allows participating FINRA members to conduct remote internal inspections of certain locations, subject to specified terms. Existing subsection (c) which governs internal inspections of dealers, would be divided into two paragraphs, with new paragraph (c)(1) to include the language in existing subsection (c) with slight amendments and additions, and paragraph (c)(2) being new language that would address the RIPP and its participants. This change would clarify that dealers registered in Texas that are participating in this FINRA pilot program may comply with this section by conducting internal inspections of certain branch offices and other non-branch locations remotely instead of in person. The change would also clarify the rule by including references to applicable FINRA rules governing internal inspections in the proposed new paragraphs in subsection (c) that registered Texas dealers participating in the RIPP would be in compliance with §115.10(c) if they conduct their internal inspections programs in compliance with FINRA rules.

Section 115.11(a) would be amended to remind and inform finder applicants that finders by the definition set forth in §115.1(a)(9) are not permitted to register in other capacities. In addition, subsection (f) would be amended to correct a cross reference and to remove an outdated reference to filings being in paper form.

Section 115.21 would also be renamed to refer to the applicable section of the codified Act.

Section 115.22 would be revised to add a reference to finder registration in subsection (b) for clarification that finder applicants may submit documents electronically, and to remove an unneeded reference to dealers and agents in subsection (c).

New rule §115.24 would adopt by reference an SEC rule governing dealer conduct referred to as the SEC Regulation Best Interest (or Regulation BI). The new rule would also adopt by reference other fair practice, ethical standard, or conduct rules promulgated by FINRA, the SEC, the United States Commodity Futures Trading Commission (CFTC), or any self-regulatory organization approved by the SEC or the CFTC. Regulation Best Interest is an SEC rule governing conduct of FINRA member dealers and their associated persons, which went into effect on June 30, 2020. The rule established and standardized a "best interest" standard of conduct for dealers and their agents when recommending securities transactions or investment strategies to retail investors. Activities and practices that do not comply with the requirements of Regulation BI or the other conduct rules enumerated in the proposed rule, may constitute bases for de-

nials, suspensions, or revocations of the registrations of dealers or agents. A related change would amend §115.5, concerning Minimum Records, to require additional related recordkeeping requirements to verify compliance with new rule §115.24. Since Regulation BI went into effect, agency staff have used this standard for guidance as to what conduct constitutes an inequitable practice under the Act involving retail investors of dealers or agents registered in Texas. The adoption of these proposals would also allow the Securities Commissioner the flexibility to assess administrative fines against violators of these requirements, which will further the Board's mission to protect Texas investors.

Travis J. Iles, Securities Commissioner; Cristi Ramón Ochoa, Deputy Securities Commissioner; Emily Diaz, Director, Registration Division; and Tommy Green, Director, Inspections and Compliance Division, have determined that for the first five-year period the proposed new rule and amendments are in effect, there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed new rule and amendments. While the adoption of the amendment to the definition of "branch office" proposed in §115.1 may reduce the number of branch office filings made with the agency, there will be no fiscal implications to the agency, because there are no fees collected for branch office filings. In addition, while the proposed amendments to §115.3 would add additional waivers from current examination requirements, there will be no fiscal implications to the agency because applicants for registration will still need to pay application fees, whether or not examination requirements are waived.

Mr. Iles, Ms. Ochoa, Ms. Diaz, and Mr. Green have also determined that for each year of the first five years the proposed new rule and amendments are in effect, the public benefits expected as a result of adoption of the proposed new rule and amendments will be (1) greater coordination with other securities regulators (particularly with respect to proposed amendments to §§115.1, 115.3, and 115.10, and proposed new rule §115.24), and (2) dealers and agents will be apprised of their obligations under the Act. Additional public benefits include that (3) administrative burdens for firms will be reduced by recognizing RSLs and RIPPs which will reduce compliance costs, and (4) dealers will be notified of required content for their supervisory systems which will improve their ability to carry out their supervisory duties. Additionally, the proposed amendments to §115.3 will (5) reduce administrative burdens for eligible applicants; (6) facilitate internal processing of registration applications, and (7) allow examination waivers to be processed more quickly, uniformly, and with more transparency. In addition, (8) proposed new §115.24 would further apprise persons of the types of activities or practices which may result in the assessment of sanctions under the Act. Finally, the proposals will (9) ensure the rules are current and accurate and that they conform to the codified version of the Act, which would promote transparency and efficient regulation.

There will be no adverse economic effect on micro or small businesses or rural communities. Since the proposed new rule and amendments will have no adverse economic effect on micro or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the new rule and amendments as proposed. Although applicants for agent registration incur costs to participate in the MQP and EVEP programs (which are paid to FINRA or NASAA) that would be recognized in proposed amendments to §115.3, participation in these programs is optional and not required for registration under the rules. There is no anticipated impact on local employment.

Mr. Iles, Ms. Ochoa, Ms. Diaz, and Mr. Green have also determined that for the first five-year period the proposed new rule and amendments are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or negatively affect the state's economy. Additionally, the proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation. The proposed amendments to §115.3 would add additional waivers from current examination requirements, which will reduce administrative burdens on eligible applicants for registration. The proposed amendments to 115.10 would provide clarity and harmonize the supervision with FINRA requirements and replace the current requirements with more flexible requirements.

Additionally, although proposed new §115.24 would create a new rule, the new rule would merely act to describe and formalize into a rule the types of conduct that are already considered to be inequitable practices under the Texas Securities Act. The new rule would not create any new obligations under the Act or make new types of conduct actionable under the Act that are currently not a violation of the Act.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sections in the *Texas Register*. Written comments should be submitted to Cheryn Netz, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The new rule and amendments are proposed under the authority of Texas Government Code (TGC), §4002.151, as adopted by HB 4171. Section 4002.151 of the Act provides the Board with the authority to adopt rules as necessary to implement the provisions of the Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. In addition, the amendments to §115.3 are also proposed under the authority of TGC, §4004.151. Section 4004.151 of the Act provides the Board with authority to waive examination requirements for any applicant or class of applicants.

The proposed amendments to §§115.1 - 115.3, 115.9 - 115.11, and 115.22 affect the following sections of the Act: Texas Government Code (TGC) Chapter 4004, Subchapters A - D, and F - G. The proposed amendment to §115.21 affects Chapter 4004, Subchapter H of the Act. The proposed amendment to §115.22 also affects TGC §4006.001 of the Act. The proposed amendment to §115.1 also affects TGC §4007.052 of the Act. The proposed amendments to §115.5 and §115.21 and proposed new rule §115.24 affect TGC §4007.105. Finally, the proposed amendment to §115.5 and proposed new rule §115.24 also affect TGC §4007.106. Statutes affected by proposed amendments to §§115.4, 115.8, and 115.16: none.

§115.1. General Provisions.

(a) Definitions. Words and terms used in this chapter are also defined in §107.2 of this title (relating to Definitions). The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Branch office--Any location where one or more agents of a dealer regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or that is held out as such.

(A) This definition excludes:

(i) - (vii) (No change.)

(viii) a location identified and designated with FINRA by the registered dealer as a residential supervisory location (RSL) in accordance with FINRA Rule 3110.19, and which location has been provided to FINRA in accordance with FINRA Rule 3110.19(d).

(B) Notwithstanding the exclusions in subparagraph (A) of this paragraph, any location other than an RSL that meets the requirements of §115.1(a)(2)(A)(viii) that is responsible for supervising the activities of persons associated with the dealer at one or more non-branch locations of the dealer is considered to be a branch office.

(C) (No change.)

(3) - (4) (No change.)

(5) In this state--As used in the Texas Securities Act, §§4001.052, 4001.056, 4004.051, and 4004.101 [~~§12~~], has the same meaning as the term "within this state" as defined in §107.2 of this title [~~(relating to Definitions)~~] and paragraph (8) of this subsection.

(6) - (7) (No change.)

(8) Within this state or in this state--

(A) A person is a "dealer" who engages "within this state" or "in this state" in one or more of the activities set out in the Texas Securities Act, §4001.056 or §4004.051 [~~§4.C~~], if either the person or the person's agent is present in this state or the offeree/purchaser or the offeree/purchaser's agent is present in this state at the time of the particular activity. A person can be a dealer in more than one state at the same time.

(B) Likewise, a person is an "agent" who engages "within this state" or "in this state" in one or more of the activities set out in the Texas Securities Act, §4001.052 or §4004.101 [~~§4.D~~], whether by direct act or through subagents except as otherwise provided, if either the person or the person's agent is present in this state or the offeree/purchaser or the offeree/purchaser's agent is present in this state at the time of the particular activity. A person can be an agent in more than one state at the same time.

(C) (No change.)

(9) - (10) (No change.)

(b) Registration requirements of dealers, issuers, and agents, and notice filings for branch offices.

(1) (No change.)

(2) Persons not required to register as an agent.

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

~~[(D) Persons not required to register with the Securities Commissioner pursuant to subparagraph (A) of this paragraph, are reminded that the Texas Securities Act prohibits fraud or fraudulent practices in dealing in any manner in any securities whether or not the person engaging in fraud or fraudulent practices is required to be registered. The Agency has jurisdiction to investigate and bring enforcement actions to the full extent authorized in the Texas Securities Act with respect to fraud or deceit, or unlawful conduct by a dealer or agent in connection with transactions involving securities in Texas.]~~

(c) Types of registrations.

(1) (No change.)

(2) Restricted registration. The restricted registrations are as follows:

(A) The Securities Commissioner recognizes the specialized knowledge examinations administered by FINRA as restricted registration categories. The registration of an applicant passing a specialized knowledge examination in lieu of the general securities examination pursuant to §115.3(b) of this chapter [~~title~~] (relating to Examination [~~Examinations~~]) is restricted to and effective only for conducting the business and securities activities and effecting transactions associated with the specialized examination.

(B) (No change.)

(3) (No change.)

(d) Prohibition on fraud and availability of an exemption from registration. The Texas Securities Act prohibits fraud or fraudulent practices in dealing in any manner in any securities whether or not the person engaging in fraud or fraudulent practices is required to be registered. The Agency has jurisdiction to investigate and bring enforcement actions to the full extent authorized in the Texas Securities Act with respect to fraud or deceit, or unlawful conduct by a dealer or agent in connection with transactions involving securities in Texas. However, the registration requirements detailed in this chapter do not apply to dealers and agents that are exempt from registration as such pursuant to the Texas Securities Act, Chapter 4005, Subchapter A [~~§5~~], or by Board rule pursuant to the Texas Securities Act, §4004.001 or §4005.024 [~~§5.T or §12.C~~], contained in Chapter 109 or 139 of this title.

§115.2. Application Requirements.

(a) Securities dealer application requirements. A complete application consists of the following [~~and must be filed in paper form with the Securities Commissioner~~]:

(1) items filed via the Central Registration Depository System (CRD) which is jointly operated by NASAA, the SEC, and FINRA, for FINRA member firms, or items filed either in paper form or as provided in §115.22 of this chapter (relating to Electronic Submission of Forms and Fees) for non-FINRA member firms, using the applicable uniform forms:

(A) Form BD;

(B) Form U-4 for the designated officer and a Form U-4 for each agent to be registered (officers of a corporation or partners of a partnership shall not be deemed agents solely because of their status as officers or partners); and

(C) the appropriate registration fee(s).

~~[(1) Form BD;]~~

(2) items filed with the Securities Commissioner either in paper form or as provided in §115.22 of this chapter:

(A) a copy of articles of incorporation, certificate of formation, partnership agreement, articles of association, trust agreement, or other documents which indicate the form of organization, certified

by the appropriate jurisdiction or by an officer or partner of the applicant;

(B) a balance sheet prepared in accordance with United States generally accepted accounting principles reflecting the financial condition of the dealer as of a date not more than 90 days prior to the date of such filing. The balance sheet should be compiled, reviewed, or audited by independent certified public accountants or independent public accountants, or must instead be certified by the applicant's principal financial officer. If certified by the principal financial officer of the applicant, such officer shall make the certification on Form 133.18, Certification of Balance Sheet by Principal Financial Officer; and

(C) any other information deemed necessary by the Securities Commissioner to determine a dealer's financial responsibility or dealer's or agent's business repute or qualifications.

[(2) Form U-4 for the designated officer and a Form U-4 for each agent to be registered (officers of a corporation or partners of a partnership shall not be deemed agents solely because of their status as officers or partners);]

[(3) a copy of articles of incorporation, partnership agreement, articles of association, trust agreement, or other documents which indicate the form of organization, certified by the appropriate jurisdiction or by an officer or partner of the applicant;]

[(4) a balance sheet prepared in accordance with United States generally accepted accounting principles reflecting the financial condition of the dealer as of a date not more than 90 days prior to the date of such filing. The balance sheet should be compiled, reviewed, or audited by independent certified public accountants or independent public accountants, or must instead be certified by the applicant's principal financial officer. If certified by the principal financial officer of the applicant, such officer shall make the certification on Form 133.18, Certification of Balance Sheet by Principal Financial Officer.]

[(5) any other information deemed necessary by the Securities Commissioner to determine a dealer's financial responsibility or a dealer's or agent's business repute or qualifications; and]

[(6) the appropriate registration fee(s).]

(b) (No change.)

(c) Branch office designation and inspection.

(1) A dealer may designate a branch office upon initial application of the dealer or by amendment to a current Form BR. No sales-related activity may occur in any branch office location until such time as the dealer has notified the Securities Commissioner that such location will function as a branch office by submitting Form BR on CRD for FINRA member firms. For non-FINRA member firms, the request is made by submitting Form BR [in paper form] to the Securities Commissioner.

(2) (No change.)

(3) Each branch office of a dealer that [who] is registered with the Securities Commissioner is subject to unannounced inspections at any time during normal business hours.

(d) Automatic withdrawal of a dealer or agent application for registration that has been pending for at least 90 days. If an application for dealer or agent registration has been pending for at least 90 days and the applicant has failed to substantively respond to a written request for information sent by either electronic mail or by certified mail to the applicant's address as set forth in the application, an automatic withdrawal will occur. The written request must have advised the applicant that if a substantive response is not received within 30 days from the date of the [certified] request, the application will be withdrawn automatically. Regardless of how long an application has been pending, it may not be withdrawn automatically without sending [certified] notice of this subsection to the address set forth in the application and allowing the applicant 30 calendar days from the date of the notice to provide a substantive written response. A copy of this subsection and the most recent written request for information will be included with the notice [certified letter].

(e) Central Registration Depository System (CRD).

(1) Whenever the Texas Securities Act or Board rules require the filing of an application with the Securities Commissioner for dealer or agent registration, members of FINRA or applicants for membership in FINRA shall make such filing electronically through [the] CRD [which is jointly operated by FINRA and the North American Securities Administrators Association, Inc. (NASAA). Applicants shall use the applicable uniform form for the submission of the filing in question and shall supplement their electronic filing by filing, in paper form, the items listed in paragraphs (3) - (6) of subsection (a)(3) - (6) of this section, directly with the Commissioner].

(2) (No change.)

§115.3. Examination.

(a) Requirement.

(1) To determine the applicant's qualifications and competency to engage in the business of dealing in and selling securities, the State Securities Board requires a written examination on general securities principles and on state securities law. Applicants must make a passing score, as determined by NASAA [the North American Securities Administrators Association], FINRA, or the Securities Commissioner, as appropriate, on any required examination.

(2) (No change.)

(b) Examinations accepted.

(1) - (3) (No change.)

(4) Each applicant must pass an examination on state securities law. This requirement may be satisfied by passing an examination on the Texas Securities Act administered by this Agency or by passing the NASAA Uniform Securities Agent State Law Examination (Series 63) or the NASAA Uniform Combined State Law Examination (Series 66).

(c) Waivers of examination requirements.

(1) (No change.)

(2) A full waiver of the examination requirements of the Texas Securities Act, §4004.151 [§13.D], is granted by the Board to the following classes of persons:

(A) - (H) (No change.)

(3) A partial waiver of the examination requirements of the Texas Securities Act, §4004.151 [§13.D], is granted by the Board to the following classes of persons:

(A) applicants who have been continuously registered with the SEC [Securities and Exchange Commission], FINRA, or any other exchange listed in the Act, §4005.054 [§6.F], or recognized by the Board pursuant to §111.2 of this title (relating to Listed and Designated Securities) for 10 years immediately preceding the application for registration in Texas. These applicants are required to pass an examination on state securities law as required by subsection (b)(4) of this section;

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

(D) applicants seeking registration for the purpose of dealing exclusively in oil and gas interests (other than interests in limited partnerships). Such persons are not required to take the general securities examination, but are required to pass an examination on state securities law as required by subsection (b)(4) of this section [~~. Provided, however, any persons registered prior to January 1, 1976, for the purpose of dealing exclusively in oil and gas interests, are not required to pass an examination~~]; and

(E) (No change.)

(4) The Securities Commissioner in his or her discretion is authorized by the Board to grant full or partial waivers of the examination requirements of the Texas Securities Act, §4004.151 [~~§13.D~~].

(5) The following classes of persons are granted a partial waiver by the Board of the examination requirements of §4004.151 of the Act and subsection (a)(1) of this section:

(A) NASAA Exam Validity Extension Program ("EVEP"). Applicants who previously took and passed an examination on state securities law as required by subsection (a)(1) of this section (State Law Requirement), whose registration with another state securities regulator has not lapsed for more than five years who have participated in the EVEP and have maintained compliance with the EVEP requirements are granted a waiver of the State Law Requirement.

(B) FINRA Maintaining Qualifications Program ("MQP").

(i) Applicants who previously took and passed an examination or examinations on general securities principles as required by subsection (a)(1) of this section (GSP Requirement), whose registration with FINRA and with another state securities regulator has not lapsed for more than five years who have participated in the MQP and have maintained compliance with the MQP requirements are granted a waiver of the GSP Requirement.

(ii) Applicants who previously took and passed an examination or examinations on one or more specialized knowledge examinations administered by FINRA as provided in subsection (b)(3) of this section, whose registration with FINRA and with another state securities regulator has not lapsed for more than five years who have participated in the MQP and have maintained compliance with the MQP requirements are granted a waiver of the requirements to pass the FINRA specialized knowledge examination(s) required to obtain the applicable restricted registration(s) as provided in subsection (b)(3) of this section.

(C) FINRA Examination Waivers. Applicants who have received a waiver of any examination requirement(s) by FINRA, including an examination on general securities principles, the SIE examination, or one or more specialized knowledge examinations administered by FINRA, are granted a waiver of the corresponding examination requirement(s) in this section.

(d) Texas securities law examination.

(1) The fee for each filing of a request to take the Texas securities law examination is $35. An admission letter issued by the Board is required for all entrants. The examination is given [~~at 9:00 a.m. on each Tuesday~~] at the main office of the State Securities Board in Austin and at the Agency's branch offices. [~~The examination may be taken at other locations near principal population centers across the state. Testing centers require reservations and may charge an additional (monitor) fee for administering the examination. A list of examination centers with additional details may be obtained from the State Securities Board.~~]

(2) (No change.)

(3) Reexamination. An applicant who fails the examination on the Texas Securities Act may request to retake the examination no sooner than after one week from the date of the examination [~~reexamination~~]. The applicant must bring his or her application up to date before retaking an examination.

(4) (No change.)

(5) Information about taking the examination and how to apply to take the examination in Austin or at an Agency branch office is available on the Agency's website located at www.ssb.texas.gov or by contacting the Registration Division of the State Securities Board.

§115.4. Evidences of Registration.

(a) (No change.)

(b) Amendments. Any changes in the information reflected on the evidence of registration must be submitted to the Securities Commissioner within 30 days of such change. An amendment fee, in the amount set forth in the Texas Securities Act, §4006.054 [~~§35~~], is required to amend the evidence of registration.

(c) - (d) (No change.)

(e) Renewal.

(1) Procedures for renewing expired and unexpired registrations are set forth in the Texas Securities Act, Chapter 4004, Subchapter F [~~§19.C~~].

(2) - (3) (No change.)

§115.5. Minimum Records.

(a) Dealer records. Compliance with the record-keeping requirements of the United States SEC [~~Securities and Exchange Commission~~], found in 17 Code of Federal Regulations §240.17a-3 and §240.17a-4 (17 CFR §240.17a-3 and §240.17a-4, as amended), will satisfy the requirements of this section.

(b) Records to be made by certain dealers. A person or company registered in Texas as a securities dealer shall make and keep current the following minimum records or the equivalent thereof.

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

(12) A record listing of every agent of the dealer that shows, for each agent, every office of the dealer where the agent regularly conducts the business of handling funds or securities or effecting any transaction in, or inducing or attempting to induce the purchase or sale of any security for the dealer, and the CRD [~~Central Registration Depository~~] number, if any, and every internal identification number or code assigned to that agent by the dealer.

(13) For each account with a natural person as a customer or owner:

(A) An account record including the customer's or owner's name, tax identification number, address, telephone number, date of birth, employment status (including occupation and whether the customer is an agent of a dealer), annual income, net worth (excluding value of primary residence), and the account's investment objectives. In the case of a joint account, the account record must include personal information for each joint owner who is a natural person; however, financial information for the individual joint owners may be combined. The account record shall indicate whether it has been signed by the agent responsible for the account, if any, and approved or accepted by a supervisor of the dealer. [~~For accounts in existence on the effective date of this section, the dealer must obtain this information within three years of May 2, 2003.~~]

(B) A record indicating that:

(i) The dealer has furnished to each customer or owner within [~~three years of May 2, 2003, and to each customer or owner who opened an account after May 2, 2003 within~~] 30 days of the opening of the account, and thereafter at intervals no greater than 36 months, a copy of the account record or an alternate document with all information required by subparagraph (A) of this paragraph. The dealer may elect to send this notification with the next statement mailed to the customer or owner after the opening of the account. The dealer may choose to exclude any tax identification number and date of birth from the account record or alternate document furnished to the customer or owner. The dealer shall include with the account record or alternate document provided to each customer or owner an explanation of any terms regarding investment objectives. The account record or alternate document furnished to the customer or owner shall include or be accompanied by prominent statements that the customer or owner should mark any corrections and return the account record or alternate document to the dealer, and that the customer or owner should notify the dealer of any future changes to information contained in the account record.

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

(C) - (F) (No change.)

(14) - (18) (No change.)

(c) Exemptions from the requirements of subsection (b) of this section:

(1) A dealer is not required to make or keep such records of transactions cleared for such dealer by a member of FINRA, the American Stock Exchange, the Boston Stock Exchange, the Chicago Stock Exchange, the Pacific Stock Exchange, the Chicago Board Options Exchange, or any other recognized and responsible stock exchange approved by the Securities Commissioner pursuant to the Texas Securities Act, Chapter 4005, Subchapter C [~~§6.F~~], where such records are customarily made and kept by the clearing member.

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

(d) (No change.)

(e) Records to be preserved by dealers.

(1) - (4) (No change.)

(5) Persons registered as dealers in Texas shall preserve for at least three years after the termination of the enterprise partnership articles and any amendments thereto, articles of incorporation, certificates of formation, charters, minute books, and stock certificate books of the dealer and of any predecessor, all Forms BD, all Forms BDW, all amendments to these forms, all licenses or other documentation showing the registration of the dealer with any securities regulatory authority.

(6) - (9) (No change.)

(f) - (g) (No change.)

(h) SEC Regulation Best Interest Records. In addition to the requirements in this section, a person or company registered in Texas as a securities dealer shall make and keep appropriate books and records to document compliance with the obligations set forth in SEC Regulation Best Interest (17 CFR §240.15l-1, as amended), including all records described in SEC Rule §240.17a-3(a)(35), and shall preserve the records required to be preserved by SEC Rule §240.17a-4(e)(5) for a period of not less than six years after the earlier of the date the account was closed or the date in which the information was collected, provided, replaced, or updated.

§115.6. Registration of Persons with Criminal Backgrounds.

(a) - (f) (No change.)

(g) State Auditor Applicant Best Practices Guide.

(1) The State Securities Board provides [~~shall post~~] a link on its website to the Applicant Best Practices Guide, which is [~~to be developed and~~] published by the state auditor as required by Texas Occupations Code, §53.026. This guide[~~, which shall be posted once it becomes available, shall set~~] sets forth best practices for an applicant with a prior conviction to use when applying for a license.

(2) (No change.)

§115.8. Fee Requirements.

(a) Registration and notice filing fees. Information about registration and notice filing fees for original and renewal applications for dealers and agents are [~~dealer, agents, officers, or partners of a securities dealer is~~] available on the Agency's website [~~web site~~] located at www.ssb.texas.gov [~~www.ssb.state.tx.us~~] or by contacting the Registration Division [~~an office~~] of the State Securities Board.

(b) Reduced fees for certain persons registered in multiple capacities.

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

(3) Reduced fees. If the Securities Commissioner grants a person's request, the person must pay all applicable fees for securities agent or dealer registration as specified in the Texas Securities Act, §4006.001 [~~§35.A~~], but is exempt from the fees specified in the Texas Securities Act, §4006.001 [~~§35.A~~], in connection with original and renewal applications for investment adviser representative or sole proprietor investment adviser registration, as applicable at the time Form 133.36 is filed. The reduction in fees granted by the Securities Commissioner under this subsection shall continue in force, without any further filings, as long as a person remains registered in a multiple capacity status.

(c) (No change.)

(d) Fees for concurrent registrations. Notwithstanding the Texas Securities Act, Chapter 4006 [~~§35~~], a person shall pay only one fee required under that section to engage in business in this state concurrently for the same person or company as:

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

(e) (No change.)

§115.9. Post-Registration Reporting Requirements.

(a) Each person registered as a securities dealer shall report to the Securities Commissioner within 30 days after its occurrence or entry against the registered person or an agent thereof, the matters described in this subsection. Likewise, each person registered as an agent of a securities dealer shall report to the Commissioner within 30 days after its occurrence or entry against the agent the matters described in this subsection. The following matters must be reported:

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

(3) any [~~misdemeanor~~] action or conviction of a misdemeanor offense that directly relates to the person's duties and responsibilities as a dealer or agent, including any criminal violation listed in §115.6(c) of this chapter (relating to Registration of Persons with Criminal Backgrounds) [~~based on fraud, deceit, or wrongful taking of property~~];

(4) - (5) (No change.)

(6) any change in any other information previously disclosed to the Securities Commissioner on any application form or filing, including change of legal status; and

(7) (No change.)

(b) - (c) (No change.)

§115.10. Supervisory Requirements.

(a) - (b) (No change.)

(c) Internal inspections. [~~Each dealer shall conduct a review, at least annually, of the businesses in which it engages, which review shall be reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations. The dealer shall document this review and provide the documentation to the Securities Commissioner upon request. Each dealer shall review the activities of each office, including the periodic examination of customer accounts to detect and prevent violations of applicable securities laws and regulations. Each branch office of the dealer shall be inspected according to a cycle which shall be set forth in the dealer's written supervisory and inspection procedures. In establishing such cycle, the dealer shall give consideration to the nature and complexity of the securities activities for which the location is responsible, the volume of business done, and the number of associated persons assigned to the location. Each dealer shall retain a written record of the dates upon which each review and internal inspection is conducted.~~]

(1) Each dealer shall conduct a review, at least annually or to be conducted within the timeframes in accordance with and as required by FINRA Rule 3110(c), of the businesses in which it engages, which review of locations shall be reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations. The dealer shall document this review and provide the documentation to the Securities Commissioner upon request. Each dealer shall review the activities of each office or location in accordance with and as required by FINRA Rule 3110(c), including the periodic examination of customer accounts to detect and prevent violations of applicable securities laws and regulations. Each branch office of the dealer shall be inspected according to a cycle which shall be set forth in the dealer's written supervisory and inspection procedures and in compliance with and as required by FINRA Rule 3110(c). In establishing such cycle, the dealer shall give consideration to the nature and complexity of the securities activities for which the location is responsible, the volume of business done, and the number of associated persons assigned to the location. Each dealer shall retain a written record of the dates upon which each review and internal inspection is conducted.

(2) For purposes of this subsection, registered dealers that have notified FINRA of their participation in the FINRA remote inspections pilot program established by FINRA Rule 3110.18, or any successor program established by FINRA, and which are in compliance with the requirements of FINRA Rule 3110.18 or successor program will satisfy the requirements of this subsection, provided however, that if a dealer or one or more of its locations becomes ineligible to participate in the program, the dealer must comply with the applicable requirements set forth in paragraph (1) of this subsection.

(d) (No change.)

§115.11. Finder Registration and Activities.

(a) Prohibited activities. A finder is not permitted to register in any other capacity and shall not:

(1) - (7) (No change.)

(b) - (e) (No change.)

(f) Filings.

(1) Application. In lieu of the application requirements listed in §115.2 of this chapter [~~title~~] (relating to Application Requirements), a complete application for a finder consists of the following and must be filed [~~in paper form~~] with the Securities Commissioner:

(A) - (D) (No change.)

(2) (No change.)

§115.16. Use of Senior-Specific Certifications and Professional Designations.

(a) The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be an inequitable practice within the meaning of the Texas Securities Act, §4007.105(a)(3) [~~§14.A(3)~~]. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

(1) - (4) (No change.)

(b) - (f) (No change.)

§115.21. System Addressing Suspected Financial Exploitation of Vulnerable Customers Pursuant to the Texas Securities Act, Chapter 4004, Subchapter H [~~Section 45~~].

(a) System. Each dealer shall establish, maintain, and enforce a written system of policies, programs, plans, or procedures to address suspected financial exploitation of vulnerable adults. The system must be reasonably designed to achieve compliance with the Texas Securities Act, Chapter 4004, Subchapter H [~~Section 45~~].

(b) Reporting. The report of suspected financial exploitation (complaint) required by the Texas Securities Act, §4004.352 [~~Section 45.C~~], must be made in writing to the Securities Commissioner. The complaint may be in the form of a letter or memorandum and submitted electronically, by facsimile, or any other method designed to assure its prompt receipt. A template for submitting the required information is available on the website of the Texas State Securities Board. The complaint shall include:

(1) - (5) (No change.)

§115.22. Electronic Submission of Forms and Fees.

(a) (No change.)

(b) Documents and fees submitted by applicants for finder registration or for dealer and agent registration may, at the option of the filer, be submitted electronically to the Securities Commissioner.

(c) Filings made and fees paid [~~by dealers and agents~~] may be submitted electronically, as the Agency's system is developed to accept them.

(d) (No change.)

§115.24. Adoption by Reference of Conduct Rules.

(a) Each dealer or agent, as defined by §4001.052 or §4001.056 of the Securities Act, when making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, shall act in the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interests of the dealer or agent making the recommendation ahead of the interest(s) of the retail customer. The best interest obligation shall be satisfied if the dealer or agent complies with the obligations set forth in SEC Regulation Best Interest (17 CFR §240.15l-1, as amended).

(b) Each dealer or agent shall also comply with any other applicable fair practice or ethical standard rule that is promulgated

by FINRA, the SEC, the Commodity Futures Trading Commission (CFTC), or any self-regulatory organization approved by the SEC or the CFTC.

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

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

TRD-202405045
Travis J. Iles
Securities Commissioner
State Securities Board
Earliest possible date of adoption: December 8, 2024
For further information, please call: (512) 305-8303

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CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §§116.1 - 116.6, 116.8, 116.9, 116.15, 116.16, 116.21

The Texas State Securities Board proposes amendments to eleven rules in Chapter 116. Specifically, the Board proposes amendments to §116.1, concerning General Provisions; §116.2, concerning Application Requirements; §116.3, concerning Examination; §116.4, concerning Evidences of Registration; §116.5, concerning Minimum Records; §116.6, concerning Registration of Persons with Criminal Backgrounds; §116.8, concerning Fee Requirements; §116.9, concerning Post-Registration Reporting Requirements; §116.15, concerning Advertising Restrictions; §116.16, concerning Use of Senior-Specific Certifications and Professional Designations; and §116.21, concerning System Addressing Suspected Financial Exploitation of Vulnerable Customers Pursuant to the Texas Securities Act, Section 45.

The rules in 7 TAC Chapter 116 govern investment advisers and investment adviser representatives. The purpose of the proposed rule changes to this chapter is to implement changes pursuant to the agency's periodic review of its rules.

The references to sections of the Texas Securities Act (Act) in §§116.1, 116.3, 116.4, 116.8, 116.16, and 116.21 would be updated to refer to the correct sections in the codified version of the Act in the Texas Government Code. The codification was adopted by HB 4171, 86th Legislature, 2019 Regular Session, and became effective January 1, 2022, (HB 4171).

Sections 116.1 and 116.2 would also be amended to replace the references in those sections to the term "Securities and Exchange Commission" with the term "SEC." SEC is a defined term in §107.2, concerning Definitions.

Section 116.1 would also be amended to add references to "solicitor" in subsection (b) for clarification and to delete redundant language in subparagraph (b)(2)(D) that is also contained in subsection (d). A reference to the Form U4 would be added to subparagraph (b)(2)(C) for accuracy and consistency, and a reference to "notice filed" with the Securities Commissioner would be added for clarity and accuracy.

Section 116.2 would also be amended to replace the reference to "North American Securities Administrators Association" with the term "NASAA" in paragraph (a)(1). NASAA is a defined term in §107.2, concerning Definitions. Subsection (a) would also be amended to abbreviate Financial Industry Regulator Authority to "FINRA," which is a defined term in §107.2, concerning Definitions. In addition, paragraph (b)(1) would be amended to update the names of two NASAA examinations.

A cross reference to §116.22 would be added to §116.2 to improve consistency and readability of provisions governing application requirements. Subsection (d) would be amended to allow the agency registration staff the option to notify applicants by email (which is a faster and more reliable delivery method) rather than by certified mail of automatic withdrawal of applications that have been pending for more than 90 days. References to "certificate of formation" which is the name of the form used by the Texas Secretary of State for formation documents filed with it, would also be added to the respective lists of formation of organization documents (including articles of incorporation, partnership agreements, articles of association, and charters) found in §116.2(a)(2)(A), as well as in §116.5(b)(3), for clarity and to improve accuracy.

Generally, applicants for registration are required to have passed various qualification examinations to become registered. Additional proposed amendments to §116.3 relate to waivers from these requirements. Section 116.3(b)(2) would also be amended to reflect that the Form U-10 is no longer in use by FINRA. In addition, §116.3 would also be amended to add new subparagraphs (c)(3)(A) and (c)(5)(B) to recognize and grant waivers of examination or reexamination requirements for certain classes of applicants who are participating in FINRA or NASAA continuing education programs and who meet other requirements. FINRA established a voluntary program in 2022 (the Maintaining Qualifications Program or MQP) that allows eligible individuals whose FINRA registration has terminated to maintain their FINRA qualifications for up to five years by completing annual continuing education requirements and by paying an enrollment fee to FINRA to participate in the MQP. Individuals participating in the MQP are not required to either take or retake a qualification exam, as applicable, to become registered with FINRA. Similarly, NASAA's voluntary Exam Validity Extension Program (EVEP) provides an opportunity for registered persons to extend their NASAA qualifications exams for up to five years by participating in the EVEP and maintaining certain continuing education requirements. Since there are no specific waiver provisions in the rules for applicants participating in the EVEP or the MQP, these requests for waivers from examination requirements must be individually approved by the Securities Commissioner. The amendments to add additional waivers in the rule would reduce the application processing time for these eligible applicants.

Section 116.3 would also be amended to add subparagraph (c)(3)(C) to recognize and grant waivers of examination requirements for applicants who have received an examination waiver from FINRA. Recognizing the FINRA waiver in the rule would reduce the processing time for these types of waivers, provide more transparency, and reflect the agency's current practice of granting waivers of this type on request. In addition, updates and revisions to the Texas securities law examination process would be made to subsection (d) to more accurately reflect this process, and to specifically direct applicants with questions about the process to the Registration Division for information. The amendment would also impose a one-week waiting period to retake the examination for applicants who failed the exam to

provide and encourage more time to study prior to retaking the exam.

Section 116.3 includes certain waivers from examination requirements for investment adviser applicants who have one or more of five different professional designations found in subparagraphs (c)(2)(B) - (F). The rule also requires these organizations to submit changes in their certification programs to the Securities Commissioner. The section would be amended in paragraph (c)(3) to remove this requirement which is no longer needed because a NASAA project group which monitors these programs has assumed this responsibility. This group, which maintains a list of eligible professional designations, has recently replaced a designation which is no longer active with a new eligible designation. In light of this change the section would also be amended in subparagraph (c)(2)(E) to replace the reference to the inactive "CIC" designation with the new "CIMA" designation and update the reference to another designation located in subparagraph (c)(2)(F).

Section 116.8, which relates to fee requirements, would also be amended to remove an incorrect reference in subsection (a) to fees for officers and partners of an investment adviser, to update the reference to the agency's website, and to clarify that persons seeking information on fee requirements may contact the Registration Division of the agency.

Section 116.9 sets out events that a registered investment adviser or investment adviser representative must report to the Securities Commissioner after registration. Paragraph (a)(3) would be amended to clarify that misdemeanor offense actions that are listed in §116.6(c) must be reported. Section 116.6(c) provides a list of misdemeanors that directly relate to the duties and responsibilities of investment advisers and investment adviser representatives. The Securities Commissioner may revoke or suspend the registration of a person who has been convicted of a misdemeanor offense that directly relates to the person's duties and responsibilities. In addition, paragraph (a)(6) would be amended to clarify that registered entities must notify the Commissioner of changes in legal status of their entities. Applicants for registration are required to include their legal status in their registration application on Form ADV, such as a sole proprietorship, partnership, corporation, or limited liability company.

Section 116.15, which was last amended in 2001, prohibits investment advisers registered in Texas from using testimonials in their advertisements and includes other advertising restrictions, mirroring (but not adopting by reference) SEC rules governing advertising that were in effect when the rule was adopted. The SEC Marketing Rule, which regulates how investment advisers registered with the SEC (SEC RIAs) may advertise their services, was amended in 2020, with a final compliance date of November 4, 2022. The change represented a broad, sweeping change in how the SEC regulates direct and indirect advertising and marketing activities of SEC RIAs, including the SEC RIAs doing business in Texas. The SEC rules have always prohibited advertising practices that are untrue, misleading, or deceptive. The new SEC rules relax prohibitions on certain types of practices, now allowing among other things, the use of endorsements or testimonials with certain safeguards. It also provides clearer guidelines concerning permitted marketing practices and increases disclosure requirements to investors, which improves investor confidence and transparency.

During the rule review of Chapter 116 the agency received two comment letters from the regulated industry requesting that §116.15 be amended to remove the current advertising restrictions in the section and instead harmonize it with the more flexible SEC Marketing Rule. The staff and Board agreed with the comments. In response, this section would be renamed and amended to adopt by reference the current SEC rules concerning marketing practices, while removing the existing regulatory restrictions in that section. This proposal if adopted would put advisers registered in Texas on a more level playing field with the SEC RIAs doing business in Texas because they would have the option to use testimonials and endorsements in their marketing and advertising as long as they otherwise comply with other applicable rules in Chapter 116. It would also conform rules relating to marketing practices to model rules which adopt the SEC advertising rules by reference which have been adopted by other state securities regulators. The proposal however would not change the registration requirements applicable to solicitors set forth in §116.1(b)(A).

A related proposal would amend the investment adviser recordkeeping requirements in §116.5 to require investment advisers to create and keep records to verify compliance with SEC Marketing Rule requirements.

The proposals to amend §116.15 and §116.5 would further the mission of the Board and the purposes of the Act by maximizing coordination with federal and other states' securities laws and administration by harmonizing the Board rules with SEC rules so that the same advertising rules would be applicable under the Act as well as SEC rules. The proposal would also further the Board's mission and Act's purposes to minimize regulatory burdens on Texas investment advisers, while ensuring that investors are adequately protected by ensuring they can make informed decisions.

Section 116.21 would also be renamed to refer to the applicable section of the codified Act.

Travis J. Iles, Securities Commissioner; Cristi Ramón Ochoa, Deputy Securities Commissioner; Emily Diaz, Director, Registration Division; and Tommy Green, Director, Inspections and Compliance Division, have determined that for the first five-year period the proposed amendments are in effect, there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the proposed amendments. While the proposed amendments to §116.3 would add additional waivers from current examination requirements, there will be no fiscal implications to the agency, because applicants for registration will still need to pay application fees, whether or not examination requirements are waived.

Mr. Iles, Ms. Ochoa, Ms. Diaz, and Mr. Green have also determined that for each year of the first five years the proposed amendments are in effect, the public benefits expected as a result of adoption of the proposed amendments will be (1) greater coordination with other securities regulators (particularly with respect to proposed amendments to §116.3 and §116.15); and (2) investment advisers and investment adviser representatives will be apprised of their obligations under the Act. Additionally, the proposed amendments to §116.3 will (3) reduce administrative burdens for eligible applicants; (4) facilitate internal processing of registration applications; and (5) allow examination waivers to be processed more quickly, uniformly, and with more transparency. Additional public benefits with respect to proposed amendments to §116.15 include (6) clearer guidelines for advisers concerning permitted marketing practices; and (7) increased disclosure requirements to investors, which improves investor confidence and transparency. Finally, the proposals will (8) ensure the rules are current and accurate and that they conform to the codified

version of the Act, which would promote transparency and efficient regulation.

There will be no adverse economic effect on micro or small businesses or rural communities. Since the proposed amendments will have no adverse economic effect on micro or small businesses or rural communities, preparation of an economic impact statement and a regulatory flexibility analysis is not required. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. Although applicants for investment adviser registration incur costs to participate in the MQP and EVEP programs (which are paid to FINRA or NASAA) that would be recognized in proposed amendments to §116.3, participation in these programs is optional and not required for registration under the rules. In addition, although investment advisers would be permitted to use certain marketing practices in the proposed amendment to §116.15, if adopted, the use of such expanded marketing practices that would be permitted is optional and not required for registration under the rules. There is no anticipated impact on local employment.

Mr. Iles, Ms. Ochoa, Ms. Diaz, and Mr. Green have also determined that for the first five-year period the proposed amendments are in effect: they do not create or eliminate a government program; they do not require the creation or elimination of existing employee positions; they do not require an increase or decrease in future legislative appropriations to this agency; they do not require an increase or decrease in fees paid to this agency; they do not increase or decrease the number of individuals subject to the rules' applicability; and they do not positively or negatively affect the state's economy. Additionally, the proposed amendments do not create a new regulation, or expand, limit, or repeal an existing regulation. The proposed amendments to §116.3 would add additional waivers from current examination requirements, which will reduce administrative burdens on eligible applicants for registration. Additionally the proposed amendment to §116.15 would remove existing regulatory restrictions on marketing and advertising and replace them with more flexible regulatory guidelines.

Comments on the proposal must be in writing and will be accepted for 30 days following publication of the proposed sections in the *Texas Register.* Written comments should be submitted to Cheryn Netz, General Counsel, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167. Comments may also be submitted electronically to proposal@ssb.texas.gov. In order to be considered by the Board at adoption, comments must be received no later than 30 days following publication.

The amendments are proposed under the authority of the Texas Government Code (TGC), §4002.151, as adopted by HB 4171. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. In addition, the amendments to §116.3 are also proposed under the authority of TGC, §4004.151 of the Act. Section 4004.151 provides the Board with authority to waive examination requirements for any applicant or class of applicants. Finally, the amendments to §116.1 are also proposed under the authority of TGC, §4004.001 of the Act. Section 4004.001 provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule.

The proposed amendments affect the following sections of the Texas Securities Act: TGC Chapter 4004, Subchapters B - F, and H. The proposed amendments to §§116.1, 116.2, 116.4, 116.5, 116.9, 116.15, and 116.16 also affect TGC Chapter 4007, Subchapter B of the Act. The proposed amendments to §§116.1, 116.5, 116.9, 116.15, and 116.16 also affect TGC §4007.105 and §4007.106 of the Act.

§116.1. General Provisions.

(a) Definitions. Words and terms used in this chapter are also defined in §107.2 of this title (relating to Definitions). The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) - (4) (No change.)

(5) In this state--

(A) A person renders services as an investment adviser "in this state" as set out in the Texas Securities Act, §4004.052 [~~§12.B~~], if either the person or the person's agent is present in this state or the client/customer or the client/customer's agent is present in this state at the time of the particular activity. A person can be an investment adviser in more than one state at the same time.

(B) Likewise, a person renders services as an investment adviser representative "in this state" as set out in the Texas Securities Act, §4004.102 [~~§12.B~~], whether by direct act or through subagents except as otherwise provided, if either the person or the person's agent is present in this state or the client/customer or the client/customer's agent is present in this state at the time of the particular activity. A person can be an investment adviser representative in more than one state at the same time.

(C) (No change.)

(6) - (10) (No change.)

(11) Registered investment adviser--An investment adviser who has been issued a registration certificate by the Securities Commissioner under the Texas Securities Act, §4004.054 [~~§15~~]. (A federal covered investment adviser is not prohibited from being registered with the Securities Commissioner. If a federal covered investment adviser elects to register with the Securities Commissioner, it is subject to all of the registration requirements of the Act.)

(12) (No change.)

(b) Registration of investment advisers and investment adviser representatives, and notice filings for branch offices.

(1) (No change.)

(2) Exemption from the registration requirements. The Board pursuant to the Texas Securities Act, §§4004.001 and 4005.024 [~~§§12.C and 5.T~~], exempts from the registration provisions of the Act, §§4004.052 and 4004.102 [~~§12~~], persons not required to register as an investment adviser or an investment adviser representative on or after July 8, 1997, by act of Congress in Public Law Number 104-290, Title III.

(A) Registration as an investment adviser is not required for the following:

(i) (No change.)

(ii) an investment adviser registered with the SEC [~~Securities and Exchange Commission~~] pursuant to a rule or order adopted under the Investment Advisers Act of 1940, §203A(c);

(iii) - (iv) (No change.)

(B) (No change.)

(C) Notice filing requirements and fees for investment advisers and investment adviser representatives, including solicitors, exempted from registration pursuant to this subsection only.

(i) Initially, the provisions of subparagraphs (A) and (B) of this paragraph are available provided that the investment adviser files:

(I) Form ADV and Form U-4 for each individual to be notice filed as an investment adviser representative or solicitor through the IARD designating Texas as a jurisdiction in which the filing is to be made; and

(II) an initial fee equal to the amount that would have been paid had the investment adviser and each investment adviser representative or solicitor filed for registration in Texas.

(ii) Annually, the investment adviser files renewal fees which would have been paid had the investment adviser and each investment adviser representative or solicitor been registered in Texas.

[~~(D) Persons not required to register with the Securities Commissioner pursuant to subparagraphs (A) and (B) of this paragraph, are reminded that the Texas Securities Act prohibits fraud or fraudulent practices in dealing in any manner in any securities whether or not the person engaging in fraud or fraudulent practices is required to be registered. The Agency has jurisdiction to investigate and bring enforcement actions to the full extent authorized in the Texas Securities Act with respect to fraud or deceit, or unlawful conduct by an investment adviser or investment adviser representative in connection with transactions involving securities in Texas.~~]

(c) (No change.)

(d) Prohibition on fraud and availability of an exemption from registration. The Texas Securities Act prohibits fraud or fraudulent practices in dealing in any manner in any securities whether or not the person engaging in fraud or fraudulent practices is required to be registered or notice filed with the Securities Commissioner. The Agency has jurisdiction to investigate and bring enforcement actions to the full extent authorized in the Texas Securities Act with respect to fraud or deceit, or unlawful conduct by an investment adviser or investment adviser representative in connection with transactions involving securities in Texas. However, the registration requirements detailed in this chapter do not apply to investment advisers and investment adviser representatives that are exempt from registration as such pursuant to the Texas Securities Act, Chapter 4005, Subchapter A [~~§5~~], or by Board rule pursuant to the Texas Securities Act, §4004.001 or §4005.024 [~~§5.T or §12.C~~], contained in Chapters 109 or 139 of this title.

§116.2. Application Requirements.

(a) Investment adviser and investment adviser representative application requirements. A complete application consists of the following:

(1) items filed electronically via the Investment Adviser Registration Depository (IARD), which is jointly operated by NASAA, the SEC, and FINRA, or items filed either in paper form or as provided in §116.22 of this chapter (relating to Electronic Submission of Forms and Fees) [~~the North American Securities Administrators Association, Inc. (NASAA), the Securities and Exchange Commission (SEC), and Financial Industry Regulatory Authority (FINRA)~~] using the applicable uniform forms:

(A) - (D) (No change.)

(2) items filed [~~in paper form~~] with the Securities Commissioner either in paper form or as provided in §116.22 of this chapter:

(A) a copy of articles of incorporation, certificate of formation, partnership agreement, articles of association, trust agreement, or other documents which indicate the form of organization, certified by the jurisdiction or by an officer or partner of the applicant;

(B) - (E) (No change.)

(b) (No change.)

(c) Branch office designation and inspection.

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

(3) Each branch office of an investment adviser that [~~who~~] is registered with the Commissioner is subject to unannounced inspections at any time during normal business hours.

(d) Automatic withdrawal of an investment adviser or investment adviser representative application for registration that has been pending for at least 90 days. If an application for investment adviser or investment adviser representative registration has been pending for at least 90 days and the applicant has failed to substantively respond to a written request for information sent by either electronic mail or by certified mail to the applicant's address as set forth in the application, an automatic withdrawal will occur. The written request must have advised the applicant that if a substantive response is not received within 30 days from the date of the [~~certified~~] request, the application will be withdrawn automatically. Regardless of how long an application has been pending, it may not be withdrawn automatically without sending [~~certified~~] notice of this subsection to the address set forth in the application and allowing the applicant 30 calendar days from the date of the notice to provide a substantive written response. A copy of this subsection and the most recent written request for information will be included with the notice [~~certified letter~~].

(e) (No change.)

§116.3. Examination.

(a) (No change.)

(b) Examinations accepted.

(1) Each applicant for registration as an investment adviser or investment adviser representative must pass:

(A) the NASAA Uniform Investment Adviser Law Examination (Series 65) [~~(the new entry level competency examination, Series 65, administered after December 31, 1999)~~]; or

(B) the following combination of examinations:

(i) (No change.)

(ii) the NASAA Uniform Combined State Law Examination (Series 66), the Uniform Investment Advisers State Law Examination (Series, 65, as it existed and was administered on or before December 31, 1999), or an examination of the Texas Securities Act Administered by this Agency.

(2) The [~~Each of these~~] examinations (except the Texas Securities Act examination) listed in paragraph (1) of this subsection are [~~is~~] administered by FINRA [~~and can be scheduled by submitting a Form U-10 to FINRA~~].

(c) Waivers of examination requirements.

(1) (No change.)

(2) A full waiver of the examination requirements of the Texas Securities Act, §4004.151 [~~§13.D~~], is granted by the Board to the following classes of persons:

(A) - (D) (No change.)

(E) applicants who are designated by the Investment & Wealth Institute as Certified Investment Management Analysts ("CIMA") [~~Investment Adviser Association, or its predecessor, the Investment Counsel Association of America, Inc., as Chartered Investment Counselors (CIC)~~];

(F) applicants who are designated by the American College of Financial Services [~~, Bryn Mawr, Pennsylvania,~~] as chartered financial consultants (ChFC);

(G) - (H) (No change.)

(3) The following classes of persons are granted a partial waiver by the Board of the examination requirements of §4004.151 of the Act and subsection (a) of this section:

(A) NASAA Exam Validity Extension Program ("EVEP"). Applicants who previously took and passed the NASAA qualification examinations accepted in subsection (b) of this section whose registration with another state securities regulator has not lapsed for more than five years who have participated in the EVEP and have maintained compliance with the EVEP requirements are granted a waiver of the NASAA qualification examination requirements of this section.

(B) FINRA Maintaining Qualifications Program ("MQP"). Applicants whose registration with FINRA and with another state securities regulator have not lapsed for more than five years, who have participated in the MQP and maintained compliance with the MQP requirements are granted a waiver of the corresponding appropriate FINRA qualifying examinations requirement(s) in this section.

(C) FINRA Examination Waivers. Applicants who have received a waiver of any examination requirement(s) by FINRA, are granted a waiver of the corresponding examination requirement(s) in this section.

(D) Successful participation in the MQP shall not extend to the Series 65 or Series 66 for purposes of investment adviser representative registration.

[~~(3) The CFA Institute, the Certified Financial Planner Board of Standards, Inc., the American Institute of Certified Public Accountants, the American College, and the Investment Adviser Association are required to submit to the Securities Commissioner any changes to their certification programs as such changes occur.~~]

(4) A partial waiver of the examination requirements of the Texas Securities Act, §4004.151 [~~§13.D~~], is granted by the Board to solicitor applicants. Such persons are required to pass only an examination on state securities law.

(5) The Securities Commissioner in his or her discretion is authorized by the Board to grant full or partial waivers of the examination requirements of the Texas Securities Act, §4004.151 [~~§13.D~~].

(d) Texas securities law examination.

(1) The fee for each filing of a request to take the Texas securities law examination is $35. An admission letter issued by the Board is required for all entrants. The examination is given [~~at 9:00 a.m. on each Tuesday~~] at the main office of the State Securities Board in Austin and at the Agency's branch offices. [~~The examination may be taken at other locations near principal population centers across the state. Testing centers require reservations and may charge an additional (monitor) fee for administering the examination. A list of examination centers with additional details may be obtained from the State Securities Board.~~]

(2) (No change.)

(3) The passing score for all applicants on the examination on the Texas Securities Act is 70%. An applicant who fails the examination on the Texas Securities Act may request to retake the examination no sooner than after one week from the date of the examination [~~reexamination~~]. The applicant must bring his or her application up to date before retaking an examination.

(4) (No change.)

(5) Information about taking the examination and how to apply to take the examination in Austin or at an Agency branch office is available on the Agency's website located at www.ssb.texas.gov or by contacting the Registration Division of the State Securities Board.

§116.4. Evidences of Registration.

(a) (No change.)

(b) Amendments. Any changes in the information reflected on the evidence of registration must be submitted to the Securities Commissioner within 30 days of such change. An amendment fee, in the amount set forth in the Texas Securities Act, §4006.054 [~~§35~~], is required to amend the evidence of registration.

(c) Successions.

(1) Succession by application.

(A) If a succession results in a surviving entity that is not currently registered as an investment adviser, the successor entity must file a new application, including the fees, as required in §116.2 of this chapter [~~title~~] (relating to Application Requirements). Such a succession may include, but is not limited to, any of the following that results in either a change in control of the beneficial owners, or a change in management:

(i) - (iv) (No change.)

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

(2) - (3) (No change.)

(d) (No change.)

(e) Renewal.

(1) Procedures for renewing expired and unexpired registrations are set forth in the Texas Securities Act, Chapter 4004, Subchapter F, and §4004.304 [~~§19.C and §12-1.C~~].

(2) - (3) (No change.)

§116.5. Minimum Records.

(a) Records to be made by investment advisers. Persons registered as investment advisers whose principal place of business is located in another state shall maintain records at least in accordance with the minimum record-keeping requirements of that state. Persons registered as investment advisers whose principal place of business is located in Texas shall make and keep current the following minimum records or the equivalent thereof:

(1) - (12) (No change.)

(13) a file containing all the information required to be retained pursuant to SEC Rule 204-2(a)(11) (17 CFR §275.204-2(a)(11), as amended).

(b) Records to be preserved by investment advisers.

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

(3) Persons registered as investment advisers in Texas shall preserve for at least three years after the termination of the enterprise partnership articles and any amendments thereto, articles of incorpo-

ration, certificates of formation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor.

(4) - (5) (No change.)

(c) - (d) (No change.)

§116.6. Registration of Persons with Criminal Backgrounds.

(a) - (f) (No change.)

(g) State Auditor Applicant Best Practices Guide.

(1) The State Securities Board provides [~~shall post~~] a link on its website to the Applicant Best Practices Guide, which is [~~to be developed and~~] published by the state auditor as required by Texas Occupations Code, §53.026. This guide sets [~~, which shall be posted once it becomes available, shall set~~] forth best practices for an applicant with a prior conviction to use when applying for a license.

(2) (No change.)

§116.8. Fee Requirements.

(a) Registration and notice filing fees. Information about registration and notice filing fees for original and renewal applications for investment adviser and investment adviser representatives [~~, officers, partners,~~] or solicitors of an investment adviser is available on the Agency's website [~~web site~~] located at www.ssb.texas.gov [~~www.ssb.state.tx.us~~] or by contacting the Registration Division [~~an office~~] of the State Securities Board.

(b) Reduced fees for certain persons registered in multiple capacities.

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

(3) Reduced fees. If the Securities Commissioner grants a person's request, the person must pay all applicable fees for registration as a dealer or dealer's agent as specified in the Texas Securities Act, §4006.001 [~~§35.A~~], but is exempt from the fees specified in the Texas Securities Act, §4006.001 [~~§35.A~~], in connection with original and renewal applications for registration as an investment adviser representative or sole proprietor investment adviser, as applicable at the time Form 133.36 is filed. The reduction in fees granted by the Securities Commissioner under this subsection shall continue in force, without any further filings, as long as a person remains registered in a multiple capacity status.

(c) (No change.)

(d) Fees for concurrent registrations. Notwithstanding the Texas Securities Act, Chapter 4006 [~~§35~~], a person shall pay only one fee required under that section to engage in business in this state concurrently for the same person or company as:

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

(e) (No change.)

§116.9. Post-Registration Reporting Requirements.

(a) Each person registered as an investment adviser shall report to the Securities Commissioner within 30 days after its occurrence or entry against the registered person or an investment adviser representative thereof, the matters described in this subsection. Likewise, each person registered as an investment adviser representative shall report to the Commissioner within 30 days after its occurrence or entry against the investment adviser representative the matters described in this subsection. The following matters must be reported:

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

(3) any [~~misdemeanor~~] action or conviction of a misdemeanor offense that directly relates to the person's duties and responsibilities as an investment adviser or investment adviser representative, including any criminal violation listed in §116.6(c) of this chapter (relating to Registration of Persons with Criminal Backgrounds) [~~based on fraud, deceit, or wrongful taking of property~~];

(4) - (5) (No change.)

(6) any change in any other information previously disclosed to the Securities Commissioner on any application form or filing, including change of legal status; and

(7) (No change.)

(b) - (d) (No change.)

§116.15. Adoption by Reference of Investment Adviser Marketing Rules [~~Advertising Restrictions~~].

The antifraud provisions of the Texas Securities Act prohibit an investment adviser from using any advertisement that contains any untrue statement of material fact or that is otherwise misleading. The prohibition would include any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any publication or by radio, television, Internet, the World Wide Web, or similar proprietary or common carrier electronic systems, that offers any service as an investment adviser. Specifically, a registered investment adviser shall not publish, circulate, or distribute any advertisement which does not comply with SEC Rule 206(4)-1 (17 CFR §275.206(4)-1, as amended) under the Investment Advisers Act of 1940.

[~~(1) Specifically, an advertisement of a registered investment adviser may not:~~]

[~~(A) use or refer to testimonials (including any statement of a client's experience or endorsement);~~]

[~~(B) refer to past, specific recommendations made by an investment adviser that were profitable, unless the advertisement sets out a list of all recommendations made by the investment adviser within the preceding period of not less than one year, and complies with paragraph (2) of this subsection;~~]

[~~(C) represent that any graph, chart, formula, or other device can, in and of itself, be used to determine which securities to buy or sell, or when to buy or sell securities, or assist persons in making those decisions, unless the advertising prominently discloses the limitations thereof and the difficulties regarding its use; and~~]

[~~(D) represent that any report, analysis, or other service will be provided without charge unless the report, analysis, or other service will be provided without any obligation whatsoever.~~]

[~~(2) A registered investment adviser may advertise its past performance (both actual performance and hypothetical or model results) only if the advertisement discloses all material facts necessary to avoid any unwarranted inference. An investment adviser may not advertise its performance data if the advertisement:~~]

[~~(A) fails to disclose the effect of material market or economic conditions on the results advertised;~~]

[~~(B) fails to disclose whether and to what extent the advertised results reflect the reinvestment of dividends or other earnings;~~]

[~~(C) suggests or makes claims about the potential for profit without disclosing the potential for loss; or~~]

[~~(D) omits any of the facts material to the performance figures.~~]

[~~(3) In addition, generally a registered investment adviser may not advertise gross performance data (i.e., performance data that~~

~~does not reflect the deduction of various fees, commissions, and expenses that a client would pay) unless the investment adviser also includes net performance information in an equally prominent manner.~~]

§116.16. Use of Senior-Specific Certifications and Professional Designations.

(a) The use of a senior specific certification or designation by any person in connection with the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be an inequitable practice within the meaning of the Texas Securities Act, §4007.105(a)(3) [~~§14.A(3)~~]. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:

(1) - (4) (No change.)

(b) - (f) (No change.)

§116.21. System Addressing Suspected Financial Exploitation of Vulnerable Customers Pursuant to the Texas Securities Act, Chapter 4004, Subchapter H [~~Section 45~~].

(a) System. Each investment adviser shall establish, maintain, and enforce a written system of policies, programs, plans, or procedures to address suspected financial exploitation of vulnerable adults. The system must be reasonably designed to achieve compliance with the Texas Securities Act, Chapter 4004, Subchapter H [~~Section 45~~].

(b) Reporting. The report of suspected financial exploitation (complaint) required by the Texas Securities Act, §4004.352 [~~Section 45.C~~], must be made in writing to the Securities Commissioner. The complaint may be in the form of a letter or memorandum and submitted electronically, by facsimile, or any other method designed to assure its prompt receipt. A template for submitting the required information is available on the website of the Texas State Securities Board. The complaint shall include:

(1) - (5) (No change.)

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

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

TRD-202405048
Travis J. Iles
Securities Commissioner
State Securities Board
Earliest possible date of adoption: December 8, 2024
For further information, please call: (512) 305-8303

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER P. SURVEILLANCE AND CONTROL OF BIRTH DEFECTS

25 TAC §37.301

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to §37.301, concerning Purpose.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update citations in the rule to Texas Government Code sections that become effective on April 1, 2025. The proposed amendment updates the affected citation to Texas Government Code.

FISCAL NOTE

Christy Havel Burton, DSHS Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rule will be in effect:

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

(2) implementation of the proposed rule will not affect the number of DSHS employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to DSHS;

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

(6) the proposed rule will not expand, limit, or repeal existing regulations;

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

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Christy Havel Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates a reference to existing law.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons

and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from having accurate citations to the laws governing HHSC, Medicaid, and other social services.

Christy Havel Burton has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the amendment only updates a reference to existing law.

TAKINGS IMPACT ASSESSMENT

DSHS has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov*.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R083" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The amendment affects Texas Government Code §531.0055 and Chapter 524.

§37.301. Purpose.

These sections implement the provisions of Health and Safety Code, Chapter 87, that provides the authority to adopt rules relating to the surveillance and control of birth defects. The legislation directs the Texas Department of Health to develop a statewide surveillance program. The Texas Department of Health and the Texas Board of Health were abolished by Chapter 198, §§1.18 and 1.26, 78th Legislature, Regular Session, 2003. Health and Safety Code, Chapter 1001, establishes the Department of State Health Services (department), which now administers these programs. Texas Government Code §524.0005 [~~Government Code,~~ §531.0055], provides authority to the Executive Commissioner of the Health and Human Services Commission to adopt rules for the department.

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

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

TRD-202405062
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: December 8, 2024
For further information, please call: (512) 221-9021

CHAPTER 103. INJURY PREVENTION AND CONTROL

25 TAC §103.1

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), proposes an amendment to §103.1, concerning Purpose and Purview.

BACKGROUND AND PURPOSE

House Bill 4611, 88th Legislature, Regular Session, 2023, made certain non-substantive revisions to Subtitle I, Title 4, Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program. This proposal is necessary to update citations in the rule to Texas Government Code sections that become effective on April 1, 2025. The proposed amendment updates the affected citation to Texas Government Code.

FISCAL NOTE

Christy Havel Burton, DSHS Chief Financial Officer, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

DSHS has determined that during the first five years that the rule will be in effect:

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

(2) implementation of the proposed rule will not affect the number of DSHS employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to DSHS;

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

(6) the proposed rule will not expand, limit, or repeal existing regulations;

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

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

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Christy Havel Burton has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule because the amendment only updates a reference to existing law.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons and is necessary to implement legislation that does not specifically state that §2001.0045 applies to the rule.

PUBLIC BENEFIT AND COSTS

Libby Elliott, Deputy Executive Commissioner, Office of Policy and Rules, has determined that for each year of the first five years the rule is in effect, the public will benefit from having accurate citations to the laws governing HHSC, Medicaid, and other social services.

Christy Havel Burton has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the amendment only updates a reference to existing law.

TAKINGS IMPACT ASSESSMENT

DSHS has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 701 W. 51st Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register.* Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 24R083" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §531.0055 and Texas Health and Safety Code §1001.075, which authorize the Executive Commissioner of HHSC to adopt rules for the operation and provision of health and human services by DSHS and for the administration of Texas Health and Safety Code Chapter 1001.

The amendment affects Texas Government Code §531.0055 and Chapter 524.

§103.1. Purpose and Purview.

(a) These sections implement the following Health and Safety Codes.

(1) Chapter 92 authorizes the Executive Commissioner to adopt rules concerning the reporting and control of injuries.

(2) Chapter 773, §773.112(c) and §773.113(a)(3), requires the department to establish and maintain a trauma reporting and analysis system.

(3) The Texas Department of Health and the Texas Board of Health were abolished by Chapter 198, §1.18 and §1.26, 78th Legislature, Regular Session, 2003. Health and Safety Code, Chapter 1001, establishes the Department of State Health Services (department), which now administers these programs. Texas Government Code §524.0005 [~~Government Code, §531.0055~~], provides authority to the Executive Commissioner of the Health and Human Services Commission to adopt rules for the department.

(b) The Executive Commissioner or the Executive Commissioner's designee shall, as circumstances may require, proceed as follows.

(1) May contact a medical examiner, justice of the peace, physician, hospital, or acute or post-acute rehabilitation facility attending a person with a case or suspected case of a required reportable event.

(2) May provide aggregate data with the suppression of values at the discretion of the Texas EMS & Trauma Registries.

(3) May release data to other areas of the department.

(4) May give information concerning the injury or its prevention to the patient or a responsible member of the patient's household to prevent further injury.

(5) May collect, or cause to be collected, medical, demographic, or epidemiological information from any medical or laboratory record or file to help the department in the epidemiologic evaluation of injuries and their causes.

(6) Investigation may be made by staff of the department for verifying the diagnosis, ascertaining the cause of the injury, obtaining a history of circumstances surrounding the injury, and discovering unreported cases.

(A) May enter at reasonable times and inspect within reasonable limits, a public place or building, including a public conveyance, in the Commissioner's duty to prevent injury.

(B) May not enter a private residence to conduct an investigation about the causes of injuries without first receiving permission from a lawful adult occupant of the residence.

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

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

TRD-202405063
Cynthia Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: December 8, 2024
For further information, please call: (512) 221-9021

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER F. RATE REVIEW FOR HEALTH BENEFIT PLANS

28 TAC §3.505

The Texas Department of Insurance (TDI) proposes to amend 28 TAC §3.505, to update the cost-sharing reduction (CSR) and clarify the actuarial value (AV) factors that health benefit plan issuers use in setting premium rates for plans sold to individuals and small groups. These amendments are needed to reflect changes in enrollment over time and provide additional guidance in the setting of rates. TDI anticipates adopting the amendments to be effective June 1, 2025, and TDI will begin enforcing the changes for rates applicable to plans to be issued or renewed effective on or after January 1, 2026.

EXPLANATION. Amendments to §3.505 ensure that premium rates for silver plans sold to individuals through the health insurance exchange are sufficient to cover the cost of CSRs that issuers are required to provide certain consumers within silver plan variations under federal law (42 USC §18071). In 2017, the federal government stopped reimbursing issuers for the cost of providing CSRs. Since 2018, issuers have adjusted premiums for silver plans sold on the exchange to account for those costs. Amendments to §3.505 will ensure that premium rates for silver plans sold to individuals through the health insurance exchange are sufficient to cover the cost of CSRs that issuers are required to provide certain consumers within silver plan variations under federal law (42 USC §18071).

Senate Bill 1296, 87th Legislature, 2021, directed the commissioner to review rates and consider, for silver plans, "whether the rate is appropriate for the plan in relation to the rates charged for qualified health plans offering different levels of coverage, taking into account any funding or lack of funding for cost-sharing reductions and the covered benefits for each level of coverage." In 2022, TDI adopted a CSR factor of 1.35 within §3.505(f)(6)(B)(iii).

TDI develops the CSR factor on the basis of (1) data that reflects the number of individuals enrolled in each silver plan variation, (2) the actuarial value associated with each silver plan variation, and (3) the induced demand factor (IDF) that TDI assigns to each silver plan variation. TDI would generally assign IDFs similar to the IDFs set by the Centers for Medicare & Medicaid Services (CMS), except for platinum-level plans, because TDI actuaries believe the IDF factor of 1.15 is not justified for plans with an AV of 94%. For the purposes of the CSR factor, the TDI-established IDFs have been:

- 1.03 for plans with an AV of 70% or 73%;

- 1.08 for plans with an AV of 87%;

- 1.09 for plans with an AV of 94%; and

- 1.15 for plans with an AV of 100%.

The methodology for calculating the CSR factor has been as follows:

(1) Divide the average actuarial value provided by silver plans on the exchange based on the latest enrollment data by 70%.

(2) Divide the average induced demand factor associated with silver plans on the exchange based on the latest enrollment data by 1.03.

(3) Multiply the resulting number from paragraph (1) by the resulting number from paragraph (2).

Based on the enrollment data for 2021, TDI calculated a CSR factor of 1.35. However, the same methodology would result in a CSR factor of 1.40 based on enrollment reported in 2024.

TDI also proposes to amend the current reference to AV in the rule to clarify that issuers are required to use the federal AV calculator in developing their individual and small group rates.

Descriptions of the section's proposed amendments follow.

Section 3.505. TDI proposes to amend the CSR factor in subsection (f)(6)(B)(iii) to replace the old factor of 1.35 with a new factor of 1.40. As previously described, this new factor is based on the same methodology that TDI has historically used, but it now reflects the changes in enrollment currently seen across the silver-level-plan variations.

TDI is also proposing to amend the rule text in §3.505(f)(6)(B)(i) that requires issuers to provide the AV for their individual and small group plans, which must be "calculated consistent with 45 CFR §156.135." The amendment will clarify that issuers are required to use the federal AV calculator in developing their rates. This will support compliance with federal single risk pool requirements by ensuring issuers use enrollee health status only when setting their index rate used to price all their plans. Enforcing the single risk pool standards and preventing issuers from setting rates that reflect plan-to-plan variations in enrollee health status within the pricing AV will support a level playing field. The changes proposed to this section will apply to rate filings made for plans to be issued or renewed effective on or after January 1, 2026.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Rachel Bowden, director of the Regulatory Initiatives Office, has determined that during each year of the first five years the proposed amendments are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the amendments, other than that imposed by statute. Ms. Bowden made this determination because the proposed amendments do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed amendments.

Ms. Bowden does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amendments are in effect, Ms. Bowden expects that administering the proposed amendments will have the public benefits of ensuring that TDI's rules conform to Insurance Code §1698.052 and that consumers are charged insurance premiums that appropriately reflect the benefits provided. As proposed, the CSR factor will increase to 1.40 for coverage starting in 2026. An increased CSR factor will result in Texas consumers who qualify for advance payments of the premium tax credit under federal law receiving higher levels of tax cred-

its, which will increase their purchasing power, and may reduce the number of individuals who are uninsured or underinsured. Clarifying the reference to the federal AV calculator will have the benefit of ensuring that issuers follow single risk pool rating requirements, and that the AV does not interfere with the effect of the uniform CSR factor.

Ms. Bowden expects that the proposed amendments will not increase the cost of compliance with Insurance Code §1698.052 because they do not impose requirements beyond those in statute. Insurance Code §1698.051(b) requires the commissioner to "establish a process under which the commissioner reviews health benefit plan rates and rate changes for compliance with this chapter and other applicable state and federal law. . . ." This process requires health plans to submit rates by June 15 of each year. Insurance Code §1698.052(c)(2) directs the commissioner to consider, for silver plans, "whether the rate is appropriate for the plan in relation to the rates charged for qualified health plans offering different levels of coverage, taking into account any funding or lack of funding for cost-sharing reductions and the covered benefits for each level of coverage. . . ." Changing the CSR factor is not expected to increase costs because issuers will include the new factor in their annual rate filing, and the factor will be sufficient to capture the costs associated with providing CSRs. Likewise, making the AV requirement clearer is not expected to increase costs because it is a clarification and not a substantive change. In addition, using the federal AV calculator will eliminate the need for issuers to provide independent actuarial analysis and justification for the AV. The clarification will not impact the total amount of premium that issuers are able to charge for individual and small group health plans.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed amendments will not have an adverse economic effect on small or micro businesses, or on rural communities. The cost analysis in the Public Benefit and Cost Note section of this proposal also applies to any small or micro businesses that may be subject to the proposed amendments. The amendments will not impact rural communities, because the rule only affects health benefit plan issuers. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. Therefore, no additional rule amendments are required under Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed amendments are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on December 9, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on December 9, 2024. If TDI holds a public hearing, TDI will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes to amend §3.505 under Insurance Code §§1698.051(b), 1698.052, 1701.060, and 36.001.

Insurance Code §1698.051(b) requires that the commissioner by rule establish a process under which the commissioner will review individual and small group health benefit plan rates and rate changes for compliance with Insurance Code Chapter 1698 and other applicable state and federal laws, including 42 USC §§300gg, 300gg-94, and 18032(c) and those sections' implementing regulations, including rules establishing geographic rating areas.

Insurance Code §1698.052 requires that the commissioner adopt rules and provide guidance regarding requirements related to individual health benefit plan rates.

Insurance Code §1701.060 specifies that the commissioner may adopt rules necessary to implement the purposes of Insurance Code Chapter 1701.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 3.505 implements Insurance Code Chapter 1698.

§3.505. Required Rate Filings.

(a) An issuer may not use a rate with respect to a plan if:

(1) the issuer has not filed the rate with TDI for review;

(2) the rate filing does not comply with the standards in §3.503 of this title (relating to Rating Standards); or

(3) the rate filing has been withdrawn.

(b) Each issuer must submit an annual rate filing no later than June 15 for any individual or small group market plan that will be issued effective on or after January 1 in the following calendar year. A small group issuer may include scheduled quarterly trend increases within the

annual rate filing. An issuer may have only one active annual single risk pool rate filing in each market. An issuer may not modify an annual rate filing later than October 1 prior to the calendar year for which the filing was submitted.

(c) A small group issuer may submit a rate filing for a quarterly rate change that takes effect on April 1, July 1, or October 1. A small group issuer may have only one active quarterly single risk pool rate filing at a given time. Notwithstanding §26.11 of this title (relating to Restrictions Relating to Premium Rates), a small group issuer must submit a quarterly rate filing at least 105 days before the effective date of the rate change.

(d) A rate filing must include the index rate for the single risk pool and reflect every product and plan that is part of the single risk pool in the applicable market. Issuers are not required to enter CSR plan variations separately.

(e) Rate filings made under this subchapter must be submitted through the electronic system designated by TDI, according to any technical instructions provided for the electronic system and consistent with the rules and procedures in Chapter 3, Subchapter A, of this title (relating to Submission Requirements for Filings and Departmental Actions Related to Such Filings) and §11.301 of this title (relating to Filing Requirements).

(f) Rate filings made under this subchapter must include the following:

(1) the URRT (Part I);

(2) for a rate increase that is 15% or more within a 12-month period that begins on January 1, as determined by 45 CFR §154.200(b) and (c), concerning Rate Increases Subject to Review, a written description justifying the rate increase (Part II) that complies with 45 CFR §154.215(e), concerning Submission of Rate Filing Justification;

(3) rating filing documentation (Part III) that complies with 45 CFR §154.215(f) and that includes an unredacted actuarial memorandum signed by a qualified actuary;

(4) a rates table that identifies the applicable rate for each plan, depending on an individual's rating area, tobacco use, and age;

(5) an enrollment spreadsheet that contains, with respect to each county:

(A) the number of covered lives, as of March 31 of the current year, that are enrolled in each of the following plan types, separated on the basis of whether the enrollment is through the federal exchange or off-exchange:

(i) catastrophic plans;

(ii) bronze plans;

(iii) silver plans, separated as follows:

(I) silver plans with an AV of 70%;

(II) silver plans with an AV of 73%;

(III) silver plans with an AV of 87%;

(IV) silver plans with an AV of 94%; and

(V) silver plans with an AV of 100%;

(iv) gold plans; and

(v) platinum plans;

(B) whether the plan is available in the county in the current calendar year; and

(C) whether the plan will be available in the county in the next calendar year; and

(6) an AV and cost-sharing factor spreadsheet that contains:

(A) the plan ID specified in the URRT; and

(B) the component factors of an AV and cost-sharing design of plan field in the URRT, which should not include adjustments that account for the morbidity of the population expected to enroll in the plan, including:

(i) the AV used in the pricing of the plan, which must be the same as the AV used to comply with federal requirements for determining the plan's actuarial value, currently found in [~~calculated consistent with~~] 45 CFR §156.135, concerning AV Calculation for Determining Level of Coverage;

(ii) the induced-demand factor of 1.00 for bronze plans, 1.03 for silver plans, 1.08 for gold plans, and 1.15 for platinum plans; and

(iii) for individual silver plans on the exchange, a CSR adjustment factor of 1.40 [~~1.35~~], that accounts for the average costs attributable to CSRs, to the extent that issuers are not otherwise being reimbursed for those costs. If issuers are being reimbursed for those costs by HHS, consistent with 42 USC §18071, concerning Reduced Cost-Sharing for Individuals Enrolling in Qualified Health Plans, then the CSR adjustment factor would not apply.

(g) Issuers may submit data using the templates available on TDI's website at www.tdi.texas.gov/health/ratereview.html.

(h) On request from TDI, an issuer must provide any additional information needed to evaluate the rate filing.

(i) An issuer that does not intend to issue a plan that would require a rate filing for the next calendar year, but that has enrollment in a plan that is subject to this subchapter in the current year or the prior year, must submit the data for such plan under paragraphs (1) and (2) of this subsection, as applicable, to TDI no later than June 15. For example, in June of 2022, an issuer must submit data under paragraph (1) of this subsection for the 2021 calendar year, and data under paragraph (2) of this subsection for the first five months of calendar year 2022. An issuer that does not have data to submit under paragraph (2) of this subsection is still required to submit data under paragraph (1) of this subsection.

(1) For prior year cumulative data, an issuer must submit:

(A) allowed claim costs, defined as total payments made under the plan to health care providers on behalf of covered members and including payments made by the issuer, member cost-sharing, cost-sharing paid by HHS on behalf of low-income members, and net payments from any federal or state reinsurance arrangement or program;

(B) incurred claim costs, defined as allowed claim costs as specified in subparagraph (A) of this paragraph, less member cost-sharing, cost-sharing paid by HHS on behalf of low-income members, and any net payments from a federal or state reinsurance arrangement;

(C) earned premium; and

(D) member months.

(2) For current year cumulative data through March 31, an issuer must submit:

(A) earned premium;

(B) member months; and

(C) the enrollment spreadsheet required under subsection (f)(5) of this section.

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

Filed with the Office of the Secretary of State on October 21, 2024.

TRD-202404934
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 8, 2024
For further information, please call: (512) 676-6555

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TITLE 43. TRANSPORTATION

PART 3. MOTOR VEHICLE CRIME PREVENTION AUTHORITY

CHAPTER 57. MOTOR VEHICLE CRIME PREVENTION AUTHORITY

43 TAC §§57.9, 57.14, 57.27, 57.29, 57.48, 57.50 - 57.52

INTRODUCTION. The Motor Vehicle Crime Prevention Authority (authority) proposes amendments to 43 Texas Administrative Code (TAC) Chapter 57, §§57.9, 57.14; 57.27, 57.29, 57.48, and 57.50 - 57.52.

The proposed amendments in Chapter 57 are necessary to bring the rules into alignment with statute; remove language that is redundant with statute; to clarify existing requirements; to modernize language; to improve readability through the use of consistent terminology; to clarify or delete unused, archaic, or inaccurate definitions, terms, and references or other language; to clarify existing requirements; and more specifically describe the authority's methods and procedures.

EXPLANATION. The authority is conducting a review of its rules in Chapter 57 in compliance with Government Code, §2001.039. Notice of the department's plan to review Chapter 57 is published in this issue of the *Texas Register.* As a part of the rule review, the authority is proposing necessary amendments as detailed in the following paragraphs.

A proposed amendment would add new proposed §57.9(f) to clarify that grantees who are in violation of the MVCPA's non-supplanting requirement may be required by the Board to return supplanted funds to the MVCPA.

A proposed amendment to §57.14(b)(4) would clarify that a projects eligible for grant funding to address a reduction in the sale of stolen auto parts can include projects designed to reduce the sale of stolen catalytic converters, in furtherance of SB 224, 89th Legislature, Regular Session (2023). Proposed new §57.14(b)(6) would add "preventing stolen motor vehicles from entering Mexico" as a project goal for which the MVCPA can provide grant funding, to align the rule with Transportation Code Chapter 1006.

Proposed amendments to §57.27(a)(1), (a)(2), (c), (d) and (f) would clarify language and improve readability without changing the meaning of the rule. Proposed new §57.27(f) clarifies that MVCPA grantees do not have a statutory right to a contested case proceeding to determine whether a deficient condition described in §57.27(a) exists or has been resolved.

Proposed amendments to §57.29(d) and (e) would modernize language and improve readability.

A proposed amendment to §57.48(b) would update the titles of two Comptroller of Public Accounts forms used by insurers to pay the MVCPA fee with correct language and would clarify that the forms may be obtained in electronic format on the Comptroller's website.

A proposed amendment to §57.50 would update the section title to reflect the official agency name of the Texas Department of Insurance. Proposed amendments to the body of the rule would align the section with Transportation Code Chapter 1006.

Proposed amendments to §57.51(a), (b), and (c) would add "designee," "MVCPA," and "MVCPA board" in several places to clarify the initial submission procedures for insurers requesting refund determinations. The proposed amendments would improve readability through the use of consistent terminology.

Proposed amendments to §57.52 would update the section title to clarify that both penalties and interest may be assessed for a late payment of the fee. Additionally, the proposed amendment would add the word "late" to the section title to clarify that a violation of the section can also occur for the late filing of the report of the fee and result in a penalty being assessed against an insurer.

A proposed amendment to §57.52(a) and (a)(1) would remove language concerning the late filing of the report of the fee from subsection (a) and place it in new subsection (b) for clarity and ease of reference. The amendments proposed for subsection (a) would clarify that an insurer shall be assessed a penalty for the late payment of the fee in accordance with Tax Code §111.061(a). New subsection (b) clarifies that a penalty of $50 will be assessed against an insurer for the late filing of the report of the fee. The $50 penalty for the late filing of a report follows the Texas Comptroller's Office current practice involving a late filing of a report by a taxpayer.

A proposed amendment to new §57.52(c)(1) would increase the time period in which an insurer may submit a prescribed form to the MVCPA director to appeal the assessment of penalties and/or interest against an insurer from thirty days to sixty days. Currently, billing statements are mailed out up to two weeks after the balance shows and some insurers have complained that they did not receive notification until after the thirty-day period expired. The amendment would allow insurers sufficient additional time to review the MVCPA director's decision and consider whether to appeal.

Additional non-substantive amendments are proposed throughout Chapter 57 to correct punctuation, grammar, and capitalization.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the amendments as proposed are in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposed amendments.

Director William Diggs has determined that there will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Diggs has also determined that for each year of the first five years the proposed amended sections are in effect, the anticipated public benefit as a result of enforcing or administering the amendments will be the simplification, clarification, and streamlining of agency rules.

Anticipated Cost to Comply with the Proposal. Mr. Diggs anticipates that there will be no costs to comply with the proposed amendments because the grant recipients can avoid the penalties and assessed costs described in the amendments proposed for §57.50 and §57.52(b) by complying with the rules and statutory requirements.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the authority has determined that the proposed amendments will not have an adverse economic impact on small businesses, micro-businesses, and rural communities because there are no anticipated economic costs for persons required to comply with the proposed amendments. Therefore, the authority is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

TAKINGS IMPACT ASSESSMENT. The authority has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The authority has determined that each year of the first five years the proposed amendments are in effect, no government program would be created or eliminated. Implementation of the proposed amendments would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the authority or an increase or decrease of fees paid to the authority. The proposed amendments do not create a new regulation or expand or repeal a regulation. The amendments proposed to create new §57.52(c)(1) would limit a regulation by increasing the time an insurer has to appeal the assessment of penalties and/or interest from thirty days to sixty days. Lastly, the proposed amendments do not affect the number of individuals subject to Chapter 57's applicability and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on December 9, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

STATUTORY AUTHORITY. The amendments are proposed under Transportation Code, §1006.101, which requires the authority to adopt rules to implement the authority's powers and duties.

CROSS REFERENCE TO STATUTE. The proposed amendments would implement Transportation Code §1006.001, and §1006.153.

§57.9. Nonsupplanting Requirement.

(a) State funds provided by this Act shall not be used to supplant state or local funds.

(b) Supplanting means the replacement of other funds with Motor Vehicle Crime Prevention Authority (MVCPA) grant funds. It shall also include using existing resources already available to a program activity as cash match.

(c) Positions which existed prior to new grant award approval and were funded from any source other than MVCPA grant funds are not eligible for grant funding or to be used as cash match.

(d) If a grant program is reduced by 20% or more from the previous year, and as a result, grant funded or match positions are transferred to other duties for the grant year, they may be returned to grant funding in the subsequent grant year. This exception is not available for any positions that have not been grant funded or used as match for more than one grant year.

(e) Each grantee shall certify that MVCPA funds have not been used to replace state or local funds that would have been available in the absence of MVCPA funds. The certification shall be incorporated in each grantee's expenditure report.

(f) Grantees that supplant funds may be required by the Board to return supplanted funds to the MVCPA.

§57.14. Approval of Grant Projects.

(a) The MVCPA board will approve funding for projects on an annual basis, subject to continuation of funding through state appropriations and availability of funds.

(b) To be eligible for consideration for funding, a project must be designed to support one of the following MVCPA program categories:

(1) Law Enforcement, Detection and Apprehension;

(2) Prosecution, Adjudication and Conviction;

(3) Prevention, Anti-Theft Devices;

(4) Reduction of the Sale of Stolen Vehicles or Parts, including catalytic converters; [~~and~~]

(5) Educational Programs and Marketing; and[.]

(6) Preventing stolen motor vehicles from entering Mexico.

(c) Grant award decisions by the MVCPA are final and not subject to judicial review.

§57.27. Withholding Funds from Grantees.

(a) The MVCPA may withhold funds from a grantee or projects operated by the grantee when:

(1) a determination is made that the grantee has failed to:

(A) comply with applicable federal or state laws, rules, regulations, policies, or the grant agreements on which the award of the grant is predicated;

(B) submit required reports on time;

(C) provide a response to audit or monitoring findings on time;

(D) return any unused grant funds remaining on the expired grant within the required timeframe;

(E) use funds appropriately; or

(F) commence project operations within 45 days of the project start date; or

(2) a determination is made that the grantee has submitted reports or records with deficiencies, irregularities, or are delinquent.

(b) The MVCPA may reduce or withhold grant funds when MVCPA allocations are depleted or insufficient funds are allocated.

(c) The MVCPA will notify grantees of deficient conditions prompting the [~~for~~] withholding of grant funds and the period of time within which to cure any deficiency.

(d) Grantees have 15 days after receiving a deficiency [~~deficient~~] notification to request an appeal.

(e) The MVCPA director or MVCPA board designee will determine the outcome of the grant appeal.

(f) Grant funds [~~Funds~~] will be released to a grantee when the MVCPA director or MVCPA board designee is provided with satisfactory evidence that the deficient conditions have been [~~are~~] corrected.

(g) An appeal under this section is not a contested case under Government Code, Chapter 2001.

§57.29. Termination for Cause.

(a) The MVCPA may terminate any grant for failure to comply with any of the following:

(1) applicable federal or state laws, rules, regulations, policies, or guidelines;

(2) terms, conditions, standards, or stipulations of grant agreements; or

(3) terms, conditions, standards, or stipulations of any other grant awarded to the grantee.

(b) Termination of grants for cause shall be based on finding that:

(1) deficient conditions make it unlikely that the objectives of the grant will be accomplished;

(2) deficient conditions cannot be corrected within a period of time adjudged acceptable by the MVCPA; or

(3) a grantee has acted in bad faith.

(c) The MVCPA shall notify grantees of the conditions and findings constituting grounds for termination.

(d) Unexpended or unobligated funds awarded to a grantee shall[~~,~~] be returned to the MVCPA upon termination of a grant[~~, revert to the MVCPA~~].

(e) A grantee may be determined [~~adjudged~~] ineligible for a future grant award if a grant awarded to the grantee is terminated for cause.

§57.48. Motor Vehicle Years of Insurance Calculations.

(a) Each insurer, in calculating the fees established by Transportation Code §1006.153, shall comply with the following guidelines:

(1) The single statutory fee of $5 is payable on each motor vehicle for which the insurer provides insurance coverage during the calendar year regardless of the number of policy renewals; and

(2) When more than one insurer provides coverage for a motor vehicle during the calendar year, each insurer shall pay the statutory fee for that vehicle.

(3) "Motor vehicle insurance" as referred to in Transportation Code, Chapter 1006, means motor vehicle insurance as defined by the Insurance Code, Article 5.01(e). This definition shall be used when calculating the fees under this section.

(4) All motor vehicle or automobile insurance policies as defined by Insurance Code, Article 5.01(e), covering a motor vehicle shall be assessed the $5 fee except mechanical breakdown policies, garage liability policies, non-resident policies and policies providing only non-ownership or hired auto coverages.

(b) Insurers must report assessment information to the Comptroller using the [~~The~~] Insurance Motor Vehicle Crime Prevention Authority Semiannual Fee Report form and the Insurance [~~Instructions for the Computation of the~~] Motor Vehicle Crime Prevention Authority Semiannual Fee Report-July through December [~~of the Comptroller of Public Accounts are adopted by reference. The form and instructions are available from the Comptroller of Public Accounts, Tax Administration, P.O. Box 149356, Austin, Texas 78714-9356. Each insurer shall use this form and follow those instructions when reporting assessment information to the Comptroller~~].

§57.50. Report to Texas Department of Insurance.

If the MVCPA determines that an insurer failed to pay or intentionally underpaid the fee required by Transportation Code, §1006.153, the MVCPA shall notify the Texas Department of Insurance, and the Texas Department of Insurance may for that reason [~~with the request that the department~~] revoke the insurer's certificate of authority.

§57.51. Refund Determinations.

(a) An insurer that seeks a determination of the sufficiency or a refund of a semi-annual payment must file an amended report for each period and submit a written claim to the MVCPA director or the MVCPA board designee requesting [~~for~~] a determination or a refund not later than four years after the date the semi-annual payment was made to the state comptroller.

(b) The MVCPA director or the MVCPA board designee shall review the claim and obtain from the insurer any additional information, if any, that may be necessary or helpful to assist in the MVCPA determination. If an insurer refuses to provide the requested information, the refund shall be denied in whole or in part.

(c) The MVCPA director or the MVCPA board designee is authorized to employ or retain the services of a third party, such as the state comptroller, to assist in the determination. The MVCPA director or the MVCPA board designee shall prepare a written report to the MVCPA based on the director's or the designee's review and shall contain findings, conclusions, and a recommendation.

(d) The MVCPA shall base its determination on the documentary evidence considered by the director or the MVCPA board designee. The MVCPA decision shall be based on a majority vote of the MVCPA board. The MVCPA decision is final and is not subject to judicial review.

(e) Upon determining that an insurer is entitled to a refund, the MVCPA shall notify the comptroller and request the comptroller to draw warrants for the purpose of refunding overpayments.

§57.52. Assessment of Penalty and/or Interest for Late Payment of the Fee, Late Filing of Report; Appeal Procedures.

(a) Penalty for Late Payment of Fee [~~or Filing of Report~~].

(1) A penalty shall be assessed against an insurer for the delinquent payment of the fee required under Transportation Code §1006.153(b-1) [~~or the delinquent filing of any report of the fee required~~].

(2) The penalty for the delinquent payment of the fee [~~or late filing of the report~~] shall be assessed in accordance with Tax Code §111.061(a).

(3) Interest accrues in the manner described in Tax Code §111.060 on any fee paid after the due date.

(b) Penalty for Late Filing of the Report. A $50 penalty shall be assessed against an insurer for the delinquent filing of any report of the fee.

(c) [~~(b)~~] Appeal Procedures.

(1) An insurer that is assessed a penalty or interest by the MVCPA under Transportation Code §1006.153 may appeal the assessment by submitting an MVCPA prescribed form to the MVCPA Director within sixty (60) [~~thirty (30)~~] days of the date of the assessment.

(2) An insurer shall provide the MVCPA with any written documentation or evidence demonstrating the reasons for the late payment of the fee or late filing of the report.

(3) The MVCPA shall make a final decision on an insurer's appeal at a regularly scheduled open meeting of the MVCPA board. A final decision on the appeal shall be made by a majority vote of the MVCPA board.

(4) An appeal under this section is not a contested case under Government Code, Chapter 2001.

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

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David Richards
General Counsel
Motor Vehicle Crime Prevention Authority
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For further information, please call: (512) 465-1423

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PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 210. CONTRACT MANAGEMENT

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes the repeal of 43 Texas Administrative Code (TAC) §§210.1, 210.2, and 210.3; and proposes new Subchapter A, General Provisions, §210.1 and §210.2, and new Subchapter C, Contract Management, §§210.41, 210.42, and 210.43. The proposed repeals and new sections are necessary as a part of the department's rule review to organize the rules to begin with the generally applicable provisions, to organize subsequent subchapters by subject matter, to delete duplicative language, to add a delegation of signature authority, and to bring the department's protest, claims and contract monitoring rules into alignment with statute, with the current rules of the Texas Comptroller of Public Accounts (Comptroller) in 34 TAC, Part 1, and with current department practices.

The proposed revisions to 43 TAC Chapter 210 would repeal all of Subchapter A, Purchase Contracts, concerning claims, protests and enhanced contract monitoring, to incorporate and reorganize the sections into proposed new Subchapters A and C. Proposed new Subchapter A, General Provisions, would provide definitions applicable to the entire chapter and contract signature authority applicable to all contracts. Proposed new Subchapter C, Contract Management, would incorporate language currently found in Subchapter A regarding claims, protests, and contract monitoring.

EXPLANATION. The department is conducting a review of its rules in Chapter 210 in compliance with Government Code, §2001.039. Notice of the department's intention to conduct this review is also published in this issue of the *Texas Register*. As a part of the review, the department is proposing necessary amendments, repeals, and new sections to update and streamline the rule text, bringing it into compliance with statute and with current department procedure.

Chapter 210 is proposed to be retitled "Procurement and Contracting" to more accurately reflect the scope of the chapter and to avoid any confusion with proposed new Subchapter C, Contract Management.

Repeal of Subchapter A. Purchase Contracts

The proposed repeal of §§210.1, 210.2 and 210.3 would allow for the reorganization of the chapter for clarity and ease of reference. Language from these sections is proposed to be incorporated into proposed new Subchapter C, Contract Management, §§210.41 - 210.43.

New Subchapter A. General Provisions

Proposed new Subchapter A would be titled General Provisions, consistent with the organization and naming conventions found in Chapters 215 and 221 of this title. It would include information that is generally applicable to the remainder of the chapter.

Proposed new §210.1 would add definitions to be applicable to the entire chapter. Definitions in Chapter 210 are currently set out for each section separately, creating confusion and inconsistency. The chapter-wide definitions proposed in new §210.1 would improve clarity, consistency, and readability for the entire chapter.

Proposed new §210.1(a) would add an interpretation provision and references to the State General Services and Purchasing Act and the Code Construction Act. It would provide that terms found in this chapter have the definitions set forth in those statutes unless otherwise specified or unless the context clearly requires a different meaning. This would allow for consistency and clarity among the department's rules and other relevant sources of authority.

Proposed new §210.1(b) would list specific definitions for words and terms used in Chapter 210. Proposed new §210.1(b)(1) would define "Act" as Government Code, Chapters 2151 - 2177, otherwise known as the State Purchasing and General Services Act, which governs purchases made by state agencies. Proposed new §210.1(b)(2) would add the same definition for "board" that currently appears in §210.2, which is proposed for repeal. Proposed new §210.1(b)(3) would add a new definition for "contract," which is more expansive and inclusive of the various types of contracts the department uses. Proposed new §210.1(b)(4) would similarly add a new definition for "contractor" to replace the definition of "vendor" in current §210.1(b)(5) for clarity and consistency, and to align with current department contract terminology. Proposed new §210.1(b)(5) would add a definition for "days" to clarify that throughout the chapter, "days" means calendar days rather than business or working days,

to be consistent with how days are calculated in the Comptroller's procurement rules in 34 TAC, Part 1. Proposed new §210.1(b)(6) would define "department" for the whole chapter to create consistency and clarity. Proposed new §210.1(b)(7) would add a definition for "executive director" to identify the individual responsible for certain duties and authorities in this chapter. Proposed new §§210.1(b)(8), 210.1(b)(9), and 210.1(b)(10) would add definitions for "historically underutilized business," "interagency contract or agreement," and "interlocal contract or agreement" respectively, citing to the relevant defining statutes for clarity and consistency. "Purchase," is currently defined with slightly different wording in both §210.1(b)(4) and §210.1(b)(7), which are both proposed for repeal; proposed new proposed new §210.1(b)(11) would define "purchase" for the whole chapter to create consistency and clarity. Proposed new §210.1(b)(12) would add a new definition for "respondent" to replace the current definition of "interested party" in current §210.2(b)(6), because the proposed definition is more specific and in better alignment with current procurement terminology and department contract language.

Proposed new §210.2 would create a new delegation of signature authority. The department's board currently delegates contract approval and signature authority through action and a board resolution that incorporates department contract procedures. Proposed new §210.2 would eliminate the need for yearly board action on that item and reduce risk by providing a consistent standard that is transparent and readily accessible. It would also satisfy the requirement found in Government Code, §2261.254, that the governing body of a state agency must either sign or delegate signature authority for those contracts exceeding $1,000,000. The delegation would be applicable to all types of contracts and agreements and would allow the executive director to delegate authority further, as authorized by statute.

New Subchapter C. Contract Management.

Proposed new Subchapter C would incorporate and modify language from current §§210.1 - 210.3.

Proposed new §210.41 would incorporate language from current §210.1, concerning claims for purchase contracts. Proposed new §210.41 would not incorporate the definitions in current §210.1, because definitions are proposed to be reorganized into proposed new §210.1. Additionally, as compared to the language in current §210.1, proposed new §§210.41-.42 would replace the word "vendor" with either "contractor" or "respondent" depending on which is appropriate under the new definitions of those terms in proposed new §210.1(b), for consistency with agency contracting terminology. Proposed new §210.42 would also change the term "interested parties" in current §210.1 to "respondent," as defined in proposed new §210.1(b), for consistency and clarity. Proposed new §210.41 would include other non-substantive punctuation, grammatical, and organizational changes to the language in current §210.1. In proposed new §210.41 the word "mediation" is assigned the meaning set forth in Civil Practice and Remedies Code §152.023 and in §210.41(d)(3) the qualifications of the mediator are updated to be consistent with the Attorney General's model rule. Additionally, in proposed new §210.41(d)(4) additional potential mediation costs are addressed to be consistent with the Attorney General's model rules. In proposed new §210.41(e)(2), which incorporates language from current §210.1(f)(2), the word "shall" would be changed to "must" for clarity and consistency. Government Code, §311.016 defines the word "must" as "creates or recognizes a condition precedent," which is the intended meaning in proposed new §210.41(e)(2). The definitions in Government Code, §311.016 apply to Chapter 210 according to Government Code, §311.002(4).

Proposed new §210.42 would incorporate language concerning protests from current §210.2, except for the definitions, which are proposed to be reorganized into proposed new §210.1. Proposed new §210.42 would update language from current §210.2 to more accurately describe the department's procedures for protests of department purchases, and to make non-substantive punctuation, grammatical and organizational improvements. Proposed new §210.42(a) incorporates language from current §210.2, but updates the term "vendor" to "respondent" for clarity and consistency with the new definitions in proposed new §210.1.

Proposed new §210.42(b) would update the department's protest rules to be consistent with the Comptroller's current rules in 34 TAC Chapter 20, as Government Code, §2155.076 requires. Proposed new §210.42(b)(1) would only authorize vendors who have submitted a response to a department solicitation to file a protest. This aligns with the Comptroller's rules in 34 TAC Chapter 20, and limits protests to those who have proper standing. Proposed new §210.42(b) would describe the requirements for a properly filed protest, which is consistent with the language used in the Comptroller's rule, 34 TAC §20.535 regarding filing requirements for a protest.

Proposed new §210.42(c) would add deadlines for a protest to be filed timely, which would vary depending on the type of protest. This proposed language would replace current §210.2(c)(1), which has the same filing deadline regardless of protest type. The proposed new deadlines would be easier to determine and calculate accurately because they are based on the specific solicitation and award dates, whereas current §210.2(c)(1) is based on when the protestor "knew or should have known" an action had occurred. This change would algin proposed new §210.42 with the Comptroller's rule, 34 TAC §20.535, and would provide certainty and transparency in the protest process.

Proposed new §§210.42(d), (f), and (g) would incorporate language from current §§210.2(d), (e), and (f) but would only authorize the department's executive director or procurement director to move forward with a contract award or performance under a contract while a protest is pending, and would only authorize the department's procurement director to informally resolve a protest, or issue a written determination on a protest. Current §§210.2(d), (e), and (f) authorize the department's executive director's designee to take such actions. The procurement director is the department staff member with the most visibility into the procurement process by virtue of supervising the department's Purchasing Section, and is therefore in the best position to make initial decisions on matters involving purchasing decisions. Proposed new §§210.42(d), (f), and (g) would ensure that protest decisions are made by those with the most knowledge of and authority over the matter.

Proposed new §210.42(e) would address the actions the department may take on a protest, including the dismissal of an untimely protest or a protest that does not meet the filing requirements. This would allow the department increased efficiency in disposing of improper protests, so that it could focus its time and resources on resolving the protests that comply with the filing requirements.

Proposed new §210.42(g) would incorporate language from current §210.2(f), but would replace the term "interested parties" with the word "respondents" to align with the new definitions in proposed new §210.1 for clarity and consistency.

Proposed new §210.42(h) would update the department's protest rule to be consistent with the Comptroller's current rule, 34 TAC §20.538, as Government Code, §2155.076 requires. Proposed new §210.42(h) would require that appeals of a written determination be filed with the general counsel and that the general counsel may either make the final determination or refer it to the executive director for final determination. Additionally, proposed new §210.42(h) would replace the term "interested parties" in current §210.2(g) with the word "respondent" and would delete the word "working" before the word "days" to align with the new definitions proposed in new §210.1 for clarity and consistency.

Proposed new §210.43 would incorporate language from current §210.3 concerning enhanced contract monitoring. Proposed new §210.43 would be titled "Enhanced Contract or Performance Monitoring" to align with statutory language in Government Code, §2261.253. Proposed new §210.43 would replace the word "vendor" from current §210.3 with the word "contractor" throughout to align with the new definitions in proposed new §210.1. Additionally, as compared to the current language of §210.3, the language of proposed new §210.43(a) would add two additional factors to the risk assessment to determine which contracts require enhanced contract or performance monitoring: proposed new §210.43(a)(5) would add "special circumstances of the project," and proposed new §210.43(a)(6) would add "the scope of the goods, products or services provided under the contract." These additions would align with the current risk assessment tool used by the department's Purchasing Section.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the new sections and repeals will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Brad Payne, Director of the Purchasing Section, has determined that there will be no significant impact on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Payne has also determined that, for each year of the first five years new and repealed sections are in effect, there are several anticipated public benefits.

Anticipated Public Benefits. The public benefits anticipated as a result of the proposal include increased transparency, readability and clarity surrounding agency contracting processes and procedures.

Anticipated Costs to Comply with The Proposal. Mr. Payne anticipates that there will be no costs to comply with these rules.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that the proposed new sections and repeals will not have an adverse economic effect on small businesses, micro-businesses, and rural communities because they do not make any changes affecting such entities. Also, many of the changes the department proposes in new §210.42 are required by Government Code, §2155.076, which requires state agencies to adopt rules that are consistent with the Comptroller's rules regarding protest procedures for resolving a vendor protest relating to purchasing issues. Therefore, the department is not required to prepare a regulatory flexibility analysis under Government Code, §2006.002.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed new sections and repeals are in effect, no government program would be created or eliminated. Implementation of the proposed new sections and repeals would not require the creation of new employee positions or elimination of existing employee positions. Implementation would not require an increase or decrease in future legislative appropriations to the department or an increase or decrease of fees paid to the department. The proposed new sections §§210.1, 210.2, 210.41, 210.42, and 210.43 create new regulations, and the proposed repealed provisions, §§210.1, 210.2, and 210.3 repeal regulations. The proposed new sections and repeals do not expand or limit an existing regulation. Lastly, the proposed new sections and repeals do not affect the number of individuals subject to the applicability of the rules and will not affect this state's economy.

REQUEST FOR PUBLIC COMMENT. If you want to comment on the proposal, submit your written comments by 5:00 p.m. CST on December 9, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER A. PURCHASE CONTRACTS

43 TAC §§210.1 - 210.3

STATUTORY AUTHORITY. The department proposes the repeal of Chapter 210, Subchapter A, Purchase Contracts, under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2155.076, which requires state agencies, by rule, to develop and adopt protest procedures for resolving vendor protests relating to purchasing issues; Government Code, §2260.052(c), which requires state agencies to develop rules to govern negotiation and mediation of contract claims; Government Code, §2261.253(c), which requires state agencies, by rule, to establish a procedure to identify each contract that requires enhanced contract monitoring; and the statutory authority referenced throughout the preamble, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The proposed repeals would implement Government Code, Title 10, Subtitle D; and Transportation Code, Chapters 1001 and 1002.

§210.1. Claims for Purchase Contracts.

§210.2. Protest of Department Purchases under the State Purchasing and General Services Act.

§210.3. Enhanced Contract Monitoring Program.

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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CHAPTER 210. PROCUREMENT AND CONTRACTING
SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §210.1, §210.2

STATUTORY AUTHORITY. The department proposes new Subchapter A, §210.1 and §210.2 in Chapter 210 under Transportation Code, §1001.0411(b), which authorizes the executive director of the Texas Department of Motor Vehicles (department) to delegate duties or responsibilities; Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2260.052(c), which requires state agencies to develop rules to govern negotiation and mediation of contract claims; Government Code, §2161.003, which requires state agencies to adopt the Texas Comptroller of Public Accounts' historically underutilized business rules as their own rules; Government Code, §2261.254(d), which authorizes the board to delegate approval and signature authority for contracts; and the statutory authority referenced throughout the preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The proposed new sections would implement Government Code, Title 10, Subtitle D, and Chapters 771 and 791; and Transportation Code, Chapters 1001 and 1002.

§210.1. Definitions.

(a) As used throughout this chapter, the words and terms defined in the State Purchasing and General Services Act, Government Code, Title 10, Subtitle D, and the Code Construction Act, Government Code, Chapter 311 will have the same meaning defined therein, and each word or term listed in this chapter will have the meaning set forth herein, unless:

(1) its use clearly requires a different meaning; or

(2) a different definition is prescribed in this section, or for a particular section of this chapter or portion thereof.

(b) The following words and terms, when used in this chapter, will have the following meaning unless the context clearly indicates otherwise:

(1) Act--Government Code, Chapters 2151-2177, the State Purchasing and General Services Act.

(2) Board--The Board of the Texas Department of Motor Vehicles.

(3) Contract--A legally enforceable written agreement, including a purchase order, between the department and a contractor for goods, products, or services.

(4) Contractor--An individual or business entity that has a contract to provide goods, products, or services to the department.

(5) Days--Calendar days.

(6) Department--The Texas Department of Motor Vehicles.

(7) Executive director--The executive director of the department.

(8) Historically underutilized business (HUB)--A business as defined in Government Code, §2161.001(2).

(9) Interagency contract or Interagency agreement-- An agreement entered into under the Interagency Cooperation Act, Government Code, Chapter 771.

(10) Interlocal contract or Interlocal agreement-- An agreement entered into under the Interlocal Cooperation Act, Government Code, Chapter 791.

(11) Purchase--Any form of acquisition for goods, products, or services, including by lease or revenue contract, under the Act.

(12) Respondent--An individual or business entity that has submitted a bid, proposal, or other expression of interest in response to a specific solicitation for goods, products, or services.

§210.2. Delegation of Approval and Signature Authority.

(a) Purpose. The purpose of this section is to establish the approval authority and responsibilities for executing contracts required by the department.

(b) Applicability. This section applies to all contracts, interagency contracts, interlocal contracts, as well as informal letters of agreement, memoranda, and agreements.

(c) Board Delegation. The board delegates the following duties and authorities to the executive director of the department:

(1) the duty and authority to execute contracts, to include approving and signing contracts on behalf of the department;

(2) the authority to further delegate contract approval and signature authority to the executive director's designees for contracts with a dollar value up to and including $1,000,000; and

(3) the authority to further delegate contract approval and signature authority to a deputy executive director of the department for contracts with a dollar value exceeding $1,000,000 as allowed by Government Code, §2261.254.

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

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Laura Moriaty
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Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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SUBCHAPTER C. CONTRACT MANAGEMENT

43 TAC §§210.41 - 210.43

STATUTORY AUTHORITY. The department proposes new §§210.41, 210.42, and 210.43 in Chapter 210 under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures; Government Code, §2155.076, which requires state agencies, by rule, to develop and adopt protest procedures for resolving vendor protests relating to purchasing issues; Government Code, §2260.052(c), which requires state agencies to develop rules to govern negotiation and mediation of contract claims; Government Code, §2261.253(c), which requires state agencies, by rule, to establish a procedure to identify each contract that requires enhanced contract monitoring; and the statutory authority referenced throughout the preamble and in the rule text, which is incorporated herein by reference.

CROSS REFERENCE TO STATUTE. The proposed new sections would implement Government Code, Title 10, Subtitle D; and Transportation Code, Chapters 1001 and 1002.

§210.41. Claims for Purchase Contracts.

(a) Purpose. Government Code, Chapter 2260, provides a resolution process for certain contract claims against the state. Chapter 2260 applies to contracts of the department entered into under the State Purchasing and General Services Act. This section governs the filing, negotiation, and mediation of a claim. When used in this section, the terms "contract" and "contractor" are defined in Government Code, §2260.001.

(b) Filing of claim. A contractor may file a notice of claim with the executive director within 180 days after the date of the event giving rise to the claim. The claim must contain:

(1) the nature of the alleged breach;

(2) any amount the contractor seeks as damages; and

(3) the legal theory supporting recovery.

(c) Negotiation.

(1) The executive director shall negotiate with the contractor to resolve the claim;

(2) Negotiations will begin no later than the 120th day after the date the claim is received by the department;

(3) Negotiations may be written or oral; and

(4) The executive director may afford the contractor an opportunity for a meeting to informally discuss the claim and provide the contractor with an opportunity to present relevant information.

(d) Mediation. The parties may agree to mediate a claim through an impartial party. For the purposes of this subchapter, "mediation" is assigned the meaning set forth in the Civil Practice and Remedies Code, §154.023. The mediation is subject to the provisions of the Governmental Dispute Resolution Act, Government Code, Chapter 2009. The parties may be assisted in the mediation by legal counsel or other individual.

(1) The department and the contractor may agree to nonbinding mediation;

(2) The department will agree to mediation if the executive director determines that mediation may speed resolution of the claim or otherwise benefit the department;

(3) The mediator shall possess the qualifications required under Civil Practice and Remedies Code §154.022;

(4) Unless otherwise agreed in writing, each party shall be responsible for its own costs incurred in connection with a mediation, including without limitation, costs of document reproduction, attorney's fees, consultant fees and expert fees, and the cost of the mediator shall be divided equally between the parties.

(e) Final offer.

(1) The executive director will make a final offer to the contractor within 90 days of beginning negotiations; and

(2) If the final offer is acceptable to the contractor, the contractor must advise the executive director in writing within 20 days of the date of the final offer. The department will forward a settlement agreement to the contractor for signature to resolve the claim.

(f) Contested case hearing. If the contractor is dissatisfied with the final offer, or if the claim is not resolved before the 270th day after the claim is filed with the department, then, unless the parties agree in writing to an extension of time, the contractor may file a request with the executive director for an administrative hearing before the State Office of Administrative Hearings to resolve the unresolved issues of the claim under the provisions of Government Code, Chapter 2260, Subchapter C.

§210.42. Protest of Department Purchases under the State Purchasing and General Services Act.

(a) Purpose. The purpose of this section is to provide a procedure for respondents to protest purchases made by the department. Purchases made by the Texas Procurement and Support Services division of the Texas Comptroller of Public Accounts' office on behalf of the department are addressed in 34 TAC, Part 1, Chapter 20.

(b) Filing of protest.

(1) A respondent who has submitted a written response to a department solicitation may file a written protest.

(2) The protest must contain:

(A) the specific statutory or regulatory provision the protestant alleges the solicitation, contract award or tentative award violated;

(B) a specific description of each action by the department that the protestant alleges violated the identified statutory or regulatory provision;

(C) a precise statement of the relevant facts, including:

(i) sufficient documentation to establish that the protest has been timely filed; and

(ii) a description of the resulting adverse impact to the protestant, department and the state;

(D) a statement of any issues of law or fact that the protestant contends must be resolved;

(E) a statement of the protestant's argument and authorities that the protestant offers in support of the protest;

(F) an explanation of the subsequent action the protestant is requesting; and

(G) a statement that copies of the protest have been mailed or delivered to other identifiable respondents.

(3) The protest must be signed by an authorized representative of the protestant and the signature to the protest must be notarized.

(4) The protest must be filed in the time period specified in this section.

(5) The protest must be mailed or delivered to the department, to the attention of the procurement director.

(c) Timeliness. To be considered timely, the protest must be filed:

(1) by the end of the posted solicitation period, if the protest concerns the solicitation documents or actions associated with the publication of solicitation documents;

(2) by the day of the award of a contract resulting from the solicitation, if the protest concerns the evaluation or method of evaluation for a response to the solicitation; or

(3) no later than 10 days after the notice of award, if the protest concerns the award.

(d) Suspension of contract award or performance. If a protest or appeal of a protest has been filed, then the department will not proceed with the contract award or performance under the contract resulting from the solicitation unless the executive director or procurement director makes a written determination that the contract award should be made or performance under the contract should proceed without delay to protect the best interests of the state and department.

(e) Action by department. Upon receipt of a protest, the department may:

(1) dismiss the protest if:

(A) it is not timely; or

(B) it does not meet the requirements of subsection (b) of this section; or

(2) consider the protest under the procedures in this section.

(f) Informal resolution. The procurement director may solicit written responses to the protest from other affected vendors and attempt to settle and resolve the protest by mutual agreement.

(g) Written determination. If the protest is not resolved by agreement, the procurement director will issue a written determination to the protesting party and other respondents, setting forth the reason for the determination. The procurement director may determine that:

(1) no violation has occurred; or

(2) a violation has occurred and it is necessary to take remedial action as appropriate to the circumstances, which may include:

(A) declare the purchase void;

(B) reverse the contract award; or

(C) re-advertise the purchase using revised specifications.

(h) Appeal.

(1) A protestant may appeal the determination of a protest, to the general counsel. An appeal must be in writing and received in the office of general counsel not later than 10 days after the date the procurement director sent written notice of their determination. The scope of the appeal shall be limited to review of the procurement director's determination.

(2) The general counsel may:

(A) refer the matter to the executive director for consideration and a final written decision that resolves the protest; or

(B) may issue a written decision that resolves the protest.

(3) An appeal that is not filed in a timely manner may not be considered unless good cause for delay is shown or the executive director determines that an appeal raises issues that are significant to agency procurement practices or procedures in general.

(4) A written decision of the executive director or general counsel shall be the final administrative action of the department.

§210.43. Enhanced Contract and Performance Monitoring.

(a) The department will apply risk assessment factors to its contracts as defined in Government Code, §2261.253 to identify those contracts that require enhanced contract or performance monitoring. The risk assessment may consider the following factors:

(1) dollar amount of the contract;

(2) total contract duration;

(3) contractor past performance;

(4) risk of fraud, abuse or waste;

(5) special circumstances of the project;

(6) the scope of the goods, products, or services provided under the contract;

(7) business process impact of failure or delay; and

(8) the board or executive director's request for enhanced contract or performance monitoring.

(b) The department's contract management office or procurement director will notify the board of the results of the risk assessment and present information to the board resulting from the enhanced contract or performance monitoring.

(c) The department's contract management office or procurement director must immediately notify the board of any serious issue or risk that is identified under this section.

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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CHAPTER 211. CRIMINAL HISTORY OFFENSE AND ACTION ON LICENSE

INTRODUCTION. The Texas Department of Motor Vehicles (department) proposes amendments to 43 Texas Administrative Code, (TAC) §211.1 and §211.2; repeal of §§211.3, 211.4, 211.5, and 211.6; and new sections §§211.10, 221.11, 221.12, and 211.13. The proposed amendments, repeals, and new sections are necessary to organize the rules into two subchapters for consistency with other chapters in TAC Title 43, to clarify the types of licenses to which the chapter applies, to clarify which crimes relate to the duties and responsibilities of these license holders, to delete duplicative language found in statute, to conform rule language with statutory changes; to clarify existing requirements, and to modernize language and improve readability. Proposed language also conforms with Senate Bill (SB) 224, 88th Legislature, Regular Session (2023), which amended the Penal Code to add felony offenses involving damage to motor vehicles during the removal or attempted removal of a catalytic converter.

EXPLANATION. The department is conducting a review of its rules under Chapter 211 in compliance with Government Code, §2001.039. Notice of the department's plan to conduct this review is also published in this issue of the *Texas Register.* As a part of the review, the department is proposing necessary amendments, repeals, and new sections as detailed in the following paragraphs.

Occupations Code, Chapter 53 and §§2301.651, 2302.104, 2301.105, and 2302.108, and Transportation Code, §503.034 and §503.038 authorize the department and its board to investigate and act on a license application, or on a license, when a person has committed a criminal offense. Chapter 211 allows the department to maintain fitness standards for license holders with prior criminal convictions while implementing the legislature's stated statutory intent in Occupations Code, §53.003 to enhance opportunities for a person to obtain gainful employment after the person has been convicted of an offense and discharged the sentence for the offense.

The department must follow the requirements of Occupations Code, Chapter 53 to determine whether a person's past criminal history can be considered in evaluating the person's fitness for licensing.

Occupations Code, §53.021 gives a licensing authority the power to suspend or revoke a license, to disqualify a person from receiving a license, or to deny a person the opportunity to take a licensing examination on the grounds that the person has been convicted of: (1) an offense that directly relates to the duties and responsibilities of the licensed occupation; (2) an offense listed in Article 42A.054, Code of Criminal Procedure; or (3) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure. The department's evaluation of past criminal history applies to all license applications. Under Occupations Code, §53.021(a)(1), the department is responsible for determining which offenses directly relate to the duties and responsibilities of a particular licensed occupation.

Occupations Code, §53.022 sets out criteria for consideration in determining whether an offense directly relates to the duties and responsibilities of the licensed occupation. Based on those criteria, the department has determined that certain offenses directly relate to the duties and responsibilities of an occupation licensed by the department. However, conviction of an offense that directly relates to the duties and responsibilities of the licensed occupation or is listed in Occupations Code, §53.021(a)(2) and (3) is not an automatic bar to licensing; the department must consider the factors listed under Occupations Code, §53.023 in making its fitness determination. The factors include, among other things, the person's age when the crime was committed, rehabilitative efforts, and overall criminal history. The department is required to publish guidelines relating to its practice under this chapter in accordance with Occupations Code, §53.025.

Proposed New Subchapter A, General Provisions

Chapter 211 currently contains only one subchapter. The proposed amendments would divide Chapter 211 into two subchapters. A proposed amendment would retitle Subchapter A "General Provisions," consistent with the organization and naming conventions found in Chapters 215 and 221 of this title. This proposed amendment would provide consistency and improve readability because Chapter 211 applies to the same applicants and license holders as Chapters 215 and 221. Sections 211.1 and 211.2 are proposed for inclusion in retitled Subchapter A for consistency and ease of reference.

A proposed amendment to the title of §211.1 would add "Purpose and" to the section title to indicate that proposed amendments to this section include the purpose for the chapter in addition to definitions. This proposed change would place the chapter purpose description in the same subchapter and in the same order as similar language in Chapters 215 and 221 of this title for improved understanding and readability. Proposed new §211.1(a) would describe the purpose of Chapter 211 by incorporating existing language in current §211.3(a). The proposed amendments would add at the end of the paragraph the obligation for the department to review criminal history of license applicants before issuing a new or renewal license and the option for the department to act on the license of an existing license holder who commits an offense during the license period, consistent with Occupations Code, Chapter 53 and §§2301.651, 2302.104, 2302.105, and 2302.108, and Transportation Code, §503.034 and §503.038, and existing department procedures.

A proposed amendment to §211.1 would reorganize the current definitions into a subsection (b). Proposed amendments to §211.1(2) would delete references to "registration, or authorization," add an "or" to §211.1(2)(B), delete an "or" and add sentence punctuation in §211.1(2)(C), and delete §211.1(2)(D). These proposed amendments would clarify that Chapter 211 only applies to licenses issued by the department under Transportation Code, Chapter 503 and Occupations Code, Chapters 2301 and 2302, and does not apply to registrations the department may issue under the authority of another Transportation Code chapter. Registrations or permits that the department issues under other Transportation Code chapters do not currently require a review of an applicant's criminal history. Proposed amendments to §211.1(3) would delete the current list of specific retail license types and define the term "retail" by listing only those license types that are not considered to be retail. This proposed amendment would shorten the sentence to improve readability without changing the meaning or scope of the definition. Additionally, this proposed amendment would eliminate the need to update the rule if a future statutory change created a new type of vehicle or changed the name of an existing vehicle type.

A proposed amendment to the title of §211.2 would substitute "Chapter" for "Subchapter" for consistency with the rule text. A proposed amendment in §211.2(b) would add a comma after Occupations Code for consistency in punctuation.

The remaining sections in Subchapter A are proposed for repeal as each of these sections are proposed for inclusion in new Subchapter B.

Proposed New Subchapter B, Criminal History Evaluation

A proposed amendment would add a new subchapter, Subchapter B. Criminal History Evaluation Guidelines and Procedures. Proposed for inclusion in new Subchapter B are new sections §§211.10- 211.13. These new proposed sections would contain the guidelines and procedures rule language currently found in §§211.3-211.6 with the addition of the proposed changes described below.

Proposed new §211.10 would include the rule text of current §211.3 with changes as follows. Current §211.3(a) would be deleted because that language has been incorporated into proposed new §211.1(a), which describes the purpose of Chapter 211. Proposed new §211.10(a) would incorporate the language of current §211.3(b), except for the two paragraphs at the end of that subsection which duplicate a statutory requirement in Occupations Code, §53.022 and do not need to be repeated in rule. Proposed new §211.10(b) would recodify language that is currently in §211.3(c), except for §§211.3(c)(1) and (2), which are redundant and unnecessary statutory references.

Proposed new §211.10(c) would incorporate §211.3(d) with the following changes. Proposed new §211.10(c) would add a comma to correct missing punctuation after "Occupations Code" and would delete three sentences that specify which offenses apply to a license type. Proposed new §211.10(c) would include clarifying paragraph numbers: paragraph (1) would identify offenses that apply to all license types, and paragraph (2) would separate and identify additional offenses that apply only to retail license types. The proposed new language would add clarity and improve readability. Proposed new language would divide the offense categories currently in §211.3(d)(1) - (16) between the new paragraphs as relettered subparagraphs of §§211.10(c)(1) and (2).

Proposed new §211.10(c)(1)(B), would incorporate language currently in §211.3(d)(2) and add language to clarify that offenses involving forgery, falsification of records, or perjury include the unauthorized sale, manufacturing, alteration, issuance, or distribution of a license plate or temporary tag. This proposed clarifying language provide additional notice to applicants and license holders that the department considers forging or falsification of license plates or temporary tags to be a serious and potentially disqualifying offense.

Proposed new §211.10(c)(1)(E) would incorporate language currently in §211.3(d)(5) and add possession and dismantling of motor vehicles to the list of felony offenses under a state or federal statute or regulation that could potentially be disqualifying. Proposed new §211.10(c)(1)(E) would also include "motor vehicle parts" to clarify that disqualifying felony offenses include crimes related to motor vehicle parts as well as to motor vehicles. These proposed clarifications are important due to the increasing frequency of motor vehicle parts theft, including catalytic converters, tailgates, batteries, and wheel rims and tires.

Proposed new §211.10(c)(1)(G) would incorporate language currently in §211.3(d)(7) and would clarify that an offense committed while engaged in a licensed activity or on a licensed premises includes falsification of a motor vehicle inspection required by statute. This clarification is important because emissions inspections in certain counties are required by law and harm the health and safety of Texas citizens if not performed.

Proposed new §211.10(c)(1)(I) would add that offenses of attempting or conspiring to commit any of the foregoing offenses are potentially disqualifying offenses because the person intended to commit an offense. This proposed new language incorporates language from current §211.3(d)(16) and is necessary to add because the offenses that apply to all license holders and the additional offenses that only apply to retail license types are proposed to be reorganized into separate paragraphs to improve readability, so the language regarding conspiracies or attempts to commit the offenses must be repeated in each paragraph to provide notice of these potentially disqualifying offenses.

Proposed new §211.10(c)(2)(E) would make felony offenses under Penal Code, §28.03 potentially disqualifying when a motor vehicle is damaged, destroyed, or tampered with during the removal or attempted removal of a catalytic converter. This new amendment aligns with Senate Bill (SB) 224, 88th Legislature, Regular Session (2023), which amended Penal Code, §28.03 to create a state jail felony for damage to a motor vehicle because of removal or attempted removal of the catalytic converter. Proposed new §211.10(c)(2)(D) would incorporate §211.3(d)(12) and would add two additional offenses against the family: Penal Code, §25.04 and §25.08. Penal Code, §25.04 includes offenses involving the enticement of a child away from the parent or other responsible person, and Penal Code, §25.08 includes offenses related to the sale or purchase of a child. These offenses are relevant to the retail professions licensed by the department because parents frequently bring children to a dealership when considering a vehicle purchase, and a retail license holder may have unsupervised access to a child while a parent test-drives a vehicle or is otherwise engaged in viewing or inspecting a vehicle offered for sale. License holders also have access to the parent's motor vehicle records, including the family's home address. A person with a predisposition to commit these types of crimes would have the opportunity to engage in further similar conduct.

Proposed new §211.10(c)(2)(F) would incorporate the language of current §211.3(d)(13), and clarify that the department would consider any offense against the person to be potentially be disqualifying, would add a reference to Penal Code, Title 5, and would further clarify that an offense in which use of a firearm resulted in fear, intimidation, or harm of another person would be included in the list of potentially disqualifying crimes. Additionally, proposed new §211.10(c)(2)(F) would clarify that a felony offense of driving while intoxicated which resulted in harm to another person may also be potentially disqualifying. The department considers these offenses to be related to the occupations of retail license holders because these license holders have direct contact with members of the public during vehicle test drives or other settings in which no one else is present, and retail license holders have access to an individual's motor vehicle records, including the individual's home address. A person with a predisposition for violence would have the opportunity in these situations to engage in further similar conduct. These proposed amendments would further clarify which offenses against a person the department considers directly related to the licensed occupation and therefore potentially disqualifying. The department's consideration of these crimes is subject to certain limitations in Occupations Code, Chapter 53.

Proposed new §211.11 would incorporate language from current §211.4, with the addition of proposed new §211.11(a), which would clarify that the department will deny a pending application if an applicant or an applicant's representative as defined in

§211.2(a)(2) is imprisoned. Occupations Code, §53.021(b) requires an agency to revoke a license holder's license on the license holder's imprisonment following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision. Because the department also determines licensure eligibility based on individuals serving as representatives for the license holder, the department also considers the effect of imprisonment of those persons on a license holder. Because the revocation for a felony conviction is mandatory in Occupations Code, §53.021(b), the department must also deny a pending application. An applicant who is imprisoned may reapply once the applicant is no longer imprisoned and an applicant whose application is denied based on an imprisoned individual serving in a representative capacity may choose a different representative and reapply for licensure. Proposed new §211.11(b) would substitute "of" for "or" to correct a typographical error made at adoption of §211.4. Proposed new §211.11(c) incorporates language from current §211.4(d). Proposed new §211.11(d) incorporates language from current §211.4(c).

Proposed new §211.12 would incorporate without change the language in current §211.5 that addresses the procedure for a person to obtain a criminal history evaluation letter from the department. This process allows a person to request an evaluation prior to applying for a license if the person so desires.

Proposed new §211.13(a) would incorporate the current language of §211.6(a) and would clarify that fingerprint requirements apply to "an applicant for a new or renewal license" to improve readability without changing meaning. Proposed new §211.13(b)(1) would incorporate the language of current §211.6(b)(1) and would clarify that a trust beneficiary is a person who may be required by the department to submit a set of fingerprints to the Texas Department of Public Safety as part of the application process for those license types. This is a clarification rather than an extension of the existing requirements for the fingerprinting of owner applicants, because a trust beneficiary is an equitable owner of the trust's assets. It is necessary for the department to fingerprint trust beneficiaries along with other owners because doing so will prevent a bad actor with a history of criminal offenses that directly relate to the duties and responsibilities of a license holder from obtaining a license from the department by using a trust to hide the bad actor's identity and then using that license to perpetrate, or benefit from, fraudulent and criminal actions, or otherwise take advantage of the position of trust created by the license.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Glenna Bowman, Chief Financial Officer, has determined that for each year of the first five years the proposal will be in effect, there will be no significant fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. Monique Johnston, Director of the Motor Vehicle Division, has determined that there will be no significant impact on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Ms. Johnston also determined that, for each year of the first five years the proposal is in effect, public benefits are anticipated, and that applicants and license holders will not incur costs to comply with the proposal. The anticipated public benefits include reduced opportunity for fraud and related crime, and improved public safety. Requiring fingerprints for a trust beneficiary will benefit the public by preventing bad actors with a history of criminal offenses that directly relate to the duties and responsibilities of a license holder from obtaining licenses by using a trust to hide their identity and then using those licenses to perpetrate, or benefit from, fraud and criminal actions, or otherwise take advantage of the position of trust created by the license.

Ms. Johnston anticipates that there will be no additional costs on regulated persons to comply with the submission and evaluation of information under this proposal because the rules do not establish any new requirements or costs for regulated persons unless the person commits a crime. The proposed requirement in §211.13(b)(1) for the fingerprinting of trust beneficiaries is a clarification of the existing requirement that applicant owners must be fingerprinted, as trust beneficiaries are equitable owners of the trust's assets. It therefore does not create a new fingerprinting requirement. Additionally, Ms. Johnston anticipates that there will be no additional costs on regulated persons to comply with the fingerprint requirements under this proposal as the new section does not establish fees for fingerprinting or processing criminal background checks. Fees for fingerprinting and access to criminal history reports are established by DPS under the authority of Texas Government Code, Chapter 411.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. As required by Government Code, §2006.002, the department has determined that this proposal will not have an adverse economic effect or disproportionate economic impact on small or micro businesses. The department has also determined that the proposed amendments will not have an adverse economic effect on rural communities because rural communities are exempt from the requirement to hold a license under Transportation Code, §503.024. Therefore, under Government Code, §2006.002, the department is not required to perform a regulatory flexibility analysis.

TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT. The department has determined that each year of the first five years the proposed repeal and amendments are in effect the amendments will not create or eliminate a government program; will not require the creation of new employee positions and will not require the elimination of existing employee positions; will not require an increase or decrease in future legislative appropriations to the department; will not require an increase in fees paid to the department; will create new regulations and expand existing regulations, as described in the explanation section of this proposal; will repeal existing regulations in §§211.3 - 211.6; will increase the number of individuals subject to the rule's applicability regarding fingerprinting of trust beneficiaries; and will not significantly benefit or adversely affect the Texas economy.

REQUEST FOR PUBLIC COMMENT.

If you want to comment on the proposal, submit your written comments by 5:00 p.m. Central Standard Time on December 9, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the

department will consider written comments and public testimony presented at the hearing.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §211,1. §211.2

STATUTORY AUTHORITY. The department proposes amendments to Chapter 211 under Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, to revoke or suspend a license, to place on probation, or to reprimand a license holder if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 411; Occupations Code, Chapters 53, 2301 and 2302; Transportation Code, Chapters 503 and 1002; Penal Code, Chapters 25, 28, 43, 49 and Title 5; and Code of Criminal Procedure, Article 42A and 62.

§211.1. Purpose and Definitions.

(a) The licenses issued by the department create positions of trust. License holder services involve access to confidential information; conveyance, titling, and registration of private property; possession of monies belonging to or owed to private individuals, creditors, and governmental entities; and compliance with federal and state environmental and safety regulations. License holders are provided with opportunities to engage in fraud, theft, money laundering, and related crimes, and to endanger the public through violations of environmental and safety regulations. Many license holders provide services directly to the public, so licensure provides persons predisposed to commit assaultive or sexual crimes with greater opportunities to engage in such conduct. To protect the public from these harms, the department shall review the criminal history of license applicants before issuing a new or renewal license and may take action on a license holder who commits an offense during the license period based on the guidelines in this chapter.

(b) When used in this chapter, the following words and terms have the following meanings, unless the context clearly indicates otherwise.

(1) "Department" means the Texas Department of Motor Vehicles.

(2) "License" means any license [~~, registration, or authorization,~~] issued by the department under:

(A) Transportation Code, Chapter 503;

(B) Occupations Code, Chapter 2301; or

(C) Occupations Code, Chapter 2302. [~~; or~~]

[~~(D) any other license, registration, or authorization, that the department may deny or revoke because of a criminal offense of the applicant or license holder.~~]

(3) "Retail license types" means those license [~~holder~~] types which require holders to [~~that~~] interact directly with the public, [~~including salvage dealers, converters, independent mobility motor vehicle dealers, lease facilitators, and general distinguishing number holders for the following vehicle categories: all-terrain vehicle, light truck, motorcycle, motorhome, moped /motor scooter, medium duty truck, neighborhood vehicle, other, passenger auto, recreational off-highway vehicle, and towable recreational vehicle,~~] but does not include other license types that do not generally interact directly with the public, including manufacturers, distributors, and general distinguishing number holders for the following vehicle categories: ambulance, axle, bus, engine, fire truck/fire fighting vehicle, heavy duty truck, transmission, wholesale motor vehicle dealer, and wholesale motor vehicle auction.

§211.2. Application of Chapter [~~Subchapter~~].

(a) This chapter applies to the following persons:

(1) applicants and holders of any license; and

(2) persons who are acting at the time of application, or will later act, in a representative capacity for an applicant or holder of a license, including the applicant's or holder's officers, directors, members, managers, trustees, partners, principals, or managers of business affairs.

(b) In this chapter a "conviction" includes a deferred adjudication that is considered to be a conviction under Occupations Code, §53.021(d).

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

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

TRD-202404979
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 8, 2024
For further information, please call: (512) 465-4160

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43 TAC §§211.3 - 211.6

STATUTORY AUTHORITY. The department proposes repeals to Chapter 211 under Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, to revoke or suspend a license, to place on probation, or to reprimand a license holder if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; and Transportation Code, §1002.001, which authorizes the board to adopt or rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 411; Occupations Code, Chapters 53, 2301 and 2302; Transportation Code, Chapters 503 and 1002; Penal Code, Chapters 25, 28, 43, 49 and Title 5; and Code of Criminal Procedure, Article 42A and 62.

§211.3. Criminal Offense Guidelines.

§211.4. Imprisonment.

§211.5. Criminal History Evaluation Letters.

§211.6. Fingerprint Requirements for Designated License Types.

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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SUBCHAPTER B. CRIMINAL HISTORY EVALUATION GUIDELINES AND PROCEDURES

43 TAC §§211.10 - 211.13

STATUTORY AUTHORITY. The department proposes new sections to Chapter 211 under Government Code, §411.122(d), which authorizes department access to criminal history record information maintained by DPS; Government Code, §411.12511, which authorizes the department to obtain criminal history record information from DPS and the FBI for license applicants, license holders, and representatives whose act or omission would be cause for denying, revoking, or suspending a general distinguishing number or license issued under Transportation Code, Chapter 503, or Occupations Code, Chapters 2301 and 2302; Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, to revoke or suspend a license, to place on probation, or to reprimand a license holder if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Occupations Code, §2302.051, which authorizes the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; and Transportation Code, §1002.001, which authorizes the board to adopt or rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. Government Code, Chapter 411; Occupations Code, Chapters 53, 2301 and 2302; Transportation Code, Chapters 503 and 1002; Penal Code, Chapters 25, 28, 43, 49 and Title 5; and Code of Criminal Procedure, Article 42A and 62.

§211.10. Criminal Offense Guidelines.

(a) Under Occupations Code, Chapter 53, the department may suspend or revoke an existing license or disqualify an applicant from receiving a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the licensed occupation.

(b) The department has determined under the factors listed in Occupations Code, §53.022 that offenses detailed in subsection (c) of this section directly relate to the duties and responsibilities of license holders, either because the offense entails a violation of the public trust,

issuance of a license would provide an opportunity to engage in further criminal activity of the same type, or the offense demonstrates the person's inability to act with honesty, trustworthiness, and integrity. Such offenses include crimes under the laws of another state, the United States, or a foreign jurisdiction, if the offense contains elements that are substantially similar to the elements of an offense under the laws of this state. The list of offenses in subsection (c) of this section is in addition to offenses that are independently disqualifying under Occupations Code, §53.021.

(c) The list of offenses in this subsection is intended to provide guidance only and is not exhaustive of the offenses that may relate to a particular regulated occupation. After due consideration of the circumstances of the criminal act and its relationship to the position of trust involved in the particular licensed occupation, the department may find that an offense not described below also renders a person unfit to hold a license based on the criteria listed in Occupations Code, §53.022.

(1) the following offenses apply to all license types:

(A) offenses involving fraud, theft, deceit, misrepresentation, or that otherwise reflect poorly on the person's honesty or trustworthiness, including an offense defined as moral turpitude;

(B) offenses involving forgery, falsification of records, perjury, or the unauthorized sale, manufacturing, alteration, issuance, or distribution of a license plate or temporary tag;

(C) offenses involving the offering, paying, or taking of bribes, kickbacks, or other illegal compensation;

(D) felony offenses against public administration;

(E) felony offenses under a state or federal statute or regulation involving the manufacture, sale, finance, distribution, repair, salvage, possession, dismantling, or demolition, of motor vehicles or motor vehicle parts;

(F) felony offenses under a state or federal statute or regulation related to emissions standards, waste disposal, water contamination, air pollution, or other environmental offenses;

(G) offenses committed while engaged in a licensed activity or on licensed premises, including the falsification of a motor vehicle inspection required by statute;

(H) felony offenses involving the possession, manufacture, delivery, or intent to deliver controlled substances, simulated controlled substances, dangerous drugs, or engaging in an organized criminal activity; and

(I) offenses of attempting or conspiring to commit any of the foregoing offenses.

(2) the following additional offenses apply to retail license types:

(A) felony offenses against real or personal property belonging to another;

(B) offenses involving the sale or disposition of another person's real or personal property;

(C) a reportable felony offense conviction under Chapter 62, Texas Code of Criminal Procedure for which the person must register as a sex offender;

(D) an offense against the family as described by Penal Code, §§25.02, 25.04, 25.07, 25.072, 25.08, or 25.11;

(E) felony offenses under Penal Code, §28.03 involving a motor vehicle that is damaged, destroyed, or tampered with during the removal or attempted removal of a catalytic converter;

(F) offenses against the person under Penal Code, Title 5, including offenses in which use of a firearm resulted in fear, intimidation, or harm of another person, and in Penal Code, Chapter 49, a felony offense of driving while intoxicated that resulted in the harm of another person;

(G) a felony stalking offense as described by Penal Code, §42.072;

(H) a felony offense against public order and decency as described by Penal Code §§43.24, 43.25, 43.251, 43.26, 43.261, or 43.262; and

(I) offenses of attempting or conspiring to commit any of the foregoing offenses.

(d) When determining a person's present fitness for a license, the department shall also consider the following evidence:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

(7) other evidence of the person's present fitness, including letters of recommendation.

(e) It is the person's responsibility to obtain and provide to the licensing authority evidence regarding the factors listed in subsection (d) of this section.

§211.11. Imprisonment.

(a) The department shall deny a license application if the applicant or a person described by §211.2(a)(2) of this chapter (relating to Application of Chapter) is imprisoned while a new or renewal license application is pending.

(b) The department shall revoke a license upon the imprisonment of a license holder following a felony conviction or revocation of felony community supervision, parole, or mandatory supervision.

(c) A person currently imprisoned because of a felony conviction may not obtain a license, renew a previously issued license, or act in a representative capacity for an application or license holder as described by §211.2(a)(2).

(d) The department may revoke a license upon the imprisonment for a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision of a person described by §211.2(a)(2) of this chapter who remains employed with the license holder.

§211.12. Criminal History Evaluation Letters.

(a) Pursuant to Texas Occupations Code, Chapter 53, Subchapter D, a person may request that the department evaluate the person's eligibility for a specific occupational license regulated by the department by:

(1) submitting a request on a form approved by the department for that purpose; and

(2) paying the required Criminal History Evaluation Letter fee of $100.

(b) The department shall respond to the request not later than the 90th day after the date the request is received.

§211.13. Fingerprint Requirements for Designated License Types.

(a) The requirements of this section apply to an applicant for a new or renewal license for the license types designated in Chapter 215 or Chapter 221 of this title as requiring fingerprints for licensure.

(b) Unless previously submitted for an active license issued by the department, the following persons may be required to submit a complete and acceptable set of fingerprints to the Texas Department of Public Safety and pay required fees for purposes of obtaining criminal history record information from the Texas Department of Public Safety and the Federal Bureau of Investigation:

(1) a person, including a trust beneficiary, applying for a new license, license amendment due to change in ownership, or license renewal; and

(2) a person acting in a representative capacity for an applicant or license holder who is required to be listed on a licensing application, including an officer, director, member, manager, trustee, partner, principal, or manager of business affairs.

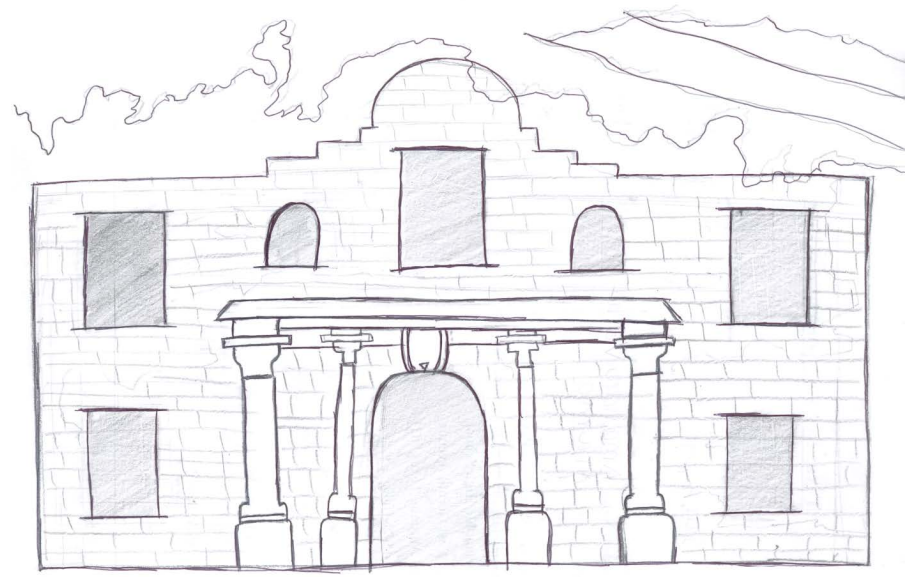
(c) After reviewing a licensure application and licensing records, the department will notify the applicant or license holder which persons in subsection (b) of this section are required to submit fingerprints to the Texas Department of Public Safety.

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

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

TRD-202404980
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: December 8, 2024
For further information, please call: (512) 465-4160

♦ ♦ ♦



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

SUBCHAPTER C. APPLICATIONS AND LICENSING

22 TAC §801.261

The Texas State Board of Examiners of Marriage and Family Therapists withdraws proposed amendments to §801.261 which appeared in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3481).

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

TRD-202405017
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: October 25, 2024
For further information, please call: (512) 305-7706

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER C. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

43 TAC §215.102, §215.122

The Texas Department of Motor Vehicles withdraws proposed new and amended §215.102 and §215.122 which appeared in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5030).

Filed with the Office of the Secretary of State on October 28, 2024.

TRD-202405109
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Effective date: October 28, 2024
For further information, please call: (512) 465-4160

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CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER H. DEPUTIES

43 TAC §217.166

The Texas Department of Motor Vehicles withdraws proposed amended §217.166 which appeared in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5066).

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

TRD-202405064
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Effective date: October 25, 2024
For further information, please call: (512) 465-4160

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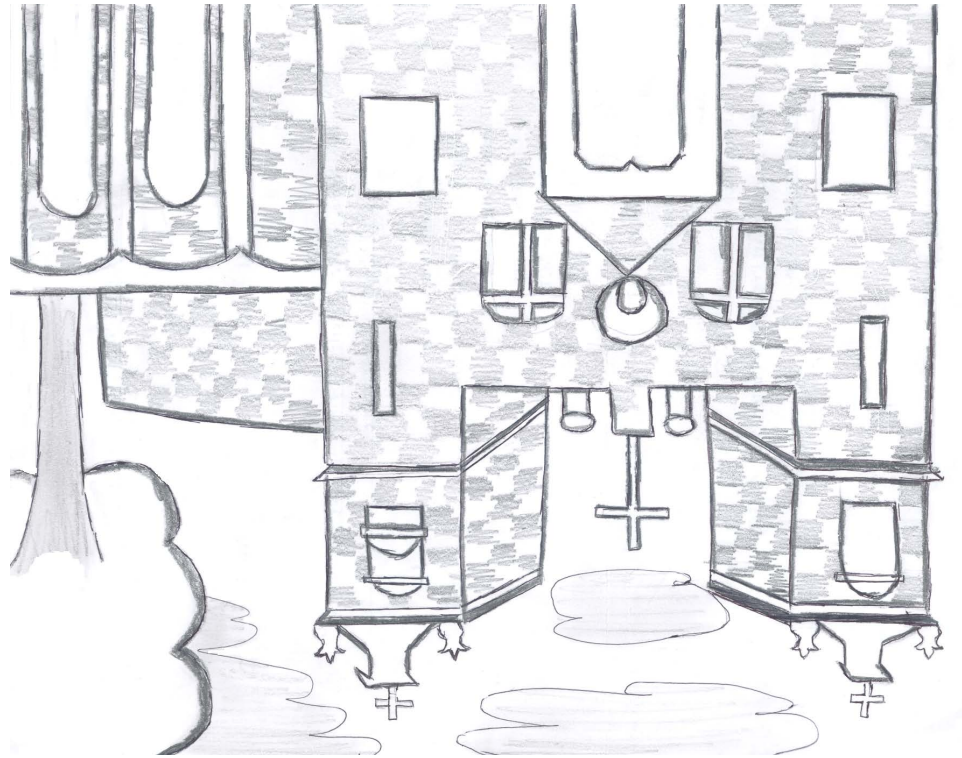

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER O. DELIVERY SYSTEM AND PROVIDER PAYMENT INITIATIVES

1 TAC §353.1311

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §353.1311, concerning Quality Metrics for the Texas Incentives for Physicians and Professional Services Program.

The amendment to §353.1311 is adopted without changes to the proposed text as published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5223) and, therefore, will not be republished.

BACKGROUND AND JUSTIFICATION

Each directed payment program (DPP) has a quality rule and financial rule. Effective January 28, 2024, HHSC amended the Texas Incentives for Physicians and Professional Services (TIPPS) financial rule, §353.1309, to add a pay-for-performance component to TIPPS beginning with state fiscal year 2026.

The adoption of amended §353.1311, the TIPPS quality rule, implements the quality reporting necessary for the pay-for-performance component of the TIPPS financial rule. The adopted amendment also makes non-substantive changes to the text of the rule to make the TIPPS quality rule mirror the quality rules for other DPPs.

COMMENTS

The 31-day comment period ended August 19, 2024.

During this period, HHSC did not receive any comments regarding the proposed rule.

STATUTORY AUTHORITY

The adoption of the amendment is authorized by Texas Government Code §531.033, which provides the Executive Commissioner with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §533.002, which authorizes HHSC to implement the Medicaid managed care 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 October 24, 2024.

TRD-202404970
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 13, 2024
Proposal publication date: July 19, 2024
For further information, please call: (512) 438-2910

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TITLE 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

The Finance Commission of Texas (commission) adopts amendments to §84.602 (relating to Filing of New Application), §84.608 (relating to Processing of Application), §84.611 (relating to Fees), §84.613 (relating to Denial, Suspension, or Revocation Based on Criminal History), §84.616 (relating to License Display), §84.617 (relating to License Term, Renewal, and Expiration), §84.705 (relating to Unclaimed Funds), §84.707 (relating to Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts)), §84.708 (relating to Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts)), §84.709 (relating to Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts)), §84.802 (relating to Non-Standard Contract Filing Procedures), §84.806 (relating to Format), §84.808 (relating to Model Clauses), and §84.809 (relating to Model Contract); and adopts new §84.710 (relating to Annual Report) in 7 TAC Chapter 84, concerning Motor Vehicle Installment Sales.

The commission adopts the amendments to §§84.608, 84.611, 84.613, 84.616, 84.617, 84.705, 84.802, 84.806, 84.808, and 84.809 and adopts new §84.710 without changes to the proposed text as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6535) and will not be republished.

The commission adopts the amendments to §§84.602, 84.707, 84.708, and 84.709 with changes to the proposed text as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6535) and will be republished.

The commission received two official comments on the proposed amendments. The comments were from the Texas Automo-

bile Dealers Association (TADA) and the Texas Independent Automobile Dealers Association (TIADA). Both comments recommended changes to certain rule sections in the proposed amendments. The commission's responses to the comments are discussed later in this preamble.

The rules in 7 TAC Chapter 84 govern motor vehicle retail installment transactions. In general, the purpose of the rule changes to 7 TAC Chapter 84 is to implement changes resulting from the commission's review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 84 was published in the *Texas Register* on May 31, 2024 (49 TexReg 3937). The commission received no official comments in response to that notice.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received one informal precomment on the rule text draft.

Amendments to §84.602 update requirements for filing a new motor vehicle sales finance license application. Currently, §84.602(1)(A)(ii) requires a license application to identify a "responsible person" with substantial management responsibility for each proposed office. The adoption would replace the "responsible person" requirement in §84.602(1)(A)(ii) with a requirement to list a "compliance officer," who must be an individual responsible for overseeing compliance, and must be authorized to receive and respond to communications from the OCCC. The amendment will enable businesses to identify an individual who can be contacted on a company-wide basis. The amendment is intended to ensure that each business lists an individual who can be contacted about compliance issues. In addition, an amendment to §84.602(2)(A)(v) removes language suggesting that license applicants send fingerprints directly to the OCCC. Currently, license applicants submit fingerprints through a party approved by the Texas Department of Public Safety.

In its official comment, TADA requests that the commission add the phrase "regarding the OCCC" after the statement that the compliance officer "must be an individual responsible for overseeing compliance." TADA notes that "some licensees have more than one person who is responsible for various aspects of compliance at the dealership, such as employment compliance, tax compliance, titling, and regulatory compliance." In response to this comment, a change has been made to the proposal to include the phrase "regarding the OCCC" in the amendment to §84.602(1)(A)(ii).

Amendments to §84.608 revise provisions governing the OCCC's denial of a motor vehicle sales finance license application. Under Texas Finance Code, §348.504(b), if the OCCC finds that a license applicant has not met the eligibility requirements for a license, then the OCCC will notify the applicant. Under Texas Finance Code, §348.504(c), an applicant has 30 days after the date of the notification to request a hearing on the denial. Amendments at §84.608(d) specify that if the eligibility requirements for a license have not been met, the OCCC will send a notice of intent to deny the license application, as described by Texas Finance Code, §348.504(b). Amendments at §84.608(e) revise current language to specify that an affected applicant has 30 days from the date of the notice of intent to deny to request a hearing, as provided by Texas Finance Code, §348.504(c). These amendments will ensure consistency with the license application denial process in Texas Finance Code, §348.504. The amendments are consistent with the OCCC's current practice for notifying an applicant of the intent to deny a license application.

Amendments to §84.611 and new §84.710 relate to annual reports filed by licensees. Under Texas Finance Code, §14.107, §16.003, and §348.506, the commission and the OCCC are authorized to set fees for the OCCC to carry out its statutory functions. Current §84.611(e)(1)(C) authorizes the OCCC to collect a variable annual assessment based on the dollar volume of transactions reported by a licensee in an annual renewal statement. Current §84.611(e)(3) describes the content and filing of the annual renewal statement. The amendments move this requirement to new §84.710, redesignate the annual renewal statement as an "annual report," and specify a June 30 deadline for filing the report. The new section is similar to rules for other OCCC licensees filing annual reports, such as the current rule for pawnshops at §85.502 (relating to Annual Report). The OCCC anticipates that it will begin requiring annual reports under new §84.710 beginning in 2026.

Amendments to §84.613 relate to the OCCC's review of the criminal history of a motor vehicle applicant or licensee. The OCCC is authorized to review criminal history of applicants and licensees under Texas Occupations Code, Chapter 53; Texas Finance Code, §14.151; and Texas Government Code, §411.095. The amendments to §84.613 ensure consistency with HB 1342, which the Texas Legislature enacted in 2019. HB 1342 included a change to Texas Occupations Code, §53.022 relating to factors considered in determining whether an offense relates to the duties and responsibilities of the licensed occupation. Amendments to §84.613(c)(2) implement this statutory change from HB 1342.

Amendments to §84.616 make clarifying changes relating to license display. Currently, §84.616 requires a licensee to display its license prominently in a conspicuous location visible to the general public. The amendments clarify that this requirement applies if a licensed location or registered office is open to the general public, and does not apply to a location or office that is not open to the general public (e.g., a servicing or collection office that operates exclusively online or by phone).

An amendment to §84.617(e) specifies that the late filing fee for a registered office is $250, as provided by Texas Finance Code, §349.302. Another amendment removes current §84.617(f), which was a temporary provision that governed licenses obtained or renewed in 2019 or 2020.

Amendments to §84.705 make technical changes relating to the escheat of unclaimed funds. Amended text in §84.705(d) reflects that unclaimed funds are submitted to the Unclaimed Property Division of the Texas Comptroller of Public Accounts. Another amendment adds a reference to Texas Property Code, §74.301, in order to provide a more complete statutory reference for the requirement to pay unclaimed funds to the state after three years.

Amendments to §84.707 update recordkeeping requirements for retail sellers that assign motor vehicle retail installment contracts to another holder. Under Texas Finance Code, §348.514 and §348.517, licensees must maintain records of each motor vehicle retail installment transaction, and licensees must allow the OCCC to access records pertaining to retail installment transactions. Currently, provisions throughout §84.707 refer to both paper and electronic recordkeeping systems. Amendments throughout §84.707 simplify and rearrange this language to refer to electronic recordkeeping systems before referring to

paper systems, based on licensees' increasing use of electronic systems rather than paper systems. Currently, §84.707(d)(1) requires licensees to be able to provide a retail installment sales transaction report containing the date of the contract, the retail buyer's name, the account number, and other information, and §84.707(d)(3) requires licensees to be able to provide an assignment report. Amendments at §84.707(d)(1) specify that licensees must be able to sort or filter the retail installment transaction report by date of the contract or sale, the retail buyer's name, the status of the transaction (open or closed), whether the transaction has been assigned to another person, and the name of any assignee. The OCCC understands that licensees generally have this information available in existing systems, and this information will help ensure that the OCCC can effectively examine licensees under Texas Finance Code, Chapter 348.

In its official comment, TADA states: "Those members contacted stated that sorting and filtering retail installment contracts by the date of the contract, the date of sale, the retail buyer's name, the status of the transaction, open or closed, are available; however, sorting or filtering by assignee and assignment was not a certainty by all members contacted." TADA suggests adding the phrase "if available" to the rule provision describing sorting or filtering by the name of the assignee. The commission disagrees with this comment. The comment does not explain how or why it would be problematic to sort or filter a transaction report by assignment information. Under current §84.707(d)(3), §84.708(e)(4), and §84.709(e)(4), licensees are already required to be able to produce an assignment report showing assigned contracts with the name and address of each assignee. The commission maintains this portion of the sorting and filtering provisions in the proposed amendments to §84.707(d)(1)(E), because the commission and the OCCC believe that this information is important for ensuring that the OCCC can effectively conduct examinations and scope risks.

In its official comment, TIADA states: "The rule should not require dealers with paper records reports to be able to sort or filter their records." TIADA states that it "is unaware of a commonly accepted method of sorting or filtering a paper records report." For this reason, TIADA recommends making a clarifying change, such as adding the phrase "Electronic records" before the phrase "Sorting or filtering." In response to this comment, a change has been made to the proposal to include the clarifying phrase "if a licensee maintains some or all transaction records electronically" in §84.707(d)(1)(E), §84.708(d)(3), and §84.709(d)(3).

Additional amendments to §84.707 relate to data security recordkeeping. An amendment at §84.707(d)(8) specifies that licensees must maintain written policies and procedures for an information security program to protect retail buyers' customer information, as required by the Federal Trade Commission's Safeguards Rule, 16 C.F.R. part 314. Another amendment at §84.707(d)(8) specifies that if a licensee maintains customer information concerning 5,000 or more consumers, then the licensee must maintain a written incident response plan and written risk assessments, as required by 16 C.F.R. §314.4. An amendment at §84.707(d)(9) specifies that licensees must maintain data breach notifications to consumers and to the Office of the Attorney General under Texas Business & Commerce Code, §521.053. Data security is a crucial issue. The OCCC's 2025-2029 strategic plan includes action items to "[p]romote cybersecurity awareness and best practices among regulated entities" and "[m]onitor cybersecurity incidents and remediation efforts reported by regulated entities." A recent data breach affecting dealer management systems highlights the urgent need for vigilance in the motor vehicle sales finance industry. *See* "Car Dealerships in North America Revert to Pens and Paper After Cyberattacks on Software Provider" AP News (June 24, 2024). The data security recordkeeping amendments will help ensure that the OCCC can monitor this crucial issue.

In its official comment, TADA states: "The new proposed examination rule to include the FTC's Safeguards Rule encompasses a WISP (written information security program) and as the rule is a federal requirement, its conformity and enforcement remains with the FTC. Verifying the WISP in an OCCC examination or providing suggestions may be helpful for a licensee; however, the enforcement of the WISP is with the FTC and a comment from the OCCC that the proposal is not for enforcement but to assist a licensee would be appreciated as to this new examination rule proposal."

The commission disagrees with this comment. Requiring motor vehicle dealers to maintain information security program records is consistent with Texas Finance Code, §348.514, which requires licensees to allow the OCCC to examine records pertaining to business regulated under Chapter 348 (i.e., motor vehicle retail installment transactions). An information security program directly pertains to the regulated business, because the program governs how a licensee will secure the information and records described by Chapter 348. Financial institutions (including motor vehicle dealers) are required to maintain a written information security program under the Safeguards Rule, 16 C.F.R. §314.3, and have been required to do so since the Safeguards Rule first went into effect in 2003. The requirement to maintain policies, procedures, and certain key documents, as described in the rule amendments, is a foundation for the OCCC to monitor and address the crucial issue of data security. For these reasons, the commission maintains the text of the data security recordkeeping amendments as proposed.

Amendments to §84.708 update recordkeeping requirements for retail sellers that collect payments on motor vehicle retail installment contracts. The amendments to §84.708 are similar to the amendments to §84.707 described in the previous six paragraphs. In particular, the amendments would simplify and rearrange language referring to electronic and paper recordkeeping systems, would specify requirements for sorting or filtering the retail installment sales transaction report, would specify requirements to maintain policies and procedures for an information security program, and would specify requirements to maintain data breach notifications. In addition, an amendment at §84.708(d)(3) specifies requirements for sorting or filtering the currently required alphabetical records search, similar to the requirements for the retail installment sales transaction report. Also, an amendment at §84.708(e)(2)(L)(ii)(V) removes a reference to the Texas Department of Public Safety's CR-2 crash report form and replaces this with a more general reference to "any law enforcement crash report form." The OCCC understands that the CR-2 form is no longer used for crash reports in Texas.

Amendments to §84.709 update recordkeeping requirements for holders that take assignment of motor vehicle retail installment contracts. The amendments to §84.709 are similar to the amendments to §84.707 and §84.708 described in the previous seven paragraphs. In particular, the amendments simplify and rearrange language referring to electronic and paper recordkeeping systems, specify requirements for sorting or filtering the alphabetical records search and retail installment

sales transaction report, replace a reference to the CR-2 crash report form with a more general reference, specify requirements to maintain policies and procedures for an information security program, and specify requirements to maintain data breach notifications.

Amendments to §84.802 reorganize and clarify the requirements for submitting non-standard plain language contracts. Under Texas Finance Code, §341.502(b), if a motor vehicle sales finance licensee uses a retail installment sales contract other than a model contract adopted by the commission, then the licensee must submit the contract to the OCCC for review. Currently, §84.802 describes the requirements for submitting these non-standard contracts to the OCCC. Under the adoption, subsection (a) will be amended to provide an up-front summary of the submission requirements, including the requirements under Texas Finance Code, §341.502. In particular, new paragraph (a)(3) specifies that non-standard loan contracts "must be consistent with Texas law and federal law." Currently, licensees are required to ensure that contracts comply with applicable law, and the OCCC's prescribed certification requires a person submitting a non-standard contract to certify compliance with state and federal law. If a contract contains illegal provisions, then the contract is misleading, and is not "easily understood by the average consumer" as required by Texas Finance Code, §341.502(a)(1). Before submitting a contract for review, licensees and form providers should work with their legal counsel and compliance staff to ensure that contracts comply with applicable law. Amendments to subsection (b) specify the grounds for disapproving a non-standard contract under Texas Finance Code, §341.502(c). These amendments replace language on the certification of readability, which will be moved into subsection (d). Amendments to subsection (c) specify that the subsection refers to the requirements for filing copies of the retail installment sales contract. Amendments to subsection (d) consolidate the rule's requirements for the submission form that must be submitted with the copies of the contract. The commission believes that it is helpful to reorganize these related requirements into a single subsection. The amendments to §84.802 are consistent with the commission's 2022 amendments to the rule for submitting non-standard regulated loan contracts at §90.104 (relating to Non-Standard Contract Filing Procedures).

Amendments to §84.806 update the list of typefaces that are considered easily readable for plain language contracts. Under Texas Finance Code, §341.502(a)(2), retail installment sales contracts must be "printed in an easily readable font and type size." Currently, §84.806(b) lists the following typefaces considered to be readable: Arial, Calibri, Caslon, Century Schoolbook, Garamond, Helvetica, Scala, and Times New Roman. The adoption revises this list to add Georgia and Verdana, and to remove Caslon, Century Schoolbook, Garamond, and Scala. Since the commission originally adopted §84.806 in 2008, electronic contracts and screen reading have changed how consumers view contracts. The amendments to §84.806 are based on updated guidance for accessibility and screen reading, including guidance from federal agencies on typefaces that are considered accessible. *See, e.g.*, U.S. Department of Health and Human Services, Research-Based Web Design and Usability Guidelines, p. 106; Centers for Medicare & Medicaid Services, Section 508 Guide for Microsoft Word 2013, p. 5 (rev. 2018). Other amendments throughout §84.806 add a descriptive title to each subsection. The amendments to §84.806 are consistent with the commission's 2022 amendments to the rule for formatting regulated loan contracts at §90.103 (relating to Format).

Amendments to §84.808 revise the model itemization of amount financed to refer to inspection program replacement fees and emissions inspection fees, following recent legislative changes. In 2023, the Texas Legislature passed HB 3297. HB 3297 repealed statutory provisions in Texas Transportation Code, Chapter 548 that generally required inspections for noncommercial vehicles. HB 3297 amended Texas Transportation Code, §548.509 and §548.510 to provide that an inspection program replacement fee will be remitted to the state. HB 3297 maintained existing provisions in Texas Health and Safety Code, Chapter 382 authorizing counties to require emissions inspections. HB 3297 will take effect on January 1, 2025. Amendments to the figures accompanying §84.808(8)(A) and (B) replace current references to the government inspection fee with lines for the inspection program replacement fee and the emissions inspection fee. Amendments to §84.808(8)(E) and (F) make conforming changes to the model clauses for inspection fees in the text of the rule. These changes will help ensure consistency with the amendments in HB 3297. The amendments to §84.808 will have a delayed effective date of January 1, 2025, to conform to the effective date of HB 3297. The OCCC does not intend to require licensees to resubmit non-standard plain language retail installment contracts that the OCCC has accepted since May 5, 2016. The clauses contained in §84.808 are model clauses, and licensees maintain some flexibility to disclose charges in a manner that is accurate and not misleading (e.g., disclosing the inspection program replacement fee on one of the extra lines in the "Other charges" section of the itemization of amount financed).

In its official comment, TADA requests clarification on how motor vehicle dealers may modify the model clauses in order to disclose fees correctly (e.g., whether a dealer may use the word "State" instead of "Government," whether a dealer may redact or cross out unused lines). These requests are generally outside the scope of the current rule action, which concerns the model clauses in §84.808. Use of the model clauses is optional. The model clauses do not restrict a licensee to using the exact same language. The OCCC may address these issues through informal advisory guidance. In general, the OCCC would recommend leaving unused clauses blank rather than crossing them out, because having dealership staff cross out provisions could lead to confusion or inconsistency.

In an informal precomment, an association of Texas motor vehicle dealers stated: "As to 7 TAC §84.808. Model Clauses, a request is that the disclosure 'Government vehicle inspection program replacement fee' be shortened, such as 'Gov't inspection replacement fee' or some similar disclosure that does not take so much real estate on the forms as the buyer's order/purchase order is more limited in space than a retail installment contract." The commission declines to include this suggestion in the adoption. As discussed earlier in this preamble, use of the model clauses is optional. The model clauses do not restrict a licensee to using the exact same language in a buyer's order or in a submitted non-standard retail installment contract. A shorter label such as "Gov't inspection replacement fee" could be sufficient if it is disclosed in an accurate manner. However, for purposes of creating a model clause for a retail installment contract, the commission and the OCCC believe that the full label "Government vehicle inspection program replacement fee" is appropriate and provides clear information to the retail buyer. Therefore, the commission has maintained the text for this adoption.

Amendments to §84.809 revise the model motor vehicle retail installment contract. The amendments to the figure accompanying §84.809(b) replace current references to the government inspection fee with lines for the inspection program replacement fee and the emissions inspection fee. These changes ensure consistency with HB 3297 and conform to the amendments to §84.808, as discussed earlier in this preamble. The amendments to §84.809 will have a delayed effective date of January 1, 2025.

SUBCHAPTER F. LICENSING

7 TAC §§84.602, 84.608, 84.611, 84.613, 84.616, 84.617

The rule changes are adopted under Texas Finance Code, §348.513, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 348. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4. The rule changes to §84.802, §84.806, §84.808, and §84.809 are also adopted under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 341 and 348.

§84.602. Filing of New Application.

An application for issuance of a new motor vehicle sales finance license issued under Texas Finance Code, Chapter 348 or 353 must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

(1) Required application information. All questions must be answered.

(A) Application for license.

(i) Location. A physical street address must be listed for the applicant's proposed licensed location. A post office box or a mail box location at a private mail-receiving service generally may not be used. If the address has not yet been determined or if the application is for an inactive license, then the application must so indicate.

(ii) Compliance officer. The application must list a compliance officer. The compliance officer must be an individual responsible for overseeing compliance regarding the OCCC, and must be authorized to receive and respond to communications from the OCCC.

(iii) Registered agent. The registered agent must be designated by each applicant. The registered agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the registered agent is a natural person, the address must be a different address than the licensed location address. If the applicant is a corporation or a limited liability company, the registered agent should be the one on file with the Office of the Texas Secretary of State. If the registered agent is not the same as the agent filed with the Office of the Texas Secretary of State, then the applicant must submit a certification from the secretary of the company identifying the registered agent.

(iv) List of registered offices. Each additional location, other than the licensed location shown on the application, must be listed. The applicant should provide the assumed name (DBA), physical address, telephone number, and the person responsible for day-to-day operations for each registered office. A registered office is required for any additional assumed name that the licensee uses at a single location to engage in a Texas Finance Code, Chapter 348 or 353 transaction.

(v) Owners and principal parties.

(I) Proprietorships. The applicant must disclose the name of the individual holding a 100% ownership interest in the business and the name of any individual responsible for operating the business. If requested, the applicant must also disclose the names of the spouses of these individuals.

(II) General partnerships. Each partner must be listed and the percentage of ownership stated. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided. General partnerships that register as limited liability partnerships should provide the same information as that required for general partnerships.

(III) Limited partnerships. Each partner, general and limited, fulfilling the requirements of items (-a-) - (-c-) of this subclause must be listed and the percentage of ownership stated.

(-a-) General partners. The applicant should provide the complete ownership, regardless of percentage owned, for all general partners. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that lists the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organizations Code, §1.002, and a description of the ownership of each legal entity must be provided.

(-b-) Limited partners. The applicant should provide a complete list of all limited partners owning 10% or more of the partnership.

(-c-) Limited partnerships that register as limited liability partnerships. The applicant should provide the same information as that required for limited partnerships.

(IV) Corporations. Each officer and director must be named. Each shareholder holding 10% or more of the voting stock must be named if the corporation is privately held. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be included that describes each level of ownership of 10% or greater.

(V) Limited liability companies. Each "manager," "officer," and "member" owning 10% or more of the company, as those terms are defined in Texas Business Organizations Code, §1.002, and each agent owning 10% or more of the company must be listed. If a member is a legal entity and not a natural person, a narrative or diagram must be included that describes each level of ownership of 10% or greater.

(VI) Trusts or estates. Each trustee or executor, as appropriate, must be listed.

(VII) Nonprofit organizations. Each officer must be listed.

(VIII) All entity types. If a parent entity is a different type of legal business entity than the applicant, the parent entity's owners and principal parties should be disclosed according to the parent's entity type.

(IX) Alternative filings for all entity types. The commissioner may also accept other filings submitted to a governmental authority that the commissioner deems to have information substan-

tially equivalent in coverage and reliability to a filing under subclauses (I) - (VIII) of this clause.

(B) Disclosure questions. All applicable questions must be answered. Questions requiring a "yes" answer must be accompanied by an explanatory statement and any appropriate documentation requested.

(C) Personal information.

(i) Personal affidavit. Each individual meeting the definition of "principal party" as defined in §84.601 of this title (relating to Definitions) must provide a personal affidavit. All requested information must be provided.

(ii) Personal questionnaire. Each individual meeting the definition of "principal party" as defined in §84.601 of this title must provide a personal questionnaire. Each question must be answered. If any question, except question 1, is answered "yes," an explanation must be provided.

(iii) Employment history. Each individual meeting the definition of "principal party" as defined in §84.601 of this title must provide an employment history. Each principal party should provide a continuous 10-year history, accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.

(D) Additional requirements.

(i) Statement of experience. Each applicant should provide information that relates to the applicant's prior experience in the motor vehicle sales finance business. If the applicant or its principal parties do not have significant experience in the same type of business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant business experience or education, why the commissioner should find that the applicant has the requisite experience, and how the applicant plans to obtain the necessary knowledge to operate lawfully and fairly.

(ii) Business operating plan. An applicant must attach a brief narrative to the application explaining:

(I) an estimate of how many motor vehicles will be financed by the applicant each year;

(II) whether the applicant will hold the retail installment sales contracts or whether the applicant will assign its retail installment sales contracts;

(III) whether the applicant will only be accepting contracts from another entity (assignor), and, if so, list the types of entities; and

(IV) whether the collections will occur at the licensed location.

(iii) Statement of records. Each applicant must provide a statement of where records of Texas transactions will be maintained. If these records will be maintained at a location outside of Texas, the applicant must acknowledge responsibility for the travel cost associated with examinations in addition to the assessment fees or agree to make all records available for examination in Texas.

(E) Consent form. Each applicant must submit a consent form signed by an authorized individual. Electronic signatures will be accepted in a manner approved by the commissioner. The following are authorized individuals:

(i) If the applicant is a proprietor, the owner must sign.

(ii) If the applicant is a partnership, one general partner must sign.

(iii) If the applicant is a corporation, an authorized officer must sign.

(iv) If the applicant is a limited liability company, an authorized member or manager must sign.

(v) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.

(F) Statement regarding previous installment transactions. Each applicant must submit a statement that it has or has not made or collected on any retail installment sales contract or accepted the cash payment for a motor vehicle in one or more installments from September 1, 2002, to date. This includes any contracts signed by applicant as seller that are subsequently assigned to a third party. If the applicant is purchasing another dealership and has permission to operate under an existing license, as described in §84.604 of this title (relating to Transfer of License; New License Application on Transfer of Ownership), the statement outlined by this subparagraph is not required. If the applicant has engaged in any of the referenced activities, the applicant must provide the following information:

(i) A list of all contracts used to finance the sale of a motor vehicle in one or more installments (whether the applicant was the original seller or whether the applicant became a holder). The list should include the name of the buyer, contract date, vehicle cash price, amount of down payment, net trade-in amount, total amount financed, payment frequency (monthly, semi-monthly, bi-weekly, weekly), total number of payments, and payment amount(s).

(ii) From the list provided by the applicant, copies of ten (10) complete files. The complete file includes, but is not limited to, the buyer's order, signed retail installment sales contract, payment history, certificate of title, and other documents related to that transaction. If there are fewer than ten (10) accounts, provide a complete copy of each file.

(2) Other required filings.

(A) Fingerprints.

(i) For all persons meeting the definition of "principal party" as defined in §84.601 of this title, a complete set of legible fingerprints must be provided. All fingerprints should be submitted in a format prescribed by the OCCC and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.

(ii) For limited partnerships, if the owners and principal parties under paragraph (1)(A)(v)(III)(-a-) of this section does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

(iii) For entities with complex ownership structures that result in the identification of individuals to be fingerprinted who do not have a substantial relationship to the proposed applicant, the applicant may submit a request to fingerprint three officers or similar employees with significant involvement in the proposed business. The request should describe the relationship and significant involvement of the individuals in the proposed business. The agency may approve the request, seek alternative appropriate individuals, or deny the request.

(iv) For individuals who have previously been licensed by the OCCC and principal parties of entities currently licensed, fingerprints are generally not required if the fingerprints are on record with the OCCC, are less than 10 years old, and have been processed by both the Texas Department of Public Safety and

the Federal Bureau of Investigation. Upon request, individuals and principal parties previously licensed by the OCCC may be required to submit a new set of fingerprints in order to complete the OCCC's records.

(v) For individuals who have previously submitted fingerprints to another state agency (e.g., Texas Department of Motor Vehicles), fingerprints are still required to be submitted under Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002.

(B) Contract forms. The applicant must provide information regarding the retail installment sales contract forms it intends to use for retail installment sales transactions involving ordinary vehicles. The applicant does not have to provide retail installment sales contract forms involving commercial vehicles.

(i) Custom forms. If a custom contract form is to be prepared, a preliminary draft or proof that is complete as to format and content and which indicates the number and distribution of copies to be prepared for each transaction must be submitted.

(ii) Stock forms. If an applicant purchases or plans to purchase stock forms from a supplier, the applicant must include a statement that includes the supplier's name and address and a list identifying the forms to be used, including the revision date of the form, if any.

(C) Entity documents.

(i) Partnerships. A partnership applicant must submit a complete and executed copy of the partnership agreement. This copy must be signed and dated by all partners. If the applicant is a limited partnership or a limited liability partnership, provide evidence of filing with the Office of the Texas Secretary of State.

(ii) Corporations. A corporate applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the certificate of formation or articles of incorporation, with any amendments;

(II) a certification from the secretary of the corporation identifying the current officers and directors as listed in the owners and principal parties section of the application for license form;

(III) if the registered agent is not the same as the one on file with the Office of the Texas Secretary of State, a certification from the secretary of the corporation identifying the registered agent;

(IV) if requested, a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation;

(V) if requested, a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application for license form;

(VI) if requested, a certificate of good standing from the Texas Comptroller of Public Accounts.

(iii) Publicly held corporations. In addition to the items required for corporations, a publicly held corporation must file the most recent 10K or 10Q for the applicant or for the parent company.

(iv) Limited liability companies. A limited liability company applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the articles of organization;

(II) a certification from the secretary of the company identifying the current officers and directors as listed in the owners and principal parties section of the application for license form;

(III) if the registered agent is not the same as the one on file with the Office of the Texas Secretary of State, a certification from the secretary of the company identifying the registered agent;

(IV) if requested, a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations;

(V) if requested, a copy of the minutes of company meetings that record the election of all current officers and directors as listed in the owners and principal parties section of the application for license form;

(VI) if requested, a certificate of good standing from the Texas Comptroller of Public Accounts.

(v) Trusts. A copy of the relevant portions of the instrument that created the trust addressing management of the trust and operations of the applicant must be filed with the application.

(vi) Estates. A copy of the instrument establishing the estate must be filed with the application.

(vii) Foreign entities. In addition to the items required by this section, a foreign entity must provide a certificate of authority to do business in Texas, if applicable.

(viii) Nonprofit organizations. The applicant must provide a copy of the relevant portions of the instrument creating the nonprofit organization addressing management of the organization and operations of the applicant. A nonprofit applicant must also provide a copy of its filing with the Internal Revenue Service or other evidence to verify that the applicant is a nonprofit organization exempt from taxation under Internal Revenue Code of 1986, §501(c)(3).

(ix) Formation document alternative. As an alternative to the entity-specific formation document applicable to the applicant's entity type (e.g., for a corporation, articles of incorporation), an applicant may submit a "certificate of formation" as defined in Texas Business Organizations Code, §1.002, if the certificate of formation provides the entity formation information required by this section for that entity type.

(D) Assumed name certificates. For any applicant that does business under an "assumed name" as that term is defined in Texas Business and Commerce Code, §71.002, an assumed name certificate must be filed as provided in this subparagraph.

(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate with the county clerk of the county where the proposed business is located in compliance with Texas Business and Commerce Code, Chapter 71. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.

(ii) Incorporated applicants. Incorporated applicants using or planning to use an assumed name must file an assumed name certificate in compliance with Texas Business and Commerce Code, Chapter 71. Evidence of the filing bearing the filing stamp of the Office of the Texas Secretary of State must be submitted or, alternatively, a certified copy.

(3) Late filing. An applicant who desires to retroactively file a license application may do so by complying with Texas Finance Code, §349.303, and the rules adopted under this chapter.

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

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Matthew Nance
General Counsel
Office of Consumer Credit Commissioner
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SUBCHAPTER G. EXAMINATIONS

7 TAC §§84.705, 84.707 - 84.710

The rule changes are adopted under Texas Finance Code, §348.513, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 348. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4. The rule changes to §84.802, §84.806, §84.808, and §84.809 are also adopted under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 341 and 348.

§84.707. Files and Records Required (Retail Sellers Assigning Retail Installment Sales Contracts).

(a) Applicability. The recordkeeping requirements of this section apply to retail sellers that immediately assign or transfer all retail installment sales contracts to another authorized creditor. If a retail seller collects any installments, excluding downpayments, on a retail installment sales contract, the retail seller must comply with the recordkeeping requirements established under §84.708 of this title (relating to Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts)). The recordkeeping requirements of this section do not apply to motor vehicle retail installment sales transactions involving commercial vehicles.

(b) Records required for each retail installment sales transaction. Each licensee must maintain records with respect to the licensee's compliance with Texas Finance Code, Chapter 348 for each motor vehicle retail installment sales contract made, acquired, serviced, or held under Chapter 348 and make those records available for examination. This requirement includes any conditional delivery agreement or retail installment sales contract signed by a retail buyer for a vehicle that has been delivered, including contracts that are subsequently voided or canceled after a seller regains possession and ownership of the vehicle.

(c) Recordkeeping systems. The records required by this section may be maintained by using either an electronic recordkeeping system, a legible paper or manual recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. Licensees may maintain records on one or more recordkeeping systems, so long as the licensee is able to integrate records pertaining to an account into one or more reports as required by this section. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(d) Records required.

(1) Retail installment sales transaction report.

(A) General requirements. Each licensee must maintain records sufficient to produce a retail installment sales transaction report that contains a listing of each Texas Finance Code, Chapter 348 retail installment sales contract entered into by the licensee. The report is only required to include those retail installment sales contracts that are subject to the record retention period of paragraph (7) of this subsection.

(B) Recordkeeping systems. The retail installment sales transaction report can be maintained either as an electronic system or as a paper record, so long as the licensee can integrate the following information into a report. If the retail installment sales transaction report is maintained under a manual recordkeeping system, the retail installment sales transaction report must be updated within a reasonable time from the date the contract is entered into by the licensee.

(C) Dealer's Motor Vehicle Inventory Tax Statement option.

(i) A licensee may utilize a copy of the Dealer's Motor Vehicle Inventory Tax Statement (VIT Statement) submitted to the Texas Comptroller of Public Accounts to satisfy the requirements of this paragraph if the following two conditions are met when the VIT Statement is provided to the commissioner's representative:

(I) on a copy of the submitted VIT Statement, the licensee identifies (e.g., highlights, marks with abbreviations) which transactions were cash transactions and which were retail installment sales transactions; and

(II) the licensee supplements the VIT Statement with the identification of all transactions in which VIT was not charged or collected.

(ii) A licensee who assigns account numbers and utilizes the Dealer's Motor Vehicle Inventory Tax Statement option must provide the account numbers for all retail installment sales transactions contained in the VIT Statement.

(D) Required information. A retail installment sales transaction report must contain the following information:

(i) the date of contract or date of sale (day, month, and year);

(ii) the retail buyer's name(s);

(iii) a method of identifying the vehicle, such as the last six digits of the vehicle identification number or the stock number; and

(iv) the account number, if the retail seller assigns an account number.

(E) Sorting or filtering. Upon request, if a licensee maintains some or all transaction records electronically, the licensee must be able to sort or filter the retail installment transaction report by each of the following:

(i) the date of contract or date of sale;

(ii) the retail buyer's name(s);

(iii) the status of the transaction (open or closed); and

(iv) whether the transaction has been assigned to another person and the name of any assignee.

(2) Retail installment sales transaction file. A licensee must maintain an electronic or paper copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) the retail installment sales contract signed by the retail buyer and the retail seller as required by Texas Finance Code, §348.101;

(ii) if prepared by the retail seller, the purchase or buyer's order reflecting a written computation of the cash price of the vehicle and itemized charges, a description of the motor vehicle being purchased, and a description of each motor vehicle being traded in;

(iii) the credit application and any other written or recorded information used in evaluating the application;

(iv) the Texas Department of Motor Vehicles' Title Application Receipt (Form VTR-500-RTS) or similar document evidencing the disbursement of the sales tax, and fees for license, title, and registration of the vehicle;

(v) copies of other agreements or disclosures signed by the retail buyer applicable to the retail installment sales transaction; and

(vi) any records applicable to the retail installment transaction outlined by subparagraphs (B) - (P) of this paragraph.

(B) for a vehicle titled in Texas, a copy of the completed Texas Department of Motor Vehicles'/Texas Comptroller of Public Accounts' Application for Texas Certificate of Title (Form 130-U) signed by the retail buyer and seller that was filed with the appropriate county tax assessor-collector.

(C) for a vehicle titled outside of Texas, a copy of the application for certificate of title for the buyer or the properly assigned evidence of ownership to the buyer including the Texas Comptroller of Public Accounts' Texas Motor Vehicle Sales Tax Exemption Certificate (Form 14-312).

(D) for a retail installment sales transaction in which a power of attorney is necessary to transfer title to the buyer, a copy of the Texas Department of Motor Vehicles' Power of Attorney to Transfer a Motor Vehicle (Form VTR-271) or any other similar document used as a power of attorney.

(E) for a retail installment sales transaction involving a downpayment, a copy of any document relating to the downpayment including:

(i) receipts for cash downpayments;

(ii) promissory notes or other documents evidencing the retail buyer's agreement to pay the cash downpayment over time;

(iii) documents or forms signed by the retail buyer relating to a manufacturer's or distributor's rebate as permitted by the Texas Finance Code, §348.404(a); and

(iv) documents or forms evidencing the payoff of any trade-in vehicle shown on the retail installment sales contract as required by Texas Finance Code, §348.408(c).

(F) for a retail installment sales transaction involving a trade-in motor vehicle, a copy of the Texas Disclosure of Equity in Trade-In Motor Vehicle required by Texas Finance Code, §348.0091 and §84.204 of this title (relating to Disclosure of Equity in Retail Buyer's Trade-in Motor Vehicle).

(G) for a retail installment sales transaction involving the disbursement of funds for money advanced pursuant to Texas Finance Code, §348.404(b) and (c), a copy of any document relating to the disbursement of funds for money advanced.

(H) for a retail installment sales transaction in which the licensee issues a certificate of insurance regarding insurance policies issued by or through the licensee in connection with the retail installment sales transaction, copies of the certificates of insurance.

(I) for a retail installment sales transaction in which the licensee issues a debt cancellation agreement, a complete copy of the debt cancellation agreement provided to the retail buyer, documentation of disbursement of the debt cancellation agreement fee to the retail seller or a third-party administrator, any written instruction from a holder to make a full or partial refund of the debt cancellation agreement fee, and documentation of any refund provided upon cancellation or termination of the debt cancellation agreement. As an alternative to maintaining a complete copy of the debt cancellation agreement in the retail installment sales transaction file, the licensee may maintain all of the following:

(i) in the retail installment sales transaction file, a copy of any page of the debt cancellation agreement with a signature, a transaction-specific term, the cost of the debt cancellation agreement, or any blank space that has been filled in;

(ii) in the licensee's general business files, a complete master copy of each debt cancellation agreement form used by the licensee during the period described by paragraph (7) of this subsection;

(iii) in the licensee's general business files, policies and procedures that show a verifiable method for ensuring that the master copy of the debt cancellation agreement accurately reflects the debt cancellation agreement used in each individual transaction.

(J) for a retail installment sales transaction in which the licensee issues a certificate of coverage regarding ancillary products issued by or through the licensee in connection with the retail installment sales transaction, records of the ancillary products (motor vehicle theft protection plans, service contracts, maintenance agreements, identity recovery service contracts, etc.) including all certificates of coverage.

(K) for a retail installment sales transaction where separate disclosures are required by federal or state law including the following:

(i) a transaction where disclosures required by the Truth in Lending Act are not incorporated into the text of the retail installment sales contract and the credit was extended for primarily for personal, family, or household purposes, a copy of the Truth in Lending statement required by Regulation Z, Truth in Lending, 12 C.F.R. §226.18;

(ii) a transaction involving a cosigner, the notice to cosigner required by the Federal Trade Commission's Credit Practices Trade regulation, 16 C.F.R. §444.3.

(L) for a retail installment sales contract that has an itemized charge for the inspection of a used motor vehicle, access to a copy of the work order, inspection receipt, or other verifiable evidence that reflects that the inspection was performed including the date and cost of the inspection.

(M) for a retail installment sales transaction involving the sale of a trade-in credit agreement under Texas Finance Code, §348.125:

(i) a copy of the trade-in credit agreement and any written notice or disclosure provided to the retail buyer;

(ii) evidence of the contractual liability reimbursement policy in effect at the time of the trade-in credit agreement, as required by Texas Finance Code, §348.125(c); and

(iii) documentation of any refund provided upon cancellation of a trade-in credit agreement.

(N) for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a trade-in credit agreement under Texas Finance Code, §348.125:

(i) a copy of the trade-in credit agreement;

(ii) evidence of the amount of any credit applied under the trade-in credit agreement; and

(iii) any documentation used to process a claim, including:

(I) any proof of insurance settlement documents obtained from the retail buyer;

(II) any accident record or vehicle condition report obtained to process a claim; and

(III) any supplemental claim records supporting the approval or denial of the claim.

(O) for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a depreciation benefit optional member program under Texas Occupations Code, §1304.003(a)(2)(C):

(i) evidence of the amount of any credit applied under the depreciation benefit optional member program; and

(ii) any documentation obtained by the licensee to process the benefit.

(P) any conditional delivery agreement signed by the retail buyer or provided to the retail buyer.

(3) Assignment information.

(A) Required information. Assignment information must cover any Texas Finance Code, Chapter 348 retail installment sales contract made by or acquired by the licensee that is assigned from its licensed or registered location. The assignment information must show the name of the retail buyer, the account number or other unique number given to the retail buyer, the date of assignment, and the name and address to which the accounts are assigned.

(B) Electronic recordkeeping systems. If a licensee is able to produce an assignment report containing the required information provided in subparagraph (A) of this paragraph electronically without any additional programming costs, the licensee must produce the report upon request. If the licensee's software programs are unable to produce an assignment report containing the required information provided in subparagraph (A) of this paragraph, the licensee may maintain assignment information for each individual retail installment sales transaction in the retail installment sales transaction file. A licensee must be able to access assignment information for a specific transaction as requested by the commissioner's representative.

(C) Manual recordkeeping systems. If a licensee is not able to produce an assignment report as provided in subparagraph (B) of this paragraph, the licensee may maintain assignment information for each individual retail installment sales transaction in the retail installment sales transaction file. A licensee must be able to access assignment information for a specific transaction as requested by the commissioner's representative.

(4) General business and accounting records. General business and accounting records concerning retail installment sales transactions must be maintained. The licensee is not required to produce information protected under the attorney-client privilege or work product privilege. The business and accounting records must include receipts, documents, or other records for each disbursement made by the licensee at the retail buyer's direction or request, on his behalf, or for his benefit, that is charged to the retail buyer, including:

(A) Texas Comptroller of Public Accounts' Dealer Motor Vehicle Inventory Tax Statement (Form 50-246); and

(B) Texas Comptroller of Public Accounts' Texas Motor Vehicle Seller-Financed Sales Tax Report (Form 14-117).

(5) Adverse action records. Each licensee must maintain adverse action records regarding all applications relating to Texas Finance Code, Chapter 348 retail installment sales transactions. Adverse action records must be maintained according to the record retention requirements contained in Regulation B, Equal Credit Opportunity Act, 12 C.F.R. §1002.12(b). The current retention periods are 25 months for consumer credit and 12 months for business credit.

(6) Trade-in credit agreement records. Each licensee that enters a trade-in credit agreement or provides a benefit in connection with a trade-in credit agreement must:

(A) maintain a copy of any contractual liability reimbursement policy related to the trade-in credit agreement, as required by Texas Finance Code, §348.125(c); and

(B) maintain a register or be able to generate a report, paper or electronic, that reflects agreements that were either satisfied or denied. This register or report must show the name of the retail buyer, the account number, and the date of satisfaction or denial.

(7) Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon by the licensee, whichever is later, or a different period of time if required by federal law. For licensees who assign retail installment sales contracts, the final entry may be the date of the assignment if the licensee makes no other entries on the account after the assignment. Upon notification of an examination pursuant to Texas Finance Code, §348.514(f), the licensee must be able to produce or access required books and records within a reasonable time at the licensed location or registered office specified on the license. The records required by this subsection must be available or accessible at an office in the state designated by the licensee except when the retail installment sales transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records

available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

(8) Information security program. A licensee must maintain written policies and procedures for an information security program to protect retail buyers' customer information, as required by the Federal Trade Commission's Safeguards Rule, 16 C.F.R. part 314. If a licensee maintains customer information concerning 5,000 or more consumers, then the licensee must maintain a written incident response plan and written risk assessments, as required by 16 C.F.R. §314.4.

(9) Data breach notifications. A licensee must maintain the text of any data breach notification provided to retail buyers, including any notification under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification. A licensee must maintain any data breach notification provided to a government agency, including any notification provided to the Office of the Attorney General under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification.

§84.708. Files and Records Required (Retail Sellers Collecting Installments on Retail Installment Sales Contracts).

(a) Applicability. The recordkeeping requirements of this section apply to retail sellers that service or collect installments on retail installment sales contracts involving ordinary vehicles. The recordkeeping requirements of this section do not apply to motor vehicle retail installment sales transactions involving commercial vehicles.

(b) Records required for each retail installment sales transaction. Each licensee must maintain records with respect to the licensee's compliance with Texas Finance Code, Chapter 348 for each motor vehicle retail installment sales contract made, acquired, serviced, or held under Chapter 348 and make those records available for examination. This requirement includes any conditional delivery agreement or retail installment sales contract signed by a retail buyer for a vehicle that has been delivered, including contracts that are subsequently voided or canceled after a seller regains possession and ownership of the vehicle.

(c) Recordkeeping systems. The records required by this section may be maintained by using either an electronic recordkeeping system, a legible paper or manual recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. Licensees may maintain records on one or more recordkeeping systems, so long as the licensee is able to integrate records pertaining to an account into one or more reports as required by this section. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(d) Record search requirements.

(1) Open retail installment sales transactions. A licensee must be able to access or produce a list of all open retail installment sales transactions. If the list of open transactions is accessed through an electronic system, the licensee must be able to generate a separate report of open transactions. Alternatively, a licensee may provide a list containing open and closed retail installment sales transactions as long as the open transactions are designated as "open."

(2) Alphabetical search. A licensee must be able to access records in alphabetical order by retail buyer name for open and closed transactions during the record retention period required by subsection (e)(10) of this section. A licensee may comply with the alphabetical requirement by providing the commissioner's representative files by retail buyer name upon request by the commissioner's representative.

(3) Sorting or filtering. Upon request, if a licensee maintains some or all transaction records electronically, a licensee must be able to sort or filter a records search by each of the following:

(A) the date of contract or date of sale;

(B) the retail buyer's name(s);

(C) the status of the transaction (open or closed); and

(D) whether the transaction has been assigned to another person and the name of any assignee.

(e) Records required.

(1) Retail installment sales transaction report.

(A) General requirements. Each licensee must maintain records sufficient to produce a retail installment sales transaction report that contains a listing of each Texas Finance Code, Chapter 348 retail installment sales contract made or acquired by the licensee. The report is only required to include those retail installment sales contracts that are subject to the record retention period of paragraph (10) of this subsection.

(B) Recordkeeping systems. The retail installment sales transaction report can be maintained either an electronic system or as a paper record, so long as the licensee can integrate the following information into a report. If the retail installment sales transaction report is maintained under a manual recordkeeping system, the retail installment sales transaction report must be updated within a reasonable time from the date the contract is made or acquired.

(C) Dealer's Motor Vehicle Inventory Tax Statement option.

(i) A licensee may utilize a copy of the Dealer's Motor Vehicle Inventory Tax Statement (VIT Statement) submitted to the Texas Comptroller of Public Accounts to satisfy the requirements of this paragraph if the following two conditions are met when the VIT Statement is provided to the commissioner's representative:

(I) on a copy of the submitted VIT Statement, the licensee identifies (e.g., highlights, marks with abbreviations) which transactions were cash transactions and which were retail installment sales transactions; and

(II) the licensee supplements the VIT Statement with the identification of all transactions in which VIT was not charged or collected.

(ii) A licensee who assigns account numbers and utilizes the Dealer's Motor Vehicle Inventory Tax Statement option must provide the account numbers for all retail installment sales transactions contained in the VIT Statement.

(D) Required information. A retail installment sales transaction report must contain the following information:

(i) the date of contract or date of sale (day, month, and year);

(ii) the retail buyer's name(s);

(iii) a method of identifying the vehicle, such as the last six digits of the vehicle identification number or the stock number; and

(iv) the account number.

(E) Sorting or filtering. Upon request, a licensee must be able to sort or filter the retail installment transaction report by each of the following:

(i) the date of contract or date of sale;

(ii) the retail buyer's name(s);

(iii) the status of the transaction (open or closed); and

(iv) whether the transaction has been assigned to another person and the name of any assignee.

(2) Retail installment sales transaction file. A licensee must maintain an electronic or paper copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) the retail installment sales contract signed by the retail buyer and the retail seller as required by Texas Finance Code, §348.101;

(ii) if prepared by the retail seller, the purchase or buyer's order reflecting a written computation of the cash price of the vehicle and itemized charges, a description of the motor vehicle being purchased, and a description of each motor vehicle being traded in;

(iii) the credit application and any other written or recorded information used in evaluating the application;

(iv) the original certificate of title to the vehicle, a certified copy of the negotiable certificate of title, or a copy of the front and back of either the original or certified copy of the title;

(v) the Texas Department of Motor Vehicles' Title Application Receipt (Form VTR-500-RTS) or similar document evidencing the disbursement of the sales tax, and fees for license, title, and registration of the vehicle;

(vi) copies of other agreements or disclosures signed by the retail buyer applicable to the retail installment sales transaction; and

(vii) any records applicable to the retail installment transaction outlined by subparagraphs (B) - (U) of this paragraph.

(B) for a vehicle titled in Texas, a copy of the completed Texas Department of Motor Vehicles'/Texas Comptroller of Public Accounts' Application for Texas Certificate of Title (Form 130-U) signed by the retail buyer and seller that was filed with the appropriate county tax assessor-collector.

(C) for a vehicle titled outside of Texas, a copy of the application for certificate of title for the buyer or the properly assigned evidence of ownership to the buyer including the Texas Comptroller of Public Accounts' Texas Motor Vehicle Sales Tax Exemption Certificate (Form 14-312).

(D) for a retail installment sales transaction in which a power of attorney is necessary to transfer title to the buyer, a copy of the Texas Department of Motor Vehicles' Power of Attorney to Transfer a Motor Vehicle (Form VTR-271) or any other similar document used as a power of attorney.

(E) for a retail installment sales transaction involving a downpayment, a copy of any record or document relating to the downpayment including:

(i) receipts for cash downpayments;

(ii) promissory notes or other documents evidencing the retail buyer's agreement to pay the cash downpayment over time;

(iii) documents or forms signed by the retail buyer relating to a manufacturer's or distributor's rebate as permitted by Texas Finance Code, §348.404(a); and

(iv) documents or forms evidencing the payoff of any trade-in vehicle shown on the retail installment sales contract as required by Texas Finance Code, §348.408(c).

(F) for a retail installment sales transaction involving a trade-in motor vehicle, a copy of the Texas Disclosure of Equity in Trade-In Motor Vehicle required by Texas Finance Code, §348.0091 and §84.204 of this title (relating to Disclosure of Equity in Retail Buyer's Trade-in Motor Vehicle).

(G) for a retail installment sales contract that has an itemized charge for the inspection of a new or used motor vehicle, a copy of or access to the work order, inspection receipt, or other verifiable evidence that reflects that the inspection was performed including the date and cost of the inspection.

(H) for a retail installment sales transaction involving the disbursement of funds for money advanced pursuant to Texas Finance Code, §348.404(b) and (c), a copy of any document, form, or agreement relating to the disbursement of funds for money advanced.

(I) for a retail installment sales transaction in which the licensee issues a certificate of insurance regarding insurance policies issued by or through the licensee in connection with the retail installment sales transaction, copies of the certificates of insurance.

(J) for a retail installment sales transaction in which the licensee issues a debt cancellation agreement, a complete copy of the debt cancellation agreement provided to the retail buyer, documentation of disbursement of the debt cancellation agreement fee to the retail seller or a third-party administrator, any written instruction to another person to make a full or partial refund of the debt cancellation agreement fee, and documentation of any refund provided upon cancellation or termination of the debt cancellation agreement. As an alternative to maintaining a complete copy of the debt cancellation agreement in the retail installment sales transaction file, the licensee may maintain all of the following:

(i) in the retail installment sales transaction file, a copy of any page of the debt cancellation agreement with a signature, a transaction-specific term, the cost of the debt cancellation agreement, or any blank space that has been filled in;

(ii) in the licensee's general business files, a complete master copy of each debt cancellation agreement form used by the licensee during the period described by paragraph (10) of this subsection;

(iii) in the licensee's general business files, policies and procedures that show a verifiable method for ensuring that the master copy of the debt cancellation agreement accurately reflects the debt cancellation agreement used in each individual transaction.

(K) for a retail installment sales transaction in which the licensee issues a certificate of coverage regarding ancillary products is-

sued by or through the licensee in connection with the retail installment sales transaction, records of the ancillary products (motor vehicle theft protection plans, service contracts, maintenance agreements, identity recovery service contracts, etc.) including all certificates of coverage.

(L) for a retail installment sales transaction involving insurance claims for credit life, credit accident and health, credit property, credit involuntary unemployment, collateral protection, or credit gap insurance:

(i) if the licensee does not negotiate or transact insurance claims on behalf of the retail buyer, records are not required to be maintained under this subparagraph.

(ii) if the licensee negotiates or transacts insurance claims on behalf of the retail buyer, supplemental insurance records, to the extent received by the licensee, supporting the settlement or denials of claims reported in the insurance loss records provided by paragraph (6) of this subsection including:

(I) Credit life insurance claims. The supplemental insurance records for credit life insurance claims must include the death certificate or other written records relating to the death of the retail buyer; proof of loss or claim form that discloses the amount of indebtedness at the time of death; check copies or electronic payment receipts that reflect the gross amount of the claim paid, including the amount of insurance benefits paid to beneficiaries other than the licensee which is in excess of the net amount necessary to pay the indebtedness; and the amount that is paid to beneficiaries other than the licensee.

(II) Credit accident and health insurance claims. The supplemental insurance records for credit accident and health insurance claims must include any written records relating to the disability, including statements from the physician, employer, and retail buyer; the proof of loss or claim form filed by the retail buyer; and copies of the checks or electronic payment receipts reflecting disability payments paid by the insurance carrier.

(III) Credit involuntary unemployment insurance claims. The supplemental insurance records for credit involuntary unemployment insurance claims must include any written document relating to the termination, layoff, or dismissal of the retail buyer; the proof of loss or claim form filed by the retail buyer; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the involuntary unemployment insurance claim.

(IV) Collateral protection insurance claims. The supplemental insurance records for collateral protection insurance claims must include the law enforcement report, fire department report, or other written record reflecting the loss or destruction of any covered motor vehicle; the proof of loss or claim form filed by the retail buyer; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the collateral protection insurance claim.

(V) Credit gap insurance claims. The supplemental insurance records for credit gap insurance claims must include the gap insurance claim form; proof of loss and settlement check from the retail buyer's basic comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle; documents that provide verification of the retail buyer's primary insurance deductible; if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle; if the accident was not investigated by a law enforcement officer, a copy of any law enforcement crash report form filed in connection with the total loss of the motor vehicle; and copies of the checks reflecting the settlement amount paid by the licensee for the gap insurance claim.

(M) for a retail installment sales transaction involving the cancellation of a full or partial balance under a debt cancellation agreement for total loss or theft of an ordinary vehicle:

(i) the licensee must maintain copies of the following records on debt cancellation agreements for total loss or theft of ordinary vehicles that include insurance coverage as part of the retail buyer's responsibility to the holder:

(I) supplemental claim records supporting the settlement or denials of claims reported in the debt cancellation agreement loss records provided by paragraph (7) of this subsection including the debt cancellation request form;

(II) proof of loss and settlement payment from the retail buyer's primary comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle;

(III) documents that provide verification of the retail buyer's primary insurance deductible;

(IV) if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle;

(V) if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety's "Crash Report" (Form CR-2) filed in connection with the total loss of the motor vehicle; and

(VI) evidence of the credit for the debt cancellation applied to the account or a copy of the check reflecting the balance canceled by the licensee; or

(ii) the licensee must maintain copies of the following records on debt cancellation agreements for total loss or theft of ordinary vehicles in which the holder bears complete responsibility for the balance canceled after the total loss or theft:

(I) if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle;

(II) if the accident was not investigated by a law enforcement officer, a copy of the Texas Department of Public Safety's "Crash Report" (Form CR-2) filed in connection with the total loss of the motor vehicle; and

(III) any records relating to the denial of the cancellation of the balance under the debt cancellation agreement for total loss or theft of any ordinary vehicle.

(N) for a retail installment sales transaction where separate disclosures are required by federal or state law including the following:

(i) a transaction where disclosures required by the Truth in Lending Act are not incorporated into the text of the retail installment sales contract and the credit was extended for primarily for personal, family, or household purposes, a copy of the Truth in Lending statement required by Regulation Z, Truth in Lending, 12 C.F.R. §1026.18;

(ii) a transaction involving a cosigner, the notice to cosigner required by the Federal Trade Commission's Credit Practices Trade regulation, 16 C.F.R. §444.3.

(O) for a retail installment sales transaction that has been repaid in full, evidence of the discharge or release of lien as prescribed by 43 TAC §217.106 (relating to Discharge of Lien).

(P) for a retail installment sales transaction involving a repossession, the records required by subsection (f) of this section.

(Q) for a retail installment sales transaction in which the licensee agrees to defer all or part of one or more payments:

(i) a copy of any written deferment agreement; and

(ii) any written notice to the retail buyer regarding a deferment under Texas Finance Code, §348.114(c).

(R) for a retail installment sales transaction involving the sale of a trade-in credit agreement under Texas Finance Code, §348.125:

(i) a copy of the trade-in credit agreement and any written notice or disclosure provided to the retail buyer;

(ii) evidence of the contractual liability reimbursement policy in effect at the time of the trade-in credit agreement, as required by Texas Finance Code, §348.125(c); and

(iii) documentation of any refund provided upon cancellation of a trade-in credit agreement.

(S) for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a trade-in credit agreement under Texas Finance Code, §348.125:

(i) a copy of the trade-in credit agreement;

(ii) evidence of the amount of any credit applied under the trade-in credit agreement; and

(iii) any documentation used to process a claim, including:

(I) any proof of insurance settlement documents obtained from the retail buyer;

(II) any accident record or vehicle condition report obtained to process a claim; and

(III) any supplemental claim records supporting the approval or denial of the claim.

(T) for a retail installment sales transaction in which a retail buyer requests or receives a benefit under a depreciation benefit optional member program under Texas Occupations Code, §1304.003(a)(2)(C):

(i) evidence of the amount of any credit applied under the depreciation benefit optional member program; and

(ii) any documentation obtained by the licensee to process the benefit.

(U) any conditional delivery agreement signed by the retail buyer or provided to the retail buyer.

(3) Account record for each retail installment sales contract (including payment and collection contact history). A separate electronic or paper record must be maintained covering each retail installment sales contract. The electronic or paper account record must be readily available by reference to either a retail buyer's name or account number.

(A) Required information. The account record for each retail installment sales contract must contain at least the following information, unless stated otherwise:

(i) account number as recorded in the retail installment sales transaction report;

(ii) date of contract;

(iii) name and address of retail buyer;

(iv) payment history information:

(I) itemized payment entries showing date payment received; dual postings are acceptable if date of posting is other than date of receipt;

(II) for a transaction using the true daily earnings method, if requested during an examination or investigation, a breakdown for each payment showing the amount applied toward principal, time price differential, late charges, and any other charges;

(III) if requested during an examination or investigation, a payoff amount that denotes amounts applied to principal, time price differential, default, deferment, or other authorized charges;

(v) for a retail installment sales contract where the licensee receives or issues a refund of insurance charges, debt cancellation agreements, or authorized ancillary products, a licensee is responsible for maintaining sufficient documentation of any refund including final entries and is also responsible for providing refunds to the retail buyer or correctly applying refunds to the retail buyer's account. Refund amounts must be itemized to show:

(I) time price differential refunded, if any;

(II) the amount of any insurance charges refunded;

(III) the amount of any debt cancellation agreement fees refunded;

(IV) the amount of any authorized ancillary products charges refunded;

(vi) collection contact history, including a written record of:

(I) all collection contacts made by a licensee with the retail buyer or any other person in connection with the collection of amounts due under a motor vehicle retail installment sales contract;

(II) all collection contacts made by the retail buyer with the licensee in connection with the collection of amounts due under a motor vehicle retail installment sales contract;

(III) for the collection contacts in subclauses (I) and (II) of this clause, the written record must include the date, method of contact, contacted party, person initiating the contact, and a summary of the contact;

(IV) copies of individual collection notices or letters or references to standard collection letters sent to the retail buyer.

(B) Recommended information. In addition to the required information under subparagraph (A) of this paragraph, it is recommended that the account record for each retail installment sales contract contain the following information:

(i) retail installment sales contract payment schedule and terms itemized to show:

(I) number of installments;

(II) due date of installments;

(III) amount of each installment; and

(IV) maturity date;

(ii) telephone number of retail buyer;

(iii) names and addresses of co-retail buyer or other obligors, if any;

(iv) amount financed;

(v) total time price differential charge;

(vi) total of payments;

(vii) amount of premium charges for insurance products;

(viii) amount of fees charged for debt cancellation agreements.

(C) Corrective entries. A licensee may make corrective entries to the account record for each retail installment sales contract if the corrective entry is justified. A licensee must maintain the reason and supporting documentation for each corrective entry made to the account record. The reason for the corrective entry may be recorded in the collection contact history of the account record. The supporting documentation justifying the corrective entry can be maintained in the individual account record for each retail installment sales contract or properly stored and indexed in a licensee's optically imaged recordkeeping system. If a licensee manually maintains the account record, the licensee must properly correct an improper entry by drawing a single line through the improper entry and entering the correct information above or below the improper entry. No erasures or other obliterations may be made on the payments received or collection contact history section of the manual account record for each retail installment sales contract.

(4) Assignment information.

(A) Required information. Assignment information must cover any Texas Finance Code, Chapter 348 retail installment sales contract made by or acquired by the licensee that is assigned from its licensed or registered location. The assignment information must show the name of the retail buyer, the account number or other unique number given to the retail buyer, the date of assignment, and the name and address to which the accounts are assigned.

(B) Electronic recordkeeping systems. If a licensee is able to produce an assignment report containing the required information provided in subparagraph (A) of this paragraph electronically without any additional programming costs, the licensee must produce the report upon request. If the licensee's software programs are unable to produce an assignment report containing the required information provided in subparagraph (A) of this paragraph, the licensee may maintain assignment information for each individual retail installment sales transaction in the retail installment sales transaction file. A licensee must be able to access assignment information for a specific transaction as requested by the commissioner's representative.

(C) Manual recordkeeping systems. If a licensee is not able to produce an assignment report as provided in subparagraph (B) of this paragraph, the licensee may maintain assignment information for each individual retail installment sales transaction in the retail installment sales transaction file. A licensee must be able to access assignment information for a specific transaction as requested by the commissioner's representative.

(D) Securitization or financing exception. If the servicing rights are retained by the licensee, then the licensee is not required to include in the assignment report retail installment sales transactions that were assigned to a legal entity as part of a securitization agreement. A licensee is also not required to include in the assignment report retail installment sales transactions that have been pledged as collateral for a bona fide financing arrangement to the licensee.

(5) General business and accounting records. General business and accounting records concerning retail installment sales transactions must be maintained. The licensee is not required to produce information protected under the attorney-client privilege or work product privilege. The business and accounting records must include receipts, documents, or other records for each disbursement made by the licensee at the retail buyer's direction or request, on his behalf, or for his benefit, that is charged to the retail buyer, including:

(A) Texas Comptroller of Public Accounts' Dealer Motor Vehicle Inventory Tax Statement (Form 50-246);

(B) Texas Comptroller of Public Accounts' Texas Motor Vehicle Seller-Financed Sales Tax Report (Form 14-117); and

(C) repossession, sequestration, disposition, or legal fees relating to repossession, sequestration, or disposition.

(6) Insurance loss records. Each licensee who negotiates or transacts the filing of insurance claims must maintain a register or be able to generate a report, electronic or paper, reflecting information to the extent received by the licensee on credit life, credit accident and health, credit property, credit involuntary unemployment, and single-interest insurance claims whether paid or denied by the insurance carrier. If the reason for the denial of a credit life insurance or credit accident and health insurance claim is based upon the medical records of the retail buyer, supplemental records supporting the denial of the claim must be made available upon request.

(7) Debt cancellation agreement for total loss or theft loss records. Each licensee who cancels entire balances or who cancels only partial balances under debt cancellation agreements must maintain a register or be able to generate a report, paper or electronic, that reflects agreements that were either satisfied or denied. This register or report must show the name of the retail buyer, the account number, an indication of whether the agreement was satisfied or denied (e.g., "paid," "denied"), and the date of satisfaction or denial.

(8) Adverse action records. Each licensee must maintain adverse action records regarding all applications relating to Texas Finance Code, Chapter 348 retail installment sales transactions. Adverse action records must be maintained according to the record retention requirements contained in Regulation B, Equal Credit Opportunity Act, 12 C.F.R. §1002.12(b). The current retention periods are 25 months for consumer credit and 12 months for business credit.

(9) Trade-in credit agreement records. Each licensee that enters a trade-in credit agreement or provides a benefit in connection with a trade-in credit agreement must:

(A) maintain a copy of any contractual liability reimbursement policy related to the trade-in credit agreement, as required by Texas Finance Code, §348.125(c); and

(B) maintain a register or be able to generate a report, paper or electronic, that reflects agreements that were either satisfied or denied. This register or report must show the name of the retail buyer, the account number, and the date of satisfaction or denial.

(10) Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon, whichever is later, or a different period of time if required by federal law. Upon notification of an examination pursuant to Texas Finance Code, §348.514(f), the licensee must be able to produce or access required books and

records within a reasonable time at the licensed location or registered office specified on the license. The records required by this subsection must be available or accessible at an office in the state designated by the licensee except when the retail installment sales transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

(f) Repossession records.

(1) Repossession report. A licensee must be able to access or produce a list of all retail installment sales transactions involving repossession by the licensee. If the list of repossessions is accessed through an electronic system, the licensee must be able to generate a separate report of repossessions. If the repossession report is maintained under a manual recordkeeping system, the licensee must maintain a current list of accounts in repossession. A manual repossession report must be updated within a reasonable time from the date of repossession. The repossession report must include the retail buyer's name, account number, and date of repossession. If accounts have been subsequently assigned, the assignment must be noted in the repossession report as well as on the record of assigned accounts as prescribed in subsection (e)(4) of this section.

(2) Required information. For a retail installment sales transaction involving the repossession of the vehicle, the following records must be maintained, unless otherwise specified:

(A) a condition report indicating the condition of the collateral, if prepared by the licensee, the licensee's agent, or any independent contractor hired to perform the repossession;

(B) any invoices or receipts for any reasonable and authorized out-of-pocket expenses that are assessed to the buyer and incurred in connection with the repossession or sequestration of the vehicle including cost of storing, reconditioning, and reselling the vehicle;

(C) for a vehicle disposed of in a public or private sale as permitted by the Texas Business and Commerce Code, §9.610, the following documents:

(i) one of the three following notices:

(I) for a transaction not involving consumer goods, a copy of any Notification of Disposition of Collateral letter sent to the retail buyer and other obligors as required by Texas Business and Commerce Code, §9.613;

(II) for a transaction involving consumer goods, a copy of any Notice of Our Plan to Sell Property as sent to the retail buyer and other obligors as required by Texas Business and Commerce Code, §9.614; or

(III) a copy of the waiver of the notice of intended disposition prescribed by subclause (I) or (II) of this clause, as applicable, signed by the retail buyer and other obligors after default;

(ii) copies of evidence of the type or manner of private sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as circumstances surrounding a dealer only auction, internet sale or other type of private disposition;

(iii) copies of evidence of the type or manner of public sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as documentation of the date, place, manner of sale of the vehicle, and amounts received for disposition of the vehicle;

(iv) the bill of sale showing the name and address of the purchaser of the repossessed collateral and the purchase price of the vehicle;

(v) for a disposition or sale of collateral creating a surplus balance, a copy of the check representing the payment of the surplus balance paid to the retail buyer or other person entitled to the surplus;

(vi) for a disposition or sale of collateral resulting in a surplus or deficiency, a copy of the explanation of calculation of surplus or deficiency as required by Texas Business and Commerce Code, §9.616, if applicable;

(vii) a copy of the waiver of the deficiency letter if the retail seller elects to waive the deficiency balance in lieu of sending the explanation of calculation of surplus or deficiency form, if applicable;

(D) for a vehicle disposed of using the strict foreclosure method as permitted by the Texas Business and Commerce Code, §9.620 and §9.621, the following documents:

(i) one of the three following notices;

(I) for a transaction not involving consumer goods and where less than 60% of the cash price of the vehicle has been paid, a copy of the notice of proposal to accept collateral in full or partial satisfaction of the obligation;

(II) for a transaction involving consumer goods, a copy of the notice of proposal to accept collateral in full satisfaction of the obligation; or

(III) for a transaction where more than 60% of the cash price of the vehicle has been paid, a copy of the debtor or obligor's waiver of compulsory disposition of collateral signed by the retail buyers and other obligors after default;

(ii) for a transaction where the retail buyer rejects the offer under clause (i)(I) or (II) of this subparagraph, a copy of the retail buyer's signed objection to retention of the collateral;

(iii) copies of the records reflecting the partial or total satisfaction of the obligation; and

(E) for a vehicle disposed by another authorized method pursuant to the Texas Business and Commerce Code, Chapter 9, a copy of any and all records or documents relating to the disposition of the collateral

(g) Information security program. A licensee must maintain written policies and procedures for an information security program to protect retail buyers' customer information, as required by the Federal Trade Commission's Safeguards Rule, 16 C.F.R. part 314. If a licensee maintains customer information concerning 5,000 or more consumers, then the licensee must maintain a written incident response plan and written risk assessments, as required by 16 C.F.R. §314.4.

(h) Data breach notifications. A licensee must maintain the text of any data breach notification provided to retail buyers, including any notification under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification. A licensee must maintain any data breach notification provided to a government agency, including any notification provided to the Office of the Attorney General under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification.

§84.709. Files and Records Required (Holders Taking Assignment of Retail Installment Sales Contracts).

(a) Applicability. The recordkeeping requirements of this section apply to holders who are not retail sellers that service or collect installments on retail installment sales contracts involving ordinary vehicles. The recordkeeping requirements of this section do not apply to motor vehicle retail installment sales transactions involving commercial vehicles.

(b) Records required for each retail installment sales transaction. Each licensee must maintain records with respect to the licensee's compliance with Texas Finance Code, Chapter 348 for each motor vehicle retail installment sales contract made, acquired, serviced, or held under Chapter 348 and make those records available for examination.

(c) Recordkeeping systems. The records required by this section may be maintained by using either an electronic recordkeeping system, a legible paper or manual recordkeeping system, or a combination of the preceding types of systems, unless otherwise specified by statute or regulation. Licensees may maintain records on one or more recordkeeping systems, so long as the licensee is able to integrate records pertaining to an account into one or more reports as required by this section. If federal law requirements for record retention are different from the provisions contained in this section, the federal law requirements prevail only to the extent of the conflict with the provisions of this section.

(d) Record search requirements.

(1) Open retail installment sales transactions. A licensee must be able to access or produce a list of all open retail installment sales transactions. If the list of open transactions is accessed through an electronic system, the licensee must be able to generate a separate report of open transactions. Alternatively, a licensee may provide a list containing open and closed retail installment sales transactions as long as the open transactions are designated as "open."

(2) Alphabetical search. A licensee must be able to access records in alphabetical order by retail buyer name for open and closed transactions during the record retention period required by subsection (e)(9) of this section. A licensee may comply with the alphabetical requirement by providing the commissioner's representative files by retail buyer name upon request by the commissioner's representative.

(3) Sorting or filtering. Upon request, if a licensee maintains some or all transaction records electronically, a licensee must be able to sort or filter a records search by each of the following:

(A) the date of contract or date of sale;

(B) the retail buyer's name(s);

(C) the status of the transaction (open or closed); and

(D) whether the transaction has been assigned to another person and the name of any assignee.

(e) Records required.

(1) Retail installment sales transaction report. Each licensee must maintain records sufficient to produce a retail installment sales transaction report that contains a listing of each Texas Finance Code, Chapter 348 retail installment sales contract acquired by the licensee. The report is only required to include those retail installment sales contracts that are subject to the record retention period of paragraph (9) of this subsection. The retail installment sales transaction report can be maintained either as a paper record or may be generated from an electronic system or systems so long as the licensee can integrate the following information into a report. If the retail installment sales transaction report is maintained under a manual recordkeeping system, the retail installment sales transaction report must be updated within a reasonable time from the date the contract is acquired.

(A) A retail installment sales transaction report must contain the following information:

(i) the date of contract (day, month, and year);

(ii) the retail buyer's name(s);

(iii) a method of identifying the vehicle, such as the last six digits of the vehicle identification number or the stock number; and

(iv) the account number.

(B) Sorting or filtering. Upon request, a licensee must be able to sort or filter the retail installment transaction report by each of the following:

(i) the date of contract or date of sale;

(ii) the retail buyer's name(s);

(iii) the status of the transaction (open or closed); and

(iv) whether the transaction has been assigned to another person and the name of any assignee.

(2) Retail installment sales transaction file. A licensee must maintain an electronic or paper copy of a retail installment sales transaction file for each individual retail installment sales contract or be able to produce the same information within a reasonable amount of time. The retail installment sales transaction file must contain documents which show the licensee's compliance with applicable law. The required documents must show the licensee's compliance with Texas Finance Code, Chapter 348 and would accordingly include applicable state and federal laws and regulations, including the Truth in Lending Act. If a substantially equivalent electronic record for any of the following records exists, a paper copy of the record does not have to be included in the retail installment sales transaction file if the electronic record can be accessed upon request. The retail installment sales transaction file must include copies of the following records or documents, unless otherwise specified:

(A) for all retail installment sales transactions:

(i) the retail installment sales contract signed by the retail buyer and the retail seller as required by Texas Finance Code, §348.101;

(ii) the credit application and any other written or recorded information used in evaluating the application;

(iii) the original certificate of title to the vehicle, a certified copy of the negotiable certificate of title, or a copy of the front of either the original or certified copy of the title; and

(iv) any records applicable to the retail installment transaction outlined by subparagraphs (B) - (J) of this paragraph.

(B) for a vehicle titled in Texas, a copy of the completed Texas Department of Motor Vehicles'/Texas Comptroller of Public Accounts' Application for Texas Certificate of Title (Form 130-U) signed by the retail buyer and seller that was filed with the appropriate county tax assessor-collector.

(C) for a retail installment sales transaction in which insurance policies are issued by or through the licensee in connection with the retail installment sales transaction, copies of the certificates of insurance.

(D) for a retail installment sales transaction in which the licensee issues or takes assignment of a debt cancellation agreement, a complete copy of the debt cancellation agreement provided to the retail buyer and any written instruction to another person to make a full or partial refund of the debt cancellation agreement fee, and any documentation that comes into the licensee's possession regarding a refund provided upon cancellation or termination of the debt cancellation agreement. As an alternative to maintaining a complete copy of the debt cancellation agreement in the retail installment sales transaction file, the licensee may maintain all of the following:

(i) in the retail installment sales transaction file, a copy of any page of the debt cancellation agreement with a signature, a transaction-specific term, the cost of the debt cancellation agreement, or any blank space that has been filled in;

(ii) in the licensee's general business files, a complete master copy of each debt cancellation agreement form used by the licensee during the period described by paragraph (9) of this subsection;

(iii) in the licensee's general business files, policies and procedures that show a verifiable method for ensuring that the master copy of the debt cancellation agreement accurately reflects the debt cancellation agreement used in each individual transaction.

(E) for a retail installment sales transaction involving insurance claims for credit life, credit accident and health, credit property, credit involuntary unemployment, collateral protection, or credit gap insurance:

(i) if the licensee does not negotiate or transact insurance claims on behalf of the retail buyer, records are not required to be maintained under this subparagraph.

(ii) if the licensee negotiates or transacts insurance claims on behalf of the retail buyer, supplemental insurance records, to the extent received by the licensee, supporting the settlement or denials of claims reported in the insurance loss records provided by paragraph (6) of this subsection including:

(I) Credit life insurance claims. The supplemental insurance records for credit life insurance claims must include the death certificate or other written records relating to the death of the retail buyer; proof of loss or claim form that discloses the amount of indebtedness at the time of death; check copies or electronic payment receipts that reflect the gross amount of the claim paid, including the amount of insurance benefits paid to beneficiaries other than the licensee which is in excess of the net amount necessary to pay the indebtedness; and the amount that is paid to beneficiaries other than the licensee.

(II) Credit accident and health insurance claims. The supplemental insurance records for credit accident and health insurance claims must include any written records relating to the disability, including statements from the physician, employer, and retail buyer; the proof of loss or claim form filed by the retail buyer; and copies of the checks or electronic payment receipts reflecting disability payments paid by the insurance carrier.

(III) Credit involuntary unemployment insurance claims. The supplemental insurance records for credit involuntary unemployment insurance claims must include any written document relating to the termination, layoff, or dismissal of the retail buyer; the proof of loss or claim form filed by the retail buyer; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the involuntary unemployment insurance claim.

(IV) Collateral protection insurance claims. The supplemental insurance records for collateral protection insurance claims must include the law enforcement report, fire department report, or other written record reflecting the loss or destruction of any covered motor vehicle; the proof of loss or claim form filed by the retail buyer; copies of the checks or electronic payment receipts reflecting the payment of the claim by the insurance carrier; and any other pertinent written record relating to the collateral protection insurance claim.

(V) Credit gap insurance claims. The supplemental insurance records for credit gap insurance claims must include the gap insurance claim form; proof of loss and settlement check from the retail buyer's basic comprehensive, collision, or uninsured/underinsured policy or other parties' liability insurance policy for the settlement of the insured total loss of the motor vehicle; documents that provide verification of the retail buyer's primary insurance deductible; if the accident was investigated by a law enforcement officer, a copy of the offense or police report filed in connection with the total loss of the motor vehicle; if the accident was not investigated by a law enforcement officer, a copy of any law enforcement crash report form filed in connection with the total loss of the motor vehicle; and copies of the checks reflecting the settlement amount paid by the licensee for the gap insurance claim.

(F) for a retail installment sales transaction involving the cancellation of a full or partial balance under a debt cancellation agreement for total loss or theft of an ordinary vehicle, or involving the cancellation or termination of a debt cancellation agreement, the licensee must:

(i) maintain any documents that come into its possession relating to the creation, processing, resolution, cancellation, or termination of a debt cancellation agreement; and

(ii) upon request of the agency, cooperate in requesting and obtaining access to the type of documents described in clause (i) of this subparagraph that are not in its possession.

(G) for a retail installment sales transaction where separate disclosures are required by federal or state law including the following:

(i) a transaction where disclosures required by the Truth in Lending Act are not incorporated into the text of the retail installment sales contract and the credit was extended for primarily for personal, family, or household purposes, a copy of the Truth in Lending statement required by Regulation Z, Truth in Lending, 12 C.F.R. §1026.18;

(ii) a transaction involving a cosigner, the notice to cosigner required by the Federal Trade Commission's Credit Practices Trade regulation, 16 C.F.R. §444.3.

(H) for a retail installment sales transaction that has been repaid in full, evidence of the discharge or release of lien as prescribed by 43 TAC §217.106 (relating to Discharge of Lien).

(I) for a retail installment sales transaction involving repossession, the records required by subsection (f) of this section.

(J) for a retail installment sales transaction in which the licensee agrees to defer all or part of one or more payments:

(i) a copy of any written deferment agreement; and

(ii) any written notice to the retail buyer regarding a deferment under Texas Finance Code, §348.114(c).

(3) Account record for each retail installment sales contract (including payment and collection contact history). A separate electronic or paper record must be maintained covering each retail install-

ment sales contract. The electronic or paper account record must be readily available by reference to either a retail buyer's name or account number.

(A) Required information. The account record for each retail installment sales contract must contain at least the following information, unless stated otherwise:

(i) account number as recorded in the retail installment sales transaction report;

(ii) date of contract;

(iii) name and address of retail buyer;

(iv) payment history information:

(I) itemized payment entries showing date payment received; dual postings are acceptable if date of posting is other than date of receipt;

(II) for a transaction using the true daily earnings method, if requested during an examination or investigation, a breakdown for each payment showing the amount applied toward principal, time price differential, late charges, and any other charges;

(III) if requested during an examination or investigation, a payoff amount that denotes amounts applied to principal, time price differential, default, deferment, or other authorized charges;

(v) for a retail installment sales contract where the licensee receives or issues a refund of insurance charges, debt cancellation agreements or authorized ancillary products, a licensee is responsible for maintaining sufficient documentation of any refund including final entries and is also responsible for providing refunds to the retail buyer or correctly applying refunds to the retail buyer's account. Refund amounts must be itemized to show:

(I) time price differential refunded, if any;

(II) the amount of any insurance charges refunded;

(III) the amount of debt cancellation agreement fees refunded;

(IV) the amount of any authorized ancillary products charges refunded;

(vi) collection contact history, including a written record of:

(I) all collection contacts made by a licensee with the retail buyer or any other person in connection with the collection of amounts due under a motor vehicle retail installment sales contract;

(II) all collection contacts made by the retail buyer with the licensee in connection with the collection of amounts due under a motor vehicle retail installment sales contract;

(III) for the collection contacts in subclauses (I) and (II) of this clause, the written record must include the date, method of contact, contacted party, person initiating the contact, and a summary of the contact;

(IV) copies of individual collection notices or letters or references to standard collection letters sent to the retail buyer.

(B) Recommended information. In addition to the required information under subparagraph (A) of this paragraph, it is recommended that the account record for each retail installment sales contract contain the following information:

(i) retail installment sales contract payment schedule and terms itemized to show:

(I) number of installments;

(II) due date of installments;

(III) amount of each installment; and

(IV) maturity date;

(ii) telephone number of retail buyer;

(iii) names and addresses of co-retail buyer or other obligors, if any;

(iv) amount financed;

(v) total time price differential charge;

(vi) total of payments;

(vii) amount of premium charges for insurance products;

(viii) amount of fees charged for debt cancellation agreements.

(C) Corrective entries. A licensee may make corrective entries to the account record for each retail installment sales contract if the corrective entry is justified. A licensee must maintain the reason and supporting documentation for each corrective entry made to the account record. The reason for the corrective entry may be recorded in the collection contact history of the account record. The supporting documentation justifying the corrective entry can be maintained in the individual account record for each retail installment sales contract or properly stored and indexed in a licensee's optically imaged record-keeping system. If a licensee manually maintains the account record, the licensee must properly correct an improper entry by drawing a single line through the improper entry and entering the correct information above or below the improper entry. No erasures or other obliterations may be made on the payments received or collection contact history section of the manual account record for each retail installment sales contract.

(4) Assignment report.

(A) Required information. A licensee must maintain or produce an assignment report, whether paper or electronic, including any Texas Finance Code, Chapter 348 retail installment sales contract made by or acquired by the licensee that is assigned from its licensed or registered location. The assignment report must show the name of the retail buyer, the account number or other unique number given to the retail buyer, the date of assignment, and the name and address to which the accounts are assigned.

(B) Securitization or financing exception. If the servicing rights are retained by the licensee, then the licensee is not required to include in the assignment report retail installment sales transactions that were assigned to a legal entity as part of a securitization agreement. A licensee is also not required to include in the assignment report retail installment sales transactions that have been pledged as collateral for a bona fide financing arrangement to the licensee.

(5) General business and accounting records. General business and accounting records concerning retail installment sales transactions must be maintained. The business and accounting records must include receipts, documents, or other records for each disbursement made by the licensee at the retail buyer's direction or request, on his behalf, or for his benefit, that is charged to the retail buyer, including repossession, sequestration, disposition, or legal fees relating to repossession, sequestration, or disposition. The licensee is

not required to produce information protected under the attorney-client privilege or work product privilege.

(6) Insurance loss records. Each licensee who negotiates or transacts the filing of insurance claims must maintain a register or be able to generate a report, electronic or paper, reflecting information to the extent received by the licensee on credit life, credit accident and health, credit property, credit involuntary unemployment, and single-interest insurance claims whether paid or denied by the insurance carrier. If the reason for the denial of a credit life insurance or credit accident and health insurance claim is based upon the medical records of the retail buyer, supplemental records supporting the denial of the claim must be made available upon request.

(7) Debt cancellation agreement for total loss or theft loss records. Each licensee who cancels entire balances or who cancels only partial balances under debt cancellation agreements must maintain a register or be able to generate a report, paper or electronic, that reflects agreements that were either satisfied or denied. This register or report must show the name of the retail buyer, the account number, an indication of whether the agreement was satisfied or denied (e.g., "paid," "denied"), and the date of satisfaction or denial.

(8) Adverse action records. Each licensee must maintain adverse action records regarding all applications relating to Texas Finance Code, Chapter 348 retail installment sales transactions. Adverse action records must be maintained according to the record retention requirements contained in Regulation B, Equal Credit Opportunity Act, 12 C.F.R. §1002.12(b). The current retention periods are 25 months for consumer credit and 12 months for business credit.

(9) Retention and availability of records. All books and records required by this subsection must be available for inspection at any time by Office of Consumer Credit Commissioner staff, and must be retained for a period of four years from the date of the contract, two years from the date of the final entry made thereon, whichever is later, or a different period of time if required by federal law. Upon notification of an examination pursuant to Texas Finance Code, §348.514(f), the licensee must be able to produce or access required books and records within a reasonable time at the licensed location or registered office specified on the license. The records required by this subsection must be available or accessible at an office in the state designated by the licensee except when the retail installment sales transactions are transferred under an agreement which gives the commissioner access to the documents. Documents may be maintained out of state if the licensee has in writing acknowledged responsibility for either making the records available within the state for examination or by acknowledging responsibility for additional examination costs associated with examinations conducted out of state.

(f) Repossession records.

(1) Repossession report. A licensee must be able to access or produce a list of all retail installment sales transactions involving repossession by the licensee. If the list of repossessions is accessed through an electronic system, the licensee must be able to generate a separate report of repossessions. If the repossession report is maintained under a manual recordkeeping system, the licensee must maintain a current list of accounts in repossession. A manual repossession report must be updated within a reasonable time from the date of repossession. The repossession report must include the retail buyer's name, account number, and date of repossession. If accounts have been subsequently assigned, the assignment must be noted in the repossession report as well as on the record of assigned accounts as prescribed in subsection (e)(4) of this section.

(2) Required information. For a retail installment sales transaction involving the repossession of the vehicle, the following records must be maintained, unless otherwise specified:

(A) a condition report indicating the condition of the collateral, if prepared by the licensee, the licensee's agent, or any independent contractor hired to perform the repossession;

(B) any invoices or receipts for any reasonable and authorized out-of-pocket expenses that are assessed to the buyer and incurred in connection with the repossession or sequestration of the vehicle including cost of storing, reconditioning, and reselling the vehicle;

(C) for a vehicle disposed of in a public or private sale as permitted by the Texas Business and Commerce Code, §9.610, the following documents:

(i) one of the three following notices:

(I) for a transaction not involving consumer goods, a copy of any Notification of Disposition of Collateral letter sent to the retail buyer and other obligors as required by Texas Business and Commerce Code, §9.613;

(II) for a transaction involving consumer goods, a copy of any Notice of Our Plan to Sell Property as sent to the retail buyer and other obligors as required by Texas Business and Commerce Code, §9.614; or

(III) a copy of the waiver of the notice of intended disposition prescribed by subclause (I) or (II) of this clause, as applicable, signed by the retail buyer and other obligors after default;

(ii) copies of evidence of the type or manner of private sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as circumstances surrounding a dealer only auction, internet sale or other type of private disposition;

(iii) copies of evidence of the type or manner of public sale that was conducted. These records must show that the manner of the disposition was commercially reasonable, such as documentation of the date, place, manner of sale of the vehicle, and amounts received for disposition of the vehicle;

(iv) the bill of sale showing the name and address of the purchaser of the repossessed collateral and the purchase price of the vehicle;

(v) for a disposition or sale of collateral creating a surplus balance, a copy of the check representing the payment of the surplus balance paid to the retail buyer or other person entitled to the surplus;

(vi) for a disposition or sale of collateral resulting in a surplus or deficiency, a copy of the explanation of calculation of surplus or deficiency as required by Texas Business and Commerce Code, §9.616, if applicable;

(vii) a copy of the waiver of the deficiency letter if the retail seller elects to waive the deficiency balance in lieu of sending the explanation of calculation of surplus or deficiency form, if applicable;

(D) for a vehicle disposed of using the strict foreclosure method as permitted by the Texas Business and Commerce Code, §9.620 and §9.621, the following documents:

(i) one of the three following notices;

(I) for a transaction not involving consumer goods and where less than 60% of the cash price of the vehicle has

been paid, a copy of the notice of proposal to accept collateral in full or partial satisfaction of the obligation;

(II) for a transaction involving consumer goods, a copy of the notice of proposal to accept collateral in full satisfaction of the obligation; or

(III) for a transaction where more than 60% of the cash price of the vehicle has been paid, a copy of the debtor or obligor's waiver of compulsory disposition of collateral signed by the retail buyers and other obligors after default;

(ii) for a transaction where the retail buyer rejects the offer under clause (i)(I) or (II) of this subparagraph, a copy of the retail buyer's signed objection to retention of the collateral;

(iii) copies of the records reflecting the partial or total satisfaction of the obligation; and

(E) for a vehicle disposed by another authorized method pursuant to the Texas Business and Commerce Code, Chapter 9, a copy of any and all records or documents relating to the disposition of the collateral.

(g) Information security program. A licensee must maintain written policies and procedures for an information security program to protect retail buyers' customer information, as required by the Federal Trade Commission's Safeguards Rule, 16 C.F.R. part 314. If a licensee maintains customer information concerning 5,000 or more consumers, then the licensee must maintain a written incident response plan and written risk assessments, as required by 16 C.F.R. §314.4.

(h) Data breach notifications. A licensee must maintain the text of any data breach notification provided to retail buyers, including any notification under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification. A licensee must maintain any data breach notification provided to a government agency, including any notification provided to the Office of the Attorney General under Texas Business & Commerce Code, §521.053, for a period of four years from the date of the notification.

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

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

TRD-202405031
Matthew Nance
General Counsel
Office of Consumer Credit Commissioner
Effective date: November 14, 2024
Proposal publication date: August 30, 2024
For further information, please call: (512) 936-7660

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SUBCHAPTER H. RETAIL INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §84.802, §84.806

The rule changes are adopted under Texas Finance Code, §348.513, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 348. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4. The rule changes to §84.802, §84.806, §84.808, and §84.809 are also adopted under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 341 and 348.

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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Matthew Nance
General Counsel
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7660

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7 TAC §84.808, §84.809

The rule changes are adopted under Texas Finance Code, §348.513, which authorizes the commission to adopt rules to enforce Texas Finance Code, Chapter 348. In addition, Texas Finance Code, §11.304 authorizes the commission to adopt rules necessary to supervise the OCCC and ensure compliance with Texas Finance Code, Title 4. The rule changes to §84.802, §84.806, §84.808, and §84.809 are also adopted under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 341 and 348.

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 7. STATE SECURITIES BOARD

CHAPTER 111. SECURITIES EXEMPT FROM REGISTRATION

7 TAC §111.2

The Texas State Securities Board adopts an amendment to §111.2, concerning Listed and Designated Securities, without changes to the proposed text as published in the July 12, 2024,

issue of the *Texas Register* (49 TexReg 4979). The amended rule will not be republished.

The references to sections of the Texas Securities Act (Act) are updated to refer to the correct sections in the codified version of the Act in the Texas Government Code. The codification was adopted by HB 4171, 86th Legislature, 2019 Regular Session, and became effective January 1, 2022 (HB 4171).

The section is also amended to replace the reference to the term "United States Securities and Exchange Commission" with the term "SEC" in subsection (d). SEC is already a defined term in §107.2, concerning Definitions. The nonsubstantive amendments are made pursuant to the Agency's periodic review of its rules.

Statutory references are current and accurate and conform to the codified version of the Act; and terminology and references are updated.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Texas Government Code, §4002.151, as adopted by HB 4171. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects the following sections of the Texas Securities Act: Texas Government Code Chapter 4003, Subchapters A, B, and C, and Chapter 4005.

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

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

TRD-202405026
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: November 14, 2024
Proposal publication date: July 12, 2024
For further information, please call: (512) 305-8303

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CHAPTER 113. REGISTRATION OF SECURITIES

7 TAC §113.14

The Texas State Securities Board adopts an amendment to §113.14, concerning Statements of Policy, without changes to the proposed text as published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 4980). The amended rule will not be republished.

The amendment adopts by reference certain updated North American Securities Administrators Association ("NASAA") statements of policy ("SOPs") that were amended by NASAA on September 12, 2023. Uniformity with other states when reviewing applications to register securities is increased.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Texas Government Code, §4002.151, as adopted by HB 4171, 86th Legislature, 2019 Regular Session, effective January 1, 2022. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects the following sections of the Texas Securities Act: Texas Government Code Chapter 4003, Subchapters A, B, and C.

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

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For further information, please call: (512) 305-8303

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CHAPTER 114. FEDERAL COVERED SECURITIES

7 TAC §114.4

The Texas State Securities Board adopts an amendment to §114.4, concerning Filings and Fees, without changes to the proposed text as published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 4981). The amended rule will not be republished.

Section 114.4(b) is amended to add a new paragraph (6) to specifically address federal covered securities offered pursuant to Securities and Exchange Commission (SEC) Federal Crowdfunding. Previously, these offerings fell within the catch-all for federal covered securities provided by subsection (a). To assist issuers in more readily locating the filing and fee requirements for SEC Federal crowdfunding offerings, a specific provision covering these offerings is provided in new subsection (b)(6). No change is made to the filing or fee requirements of this rule, other than to permit a filer to use the Uniform Notice Filing of Federal Crowdfunding form instead of page 1, Items 1-6 of the Form U-1. The Federal Crowdfunding form includes a consent to service of process. The nonsubstantive amendment is made pursuant to the Agency's periodic review of its rules.

Federal Crowdfunding filings are more efficient because a specific filing requirement for Federal Crowdfunding filings has been provided and Federal Crowdfunding filers are permitted to use a different form for these filings.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Texas Government Code, §§4002.151 and 4005.024, as adopted by HB 7171, 86th Legislature, 2019 Regular Session, effective January 1, 2022. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 4005.024 provides that the Board may prescribe new exemptions by rule.

The adopted amendment affects the following sections of the Texas Securities Act: Texas Government Code Chapter 4003, Subchapters A, B, and C; Chapter 4005, Subchapters A and B; and Chapter 4006.

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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Travis J. Iles
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8303

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CHAPTER 133. FORMS

7 TAC §133.7

The Texas State Securities Board adopts the repeal of rule §133.7, which adopts by reference a form concerning Securities Application, without changes to the proposed text as published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 4982). The repealed rule will not be republished.

The adopted repeal of the rule allows for the simultaneous adoption of a new rule and a new corrected form by reference, which are being concurrently adopted. The repeal is made pursuant to the Agency's periodic review its rules.

An existing form has been eliminated so it can be replaced with a new corrected form.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the authority of the Texas Government Code, §4002.151, as adopted by HB 4171, 86th Legislature, 2019 regular Session, effective January 1, 2022. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted repeal affects the following sections of the Texas Securities Act: Texas Government Code Chapter 4003, Subchapters A, B, and C; and Chapter 4006, Subchapters A, B, and C.

§133.7. Securities Application.

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

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

TRD-202405037
Travis J. Iles
Securities Commissioner
State Securities Board
Effective date: November 14, 2024
Proposal publication date: July 12, 2024
For further information, please call: (512) 305-8303

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7 TAC §133.7

The Texas State Securities Board adopts new rule §133.7, which adopts by reference a form concerning Securities Application, without changes to the proposed text as published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 4982). The new rule will not be republished.

Previous §133.7 and the form it adopted by reference, which referred to a different form that has been repealed and no longer exists, is repealed and replaced with a new rule that adopts a new corrected form by reference. The new rule is made pursuant to the Agency's periodic review its rules.

A repealed form has been replaced with a new, updated form.

No comments were received regarding adoption of the new rule.

STATUTORY AUTHORITY

The new rule is adopted under the authority of the Texas Government Code, §4002.151, as adopted by HB 4171, 86th Legislature, 2019 regular Session, effective January 1, 2022. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted new rule affects the following sections of the Texas Securities Act: Texas Government Code Chapter 4003, Subchapters A, B, and C; and Chapter 4006, Subchapters A, B, and C.

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

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Travis J. Iles
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8303

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7 TAC §133.33

The Texas State Securities Board adopts an amendment to §133.33, concerning Uniform Forms Accepted, Required, or Recommended, without changes to the proposed text as published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 4983). The amended rule will not be republished.

The amendment to §133.33 updates the statutory reference to the Texas Securities Act (Act) in §133.33(a)(8) to refer to the correct section in the codified version of the Act in the Texas Government Code. The codification was adopted by HB 4171, 86th Legislature, 2019 Regular Session, and became effective January 1, 2022 (HB 4171).

The amendment to §133.33 also adds the Uniform Notice of Federal Crowdfunding (Form U-CF) form and Form U6 to the list in subsection (a) of uniform forms accepted. The Form U-CF is used for making the required notice filings for this type of federal covered securities. A related change to §114.4 is being concurrently adopted. Form U6 is used by state securities regulators, including the Agency, and by federal securities regulators, for reporting disclosure events and disciplinary actions against individuals and organizations. The addition of Form U6 to the list of uniform forms accepted acknowledges through formal rulemaking the Agency's current practice of accepting these forms as a means of notifying the Agency of such events disclosed in these forms.

The amendments to this section are made pursuant to the Agency's periodic review of its rules.

Federal Crowdfunding filings are more accurate and efficient because a specific form is provided for these filings, and the rule is current, accurate, and reflects an existing practice.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Texas Government Code, §4002.151, as adopted by HB 4171. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The adopted amendment affects the following sections of the Texas Securities Act: Texas Government Code Chapter 4005, Subchapter A; and §4007.105.

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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Travis J. Iles
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8303

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CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §§139.1, 139.2, 139.7 - 139.16, 139.18 - 139.24, 139.26, 139.27

The Texas State Securities Board adopts amendments to 21 rules in this chapter, §§139.1, 139.2, 139.7 - 139.16, 139.18 - 139.24, 139.26, and 139.27, without changes to the proposed text as published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 4984). The amended rules will not be republished.

The amended rules make nonsubstantive changes to the chapter. Specifically, the Board adopts amendments to §139.1, concerning Policies; §139.2, concerning Professional Associations; §139.7, concerning Sale of Securities to Nonresidents; §139.8, concerning Sales to Underwriters; §139.9, concerning Bank Holding Companies; §139.10, concerning Exchange Offers; §139.11, concerning Transactions in United States Savings Bonds; §139.12, concerning Oil and Gas Auction Exemption; §139.13, concerning Resales under SEC Rule 144 and Rule 145(d); §139.14, concerning Non-Issuer Sales; §139.15, concerning Credit Enhancements; §139.16, concerning Sales to Individual Accredited Investors; §139.18, concerning Dealer and Investment Adviser Use of the Internet To Disseminate Information on Products and Services; §139.19, concerning Accredited Investor Exemption; §139.20, concerning Third Party Brokerage Arrangements on Financial Entity Premises; §139.21, concerning Dealer, Agent, and Securities Exemptions for Canadian Accounts; §139.22, concerning Exemption for Investment Adviser to a High Net Worth Family Entity; §139.23, concerning Registration Exemption for Investment Advisers to Private Funds; §139.24, concerning Charitable Organizations Assisting Economically Disadvantaged Clients with Texas Qualified Tuition Program Plans; §139.26, concerning Intrastate Crowdfunding Exemption for SEC Rule 147A Offerings; and §139.27, concerning Mergers and Acquisitions Dealer Exemption. The nonsubstantive amendments are made pursuant to the Agency's periodic review of its rules.

The references to sections of the Texas Securities Act (Act) in §§139.1, 139.8 - 139.16, 139.18 - 139.24, 139.26, and 139.27 are updated to refer to the correct sections in the codified version of the Act in the Texas Government Code. The codification was adopted by HB 4171, 86th Legislature, 2019 Regular Session, and became effective January 1, 2022 (HB 4171). The rest of the amendments make other nonsubstantive and cleanup changes.

Section 139.2 is amended to capitalize "Board" and "Commissioner" for consistency. Section 139.2 is also amended to reference the section of the Texas Business Organizations Code where the existing cite in the rule concerning professional associations has been moved.

Sections 139.10, 139.13, 139.16, 139.19, 139.23, and 139.26 are amended to replace the references in those sections to

the term "Securities and Exchange Commission" with the term "SEC." SEC is already a defined term in §107.2, concerning Definitions.

Section 139.7(b) is amended to add the word "internet" to the means that an offer or sale can be made under this rule. In addition, the words "or her" are added to §139.7 for consistency.

The language in subsection §139.16(e), which sets forth the content of the rule's limited use advertisement requirement, is updated to reflect the current SEC definition of "individual accredited investor." A parenthetical in subsection (g) is deleted to conform to the preferred format for multiple references to a rule within a rule.

Section 139.18 is amended to replace the outdated term "dealer agent" with "agent."

Section 139.20 contains a cross reference to §109.17 of this title (relating to Banks under the Securities Act, §5.L). This caption of this cross reference to §109.17 is renamed, and the incorrect capitalization of "under" and "the" in the caption is corrected.

Sections 139.23, 139.26, and 139.27 is also amended for consistency to reformat the citations in these sections to the SEC rules and to add a missing "--" to §139.23(a)(6).

Statutory references are current and accurate and conform to the codified version of the Act; and terminology and references are updated.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Government Code, §§4002.151, 4004.001, and 4005.024, as adopted by HB 4171. Section 4002.151 provides the Board with the authority to adopt rules as necessary to implement the provisions of the Texas Securities Act, including rules governing registration statements, applications, notices, and reports; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 4004.001 provides the Board with the authority to prescribe new dealer, agent, investment adviser, or investment adviser representative registration exemptions by rule. Section 4005.024 provides that the Board may prescribe new exemptions by rule.

The adopted amendments affect the Texas Securities Act, Texas Government Code Chapter 4003, Subchapters A, B, and C; Chapter 4004; and Chapter 4005, Subchapters A and 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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Travis J. Iles
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8303

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

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

The Public Utility Commission of Texas (commission) repeals 16 Texas Administrative Code (TAC) §24.361, relating to Municipal Rates for Certain Recreational Vehicle Parks, with no changes to the proposed text as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6665) and will not be republished, and adopts new 16 TAC §24.50, relating to Rates for Certain Recreational Vehicle Parks, with changes to the proposed text as published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6664) and will be republished. The rule implements Texas Water Code (TWC) §13.152 as added by Senate Bill (SB) 594 during the Texas 88th Regular Legislative Session. The new rule will require a retail public utility, other than a municipally owned utility (MOU), that provides water or sewer service to a recreational vehicle park to ensure that billing for the service is based on actual water usage recorded by the retail public utility. The new rule will also prohibit a retail public utility, other than an MOU, from imposing a surcharge based on the number of recreational vehicle or cabin sites in the recreational vehicle park. The repeal and new rule are adopted under Project Number 56828.

The commission received comments on the proposed new rule from the Texas Rural Water Association (TRWA).

Proposed §24.50(a) - Definitions

Proposed §24.50(a) defines certain terms in the rule.

TRWA suggested adding a definition of "cabin" that also includes tiny homes. TRWA stated that the new law has created confusion and that it had received questions regarding the definition of "cabin" and whether that definition includes "tiny homes."

Commission Response

The commission disagrees with adding a definition of "cabin" because it is unnecessary. "Cabin" is a commonly understood term that does not need further specification for purposes of this rule. The word "cabin" in TWC §13.152(b)(2) describes a site within a recreational vehicle park that has a water connection and is distinguishable from a recreational vehicle site. It is not a standalone concept. A recreational vehicle park that has water connections for recreational vehicles may also have connections for other types of habitation, such as cabins. The purpose of the term "cabin" in TWC §13.152(b)(2) is to clarify that the prohibition on imposing a surcharge applies to all water connections within a recreational vehicle park, not just those for recreational vehicles.

The commission also declines to include the term "tiny home" in the rule for the reasons above and because "tiny home" is an ambiguous term that could be classified in different ways, depending upon a particular tiny home's features (e.g., is it stationary, or mounted on a chassis).

The commission further clarifies the intended application of this rule by modifying the definition of "recreational vehicle park" to align with how that term is defined in TWC §13.087. Specifically,

the adopted definition states that a recreational vehicle park is designed "primarily for recreational vehicle transient guest use." Accordingly, regardless of whether a cabin includes a "tiny home," the key factor determining whether the rule applies is whether the location is primarily intended to service recreational vehicles.

Proposed §24.50(b) - Municipally owned utilities providing nonsubmetered master metered utility service

Under proposed §24.50(b), a municipally owned utility that provides nonsubmetered master metered utility service to a recreational vehicle park must determine the rates for that service on the same basis that it uses to determine the rates for other similar commercial businesses. The commission modifies the rule to reflect that such utilities are also prohibited from charging a recreational vehicle park a fee that the utility does not charge other commercial businesses. This prohibition already applies to municipally owned utilities under TWC § 13.087(b-1). Accordingly, this modification does not impose any new burdens on municipally owned utilities and prevents confusion over the applicable requirements.

Proposed §24.50(c) - Billing based on actual water usage data

Proposed §24.50(c) requires that a retail public utility, other than an MOU, ensure that billing for service is based on actual water usage recorded by the retail public utility.

TRWA suggested adding a sentence to the rule that would allow a retail public utility providing sewer service to use the best means available for determining the actual water usage of an RV park for billing purposes when actual water usage data is not available to that utility. TRWA argued that some sewer service providers do not have access to actual water usage data, and that the commission's rules already allow some retail public utilities to calculate customers' sewer service bills based on best available data (16 TAC §24.165(f)).

Commission Response

The commission declines to modify the rule to allow a retail public utility providing sewer service to use the best means available to determine actual water usage when actual water usage data is not available, as requested by TRWA. The plain language of TWC §13.152(b) explicitly states that "a retail public utility...providing water or sewer service to a recreational vehicle park...shall ensure that billing for the service is based on actual water usage recorded by the retail public utility" (emphasis added). Accordingly, this requirement already applies to retail public utilities providing water and sewer service by statute, and the commission does not have authority to overrule or circumvent explicit statutory requirements by rule.

In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

SUBCHAPTER B. RATES AND TARIFFS

16 TAC §24.50

The new section is adopted under the Texas Water Code (TWC) §13.041(a), 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 the Texas Water Code that is necessary and convenient to the exercise of that power and jurisdiction; TWC §13.041(b), which provides the commission the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; TWC §13.087, which prescribes municipal rates for certain recreational vehicle parks; and TWC §13.152, which establishes billing requirements for recreational vehicle parks by a retail public utility other than an MOU described by TWC §13.087.

Cross Reference to Statutes: Texas Water Code §§13.041(a) and (b), 13.087, 13.152.

§24.50. Rates for Certain Recreational Vehicle Parks.

(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) Nonsubmetered master metered utility service--Potable water service that is master metered but not submetered and wastewater service that is based on master metered potable water service.

(2) Recreational vehicle--Includes a:

(A) house trailer as that term is defined by Texas Transportation Code, §501.002; and

(B) towable recreational vehicle as that term is defined by Texas Transportation Code, §541.201.

(3) Recreational vehicle park--A commercial property that is designed primarily for recreational vehicle transient guest use and for which fees for site service connections for recreational vehicles, as defined by Texas Transportation Code, §522.004(b), are paid daily, weekly, or monthly.

(b) A municipally owned utility that provides nonsubmetered master metered utility service to a recreational vehicle park must determine the rates for that service on the same basis the utility uses to determine the rates for other commercial businesses that serve transient customers and receive nonsubmetered master metered utility service from the utility, and must not charge a recreational vehicle park a fee that the utility does not charge other commercial businesses.

(c) A retail public utility, other than a municipally owned utility to which subsection (b) of this section applies, that provides water or sewer service to a recreational vehicle park:

(1) must ensure that billing for the service is based on actual water usage recorded by the retail public utility; and

(2) is prohibited from imposing a surcharge based on the number of recreational vehicle or cabin sites in the recreational vehicle park.

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

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TRD-202405023
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: November 14, 2024
Proposal publication date: August 30, 2024
For further information, please call: (512) 936-7322

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SUBCHAPTER K. ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

16 TAC §24.361

The repeal is adopted under the Texas Water Code (TWC) §13.041(a), 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 the Texas Water Code that is necessary and convenient to the exercise of that power and jurisdiction; TWC §13.041(b), which provides the commission the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; TWC §13.087, which prescribes municipal rates for certain recreational vehicle parks; and TWC §13.152, which establishes billing requirements for recreational vehicle parks by a retail public utility other than an MOU described by TWC §13.087.

Cross Reference to Statutes: Texas Water Code §§13.041(a) and (b), 13.087, 13.152.

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

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Adriana Gonzales
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For further information, please call: (512) 936-7322

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.14

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of Title 19, Part 1, Chapter 1, Subchapter A, §1.14, Negotiated Rulemaking, without changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5865). The rule will not republished.

The repeal removes a rule that is unnecessary as negotiated rulemaking procedures are laid out in Chapter 2008 of the Texas Government Code.

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

No comments were received regarding the adoption of the repeal.

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

The adopted repeal affects Texas Administrative Code, Chapter 1, Subchapter A, Section 1.14, Negotiated Rulemaking.

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

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TRD-202405039
Nichole Bunker-Henderson
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Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6297

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SUBCHAPTER W. OPPORTUNITY HIGH SCHOOL DIPLOMA ADVISORY COMMITTEE

19 TAC §§1.260 - 1.268

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 1, Subchapter W, §§1.260 - 1.268, concerning the Opportunity High School Diploma Advisory Committee, without changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5865). The rules will not be republished.

The Coordinating Board adopted the establishment of the Opportunity High School Diploma Advisory Committee rule framework to advise and counsel the Coordinating Board and its governing board on the administration of the Opportunity High School Diploma through ongoing, structured review and recommendation of program components. The adopted new rules provide clarity and guidance around committee membership, meeting cadence, and charges.

Specifically, these new sections outline the authority and purpose, definitions, membership and officers, duration of the committee, meeting frequency, committee tasks, review requirement, committee recommendations, and the effective date of the rules.

Rule 1.260, Authority and Specific Purposes of the Opportunity High School Diploma Advisory Committee, authorizes the Coordinating Board to adopt rules under Texas Government Code, §2110.0012 and Texas Education Code, chapter 130, subchapter O. It states that the purpose of this new rule is to create an Advisory Committee to advise and counsel the Commissioner and Board on the Opportunity High School Diploma.

Rule 1.261, Definitions, defines words and terms that are key to the understanding and administration of the Advisory Committee.

Rule 1.262, Committee Membership and Officers, outlines the members that will make up the Advisory Committee. It specifies total number of members, eligibility criteria, membership and officer appointments, and term durations.

Rule 1.263, Duration, sets the term for the Advisory Committee and allows for its re-establishment.

Rule 1.264, Meetings, specifies a minimum of one Advisory Committee meeting per year and allows for special meetings to be called by the presiding officer.

Rule 1.265, Tasks Assigned to the Committee, lists the charges placed on the Advisory Committee to provide to the Board and Commissioner including those relating to general administration of the Opportunity High School Diploma, study and recommendations on program components, and identification of funding to help propagate the program. It also allows for additional charges to be issued by the Board or the Commissioner.

Rule 1.266, Requirement to Review, details the process and cadence to be followed by the Advisory Committee to review the Opportunity High School Diploma instructional outcomes, performance expectations, and assessments.

Rule 1.267, Recommendations, instructs the Advisory Committee to provide recommendations to the Board and Commissioner that help improve the Opportunity High School Diploma program.

Rule 1.268, Effective Date of Rules, states the date when this subchapter becomes effective.

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

The new sections are adopted under Texas Education Code, Section 130.001, which provides the Coordinating Board with the authority to adopt rules and regulations for public junior colleges; and §61.026, granting the Coordinating Board authority to establish advisory committees.

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

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

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Nichole Bunker-Henderson
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For further information, please call: (512) 427-6344

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CHAPTER 2. ACADEMIC AND WORKFORCE EDUCATION

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

19 TAC §2.143

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 2, Subchapter G, §2.143, Submission of Planning Notification, without changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5867). The rule will not be republished.

The adopted amendments provide an exception to the one-year waiting period after submitting a planning notification for professional programs if the institution has already received Board approval for the same degree or is acquiring the program from another public, private, or independent institution of higher education. This amendment will permit a faster path toward program approval for a program that has already been previously approved by the Board or is fully accredited and currently operating. There is a reduced need for long-term planning for a program that is currently in existence or operating. An institution is unlikely to need a full year to plan because it does not need to create the program, i.e. the program may require modification, but the essential elements required by board rule should already be in place for an approved or operating program.

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

No comments were received regarding the adoption of the amendments.

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

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

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

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

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Nichole Bunker-Henderson
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Texas Higher Education Coordinating Board
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SUBCHAPTER O. APPROVAL PROCESS AND REQUIRED REPORTING FOR SELF-SUPPORTING DEGREE PROGRAMS

19 TAC §§2.350 - 2.358

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 2, Subchapter O, §§2.350 - 2.352 and 2.355 - 2.357, Approval Process and Required Reporting for Self-Supporting Degree Programs, without changes to the proposed text as published in the May 10, 2024, issue of the *Texas Register* (49 TexReg 3085). The rules will not be republished. Sections 2.353, 2.354 and 2.358 are adopted with changes and will be republished.

The new rules replace existing rules regarding approval of self-supported courses and programs in Chapter 4, Subchapter Q, relating to Approval of Off-Campus and Self-Supporting Courses and Programs for Public Institutions, which will be

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule 2.358, Effective Dates, lists the effective dates for each rule section.

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

Rule 2.353 is amended to include language related to minimum tuition and fees required for self-supporting courses and programs. This language was inadvertently left out of the original rule. The Coordinating Board did receive a comment requesting that this continue to be omitted from the rules, however upon legal review, it was determined that there are no exceptions for self-supporting programs in Texas Education Code, Chapter 54, relating to Tuition and Fees.

Rule 2.354(a)(1) is amended to correct formatting of Chapter 2 cite.

Rule 2.358 is amended to correct rule effective date section references and update the timeline to ensure that adoption of self-supporting rules does not happen in the middle of an academic semester, and that mandatory reporting requirements are delayed for one year to ensure the agency and the institutions have time to implement the reporting requirements.

The following comment was received regarding the adoption of the new rule:

Comment: The University of Texas System submitted a request to continue to omit language in the current rules from the new rules related to requiring institutions to charge a minimum tuition and fees for self-supporting programs.

Response: Upon legal review, it was determined that there are no exceptions for self-supporting programs in Texas Education Code, Chapter 54, relating to Tuition and Fees.

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

provide incentives for supporting the master plan developed under TEC, §61.051.

The adopted new sections affect Texas Education Code, §§61.051, 62.051(c), and 61.059(a).

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

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

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

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

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

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

(5) Charge tuition and fees for self-supporting courses, degree programs, and program tracks not less than required by Texas Education Code, chapter 54, Tuition and Fees.

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

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

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

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

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

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

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

§2.358. Effective Dates.

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

(b) Section 2.357 is effective November 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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CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER G. STRATEGIC PLANNING AND GRANT PROGRAMS RELATED TO EMERGING RESEARCH AND/OR RESEARCH UNIVERSITIES

19 TAC §§5.120 - 5.122

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of Title 19, Part 1, Chapter 5, Subchapter G, §§5.120 - 5.122, concerning the purpose and authority, definitions, and submission of a strategic plan for achieving recognition as a research university, without changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5868). The rules will not be republished.

This repeal removes these rules from Chapter 5 with the intent to place them in Chapter 15, Research Funds, to group rules related to research. The Coordinating Board intends to adopt a separate forthcoming subchapter relating to the submission of the required strategic plans and update the rules for clarity for the institutions.

The Coordinating Board has statutory authority to adopt rules relating to the submission of long-term strategic plans for research or emerging research universities under Texas Education Code, Section 51.358.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Education Code, Section 51.358, which provides the Coordinating Board with the authority to adopt rules to administer the submission of long-term strategic plans for research or emerging research universities.

The adopted repeal affects Texas Education Code, Section 51.358.

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 B. FAMILY PRACTICE RESIDENCY PROGRAM

19 TAC §§10.50 - 10.58

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 10, Subchapter B, §§10.50, 10.52 - 10.55, and 10.57, Family Practice Residency Program, with changes to the proposed text as published in the August 16, 2024, issue of the *Texas Register* (49 TexReg 6129). The rules will be republished. Sections 10.51, 10.56, and 10.58 are adopted without changes and will not be republished.

The new rules are a revision of existing rules in Chapter 6, Subchapter A, which will be repealed in future rulemaking after the current grant cycle is completed. The new rules include updated sections to ensure consistency with the administration of other grant programs. The Coordinating Board used negotiated rulemaking to develop these rules. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

Rule 10.50, Purpose, establishes the purpose for the subchapter is to administer the Family Practice Residency Program grant designed to improved organization and consistency for Coordinating Board grant program rules overall, and improved rules for the application, review, and awarding of funds of the Family Practice Residency grant program.

Rule 10.51, Authority, establishes authority for this subchapter is found in Texas Education Code, Sections 61.501 - 61.506, which grants the Coordinating Board with authority to adopt rules to administer the grant program.

Rule 10.52, Definitions, defines terms related to administration of the grant program.

Rule 10.53, Eligibility, establishes eligibility criteria to receive grant funding.

Rule 10.54, Application Process, describes the main criteria that must be included in the grant application.

Rule 10.55, Evaluation of Applications, establishes selection criteria for awards.

Rule 10.56, Grant Awards, establishes how grant funding is awarded and defines allowable expenditures.

Rule 10.57, Reporting, establishes reporting requirements for grantees.

Rule 10.58, Additional Requirements, establishes criteria for returning unspent funds at the end of the grant term.

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

Section 10.50, Purpose, is amended to include clarification of which requests for applications the new subchapter applies to.

Section 10.52, Definitions, is amended to add paragraphs (6), (10), and (13) support grant program definitions to clarify the different components of the program. Paragraph (7), Medicalluy Underserved, is amended per the recommendation of the Texas Medical Association.

Section 10.53, Eligibility, is amended by replacing proposed eligibility language with current eligibility language based on stakeholder feedback that the current eligibility language is clearer.

Section 10.54, Application Process, is amended to provide clarity on terms not well defined.

Section 10.55(b)(1), Evaluation of Applications, is amended to provide clarity on what type of evidence is required for the evaluation of applications by the advisory committee.

Section 10.57, Reporting, is amended to replace Support Program with Faculty Support Program.

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

Comment from the Texas Medical Association (TMA) regarding section 10.52(6), definition of "medical school:" TMA expressed concerns that the proposed definition does not include the UT Tyler School of Medicine and two other private medical schools. TMA proposed adding a specific reference to UT Tyler's medical school as well as the two additional private medical schools that are potentially eligible for grants from the FPRP.

Response: The Coordinating Board thanks the Texas Medical Association (TMA) for its comment but cannot deviate from current statute regarding section 10.52(6), definition of "medical school" in the proposed rules.

Comment from the Texas Medical Association (TMA) regarding section 10.52(7), definition of "medically underserved:" TMA expressed concerns that the proposed definition's origins and validation of the proposed methodology are not provided. TMA indicated it is not aware of any entity that currently uses this methodology and that background information on the origin and validation of this methodology should be made available to the public. TMA offered an alternative definition below:

(7) Medically Underserved - Patient populations that experience challenges in accessing medical services due to the lack of adequate health insurance coverage or no insurance coverage, who have a low economic status as can reasonably be determined by the residency program, or experience other access barriers such as a shortage of available services. Access barriers may be demonstrated through references to existing federal designations such as a Medically Underserved Area, as that term is defined in Tex. Gov't Code §487.251.

Response: The Coordinating Board thanks TMA for the comment and agrees to accept this proposed definition.

Comment from Texas Medical Association regarding section 10.52(11), definition of "support grant program:" TMA expressed concerns about the lack of clarity in the definition.

Response: The Coordinating Board thanks the TMA for its comment and agrees to amend section 10.52, Definitions, to remove a general definition of "support grant program" and add the following specific definitions of types of support grant programs.

Faculty Support Grant is an annual, renewable grant to support an ongoing statewide program to encourage research and leadership development of faculty of Texas family practice residency programs. The advisory committee may recommend funding amounts for faculty support grants.

Add Definitions:

Rural Rotation Reimbursement Grant is a grant to reimburse program costs, recognize participation, and encourage rural practice location for resident physicians in training at nationally accredited Texas family practice residency programs. Funding is provided to offset costs associated with residents completing an optional one-month rotation in a rural setting in Texas.

Public Health Rotation Reimbursement Grant is a grant to reimburse program costs, recognize participation, and encourage future public health commitments for residents in training at nationally recognized Texas family practice residency programs. Funding is provided to offset costs associated with residents completing an optional one-month rotation in a public health setting in Texas.

Comment from Texas Medical Association (TMA) regarding section 10.53, Eligibility: TMA expressed concerns that the existing eligibility in the current grant rules are more clearly defined and should be retained. TMA also expressed concerns that the term "viability" in the proposed rules which it suggested has a different meaning than in the current language. TMA provided alternative rule language that was a modified version of the current rules.

Response: The agency agrees to amend the language to clarify eligibility criteria in section 10.53, Eligibility, as follows:

(a) To be considered for a Family Practice Residency Operational Grant, a medical school, licensed hospital, or nonprofit corporation requesting an Operational Grant must at a minimum:

(1) Show that the residency program is accredited by the Accreditation Council for Graduate Medical Education (ACGME) as a family practice residency program;

(2) Conform to Board criteria and expenditure reporting guidelines for a Family Practice Residency Operational Grant;

(3) Provide evidence that the residency program has been operational for three or more academic years immediately preceding the application for funds;

(4) Document continuing local financial support for the program;

(5) Document expenditures and revenue for the program to substantiate funding needs; and

(6) Submit annual progress reports on the training program to the Coordinating Board that demonstrate the training program's efforts to recruit residents likely to practice in medically underserved areas of the state and the program's encouragement of residents to enter practice in medically underserved areas of the state.

(b) A Faculty Support Grant may be provided to a medical school, licensed hospital, or nonprofit corporation to operate and maintain the Family Practice Faculty Development Center. The Center may be supported through federal, state, and other funds. To be considered for a Faculty Support Grant, a medical school, licensed hospital, or nonprofit corporation must:

(1) Conform to Board guidelines for Family Practice Residency Faculty Support Grant Programs;

(2) Give evidence that the program to be funded has been operational for three or more academic years immediately preceding the application for funding; and

(3) Report on the expenditure of Faculty Support Grant funds in the Annual Expenditure Report.

(c) Requirements for Rural or Public Health Reimbursement Grants.

(1) Submit notification of a resident's intent to complete a rural or public health rotation, two-months prior to the beginning of the rotation;

(A) Provide evidence that the program sponsored a resident in a rural or public health rotation;

(B) Submit evaluations and request for funds upon completion of the rotation;

(C) Document expenditures for reimbursement in accordance with Board guidelines; and

(D) Report on receipt and expenditures information on completed rural rotations on the Annual Expenditure Report.

Comment from Texas Medical Association (TMA) regarding 10.54, Application Process: TMA seeks clarification on terms in this section not well defined.

Response: The Coordinating Board thanks TMA for its comment and has amended section 10.54, as follows, to improve clarity for items not well defined in the Application Process.

(a) Operational Grants.

(1) An eligible program must submit an application to the Board. Each application must:

(A) be submitted electronically in a format specified by the Board;

(B) be submitted with documented approval of the President or Chief Executive Officer or designee on or before the day and time specified by the Coordinating Board.

(2) Applications must include:

(A) The projected number of family practice residents enrolled if grant funds are awarded;

(B) A budget that includes resident compensation, professional liability and other direct resident costs; and

(C) Evidence of support for the residency program by the entity receiving the grant.

(b) Rural or Public Health Reimbursement Grants.

(1) Submit notification of a resident's intent to complete a rural or public health rotation, two-months prior to the beginning of the rotation;

(A) Provide evidence that the program sponsored a resident in a rural or public health rotation; and

(B) Submit evaluations and request for funds upon completion of the rotation.

Comment from Texas Medical Association (TMA) regarding section 10.55, Evaluations of Applications: TMA expressed concerns about use of the term "evidence-based determination."

Response: The agency thanks TMA for its comment and agrees to amend the language in section 10.55(b)(1) as follows: "Evidence that the proposed program will be able to effectively pro-

vide medical care in medically underserved areas and training to family practice residency physicians."

The new sections are adopted under Texas Education Code, Sections 61.501 - 61.506, which provide the Coordinating Board with rulemaking authority for administration of the grant program.

The adopted new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 10, Subchapter B.

§10.50. Purpose.

The purpose of this subchapter is to implement the Family Practice Residency Program to administer awards to Texas medical schools, licensed hospitals, or nonprofit corporations aimed to increase the number of physicians selecting family practice as their medical specialty and to fulfill the goal of increasing access to medical care in medically underserved communities in Texas. This subchapter applies to any request for applications distributed on or after November 1, 2024, for the associated grant program.

§10.52. Definitions.

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

(1) Advisory Committee--The Family Practice Residency Advisory Committee as created and described in Texas Education Code §61.505.

(2) Approved Family Practice Residency Program--A family practice residency program, as described in Texas Education Code, §61.501(2).

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

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

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

(6) Faculty Support Grant--An annual, renewable grant to support an ongoing statewide program to encourage research and leadership development of faculty of Texas family practice residency programs. The advisory committee may recommend funding amounts for faculty support grants.

(7) Medical school--An eligible medical institution as identified in Texas Education Code, §61.501(1).

(8) Medically Underserved--Patient populations that experience challenges in accessing medical services due to the lack of adequate health insurance coverage or no insurance coverage, who have a low economic status as can reasonably be determined by the residency program, or experience other access barriers such as a shortage of available services. Access barriers may be demonstrated through references to existing federal designations such as a Medically Underserved Area, as that term is defined in Tex. Gov't Code, §487.251.

(9) Operational Grant--An annual, renewable grant to support the educational activities of a fully accredited family practice residency programs.

(10) Public Health Rotation Reimbursement Grant--A grant to reimburse program costs, recognize participation, and encourage future public health commitments for residents in training at nationally recognized Texas family practice residency programs. Funding is provided to offset costs associated with residents completing an optional one-month rotation in a public health setting in Texas.

(11) Resident Physician--A physician contractually obligated to a Texas medical school, Texas licensed hospital, or non-profit corporation operating in Texas to receive residency education and training for a specified period.

(12) Rural--A location in Texas that is eligible for Federal Office of Rural Health Policy grant programs.

(13) Rural Rotation Reimbursement Grant--A grant to reimburse program costs, recognize participation, and encourage rural practice location for resident physicians in training at nationally accredited Texas family practice residency programs. Funding is provided to offset costs associated with residents completing an optional one-month rotation in a rural setting in Texas.

(14) Urban--Any area in Texas that is not rural, as defined in this section.

§10.53. Eligibility.

(a) To be considered for a Family Practice Residency Operational Grant, a medical school, licensed hospital, or nonprofit corporation operating in Texas requesting an Operational Grant must at a minimum:

(1) Show that the residency program is accredited by the Accreditation Council for Graduate Medical Education (ACGME) as a family practice residency program;

(2) Conform to Coordinating Board criteria and expenditure reporting guidelines for a Family Practice Residency Operational Grant;

(3) Provide evidence that the residency program has been operational for three or more academic years immediately preceding the application for funds;

(4) Document continuing local financial support for the program;

(5) Document expenditures and revenue for the program to substantiate funding needs; and

(6) Submit annual progress reports on the training program to the Coordinating Board that demonstrate the training program's efforts to recruit residents likely to practice in medically underserved areas of the state and the program's encouragement of residents to enter practice in medically underserved areas of the state.

(b) A Faculty Support Grant may be provided to a medical school, licensed hospital, or nonprofit corporation operating in Texas to operate and maintain the Family Practice Faculty Development Center. The Center may be supported through federal, state, and other funds. To be considered for a Faculty Support Grant, a medical school, licensed hospital, or nonprofit corporation operating in Texas must:

(1) Conform to Coordinating Board guidelines for Family Practice Residency Faculty Support Grant Programs;

(2) Give evidence that the program to be funded has been operational for three or more academic years immediately preceding the application for funding; and

(3) Report on the expenditure of Faculty Support Grant funds in the Annual Expenditure Report.

(c) Requirements for Rural or Public Health Reimbursement Grants. To be reimbursed for a family practice resident's rural or public health rotation, a Texas family practice residency program must:

(1) Submit notification of a resident's intent to complete a rural or public health rotation, two-months prior to the beginning of the rotation;

(2) Provide evidence that the program sponsored a resident in a rural or public health rotation;

(3) Submit evaluations and request for funds upon completion of the rotation;

(4) Document expenditures for reimbursement in accordance with Board guidelines; and

(5) Report on receipt and expenditures information on completed rural or public health rotations on the Annual Expenditure Report.

§10.54. Application Process.

(a) Operational Grants.

(1) An eligible program must submit an application to the Coordinating Board. Each application shall:

(A) be submitted electronically in a format specified by the Coordinating Board;

(B) be submitted with documented approval of the President or Chief Executive Officer or designee on or before the day and time specified by the Coordinating Board.

(2) Each applications must include:

(A) The projected number of family practice residents enrolled if grant funds are awarded;

(B) A budget that includes resident compensation, professional liability and other direct resident costs; and

(C) Evidence of support for the residency program by the entity receiving the grant.

(b) Rural or Public Health Reimbursement Grants. A Texas family practice residency program must:

(1) Submit notification of a resident's intent to complete a rural or public health rotation, two-months prior to the beginning of the rotation;

(2) Provide evidence that the program sponsored a resident in a rural or public health rotation; and

(3) Submit evaluations and request for funds upon completion of the rotation.

§10.55. Evaluation of Applications.

(a) Applications for Family Practice Residency Program grants shall be reviewed and evaluated by the Family Practice Residency Advisory Committee.

(b) The Advisory Committee's review shall include the following:

(1) Evidence that the proposed program will be able to effectively provide medical care in medically underserved areas and training to family practice residency physicians;

(2) Existing and anticipated costs and funding for new and existing programs requesting funding; and

(3) The program's performance in:

(A) improving the distribution of family physicians throughout the state;

(B) providing care to medically underserved urban or medically underserved rural areas of Texas; and

(C) encouraging residents to practice in medically underserved urban or medically underserved rural areas of the state.

(c) The Advisory Committee shall submit their recommendations to the Board for approval and funding of Operational, Reimbursement and Faculty Support Grant Programs.

§10.57. Reporting.

(a) Each grantee shall file program narrative, expenditure, and resident roster reports in a format on or before the day and time specified by the Coordinating Board.

(b) No later than ninety (90) days after the end of the Operational Grant or Faculty Support Grant Program, the grantee shall conduct a post award audit. The post award audit shall include a review of program goals and grant expenditures. To fulfill this requirement, a grantee shall submit the following reports to the Coordinating Board:

(1) A final narrative report on the grant program's efforts to recruit residents likely to practice in medically underserved urban or medically underserved rural areas of the state and the program's encouragement of residents to enter practice in medically underserved urban or medically underserved rural areas of the state addressing the needs of communities or regions; and

(2) A final expenditure report for all expended grant funds. The final expenditure report must include an attestation from Grantee that all expenditures were allowable expenses pursuant to law and regulation.

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. TEXAS EMERGENCY AND TRAUMA CARE EDUCATION PARTNERSHIP PROGRAM

19 TAC §§10.170 - 10.179

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 10, Subchapter H, Texas Emergency and Trauma Care Education Partnership Program, §10.170, with changes to the proposed text as published in the August 16, 2024, issue of the *Texas Register* (49 TexReg 6132). The rule will be republished. Sections 10.171 - 10.179 are adopted without changes and will not be republished.

The new rules are a revision of existing rules in Chapter 6, Subchapter E, which will be repealed in future rulemaking after the current grant cycle is completed. The new rules include updated sections to ensure consistency with administration of other grant programs. The Coordinating Board used negotiated rulemaking to develop these rules. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

Rule 10.170, Purpose, establishes the purpose for the subchapter is to administer the Texas Emergency and Trauma Care Education Partnership Program.

Rule 10.171, Authority, establishes authority for this subchapter is found in Texas Education Code, §§61.9801 - 61.9807, which grants the Coordinating Board with authority to adopt rules to administer the grant program.

Rule 10.172, Definitions, defines terms related to administration of the grant program.

Rule 10.173, Eligibility, establishes eligibility criteria to receive grant funding.

Rule 10.174, Application Process, describes the main criteria that must be included in the grant application.

Rule 10.175, Evaluation of Applications, establishes selection criteria for awards.

Rule 10.176, Grant Awards, establishes how grant funding is awarded and defines allowable expenditures.

Rule 10.177, Reporting, establishes reporting requirements for grantees.

Rule 10.178, Additional Requirements, establishes criteria for returning unspent funds at the end of the grant term.

Rule 10.179, Administrative Costs, provides direction on how funds can be appropriated for administrative costs of the grant program.

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

Rule 10.170, Purpose, is amended to include clarification of which requests for applications the new subchapter applies to.

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

The new sections are adopted under Texas Education Code, Chapter 61, Subchapter HH, Sections 61.9801 - 61.9807, which provide the Coordinating Board with rulemaking authority for administration of the grant program.

The adopted new sections affect Texas Education Code, Sections 61.9801 - 61.9807.

§10.170. Purpose.

The purpose of this subchapter is to administer the Texas Emergency and Trauma Care Education Partnership Program to provide and oversee grants to eligible entities to meet the needs of the state of Texas for doctors and registered nurses. This subchapter applies to any request for applications distributed on or after November 1, 2024, for the associated grant 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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For further information, please call: (512) 427-6182

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SUBCHAPTER J. MINORITY HEALTH RESEARCH AND EDUCATION GRANT PROGRAM

19 TAC §§10.210 - 10.218

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 10, Subchapter J, Minority Health Research and Education Grant Program. Section 10.210 is adopted with changes to the proposed rule text as published in the August 16, 2024, issue of the *Texas Register* (49 TexReg 6135). The rule will be republished. Sections 10.211 - 10.218 are adopted without changes and will not be republished.

The new rules are a revision of existing rules in Chapter 6, Subchapter C, §6.74, which will be repealed in future rulemaking. The new rules include updated sections to ensure consistency with the administration of other grant programs. The Coordinating Board used negotiated rulemaking to develop these rules. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

Rule 10.210, Purpose, establishes the purpose for the subchapter is to administer the Minority Health Research and Education Grant Program.

Rule 10.211, Authority, establishes authority for this subchapter is found in Texas Education Code, §§63.301 - 63.302, which provide the Coordinating Board with authority to adopt rules to administer the grant program.

Rule 10.212, Definitions, defines terms related to administration of the grant program.

Rule 10.213, Eligibility, establishes eligibility criteria to receive grant funding.

Rule 10.214, Application Process, describes main criteria that must be included in the grant application.

Rule 10.215, Evaluation of Applications, establishes selection criteria for awards.

Rule 10.216, Grant Awards, establishes how grant funding is awarded and defines allowable expenditures.

Rule 10.217, Reporting, establishes reporting requirements for grantees.

Rule 10.218, Additional Requirements, establishes criteria for returning unspent funds at the end of the grant term.

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

Rule 10.210, Purpose, is amended to include clarification of which requests for applications the new subchapter applies to.

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

The new sections are adopted under Texas Education Code, Sections 63.301 - 63.302, which provide the Coordinating Board with the authority to adopt rules to administer the Minority Health Research and Education Grant Program.

The adopted new sections affect Texas Administrative Code, Chapter 10, Subchapter J.

§10.210. Purpose.

The purpose of this subchapter is to administer the Minority Health Research and Education Grant Program to eligible entities to meet the needs of the state of Texas. This subchapter applies to any request for applications distributed on or after November 1, 2024, for the associated grant program.

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

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SUBCHAPTER K. NURSING, ALLIED HEALTH AND OTHER HEALTH-RELATED EDUCATION GRANT PROGRAM

19 TAC §§10.230 - 10.238

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 10, Subchapter K, Nursing, Allied Health and Other Health-Related Education Grant Program. Sections 10.230, 10.233, and 10.238 are adopted with changes to the proposed text as published in the August 16, 2024, issue of the *Texas Register* (49 TexReg 6137) and will be republished. Sections 10.231, 10.232, and 10.234 - 10.237 are adopted without changes and will not be republished.

The new rules are a revision of existing rules in Chapter 6, Subchapter C, §6.73, which will be repealed in future rulemaking. The new rules include updated sections to ensure consistency with the administration of other grant programs. The Coordinating Board used negotiated rulemaking to develop these rules. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

Rule 10.230, Purpose, establishes the purpose for the subchapter is to administer the Nursing, Allied Health and Other Health-Related Education Grant Program.

Rule 10.231, Authority, establishes authority for this subchapter is found in Texas Education Code, §§63.201 - 63.203, which grant the Coordinating Board with authority to adopt rules to administer the grant program.

Rule 10.232, Definitions, defines terms related to administration of the grant program.

Rule 10.233, Eligibility, establishes eligibility criteria to receive grant funding.

Rule 10.234, Application Process, describes main criteria that must be included in the grant application.

Rule 10.235, Evaluation of Applications, establishes selection criteria for awards.

Rule 10.236 Grant Awards, establishes how grant funding is awarded and defines allowable expenditures.

Rule 10.237, Reporting, establishes reporting requirements for grantees.

Rule 10.238, Additional Requirements, establishes criteria for returning unspent funds at the end of the grant term.

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

Section 10.230, Purpose, is amended to include clarification of which requests for applications the new subchapter applies to.

Section 10.233, Eligibility, is amended to align with statutory eligibility criteria through 2027.

Section 10.238, Additional Requirements, subsection (c) is amended to mirror requirements in Chapter 10, Subchapter J (concerning Minority Health Research and Education Grant Program).

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

The new sections are adopted under Texas Education Code, Sections 63.201 - 63.203, which grant the Coordinating Board with authority to adopt rules to administer the grant program.

The adopted new sections affect Texas Administrative Code, Chapter 10, Subchapter K.

§10.230. Purpose.

The purpose of this subchapter is to administer the Nursing, Allied Health and Other Health-Related Education Grant Program to provide and oversee grants to eligible entities to meet the needs of the state of Texas. This subchapter applies to any request for applications distributed on or after November 1, 2024, for the associated grant program.

§10.233. Eligibility.

(a) General Eligibility.

(1) Eligible institutions include public institutions of higher education that offer upper-level academic instruction and training in the fields of nursing, allied health, or other health-related education.

(2) Institutions or components identified under Texas Education Code, §§63.002(c) and 63.101, are not eligible to receive funding through the grant program.

(3) Eligible programs include nursing, allied health or other health-related initiatives, including those that expand existing academic programs, develop new or existing activities and projects, and are not funded by state appropriation during the funding period.

(b) Alternative eligibility criteria through August 31, 2027.

(1) For the fiscal biennium ending on August 31, 2025, and the fiscal biennium ending on August 31, 2027, eligible programs include programs at two-year institutions of higher education, four-year

general academic teaching institutions, health-related institutions, and independent or private institutions of higher education, or a nursing resource section established under §105.002(b) of the Health and Safety Code that prepare students for initial licensure as registered nurses or programs preparing qualified faculty members with a master's or doctoral degree.

(2) The Coordinating Board shall prioritize institutions proposing to address the shortage of registered nurses by:

(A) Preparing students for initial licensure as registered nurses; or

(B) Preparing qualified faculty members with a master's or doctoral degree.

(c) Institutions and programs shall meet any other eligibility criteria set forth in the RFA.

§10.238. Additional Requirements.

(a) A grant award is automatically terminated if the grantee is placed on probation by the Texas Board of Nursing or loses its status as an approved professional nursing program. The grantee shall immediately return all unexpended grant funds.

(b) Each grantee shall return any award funds remaining unspent at the end of the grant term as set forth in the RFA or Notice of Grant Agreement (NOGA) to the Coordinating Board within ninety (90) calendar days after written demand or an earlier due date if specified by the RFA.

(c) Each grantee shall return or repay to the Coordinating Board any award funds that the State determines an eligible institution improperly expended on items not listed in the RFA or otherwise prohibited by law within the time frame and subject to the requirements set forth in the RFA.

(d) The Commissioner may take the following actions if a grantee fails to comply with requirements set forth in the RFA:

(1) Reduce the grant award;

(2) Require the grantee to return unspent grant funds;

(3) Amend the grant agreement; or

(4) Terminate the grant agreement.

(e) The RFA may set forth additional return or reimbursement of fund requirements and termination provisions.

(f) The Coordinating Board may retain returned and reimbursed funds for the next RFA.

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 §§12.3, 12.5, 12.7, 12.8, 12.10 - 12.12

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments and new sections in Title 19, Part 1, Chapter 12, Subchapter A, Opportunity High School Diploma Program, §12.5 and §12.11, with changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5869). The rules will be republished. Sections 12.3, 12.7, 12.8, 12.10, and 12.12 are adopted without changes and will not be republished.

The adopted amendments provide additional information and guidance on program components, institutional requirements, and administration of the program.

The Coordinating Board adopts amendments to the Opportunity High School Diploma Program rules to provide additional guidance regarding the program application and approval processes for institutions seeking to offer the Opportunity High School Diploma program; detail the instructional outcomes and performance expectations for the five competencies listed in §12.5(c) of this subchapter; provide clarity on the approval and publishing of assessments to determine student achievement; list institutional reporting requirements; establish ongoing review and revision of the program; and outline program revocation guidelines.

Rule 12.3, Definitions, is amended to add definitions for Application and Career and Technical Education, and to update the definition for Public School District.

Rule 12.5, Program Requirements, is amended to clarify the type of career and technical education programs that are permissible for concurrent enrollment purposes. The amendment also specifies where the required instructional outcomes and performance expectations for each of the five core program competencies will be detailed and establishes the approved assessments.

Rule 12.7, Program Approval Process, is amended to provide additional information on the application process that eligible entities must follow to qualify for consideration to offer the Opportunity High School Diploma. The amendment also notes that the maximum number of program approvals shall not exceed what is set forth in Texas Education Code, §130.454(c).

Rule 12.8, Required Reporting, is amended to detail the required reporting a participating public junior college will have to submit to the Coordinating Board including data and information requirements, additional reports, and report submission schedule.

Rule 12.10, Approval of a Request to Deliver an Opportunity High School Diploma Program, details the approval process that the Coordinating Board must follow once an application to offer an Opportunity High School Diploma program has been received. It sets forth a timeline for Assistant Commissioner and Commissioner approval, denial, or allowance for an institution to address deficiencies in a proposed diploma program. The rule also outlines an appeals process and respective timeline for denied applications and sets forth an implementation period for approved programs.

Rule 12.11, Program Review and Revision, instructs the Coordinating Board to convene the Opportunity High School Diploma

Advisory Committee no less than one time per year to review and recommend revisions to the instructional outcomes, performance expectations, and assessments. It details where the Coordinating Board shall list approved revisions and instructs approved colleges to update or revise their programs accordingly and provide documentation of such within ninety days.

Rule 12.12, Revocation of Authorization, states the Commissioner's authority to revoke a college or consortium's authorization to offer an Opportunity High School Diploma. It lists the factors that can lead to revocation, sets a requirement for a written notice of proposed revocation or revocation status, grants the right to a hearing and details the process and timelines for such, and allows for appeal of a revocation to the Board.

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

Rules 12.5(c) and 12.11(c)(1) are updated to reflect an updated URL address where the instructional outcomes and performance expectations for the five core program competencies are detailed.

Rule 12.5(d)(4) replaces Figure 19 TAC §12.5(d)(4) due to technical corrections applied to the approved assessments.

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

The amendments and new sections are adopted under Texas Education Code, Section 130.458, which provides the Coordinating Board with the authority to adopt rules as necessary to implement the Opportunity High School Diploma Program.

The adopted amendments and new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 12, Subchapter A, Sections 12.3, 12.5, 12.7, 12.8, and 12.10 - 12.12.

§12.5. Program Requirements.

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

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

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

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

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

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

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

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

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

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

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

(A) transcripted high school grades;

(B) transcripted college credit;

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

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

(E) demonstrated success on pre-program assessments.

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

(4) Assessments approved by the Commissioner are listed in Figure 1.
Figure: 19 TAC §12.5(d)(4)

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

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

(f) Performance Expectations. A public junior college that is approved to offer the program shall embed the performance expectations into their curriculum as required under subsection (c) of this section.

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

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

§12.11. Program Review and Revision.

(a) The Coordinating Board shall convene the Opportunity High School Diploma Advisory Committee not less than annually to review the instructional outcomes, performance expectations, and assessments for each of the five core program competencies.

(b) The Advisory Committee shall recommend revisions to the instructional objectives, performance expectations, and assessments to the Commissioner.

(c) The Commissioner shall consider the Advisory Committee's recommendations.

(1) Upon approval by the Commissioner, the revised instructional outcomes and performance expectations pertaining to §12.5(c) of this subchapter (relating to Program Requirements) shall include the date of approval and be posted at https://reportcenter.highered.texas.gov/contracts/workforce-education/opportunity-high-school-diploma-instructional-outcomes-and-performance-expectations/.

(2) Upon approval by the Commissioner, the revised list of assessments pertaining to §12.5(d)(4) of this subchapter shall include the date of approval and be detailed in Figure 1 of this subchapter.

(d) A public junior college approved to offer the Opportunity High School Diploma shall update or revise its program as necessary to meet any approved revisions and provide documentation to Coordinating Board of such revisions within ninety days of the effective date.

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 G. TUITION AND FEES

19 TAC §13.122

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rule in Title 19, Part 1, Chapter 13, Subchapter G, §13.122, Tuition and Fees, with changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5457). The rule will be republished.

This new section outlines the manner in which nonresident tuition rates are established, including an alternate nonresident tuition rate that general academic teaching institutions may request to use.

The Coordinating Board is authorized to adopt rules as necessary for the administration of nonresident tuition rates by Texas Education Code (TEC), Section 54.075. The Coordinating Board used negotiated rulemaking to develop these rules. The Coordinating Board makes reports of negotiated rulemaking committees available upon request.

Rule 13.122(a) indicates the authorizing statutes for the creation of this new rule.

Rule 13.122(b) indicates the definitions necessary for the administration of this new rule, aligning to other proposed published rules pertaining to different types of campuses.

Rule 13.122(c) indicates that nonresident tuition rates provided by the applicable provisions of Texas Education Code, Chapters 51 and 54, including those outlined throughout rule 13.122, apply to any student who does not demonstrate residency, regardless of citizenship, as dictated by Texas Education Code, §54.051(m).

Rule 13.122(d) indicates the timing of when the Coordinating Board will publish the annual nonresident tuition rate and summarizes the students to whom the nonresident rate applies. This subsection replaces rule 21.2(a), which is proposed for repeal.

Rule 13.122(e) indicates the manner by which the Coordinating Board will calculate the nonresident tuition rate, as dictated by Texas Education Code, §54.051(d). This subsection replaces rule 21.2(b), which is proposed for repeal.

Rule 13.122(f) indicates the manner in which the Coordinating Board administers Texas Education Code, §54.0601. The Coordinating Board used negotiated rulemaking to develop this subsection of the new rule.

Paragraph (1) indicates the conditions under which a general academic teaching institution may request to use the alternate nonresident tuition rate at its parent institution (defined in rule 2.383). Eligibility to request to use the alternate nonresident tuition rate at the parent institution is based on the parent institution's 100-mile proximity to the border of Texas and another U.S. state. It is not based on the geographic location of an off-campus educational site. If approved, the alternate nonresident tuition rate applies only to the general academic teaching institution's on-campus students (defined in rule 2.383). If a student qualifies for the alternate nonresident rate, then the rate may be applied to any of the student's coursework at the general academic teaching institution. This level of detail is provided to help ensure consistent administration of the rule across the multiple general academic teaching institutions eligible to participate.

Paragraph (2) indicates the conditions under which a general academic teaching institution may request to use the nonresident tuition rate at its off-campus educational site(s) (defined in rule 2.383). The Board included a separate subsection for off-campus educational sites to provide clarity that the request and approval process, along with the applicability of the alternate tuition rate, is unique to the specific site. Eligibility to request to use the alternate nonresident tuition rate at an off-campus edu-

cational site is based on that site's location within 100-miles of a border between Texas and another U.S. state and is requested separately from the parent institution. An off-campus educational site is eligible for consideration if the site offers at least one off-campus degree program (defined in rule 2.383). If approved, the alternate nonresident tuition rate applies only to the general academic teaching institution's eligible off-campus students (defined in rule 2.383) whose off-campus degree program is offered through the off-campus educational site. If a student qualifies for the alternate nonresident rate, then the rate may be applied to any of the student's coursework at the general academic teaching institution. This level of detail is provided to help ensure consistent administration of the rule across the multiple general academic teaching institutions eligible to participate.

Paragraph (3) indicates that the alternate nonresident tuition rate applies only to those nonresident students for whom the Coordinating Board is responsible for calculating a nonresident tuition rate, as determined by Texas Education Code, §54.051.

Paragraph (4) indicates the impact that using an alternate nonresident tuition rate will have on the calculation of formula funding, as dictated by Texas Education Code, §61.059.

Paragraph (5) indicates the process by which institutions may request to use the alternate nonresident tuition rate. Such a request can be understood as having three main components: methodology, scope, and rationale. First, institutions will provide a methodology by which they will calculate the alternate nonresident tuition rate. This methodology can be for a full biennium (i.e. a calculable relationship between the alternate nonresident rate and other tuition rates), or institutions may submit annual requests with discrete alternate nonresident tuition rates. Second, the institution also must define the scope of its use of the alternate nonresident tuition rate. This includes the specific educational site for which the request is being made (institutions with multiple eligible education sites must submit separate requests for each) and state(s) from which nonresident students would receive the requested alternate rate. The alternate nonresident tuition rate is limited to students who reside in a U.S. state of which any portion is within a 135-mile radius of the educational site for which the request is being submitted. This operationalizes guidance previously provided by the Coordinating Board after the statute was originally created. The Coordinating Board views this restriction as a reasonable measure to prevent unreasonable harm to other institutions of higher education. Finally, institutions also must provide their justification for requesting the alternate rate by providing explanations of why offering the rate is in the best interest of the institution and why it would not cause unreasonable harm to another institution, which are required by statute. This information will be used in the Coordinating Board's review and approval process.

Paragraph (6) indicates the Coordinating Board's review and approval process for requests. The Coordinating Board may deny or approve the request, in whole or in part, within 30 calendar days of receiving the request. Institutions may not offer or publish the alternate rate until after they have received approval from the Coordinating Board.

Paragraph (7) indicates the minimum allowable nonresident tuition rate, which is consistent with the minimum rate established in rule 21.2264(d), which is proposed for repeal.

Paragraph (8) indicates that institutions will continue to report the use of the alternate nonresident tuition rate as a waiver to minimize any potential impact on long-standing reporting requirements.

Paragraphs (9) through (11) allow students who were previously granted the alternate tuition rate to continue to receive the rate under subsection (f) if they may no longer qualify following adoption of the proposed rule. These subsections provide a "grandfathering" period through the 2029-2030 academic year, while institutions realign their practices with the new rule. The grandfathering period is established to minimize the financial impact of the rule change on current students, and it requires that the student stay continuously enrolled and that the institution continues to be approved for the alternate nonresident tuition rate.

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

Subsection (b) was updated to include the full definitions for the terms rather than cite to §2.383 of this title. This change was made because the adoption of §2.383 has been delayed, so the citation would not yet be operative. The definitions included are identical to those posted for public comment for proposed §2.383 and were presented in this form to the negotiated rulemaking committee. The committee reached consensus on using these definitions.

Subsection (f)(5) was updated to correct an error in the citation.

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

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

The adopted new section affects Texas Education Code, Sections 54.051 and 54.0601.

§13.122. Determination of Tuition Rate for Nonresident Students.

(a) Authorizing Statute. The Coordinating Board's responsibilities regarding tuition rates for nonresident students are authorized through Texas Education Code, §54.051, "Tuition Rates," and §54.0601, "Nonresident Tuition Rates at Certain Institutions," and the Coordinating Board is authorized to adopt rules by §54.075.

(b) The following words and terms, when used in this section, shall have the following meanings:

(1) Off-Campus Degree Program--A degree program that delivers fifty (50) percent or more of required instruction or coursework in-person at an off-campus educational site.

(2) Off-Campus Educational Site--A location where an institution delivers required instruction for a credit-bearing course, certificate, or degree program in person. For a public university, health-related institution, or a Lamar state college, an off-campus educational site is any location outside the parent institution. For a community college (public junior college), an off-campus educational site is a site outside the public junior college service area. An off-campus educational site includes, but is not limited to:

(A) Branch Campus--For a university, a major, secondary location of an institution offering multiple programs usually with its own administrative structure and usually headed by a dean. A branch campus must be established by the Legislature or approved by the Board. A junior college branch campus is approved and operated in accordance with Texas Education Code, chapter 130, subchapter K, and Board rules.

(B) Extension Center--For Texas State Technical College, as defined in §11.3(5) of this title (relating to Definitions), a site, operating under the administration of a campus, that has an extension program.

(C) Multi-Institution Teaching Center (MITC)--For a university, an off-campus educational unit administered under a memorandum of understanding (MOU) between two or more institutions of higher education. It may also involve one or more private or independent institution of higher education. It has minimal administration and locally provided facilities.

(D) Regional Academic Health Center (RAHC)--A special purpose campus of a parent health-related institution(s) that may be used to provide undergraduate clinical education, graduate education, including a residency training program, or other level of medical education in specifically identified counties.

(E) Single Institution Center--An off-campus educational unit administered by a single parent institution. It has minimal administration and locally provided facilities.

(F) Special Purpose Campus--A major, secondary location of an institution offering programs related to specific and limited field(s) of study, usually with its own administrative structure and usually headed by a dean. Regional Academic Health Centers are considered special-purpose campuses. Special Purpose Campuses must be established by the Legislature or approved by the Board.

(G) University System Center (USC)--An off-campus educational unit administered by a single university system comprised of two or more of the system's parent institutions. A memorandum of understanding must be established between all parties that governs the operations of the USC. It has minimal administration and locally provided facilities.

(3) Off-Campus Student--A regularly enrolled student who is admitted to an institution and fifty (50) percent or more of the student's instruction is delivered in person at an off-campus location.

(4) On-Campus Student--A regularly enrolled student who is admitted to an institution and fifty (50) percent or more of instruction is delivered at an institution's main campus or on one or more of the campuses within a multi-campus public junior college.

(5) Parent Institution--The primary campus or campuses of an institution of higher education providing courses, certificates, and degree programs at an off-campus educational site.

(c) In accordance with Texas Education Code, §54.051(m), the tuition rates for nonresident students that are provided by the applicable provisions of Texas Education Code, chapters 51 and 54, will be applied to any student who does not demonstrate residency per chapter 21, subchapter B of this title (relating to Determination of Resident Status), regardless of the student's citizenship.

(d) Prior to January 1 of each calendar year in which the academic year begins, or as soon thereafter as is practicable, the Coordinating Board shall determine the minimum nonresident tuition rate per subsection (e) of this section, and report the rate to the appropriate institutions, pursuant to Texas Education Code, §51.051(d). This minimum rate generally applies to nonresident students enrolled in general academic teaching and health-related institutions, unless Texas law provides for a different rate to be applied to a particular program or student.

(e) The minimum nonresident tuition rate set per semester credit hour per subsection (d) of this section, is calculated as dictated by Texas Education Code, §54.051.

(f) Alternate Nonresident Tuition Rate. General academic teaching institutions, as defined by Texas Education Code, §61.003, "Definitions," are eligible to request an alternate nonresident tuition rate that is lower than otherwise calculated by subsection (d) of this section.

(1) A general academic teaching institution may request an alternate nonresident tuition rate if the primary physical address of the parent institution is located within a 100-mile radius of the boundary of Texas with another U.S. state. If approved, this nonresident tuition rate applies only to the institution's on-campus students but includes students taking courses at both the parent institution and its off-campus educational sites.

(2) A general academic teaching institution may request an alternate nonresident tuition rate if the primary physical address of an off-campus educational site offering at least one off-campus degree program is located within a 100-mile radius of the boundary of Texas with another U.S. state. If approved, this nonresident tuition rate applies only to the institution's off-campus students enrolled in an off-campus degree program offered at the approved off-campus educational site but includes students taking courses at both the parent institution and its off-campus educational sites.

(3) The nonresident tuition rate under this subsection may be applied only to nonresident students who would otherwise be charged the minimum nonresident tuition rate or a multiplier of such rate. This includes undergraduate, graduate, law school, nursing and allied health profession, optometry, and undergraduate and graduate pharmacy students. It does not include M.D., D.O., D.D.S, or D.V.M. students.

(4) For an institution that charges a nonresident tuition rate under this subsection, the Coordinating Board may not include in a formula under Texas Education Code, §61.059, "Appropriations," funding based on the number of nonresident undergraduate students enrolled at the institution in excess of 10 percent of the total number of undergraduate students enrolled at the institution.

(5) In order to utilize a nonresident tuition rate under this subsection, the governing board of the institution, or designee if permitted by law, must submit a written request to the Coordinating Board that includes:

(A) the proposed methodology for determining the nonresident tuition rate that the institution will use under this subsection;

(B) the academic year(s) within a legislative biennium for which the general academic teaching institution is requesting approval to use the non-resident tuition rate under this subsection;

(C) the primary physical address of the parent institution or off-campus educational site offering at least one off-campus degree program that is located within a 100-mile radius of the boundary of Texas with another state and at which the general academic teaching institution proposes to use the nonresident tuition rate under this subsection;

(D) the U.S. state or states, of which any portion is within a 135-mile radius of the parent institution or off-campus educational site provided under subparagraph (C) of this paragraph, to whose residents the institution proposes to apply the nonresident tuition rate under this subsection;

(E) an explanation of why offering a nonresident tuition rate under this subsection is in the best interest of the institution; and

(F) an explanation of why offering a nonresident tuition rate under this subsection will not cause unreasonable harm to any other

institution of higher education, as defined by Texas Education Code, §61.003, "Definitions."

(6) The Commissioner shall review the requested tuition rate and determine if it is in the best interest of the institution and whether it would cause harm to any other institution. The Commissioner may deny or approve, in whole or in part, an institution's request, and will communicate his or her decision in writing to the requesting institution within thirty (30) calendar days of the Coordinating Board's receipt of the institution's request. To the extent approved by the Commissioner, the institution shall utilize the nonresident tuition rate under this subsection for residents of the eligible state or states included in the Commissioner's approval during the academic year(s) stated in the approval. Requests must be approved by the Commissioner prior to offering or publishing an alternate nonresident tuition rate to eligible students by the institution.

(7) The nonresident tuition rate approved for a general academic teaching institution by the Coordinating Board under this subsection may not be less than $30 more than the resident tuition rate outlined in Texas Education Code, 54.051(c).

(8) The difference between the nonresident tuition rate set annually by the Coordinating Board, under subsection (c) of this section, and an alternate nonresident tuition rate approved under this subsection shall be reported by the institution as a waiver on relevant Coordinating Board data submissions.

(9) General academic teaching institutions who received Commissioner approval to offer a nonresident tuition rate under former §21.2264 of this title (relating to General Academic Teaching Institutions Located within 100 Miles of the Texas Border) for the 2024 - 2025 academic year prior to August 31, 2024, may continue to offer the approved nonresident tuition rate in the 2024 - 2025 academic year to individuals who qualified and established eligibility pursuant to §21.2264 as it existed prior to repeal.

(10) If an individual received a nonresident tuition rate under former §21.2264 prior to the 2025 - 2026 academic year that was approved by the Commissioner, and is no longer eligible to receive the nonresident tuition rate based on this subsection, then the institution may continue to offer the nonresident tuition rate based on this subsection to that individual if that individual remains continuously enrolled and the institution has Commissioner approval to offer the nonresident tuition rate under this subsection for the applicable academic year.

(11) Paragraph (10) of this subsection expires at the end of 2029 - 2030 academic year.

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 M. TOTAL RESEARCH EXPENDITURES

19 TAC §§13.302 - 13.305

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 13, Subchapter M, §13.303, concerning Total Research Expenditures, with changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5873). The rule will be republished. Sections 13.302, 13.304, and 13.305 are adopted without changes and will not be republished.

Specifically, amendments clarify the reporting of total research expenditures to the Coordinating Board for use in state research funding allocations for the Comprehensive Research Fund, National Research Support Fund, Texas University Fund (TUF), and certain health related institution funding formulas (e.g., research enhancement formula and certain mission specific performance based research formulas). The rules provide direction to general academic teaching institutions with a health related institution that submit a singular annual financial report on how to allocate their research expenditures. The Coordinating Board used negotiated rulemaking to develop these rules. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

Rule 13.302, Definitions, lists definitions pertinent to research expenditure reporting. The addition of paragraph (10), "Health Related Institutions," adds a more commonly used term for this category of institutions, improving the readability of the rule, using this term throughout the rules in place of "medical and dental units."

Paragraph (11), "Institutional Fund Expenditures," adds additional detail on Institutional Fund Expenditure sources (tobacco settlement receipts and patient income) and removes language about unrecovered indirect costs. This had been included to align reporting with the National Science Foundation Higher Education Research and Development survey. However, due to institutions' concerns about disclosure of information that could be confidential under state or federal law, the amendment deletes the mandatory collection of data on unrecovered indirect cost.

Paragraph (15), "Private Expenditures," removes language about ineligible expenditures because this is addressed in the research expenditure survey definition in paragraph (19).

Revisions to paragraphs (16), "Research and Development (R&D)," and (18), "Research Expenditures or Expenditures," clarify the language but do not change the meaning.

The amendments to paragraph (19), "Research Expenditures or Expenditures," remove duplicative language, add adjustments for ineligible expenditures, remove unrecovered indirect expenditures, and clarify that the pass-throughs referred to occur in Texas.

A statutory citation is added to paragraph (21), "Sources and Uses Template," for clarity.

Paragraph (23), "State and Local Government Expenditures," is amended to add patient income and its statutory citation because there have been questions about how patient income is categorized.

Paragraph (24), "State of Texas Contracts and Grants," is clarified with the addition of grants to the listing of expenditures in this category.

Rule 13.303, Standards and Accounting Methods for Determining Total Research Expenditures, amendments reorganize the section to clarify that the new subsection (a) applies to all institutions of higher education, replaces expenses with expenditures in all instances, and adds clarifying detail on types of eligible expenditures, such as capital outlay for research equipment. New subsection (b) applies to the general academic teaching institutions with a health related institution that submit a singular annual financial report and provides detail on how to allocate their research expenditures. This methodology takes into account stakeholder feedback, basing the reporting of research expenditures on the appointment of the investigators, and will go into effect beginning with fiscal year 2025. Subsection (c) is the previous subsection (a) language with no substantive change.

Rule 13.304, Reporting of Total Research Expenditures, removes the word "public," since the statutory definition of institution of higher education is a Texas public institution (Texas Education Code, §61.003(8)).

Rule 13.305, Institutional Reporting of Total Research Expenditures by Funding Source, clarifies certain terms, removes the concept of a "narrow" definition of research and development expenditures, and removes reference to unrecovered indirect costs.

Subsequent to the posting of the rules in the *Texas Register*, the following change is incorporated in the adopted rules.

Rule 13.303(b) is amended to clarify the definition of general academic teaching institutions with a health related institution for purposes of reporting research expenditures. The amendment incorporates a reference to the General Appropriations Act to specify exactly which health related institutions are affected.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, Section 62.053, which provides the Coordinating Board with the authority to prescribe standards and accounting methods for determining the amount of total research funds expended.

The adopted amendment affects Texas Education Code, Sections 61.0662, 62.053, 62.095, 62.134, 62.1482.

§13.303. Standards and Accounting Methods for Determining Total Research Expenditures.

(a) Research expenditure reporting for all institutions of higher education. Each institution shall reconcile its research expenditures from the AFR to the total R&D expenditures of the Research Expenditure Survey by a:

(1) Decrease of the AFR total by the amount of R&D expenditures that do not meet the definition of R&D expenditures used in the Coordinating Board's Research Expenditure Survey, such as pass-throughs to other general academic teaching institutions, health related institutions, and other agencies of higher education in Texas.

(2) Increase of the AFR total by the amount of recovered indirect costs associated with expenditures for R&D as reported through the Research Expenditure Survey.

(3) Increase of the AFR total by the amount of capital outlay for research equipment, not including R&D plant expenditures or construction.

(4) Increase of the AFR total by the amount of expenditures for conduct of R&D made by an institution's research foundation, or 501(c) corporation on behalf of the institution, and not reported in the institution's AFR, including recovered indirect costs and capital outlay for research equipment.

(5) Increase of the AFR total to include expenditures, including recovered indirect costs and capital outlay for research equipment related to research performed by the agency or institution but reported by a separate agency or institution that received and expended the funding. The agency or institution that received and expended the funding but did not perform the research must make a corresponding decrease of its AFR total for this amount. This accounting event is not a pass-through to subrecipient as defined in §13.302(14) of this subchapter (relating to Definitions).

(b) This subsection applies to the general academic teaching institutions with a health related institution as defined in §13.302(10) of this subchapter (relating to Definitions); that is listed as a health related institution in the General Appropriations Act, Special Provisions Relating only to State Agencies of Higher Education; and that submit a singular annual financial report.

(1) Research expenditures shall be reported separately by the general academic teaching institution and health related institution using a methodology that allocates amounts to the general academic teaching institution and health related institution according to the proportion of the expenditures attributed to the principal investigator and any co-investigators.

(2) The primary appointment of each investigator shall determine to which entity (the general academic teaching institution or health related institution) the investigator's allocated expenditures are assigned and reported.

(3) Subsection (b) of this section will take effect beginning with the reporting of expenditures made during fiscal year 2025.

(c) R&D expenditures for Texas A&M University include consolidated expenditures from Texas A&M University and its service agencies.

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

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CHAPTER 15. RESEARCH FUNDS
SUBCHAPTER C. STRATEGIC PLANNING RELATED TO EMERGING RESEARCH AND RESEARCH UNIVERSITIES

19 TAC §§15.50 - 15.52

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 15, Subchapter C, §§15.50 - 15.52, Strategic Planning Related to Emerging Research and Research Universities, without changes to the

proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5876). The rules will not be republished.

Specifically, the new subchapter replaces the repealed Title 19, Part 1, Chapter 5, Subchapter G, §§5.120 - 5.122, concerning Strategic Planning and Grant Programs Related to Emerging Research and/or Research Universities. The new language updates certain definitions and gives authority to the Commissioner to determine the requirements for research strategic plans submitted to the Coordinating Board.

Rule 15.50, Purpose and Authority, describes the purpose and authority of the subchapter.

Rule 15.51, Definitions, defines the terms used in the rule. Revisions update certain definitions to the most current terminology. Paragraph (3) is a new definition for the Coordinating Board to specify distinct actions taken by the agency or staff that are separate from actions taken by the governing board of the Texas Higher Education Coordinating Board. Paragraph (4), Research Strategic Plan, modifies the definition to prescribe that the specifications of the plan are approved by the Commissioner of Higher Education, per the delegation of the Board in rule 15.52(a).

Rule 15.52, Submission of a Strategic Plan for Achieving Recognition as a Research University, describes the process, required minimum elements of a plan, and timing for submission of a research strategic plan. The amendments to previous rule language clarify that the Board delegates authority to the Commissioner to determine the required elements of the plan. The rule prescribes that, at a minimum, the plan must include elements relating to an institution's research enterprise, doctoral programs, and faculty. These elements provide a broad guideline for the Commissioner to then approve additional or more specific requirements for the institutions. By providing the authority for the Commissioner to designate the required elements of the report, the Commissioner may consider current statewide needs and trends rather than maintaining a static list of elements.

The rule prescribes that these elements be approved by the Commissioner by October 1 the year prior to the required submission date, which is set at April 1, 2025. Setting a starting date for the submission of plans and a future schedule within the rule provides clarity for institutions on when the reports are due on a standard timeline.

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

The new sections are adopted under Texas Education Code, Section 51.358, Long-Term Strategic Plan for Research University or Emerging Research University, which provides the Coordinating Board with the authority to adopt rules for the administration of the section.

The adopted new sections affect Texas Education Code, Section 51.358.

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 17. RESOURCE PLANNING

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §17.3

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 17, Subchapter A, §17.3, Definitions, without changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5878). The rule will not be republished.

Changes from existing definitions include the removal of the following definitions:

Educational and General (E&G) Building Replacement Estimate (existing paragraph (11)) and Institution-Wide Building Replacement Estimate (existing paragraph (12)), as these will now be included with the definition for the Building Replacement Estimate Report (as listed below).

Campus Master Plan (existing paragraph (14)), as the current methodology for capturing capital planning is within the Capital Expenditure Plan definition.

Committee (existing paragraph (19)) as the Board no longer has a Committee review facilities projects.

Energy Systems (existing paragraph (27)) as no longer in use.

Project Review (existing paragraph (47)) as the Board does not conduct project reviews.

Adopted rules add the following new definitions:

Paragraphs (8) and (20) specify two distinct entities: "Board," meaning the nine-member appointed governing body of the Texas Higher Education Coordinating Board and "Coordinating Board," meaning the state agency, including agency staff, as a whole. Separating these terms improves the readability and precision of the rules contained in Chapter 17 and allows the Coordinating Board to make a distinction between actions taken by the governing body and the agency, including agency staff, as a whole.

Paragraph (31), Health-related institution, adds a definition for a health-related institution as defined by Texas Education Code, §61.003(5).

Paragraph (51), Space Projection Model, adds a definition for the Space Projection Model, as it is a required report under rule 17.100(1) and is currently used by the Legislature for formula funding and facilities related purposes. It also is used as a standard by which a facilities project is reviewed by an institution's Board of Regents.

Adopted amendments to existing definitions include the following:

Paragraph (10), Building Efficiency, and paragraph (52), Space Use Efficiency, amend the definitions of both rules to specify the language use of the word "efficiency", since the term is used in two different ways. Paragraph (10) adds the word "building"

to specify that this definition is referring to building efficiency, whereas, paragraph (52) adds the word "efficiency" to clarify that this definition is referring to "space usage efficiency", a report that is a required under rule 17.100(2).

Paragraph (11), Building Replacement Estimate Report, adds more detail as to whom the audience of the report is and how the report Is calculated.

Paragraph (12), Campus Condition Report, adds more detail as to whom institutions should provide the report to in accordance with Texas Education Code, §61.05821.

Paragraph (14), Capital Expenditure Plan (MP1), includes an additional project type (information resource project) to match projects as listed in rule 17.101, regarding Institutional Reports.

Paragraph (27), Facilities Audit, redefines the definition of an audit to clarify what is included and the authority reference that audits fall under.

Paragraph (13), Capital Construction Assistance Projects, renames the former Tuition Revenue Bonds Project to Capital Construction Assistance Projects as provided for in Texas Education Code, §55.111 and §§55.171 - 55.17991.

Adopted changes to the Texas Administrative Code, Chapter 17, Section A, §17.3, also provide subsequent reorganization and renumbering.

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

The new section is adopted under Texas Education Code, Sections 61.0572 and 61.058, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

The adopted new section affects Texas Administrative Code, Chapter 17, Subchapter A, §17.3.

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 §17.3

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of Title 19, Part 1, Chapter 17, Subchapter A, §17.3, Definitions, without changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5877). The rule will not be republished.

The Coordinating Board intends to adopt a separate rule relating to definitions to reorganize and improve readability and accuracy of the definitions used for resource planning. The Coordinating Board has statutory authority to adopt rules relating to resource planning and facilities under Texas Education Code, §§61.0572 and 61.058.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Education Code, Sections 61.0572 and 61.058, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

The adopted repeal affects Texas Administrative Code, Chapter 17, Section A, §17.3, Definitions.

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. REPORTING REQUIREMENTS

19 TAC §17.20, §17.21

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 17, Subchapter B, Reporting Requirement, §17.20 and §17.21, without changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5881). The rules will not be republished.

The adopted amendments clarify terminology used in this subchapter and align the rule more closely with statute and practice.

Rule 17.20(a) and (b) and rule 17.21(1), (2), and (4) add the term "Coordinating" before the existing nomenclature of "Board" to align with definition changes in Subchapter A that specify the three distinct entities of the Board, Coordinating Board, and Board staff. This amendment clarifies the roles and responsibilities of each entity in rule.

Rule 17.20(a)(3) updates the property purchases reporting threshold from $1 million to $5 million to align with the reporting threshold update established in Section 11.03 of the FY 2024-25 General Appropriations Act.

Rule 17.21, Submission Procedures, removes "and the project complies with applicable state and federal requirements as listed on the form," since the authority to approve a facilities project rests with an institution's Board of Regents under Texas Education Code, Chapter 51, Subchapter T. The Coordinating Board's authority rests in a permissive review of purchases of improved real property (Texas Education Code, §61.0572(d)) and construction, repair, or rehabilitation of buildings and facilities (Texas Education Code, §61.058(b)). The Coordinating Board currently does not review these projects and solely collects data on the facilities projects at institutions of higher education.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Education Code, Sections 61.0572 and 61.058, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Texas Administrative Code, Title 19, Part 1, Chapter 17.

The adopted amendments affect the reporting threshold for improved real property purchases and align Coordinating Board referencing language in congruency with other Board 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 C. PROJECT STANDARDS

19 TAC §§17.30 - 17.32

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 17, Subchapter C, §§17.30 - 17.32, relating to Project Standards without changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5883). The rules will not be republished.

Adopted amendments throughout this subchapter align terminology with forthcoming new definitions in subchapter A, which separate out the meaning of "Board," "Coordinating Board," and "Coordinating Board Staff or Board Staff." Separate definitions improve clarity of roles and responsibilities in Coordinating Board rules.

Rule 17.30(2) and §17.31(2) adds the term "Coordinating" to the existing term "Board" to align with definition changes in Subchapter A that specify the three distinct entities of the Board, Coordinating Board, and Board staff.

Rule 17.30(4)(B)(ii), deletes the term "THECB" and replaces the term with "Board" to align with definition changes in Subchapter A.

Rules 17.30(1), 17.31(1), and 17.32(1) deletes the specificity of the use of "Board's" as it relates to the space projection model, which is defined in Subchapter E under Board reports.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Education Code, Sections 61.0572 and 61.058, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Texas Administrative Code, Title 19, Part 1, Chapter 17.

The adopted amendments affect Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter B, §§17.30, 17.31, and 17.32.

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

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SUBCHAPTER E. REPORTS

19 TAC §17.100, §17.101

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 17, Subchapter E, §17.100 and §17.101, Board Reports and Institutional Reports, without changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5884). The rules will not be republished.

The adopted amendments align rules with current agency practices related to producing reports for resource planning.

Rule 17.100 provides that the Board delegates to the Commissioner of Higher Education to approve the required reports listed, including the space projection model, space usage efficiency, and construction costs, as required under Texas Education Code, §§61.0572 and 61.058.

Rule 17.100(1), (2), and (3) amend language to define each of the reports and deletes unnecessary language related to each of the reports.

Rule 17.100(1)(A) provides that the existing General Academic Institutions, Technical Colleges, and State Colleges Formula Advisory Committee and Health-Related Institutions Formula Advisory Committee may review the space projection model as part of tasks assigned to the committees in rule 1.169 and 1.176 as the model is currently in use by the legislature in making appropriations to these institutions of higher education. This replaces a provision currently in the rule providing that the Commissioner may convene a separate committee to review the model and streamlines the process using standing advisory committees.

Rule 17.100(2) deletes duplicative language pertaining to the space usage efficiency report.

Rule 17.100(3) adds the term "Coordinating" to the existing term "Board" to align with proposed definition changes in Subchapter A that specify the three distinct entities of the Board, Coordinating Board, and Board staff.

Rule 17.101 amends terminology throughout the rule to align with the proposed definition changes in Subchapter A that specify the three distinct entities of the Board, Coordinating Board, and Board staff. This allows for the specific identification of responsible parties completing each specified action or report.

Rule 17.101(1)(B) includes an additional use of the data, noting that the facilities inventory data may also be used to calculate the construction cost standard.

Rule 17.101(2)(A)(i) - (iv) removes reporting based on specific dollar thresholds with new language that aligns the thresholds in accordance with language from Article IX, General Provisions, Section 11.03, Statewide Capital Planning, of the Fiscal Year 2024-25 General Appropriations Act.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Education Code, Sections 61.0572 and 61.058, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

The adopted amendments affect Texas Administrative Code, Title 19, Part 1, Chapter 17.

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SUBCHAPTER F. FACILITIES AUDIT

19 TAC §§17.110 - 17.114

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 17, Subchapter F, §§17.110 - 17.114, concerning Facilities Audits without changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5886). The rules will not be republished.

The adopted amendments update verbiage in the sections listed individually below.

Rules 17.110 and 17.114 update nomenclature from "THECB staff" to "Board staff" and from "THECB" to "Coordinating Board" in alignment with changes to definitions in Subchapter A. The amendments allow for the specific identification of responsible parties completing each specified action or report.

Rule 17.110(a) removes the use of "approved" from facilities development projects as the Coordinating Board does not approve projects and solely collects data on the projects, in accordance with Texas Education Code, §§61.0572 and 61.058. Additional revisions correct terminology related to educational and general facilities.

Rules 17.111(1), 17.112, and 17.113(a) add the term "Coordinating" to the existing term "Board" to align with definition changes in Subchapter A that specify the three distinct entities of the Board, Coordinating Board, and Board staff. The amendments allow for the specific identification of responsible parties completing each specified action or report.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Education Code, Sections 61.0572 and 61.058, which provide the Coordinating Board with the authority to conduct the facilities programs governed by Chapter 17.

The adopted amendments affect Title 19, Part 1, Chapter 17, Subchapter F, §§17.110 - 17.114.

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SUBCHAPTER G. TEXAS STATE TECHNICAL COLLEGE SYSTEM ACQUISITIONS OF LAND AND FACILITIES

19 TAC §17.200

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 17, Subchapter G, §17.200, concerning Texas State Technical College System Acquisitions of Land and Facilities, without changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5887). The rule will not be republished.

The adopted new section establishes the Texas State Technical College land and facilities projects requiring Coordinating Board approval and the method by which the Coordinating Board would review and consider the projects for approval.

Rule 17.200 ensures a documented approval process for certain Texas State Technical College System land and facilities purchases if the combined value is more than $300,000, in accordance with Texas Education Code, §135.02(c). This differs from facilities related projects at other institutions of higher education for which an institution's Board of Regents has sole authority to approve and the Coordinating Board only receives information on the project.

The rule requires the institution to submit the project in accordance with §17.21, Submission Procedures, and the Coordinating Board to assess the project in accordance with the standards provided under §17.32, Standards for Improved Real Property Purchase Projects.

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

The new section is adopted under Texas Education Code, §135.02(c), which requires the Coordinating Board to approve certain Texas State Technical College System land and facilities purchases.

The adopted new section affects Title 19, Part 1, Chapter 17, by adding Subchapter G, §17.200.

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 21. STUDENT SERVICES
SUBCHAPTER A, GENERAL PROVISIONS

19 TAC §21.2

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of Title 19, Part 1, Chapter 21, Subchapter A, §21.2, General Provisions, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5460). The rule will not be republished.

The adopted repeal eliminates a duplicative rule.

Rule 21.2, Determination of Tuition Rate for Nonresident and Foreign Students, is repealed. The provisions of this rule have been incorporated into §13.122 (relating to Determination of Tuition Rate for Nonresident Students) in the new Chapter 13, Subchapter G, Tuition and Fees. Accordingly, this section is duplicative and is eliminated without affecting Coordinating Board operations.

No comments were received regarding the adoption of the repeal.

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

The adopted repeal affects Texas Education Code, Section 54.051.

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

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SUBCHAPTER SS. WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §21.2264

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of Title 19, Part 1, Chapter 21, Subchapter SS, §21.2264, Waiver Programs for Certain Nonresident Persons, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5461). The rule will not be republished.

This adopted repeal eliminates a duplicative rule.

Rule 21.2264, General Academic Teaching Institutions Located within 100 Miles of the Texas Border, is repealed. The provisions of this rule have been incorporated into §13.122 (relating to Determination of Tuition Rate for Nonresident Students) in the new Chapter 13, Subchapter G, Tuition and Fees. Accordingly, this section is duplicative and is eliminated without affecting Coordinating Board operations.

No comments were received regarding the adoption of the repeal.

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

The adopted repeal affects Texas Education Code, Section 54.0601.

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 H. PROVISIONS FOR THE LICENSE PLATE INSIGNIA SCHOLARSHIP PROGRAM

19 TAC §§22.141, 22.143 - 22.147

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of Title 19, Part 1, Chapter 22, Subchapter H, §22.141 and §§22.143 - 22.147, Provisions for the License Plate Insignia Scholarship Program, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5462). The rules will not be republished.

The adopted repeal eliminates unnecessary rules and institutional reporting requirements.

Texas Transportation Code, §504.615, establishes the License Plate Insignia Scholarship Program, which allows for the transfer of funds collected by the Texas Department of Motor Vehicles from the purchase of institution-specific specialty license plates to Texas institutions of higher education to provide financial aid to students with need. Texas Administrative Code, Chapter 22, Subchapter H, includes rules related to institutional responsibilities, student eligibility for associated aid, and allocation and disbursement procedures. Upon review, the Coordinating Board has concluded that the necessary provisions for the agency or participating institutions to meet statutory obligations related to the program already exist in statute or elsewhere in the Coordinating Board's rules. Accordingly, repealing the rules in this subchapter does not affect Coordinating Board operations while advancing its interest in eliminating unnecessary institutional reporting requirements.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Transportation Code, Section 504.615, which establishes the License Plate Insignia Scholarship Program.

The adopted repeal 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 O. TEXAS LEADERSHIP RESEARCH SCHOLARS PROGRAM

19 TAC §22.301, §22.310

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 22, Subchapter O, §22.301 and §22.310, concerning the Texas Leadership Research Scholars Program, without changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5888). The rules will not be republished.

The adopted amendments clarify the type of institutions eligible to participate and how the allocation of funds is determined.

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

Rule 22.301, Definitions, provides definitions for words and terms within Texas Leadership Research Scholars rules. The definitions provide clarity for words and terms that are integral to the understanding and administration of the Texas Leadership Research Scholars rules. Specifically, the amended section clarifies that general academic institutions are eligible to participate in the Texas Leadership Research Scholars Program.

Rule 22.310, Scholarship Amounts and Allocation of Funds, outlines the scholarship amounts and how the Coordinating Board will allocate the funds to institutions. The 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. Specifically, the amended section outlines how the allocation of initial awards will be determined between eligible institutions, clarifying the data used to determine each eligible institution's share of awarded research doctoral degrees, and if there is insufficient funding to award more than seventy-five initial scholarships the awards will be split between public research and emerging institutions. This calculation ensures that initial scholarship awards are being allocated to institutions successfully graduating research doctorates.

No comments were received regarding the adoption of the amendments.

The amendment is 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 amendment affects 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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SUBCHAPTER Q. TEXAS B-ON-TIME LOAN PROGRAM

19 TAC §22.342

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 22, Subchapter Q, §22.342, Texas B-On-Time Loan Program, with changes

to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5462). The rule will be republished. The changes to the proposed text reflect the addition of subsection (e) regarding institutional reporting requirements.

This new section governs the allocation and use of remaining funds in the Texas B-On-Time Student Loan Account after its abolition. The Coordinating Board is authorized to establish rules as necessary to administer the B-On-Time Student Loan Program under Texas Education Code (TEC), Section 56.0092.

Section 22.342, Appropriation of Funds from Former B-On-Time Student Loan Account, is adopted to establish the allocation methodology and approved uses of funds remaining in the B-On-Time Student Loan Account after its abolition on September 1, 2024, pursuant to Section 4.07 of Senate Bill 30, 88th Legislative Session. The methodology (which was originally agreed upon in a negotiated rulemaking proceeding following the creation of TEC, Section 56.0092, by House Bill 700, 84th Legislative Session but never adopted into rule) allocates funds among institutions that participated in the B-On-Time Program during Fiscal Years 2007 and 2015 proportionately based on each institution's unused tuition set-asides (i.e., total program disbursements less total program set-asides) for the period. Institutions that disbursed more funds than were set aside during the period did not receive an allocation. Allocated funds must be used to increase the number of at-risk students who graduate from the institutions or the rate at which at-risk students graduate from the institution.

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

The new section is adopted under Texas Education Code, Section 56.0092, which provides the Coordinating Board with the authority to establish rules as necessary to administer the B-On-Time Loan Program.

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

§22.342. Appropriation of Funds from Former B-On-Time Student Loan Account.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings:

(1) At-Risk Student--An undergraduate student who has previously received a grant under the federal Pell Grant program, met the Expected Family Contribution (EFC) criterion for a grant under that program, or whose total score on the SAT or the ACT, excluding the optional essay test, is less than the national mean of students' scores on the applicable test.

(2) Eligible Institution--A general academic teaching institution described by Texas Education Code, §56.451(2)(A), or a medical and dental unit described by Texas Education Code §56.451(2)(B), as those paragraphs existed immediately before September 1, 2015.

(3) Total Disbursements--The total amount of tuition set-aside funds disbursed by an eligible institution to students for the B-On-Time Loan Program during Fiscal Years 2007 through 2015.

(4) Total Set-Asides--The total amount of tuition funds set aside by an eligible institution for the B-On-Time Loan Program during Fiscal Years 2007 through 2015.

(5) Unused Set-Asides--The amount of funds remaining after subtracting an eligible institution's total disbursements from its total set-asides. If an eligible institution's total disbursements are greater than its total set-asides, the institution's unused set-asides are considered to be zero.

(b) Allocation. After the abolition of the Texas B-On-Time Student Loan Account, the Coordinating Board may allocate any remaining money in the account to eligible institutions. Each eligible institution's proportion of the allocation shall be its unused set-asides divided by the sum of all eligible institutions' unused set-asides.

(c) Verification of Data. Allocation calculations will be shared with all eligible institutions for comment and verification prior to final posting, and the institutions will be given ten (10) working days, beginning the day of the notice's distribution and excluding State holidays, to confirm that the allocation report accurately reflects the B-On-Time disbursements for Fiscal Years 2007 through 2015 or to notify the Coordinating Board in writing of any inaccuracies.

(d) An eligible institution that receives an appropriation of money under this section may use the money only to support efforts to increase the number of at-risk students who graduate from the institution or the rate at which at-risk students graduate from the institution.

(e) Reporting. An eligible institution that receives an appropriation of money under this section shall provide the Coordinating Board with a report documenting the amount of its expenditures from funding received under this section and its adherence to subsection (d) of this section in a manner provided by the Commissioner.

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 V. TEXAS SCIENCE, TECHNOLOGY, ENGINEERING, AND MATHEMATICS CHALLENGE SCHOLARSHIP PROGRAM

19 TAC §§22.570 - 22.577

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of Title 19, Part 1, Chapter 22, Subchapter V, §§22.570 - 22.577, Texas Science, Technology, Engineering, and Mathematics Challenge Scholarship Program, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5464). The rules will not be republished.

The adopted repeal eliminates the entire subchapter, which is no longer necessary as the program is inoperative.

Texas Education Code, Section 61.9792, provides the Coordinating Board with the authority to adopt rules for the administration of the Texas Science, Technology, Engineering, and Mathematics Challenge Scholarship Program. The program has not been funded and thus has been inoperative for several biennia. Given the number of programs managed by the Coordinating

Board and the agency's interest in informing the public accurately about its programmatic offerings, elimination of these rules will provide greater clarity to the public regarding the availability of student financial assistance.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Education Code, Section 61.9792, which provides the Coordinating Board with the authority to administer the program.

The adopted repeal 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 BB. NURSING SHORTAGE REDUCTION PROGRAM RIDER 28 STUDY WORK GROUP

19 TAC §§22.751 - 22.757

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of Title 19, Part 1, Chapter 22, Subchapter BB, §§22.751 - 22.757, Nursing Shortage Reduction Program Rider 28 Study Work Group, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5464). The rules will not be republished.

The adopted repeal eliminates the entire subchapter, which is no longer necessary as the study work group completed its function and is now inoperative.

The General Appropriations Act, HB 1, Article III-56, Section 28, Subsection g, 86th Texas Legislature, directed the Coordinating Board to establish the work group and provided authority to adopt rules to govern its operations. The 24-member work group appointed by the Coordinating Board met six times in 2019 and 2020 and issued its final report in October 2020. Pursuant to rule §22.754 and in accordance with Texas Government Code, Chapter 2110, the work group was abolished thereafter. Accordingly, repeal of these rules will not affect agency operations while advancing the agency's interest in informing the public accurately regarding its programmatic offerings and activities.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Education Code, Section 61.026, which provides the Coordinating Board with the authority to establish and adopt rules relating to advisory committees.

The adopted repeal 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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CHAPTER 23. EDUCATION LOAN REPAYMENT PROGRAMS
SUBCHAPTER B. TEACH FOR TEXAS LOAN REPAYMENT ASSISTANCE PROGRAM

19 TAC §§23.31 - 23.36

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments and new section in Title 19, Part 1, Chapter 23, Subchapter B, §§23.31 - 23.36, Teach for Texas Loan Repayment Assistance Program, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5465). The rules will not be republished.

The adopted amendments and new section align the subchapter with others in Chapter 23 regarding structure, form, and language; eliminate duplicative provisions; and clarify potential ambiguities in existing rules. The Coordinating Board is authorized to establish rules as necessary to administer the Teach for Texas Loan Repayment Assistance Program under Texas Education Code (TEC), Section 56.3575.

Rule 23.31 is amended to make conforming edits to the Authority subsection and include the full range of TEC sections related to the program. These changes align language with similar provisions in other subchapters in Chapter 23.

Rule 23.32 is amended to add a clarifying definition for "public school" and to eliminate unnecessary definitions. The definition for "public school" is already the operational definition for the term and is included to further clarify that otherwise eligible teachers at both traditional public and public charter schools may participate in the program. The definition of "Board" is removed after being made duplicative by the inclusion of a definition for "Coordinating Board" in §23.1 (relating to Definitions) in the general provisions of this chapter. Provisions relating to the education loans of program applicants and participants similarly have been consolidated in §23.2 (relating to Eligible Lender and Eligible Education Loan) in the general provisions of this chapter, making the definition of "default" in this subchapter unnecessary.

Rule 23.33 is amended to make non-substantive edits to improve clarity and readability. The section is retitled to conform to a consistent rule structure and naming convention throughout Chapter 23. Reference to "individual" is changed to "applicant"

to conform with usage in other subchapters in the chapter. Eligibility criteria are re-ordered for greater clarity, and the amended rule clarifies that an applicant must have taught full-time for one service period in the last academic year. None of these amendments deviate from current Coordinating Board practice.

Rule 23.34 is amended to clarify the prioritization of eligible applicants when funds are insufficient to offer loan repayment assistance to all eligible applicants. The section is retitled to conform to a consistent rule structure and naming convention throughout Chapter 23. The new subsection (b) does not change current prioritization policy but reflects a few clarifying edits to explain potential ambiguities in the current rule language.

Rule 23.35 is created to establish provisions related to the amount of loan repayment assistance available under the program. The new provisions codify the Coordinating Board's current practice of setting the maximum amount of loan repayment assistance annually based on available funding and the number of eligible applicants.

Rule 23.36 is amended to eliminate rule language related to disbursement of loan repayment assistance funds, which now are unnecessary following the creation of §23.3 (relating to Method of Disbursement) in the general provisions of the Chapter 23. The section is retitled to more accurately reflect the section's purpose and to conform with the consistent rule structure and naming convention throughout the chapter. Paragraph (2) codifies the Coordinating Board's practice that the amount of loan repayment assistance may not exceed unpaid principal and interest on an eligible education loan(s). This language is being added to the rules for all Coordinating Board loan repayment assistance programs.

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

The amendments and new section are adopted under Texas Education Code, Section 56.3575, which provides the Coordinating Board with the authority to adopt rules necessary for the administration of the Teach for Texas Loan Repayment Assistance Program.

The adopted amendments and new section 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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19 TAC §23.35

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of Title 19, Part 1, Chapter 23, Subchapter B, §23.35, Teach for Texas Loan Repayment Assistance Program, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5467). The rule will not be republished.

The adopted repeal eliminates a duplicative provision. The Coordinating Board is authorized to adopt rules as necessary to administer the program by Texas Education Code (TEC) §56.3575.

Rule 23.35 is repealed. The provisions of this rule have been incorporated into rule §23.2 (relating to Eligible Lender and Eligible Education Loan) in the general provisions of this chapter. Accordingly, this section is duplicative and is eliminated without affecting Coordinating Board operations.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Education Code, Section 56.3575, which provides the Coordinating Board with the authority to adopt rules as necessary to administer the Teach for Texas Loan Repayment Assistance Program.

The adopted repeal affects 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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SUBCHAPTER C. PHYSICIAN EDUCATION LOAN REPAYMENT ASSISTANCE PROGRAM

19 TAC §§23.62, 23.65 - 23.68, 23.70, 23.71

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 23, Subchapter C, §§23.62, 23.65 - 23.68, 23.70, and 23.71, Physician Education Loan Repayment Assistance Program, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5468). The rules will not be republished.

The adopted amendments align the subchapter with others in Chapter 23 regarding structure, form, and language; eliminate duplicative provisions; and clarify potential ambiguities in existing rules.

The Coordinating Board is authorized to establish rules as necessary to administer the Physician Education Loan Repayment Program under Texas Education Code (TEC), Section 61.537.

The subchapter is retitled to conform with the titles of the other subchapters in Chapter 23. Conforming changes to the program title are made throughout the subchapter, specifically in rules 23.62 and 23.71.

Rule 23.62 is amended to make nonsubstantive changes. The appropriate TEC chapter is added to the Authority section to conform with the structure of similar provisions in other subchapters.

Rule 23.65 is amended to eliminate unnecessary definitions and make nonsubstantive, clarifying changes to others. After the creation of a definition for "Coordinating Board" in §23.1 (relating to Definitions) in the general provisions for this chapter, the definition of "Board" in §23.65 is redundant, with all references to "Board" throughout the subchapter changed to "Coordinating Board." Definitions for "CHIP" and "Federally Qualified Health Center" are eliminated due to being used only once throughout the subchapter, and so have been incorporated contextually when they appear. No adopted changes to this rule affect administration of the program.

Rule 23.66 is amended to simplify program eligibility rules so they more clearly reflect Coordinating Board practice. The rule is retitled to conform to a consistent rule structure and naming convention throughout Chapter 23. Historically, eligibility for this program has been a two-step process, with applicants establishing initial eligibility for the program - prompted the Coordinating Board to encumber funds - and then, after completing a service period, becoming eligible for disbursement of those funds. These processes have since been combined, with applicants establishing eligibility after their first service period. Accordingly, the existing subsections (a) and (b), which related to these separate stages, have been combined. Further edits were made to clarify certain eligibility criteria, but the adopted rule changes did not change existing program requirements.

Rule 23.67 is amended to clarify how the Coordinating Board prioritizes disbursement in the event that available funds are insufficient to offer loan repayment assistance to all eligible applicants. The rule is retitled to conform to a consistent rule structure and naming convention throughout Chapter 23. The adopted changes are not intended to reflect a change in Coordinating Board policy; rather, they are adopted to improve the readability and clarity of the rule. Adopted changes clarify that previously used "highest degree of shortage" language associated with health professional shortage areas (HPSA) is established via the HPSA score of 1 to 25, with higher scores reflecting greater shortage. Subparagraph (3)(B) is clarified to establish that a "rural county" is a county with a population of less than 50,000 persons, which aligns with the Coordinating Board's operational definitions for rural HPSA in this program and "rural county" in other loan repayment programs.

Rule 23.68 is amended to make nonsubstantive edits to provisions related to physicians who establish eligibility for the program based on services to Medicaid or Texas Women's Health Program enrollees. Language in subsection (a) related to a written statement of intent to provide services is eliminated to align with the consolidation of the two-step eligibility process in §23.66. Changes to subsection (b) add detail to current practice related to the Coordinating Board's receipt of Medicaid HMO encounter data from the Health and Human Services Commission.

Rule 23.70 is amended to eliminate outdated provisions related to maximum loan repayment assistance amounts. Existing subsection (a) is eliminated; these provisions related only to individuals who established eligibility for the program before September 1, 2019. Because program eligibility is contingent on consecutive service periods, these provisions are no longer operative and are eliminated. Conforming changes are made throughout the rule.

Rule 23.71 is amended to eliminate unnecessary provisions or potential ambiguities in the program's limitations. Former subsection (b), as with the provisions in §23.70, is outdated and is eliminated without effect. Former subsection (d) simply restates the placement of physicians who qualify for the program via service to Medicaid or Texas Women's Health Program enrollees in the prioritization established in §23.67 and is therefore redundant. Existing subsection (e) is restated as paragraph (3) and clarifies current practice: Good cause for failing to meet program requirements can prevent removal from the program but not non-payment for the service period(s) in question. Subsection (f) was made redundant by the creation of §23.2 (relating to Eligible Lender and Eligible Education Loan) in the general provisions of Chapter 23 and is eliminated without effect.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, Section 61.537, which provides the Coordinating Board with the authority to adopt rules as necessary to administer the Physician Education Loan Repayment Assistance Program.

The adopted amendment affects 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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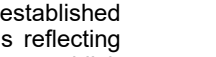

19 TAC §§23.63, 23.64, 23.69, 23.72, 23.73

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of Title 19, Part 1, Chapter 23, Subchapter C, §§23.63, 23.64, 23.69, 23.72, and 23.73, Physician Education Loan Repayment Program, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5472). The rules will not be republished.

The adopted repeal eliminates rules that have been determined to be unnecessary to the Coordinating Board's operations or duplicative with the General Provisions adopted in Chapter 23, Subchapter A, in July 2024.

The Coordinating Board is authorized to adopt rules as necessary for the administration of the program by Texas Education Code (TEC), Section 61.537.

Rule 23.63 is repealed. The rule's primary purpose is to authorize the Coordinating Board to enter into a memorandum of understanding with the Department of State Health Services. This provision is unnecessary to the administration of the program, and its elimination does not affect Coordinating Board operations.

Rule 23.64 is repealed. The rule directs the Coordinating Board to disseminate information about the program to interested parties, including health-related institutions of higher education, appropriate state agencies, interested professional associations and the public. Outreach to relevant stakeholders is crucial for the success of this and similar programs, but the inclusion of this rule is unnecessary to the administration of the program. Its elimination does not affect Coordinating Board operations.

Rule 23.69 is repealed. The provisions of this rule have been incorporated into rule §23.2 (relating to Eligible Lender and Eligible Education Loan) in the general provisions of this chapter. Accordingly, this section is duplicative and is eliminated without affecting Coordinating Board operations.

Rule 23.72 is repealed. The provisions of this rule have been incorporated into rule §23.3 (relating to Method of Disbursement) in the general provisions of this chapter. Accordingly, this section is duplicative and is eliminated without affecting Coordinating Board operations.

Rule 23.73 is repealed. The reporting and data collection requirements contained within the rule relate to the Coordinating Board's compliance with an appropriations rider related to the program, most recently Rider 51 (page III-67) within the Coordinating Board's section of the General Appropriations Act (H.B. 1), 88th Texas Legislature, Regular Session. The Coordinating Board has determined that it can continue to meet the requirements of this rider without the rule, which is otherwise unnecessary to the administration of the program. Its elimination does not affect Coordinating Board operations.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Education Code, Section 61.537, which provides the Coordinating Board with the authority to adopt rules as necessary for the administration of The Physician Education Loan Repayment Program.

The adopted repeal affects 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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SUBCHAPTER D. MENTAL HEALTH PROFESSIONALS LOAN REPAYMENT ASSISTANCE PROGRAM

19 TAC §§23.93, 23.94, 23.96, 23.97, 23.100 - 23.102

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules and amendments to Title 19, Part 1, Chapter 23, Subchapter D, §23.97 and §23.100, Mental Health Professionals Loan Repayment Assistance Program, with changes to the proposed text as published in the August 9, 2024, issue of the *Texas Register* (49 TexReg 5890). The rules will be republished. Sections 23.93, 23.94, 23.96, 23.101, and 23.102 are adopted without changes and will not be republished.

The amendments align the subchapter with others in Chapter 23 regarding structure, form, and language; eliminate duplicative provisions; and clarify potential ambiguities in existing rules. The new sections consolidate provisions from other rules related to program limitations and specific provisions affecting persons who first established eligibility for the program prior to September 1, 2024. The Coordinating Board is authorized to adopt rules as necessary for the administration of the program by Texas Education Code (TEC), Section 61.608.

The subchapter is retitled to conform with the titles of the other subchapters in Chapter 23.

Rule 23.93 is amended to make conforming changes to the subchapter title.

Rule 23.94 is amended by removing three unnecessary definitions and unnecessary portions of another definition. After the creation of a definition for "Coordinating Board" in §23.1 (relating to Definitions) in the general provisions for this chapter, the definition of "Board staff" in §23.94 is redundant, with all references to "Board staff" throughout the subchapter changed to "Coordinating Board." The terms "Local Mental Health Authority" and "Title I school" are used only once each in rule, so the definitions are eliminated and have been incorporated contextually when the terms appear. The definition of "full-time service" is amended to eliminate the listed conditions that constitute eligible service (existing subparagraphs (4)(A) - (D)). These conditions are included in the eligibility criteria described in §23.96 (relating to Eligible Applicants).

Rule 23.94 is further amended by expanding the existing definition of "service period." Specifically, an alternate definition is provided that allows service for at least 9 months of a 12-month academic year by a licensed specialist in school psychology. The existing definition conflicts with the typical employment contract for these individuals, inadvertently disqualifying some otherwise eligible applicants from receiving loan repayment funds. The expanded definition remedies this.

Rule 23.96 is amended to simplify program eligibility rules so they more clearly reflect Coordinating Board practice. The rule is retitled to conform to a consistent rule structure and naming convention throughout Chapter 23. Historically, eligibility for this program has been a two-step process, with applicants establishing initial eligibility for the program and then, after completing a service period, becoming eligible for disbursement of funds. These processes have since been combined, with applicants establishing eligibility after their first service period. Accordingly, subsection (a) of this section and repealed §23.98 (related to Eligibility for Disbursement of Loan Repayment Assistance) are consolidated into the amended subsection (a) and the new subsection (b). Eligible practice specialties, previously listed in repealed §23.95, also are incorporated in paragraph (a)(3). Further edits are made to clarify certain eligibility criteria, but the adopted rule changes do not substantively change program requirements. The existing subsection (b) is eliminated and reconstituted within the new §23.102 (relating to Provisions Specific to Mental Health Professionals Who Established Eligibility for the Program Before September 1, 2023).

Rule 23.97 is amended to clarify how the Coordinating Board prioritizes disbursement in the event that available funds are insufficient to offer loan repayment assistance to all eligible applicants. The rule is retitled to conform to a consistent rule structure and naming convention throughout Chapter 23. Existing subsections (b) and (c) are removed and reconstituted in §23.101 (relating to Limitations). The prioritization process in new subsection (b), which consolidates existing subsections (d), (e), and (f), is slightly amended in three substantive ways. First, subparagraph (b)(1)(C) is clarified to align with current practice that "MHPSA scores that reflect the highest degrees of shortage" means that the Coordinating Board ranks applications by MHPSA score in descending order, starting with applications with the highest score. Also, subparagraph (b)(1)(E) is amended to reflect that "rural area," which previously was not defined in rule, means a county with a population of less than 50,000 persons, which is the Coordinating Board's operational definition for the term in all loan repayment programs. Finally, paragraph (b)(2) is added based on the existing subsection (f) but further clarified that renewal applications from licensed marriage and family therapists are prioritized over initial applications. Existing subsection (g) is amended to clarify that the Coordinating Board only will use this provision in the event that insufficient funds are available to provide full loan repayment amounts to eligible renewal applicants .

Rule 23.100 is amended by adding some provisions that previously existed elsewhere in the subchapter and removing provisions that are relocated to other rules. Existing subsection (a) is redundant with provisions within §23.3 (relating to Methods of Disbursement) in the general provisions of this chapter and is removed. Existing subsection (b) and paragraph (e)(1) are removed and relocated to new §23.102 (relating to Provisions Specific to Mental Health Professionals Who Established Eligibility for the Program Before September 1, 2023). New subsection (a) has "on or after September 1, 2023" language removed to make it the clear default state and is rephrased to combine the provisions of existing subsection (c) and paragraph (e)(2). Existing subsection (d) is removed and reconstituted in §23.101 (relating to Limitations).

Rule 23.101 is created to consolidate various program limitations that previously were spread throughout the subchapter. Paragraphs (1) and (2) are the reconstituted §23.97(b) and (c); paragraph (3) is the reconstituted §23.100(d); and paragraph (4) codifies existing Coordinating Board practice that loan repayment assistance amounts may never exceed unpaid principal and interest owed on eligible education loans.

Rule 23.102 is created to consolidate provisions that specifically apply to providers who established eligibility for the program prior to September 1, 2023. Subsections (a) and (b) are the reconstituted §23.96(b), (c), and (d), with changes to reflect the elimination of the outdated "two-step" eligibility process in rule; and subsection (c) is the reconstituted and consolidated §23.100(b) and (e)(1).

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

Subsection §23.97(c) - which, when the proposed rules were posted in the *Texas Register,* appeared as §23.100(d) - was instead amended to clarify that the Coordinating Board will only conduct an equitable reduction of loan repayment assistance amounts in the event that insufficient funds were available to provide full loan repayment amounts to eligible renewal applicants. This change was made to provide greater predictability to program applicants regarding Coordinating Board decisions regarding assistance amounts.

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

Comment: The Texas Hospital Association (THA) commented with four recommendations to the proposed rule, specifically: (1) change the definition of "rural county" in rule to align with that of the state's most recent General Appropriations Act (e.g. Article II, Rider 8); (2) apply the subsequent ranking criteria in §23.97(b)(1) within the class of renewal applications; (3) introduce a process to ensure that applicants receiving prioritization for practicing in a demographic Mental Health Professional Shortage Area (MHPSA) are actually providing care to that demographic group; and (4) commit to fully funding eligible applicants according to established ranking criteria in §23.97 rather than reducing funds for all providers.

Response: The Coordinating Board appreciates these recommendations.

For recommendation (1), there are numerous definitions of rurality in Texas statutes and administrative rules, including the one cited in THA's comment. The definition of "rural county" in the adopted rules was selected to align with similar definitions in the Nurse Loan Repayment Assistance Program and Physician Education Loan Repayment Assistance Program, allowing for greater operational efficiency and consistency. Accordingly, the Coordinating Board takes no action on this recommendation at this time.

For recommendation (3), the Coordinating Board shares THA's goal of ensuring applicants who qualify by practicing in a demographic MHPSA actually provide care to that demographic group; however, the application review and employer certification processes already accomplish this aim. §23.96(a)(4)(A) specifies that to be eligible, an applicant working in an MHPSA must provide direct patient care to Medicaid enrollees, Children's Health Insurance Program enrollees, and/or persons in secure correctional facilities operated by the Texas Department of Criminal Justice or Texas Juvenile Justice Department. To ensure applicants meet these criteria, the Coordinating Board requires the applicant's employer to certify that the applicant practices in an MHPSA and provides direct care to these populations. The Coordinating Board believes this process is sufficient to accomplish the stated goal, so it takes no action on this recommendation at this time.

For recommendations (2) and (4), the Coordinating Board agrees generally that greater transparency is required regarding the two distinct means by which the Coordinating Board can address insufficient program funds to provide loan repayment assistance to all eligible applicants. Accordingly, the adopted rule was amended to clarify that the Coordinating Board will only use equitable reduction provision in §23.97(c) (this provision also was relocated from §23.100 since the rules were posted in the *Texas Register*) in the event that insufficient funds were available to provide full loan repayment amounts to eligible renewal applicants. In all other cases, the Coordinating Board would use the prioritization criteria listed in §23.97(b).

The amendments and new sections are adopted under Texas Education Code, Section 61.608, which provides the Coordinating Board with the authority to adopt rules as necessary to administer the Loan Repayment Program for Mental Health Professionals.

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

§23.97. Applicant Ranking Priorities.

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

(b) If there are not sufficient funds to offer loan repayment assistance for all eligible providers, applications shall be prioritized as follows:

(1) Applications from eligible providers from practice specialties described in §23.96(a)(3)(A) - (G) of this subchapter (relating to Applicant Eligibility), ranked by the following criteria:

(A) renewal applications;

(B) applications from providers who sign SLRP contracts;

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

(D) applications from providers in state hospitals;

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

(F) applications received on the earliest dates; and

(2) Applications from eligible providers from the practice specialty described in §23.96(a)(3)(H) of this subchapter, ranked by the following criteria:

(A) renewal applications; and

(B) applications received on the earliest dates.

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

§23.100. Amount of Repayment Assistance.

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

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

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

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

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

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

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

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SUBCHAPTER D. LOAN REPAYMENT PROGRAM FOR MENTAL HEALTH PROFESSIONALS

19 TAC §§23.95, 23.98, 23.99, 23.101

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of Title 19, Part 1, Chapter 23, Subchapter D, §§23.95, 23.98, 23.99, and 23.101, Loan Repayment Program for Mental Health Professionals, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5473). The rules will not be republished.

The adopted repeal consolidates provisions into other rules to better reflect Coordinating Board practices or eliminates rules that are duplicative with the General Provisions adopted in Chapter 23, Subchapter A, in July 2024.

The Coordinating Board is authorized to adopt rules as necessary for the administration of the program by Texas Education Code (TEC), Section 61.608.

Rule 23.95 is repealed. The eligible practice specialties delineated in this section are incorporated into rule §23.96 (relating to Applicant Eligibility).

Rule 23.98 is repealed. Historically, eligibility for this program has been a two-step process, with applicants establishing initial eligibility for the program and then, after completing a service period, becoming eligible for disbursement of funds. These processes have since been combined, with applicants establishing eligibility after their first service period. Accordingly, the relevant provisions of this rule are incorporated into rule §23.96 (related to Applicant Eligibility), and this section is repealed without effect.

Rule 23.99 is repealed. The provisions of this rule have been incorporated into rule §23.2 (relating to Eligible Lender and Eligible Education Loan) in the general provisions of this chapter. Accordingly, this section is duplicative and is eliminated without affecting Coordinating Board operations.

Rule 23.101 is repealed. The rule directs the Coordinating Board to disseminate information about the program to interested parties, including institutions of higher education, appropriate state

agencies, and interested professional associations. Outreach to relevant stakeholders is crucial for the success of this and similar programs, but the Coordinating Board has determined that it can continue to accomplish this task without the rule, which is otherwise unnecessary for the administration of the program. Its elimination does not affect Coordinating Board operations.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Education Code, Section 61.608, which provides the Coordinating Board with the authority to adopt rules as necessary to administer the Loan Repayment Program for Mental Health Professionals.

The adopted repeal affects 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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SUBCHAPTER H. PEACE OFFICER LOAN REPAYMENT ASSISTANCE PROGRAM

19 TAC §§23.209 - 23.212, 23.215, 23.216

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments and new rules in Title 19, Part 1, Chapter 23, Subchapter H, §§23.209 - 23.212, 23.215, and 23.216, Peace Officer Loan Repayment Assistance Program, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5474). The rules will not be republished.

The adopted amendments align the subchapter with others in Chapter 23 regarding structure, form, and language; eliminates duplicative provisions; and clarifies potential ambiguities in existing rules. The new section consolidates program limitations into a single rule.

The Coordinating Board is authorized to establish rules as necessary to administer the Peace Officer Loan Repayment Program under Texas Education Code (TEC), Section 61.9959.

Rule 23.209 is amended to make nonsubstantive changes to the program's purpose statement. Because eligibility for the program is established after the first service period, the statement is rephrased to "maintain" - rather than "agree to continued" - employment, and the phrase "for a specified period" is removed because program eligibility is not tied to a specific number of consecutive periods of service.

Rule 23.210 is amended to eliminate two unnecessary definitions and make one clarifying edit to an existing definition. After the creation of a definition for "Coordinating Board" in §23.1 (relating to Definitions) in the general provisions for this chapter, the definition of "Board" in §23.210 is redundant, with all references to "Board" throughout the subchapter changed to "Coordinating Board." The term "full-time" is used only once in the substantive portions of the subchapter, and so the definition has been incorporated contextually when it appears. The definition for "eligible institution" is clarified to use the full term, "institution of higher education" in reference to both public and private institutions to more closely reflect the statutory definition referenced in rule. The substance of the definition is unchanged.

Rule 23.211 is amended to clarify program eligibility rules so they more clearly reflect Coordinating Board practice. To align with other subchapters in Chapter 23, participants in the program are referred to as "applicants" before establishing eligibility and by their profession thereafter - in this case, "peace officers." Employer verification, currently included as an element of the submitted application in subparagraph (2)(A), is moved to paragraph (3), reflecting that it is a distinct part of the eligibility process and not part of the application itself. The new subparagraph (2)(B) consolidates renewal applications - previously located in repealed §23.213(b) (relating to Eligibility for Disbursement of Loan Repayment Assistance) into the overall eligibility section. The required statements in existing subparagraphs (2)(E) and (F) reflect an outdated version of the application submitted to the Coordinating Board for this program and are eliminated to reflect current practice and better align to the statutory requirements for eligibility.

Rule 23.212 is amended to clarify how the Coordinating Board prioritizes disbursement in the event that available funds are insufficient to offer loan repayment assistance to all eligible applicants. Existing subsections (b) and (c) are consolidated and rewritten for clarity; the substance of these provisions is unchanged.

Rule 23.215 is amended to relocate provisions to the new §23.216 (relating to provisions) and make nonsubstantive edits.

Rule 23.216 is created to consolidate program limitations previously included in §23.215 (related to Amount of Repayment Assistance). Paragraph (2) is the reconstituted §23.215(b) but is modified slightly by codifying the Coordinating Board's current practice that loan repayment assistance amounts may never exceed unpaid principal and interest owed on eligible education loans.

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

The amendments and new section are adopted under Texas Education Code, Section 61.9959, which provides the Coordinating Board with the authority to adopt rules as necessary to administer the Peace Officer Loan Repayment Assistance Program.

The adopted amendments and new section 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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SUBCHAPTER H. PEACE OFFICER LOAN REPAYMENT ASSISTANCE PROGRAM

19 TAC §§23.213, 23.214, 23.216

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of Title 19, Part 1, Chapter 23, Subchapter H, §§23.213, 23.214, and 23.216, Peace Officer Loan Repayment Assistance Program, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5476). The rules will not be republished.

The adopted repeal eliminates rules that have been determined to be unnecessary to the Coordinating Board's operations or duplicative of the General Provisions adopted in Chapter 23, Subchapter A, in July 2024.

The Coordinating Board is authorized to adopt rules as necessary for the administration of the program by Texas Education Code (TEC), §61.9959.

Rule 23.213 is repealed. The provisions contained within this section are consolidated into other rules to allow the structure of this subchapter to align with others in Chapter 23. Specifically, subsection (a) is moved to new rule §23.216 (relating to Limitations), and subsection (b) is moved to rule §23.211 (relating to Applicant Eligibility).

Rule 23.214 is repealed. The provisions of this rule have been incorporated into rule §23.2 (relating to Eligible Lender and Eligible Education Loan) in the general provisions of this chapter. Accordingly, this section is duplicative and is eliminated without affecting Coordinating Board operations.

Rule 23.216 is repealed. The section's only provision is a requirement for the Coordinating Board to post a link to adopted rules for this program and other program materials on its website. This requirement is duplicative of TEC, §61.9959(b), and, although public outreach and education regarding the Coordinating Board's programmatic offerings are key to the success of this and similar programs, the rule itself is unnecessary to the administration of the program. Its elimination does not affect Coordinating Board operations.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Education Code, Section 61.9959, which provides the Coordinating Board with the authority to adopt rules necessary for the administration of the Peace Officer Loan Repayment Assistance Program.

The adopted repeal affects 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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SUBCHAPTER J. MATH AND SCIENCE SCHOLARS LOAN REPAYMENT ASSISTANCE PROGRAM

19 TAC §§23.286 - 23.289, 23.293 - 23.295

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments and new rules in Title 19, Part 1, Chapter 23, Subchapter J, §§23.286 - 23.289 and 23.293 - 23.295, Math and Science Scholars Loan Repayment Assistance Program, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5477). The rules will not be republished.

The amendments and new section align the subchapter with others in Chapter 23 regarding structure, form, and language; eliminate duplicative provisions; and clarify potential ambiguities in existing rules; and the new section consolidates provisions specific to persons who established eligibility for the program prior to September 1, 2023.

The Coordinating Board is authorized to establish rules as necessary to administer the Math & Science Scholars Loan Repayment Program under Texas Education Code (TEC), Section 61.9840.

The subchapter is retitled to conform with the titles of the other subchapters in Chapter 23. Conforming changes to the program title are made throughout the subchapter.

Rule 23.286 is amended to align the subchapter's authority statement with that of other subchapters in Chapter 23. The purpose statement is revised to avoid any potential confusion related to the required length of service, which is included in the rules related to eligibility.

Rule 23.287 is amended to eliminate two unnecessary definitions and codify the Coordinating Board's existing operational definition for "public school" for this program. The terms "Commissioner" and "Coordinating Board" are defined in §23.1 (related to Definitions) in the general provisions of this chapter and are therefore duplicative in this rule. The term "employment service period" is changed to "service period" to align with usage in this subchapter and with other subchapters in Chapter 23. The definition for "public school" in paragraph (2) already is the operational definition for the term and is included to further clarify that otherwise eligible teachers employed at either traditional public or public charter schools may participate in the program.

Rule 23.288 is amended to simplify program eligibility rules so they more clearly reflect Coordinating Board practice. The rule is retitled to conform to a consistent rule structure and naming convention throughout Chapter 23. Historically, eligibility for this program has been a two-step process, with applicants establishing

initial eligibility for the program and then, after completing a service period, becoming eligible for disbursement of funds. These processes have since been combined, with applicants establishing eligibility after their first service period. Accordingly, the former subsection (b) and repealed §23.291 are combined into the new eligibility criteria, with conforming changes made throughout the rule to make the consolidation fit logically. The existing subsection (a) is relocated to the new §23.295 (relating to Provisions Specific to Teachers Who Established Eligibility for the Program Based on an Application Submitted Prior to September 1, 2023). New paragraph (3) now includes clarifying language that the Coordinating Board will specify the eligible majors biennially that constitute "an undergraduate or graduate program in mathematics or science" to alleviate confusion for potential applicants. Overall, eligibility criteria for the program remain unchanged.

Rule 23.289 is amended to clarify the means by which the Coordinating Board will rank applications in the event that funds available are insufficient to offer loan repayment to all eligible applicants. The rule is retitled to conform to a consistent rule structure and naming convention throughout Chapter 23. Subsections (a) and (b) are combined, along with a number of nonsubstantive edits for clarity. The prioritization process remains unchanged.

Rule 23.293 is amended to eliminate or relocate provisions to better align with other subchapters in Chapter 23. The rule is retitled to reflect its remaining provision: setting the annual amount of repayment assistance offered to eligible applicants. Subsection (a) is duplicative with §23.3 (relating to Method of Disbursement) and is eliminated. Subsection (c) is relocated to §23.295 (relating to Provisions Specific to Teachers Who Established Eligibility for the Program Based on an Application Submitted Prior to September 1, 2023). Subsection (d) is relocated to §23.294 (relating to Limitations).

Rule 23.294 is amended to consolidate various program limitations that were previously dispersed throughout the subchapter in a single rule. Paragraph (a)(3) is the reconstituted §23.293(d). Paragraph (a)(4) codifies the existing Coordinating Board practice of not offering an amount of loan repayment assistance that exceeds the unpaid principal and interest on an eligible education loan. Subsection (b) is the reconstituted §23.290(b).

Rule 23.295 is created to consolidate provisions affecting persons who established eligibility for the program prior to September 1, 2023. Subsection (a) is the reconstituted and combined §23.288(a) and §23.291(a), and subsection (b) is the reconstituted §23.290(a).

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

The amendments and new section are adopted under Texas Education Code, Section 61.9840, which provides the Coordinating Board with the authority to adopt rules as necessary to administer the Math & Science Scholars Loan Repayment Program.

The adopted amendments and new section 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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19 TAC §§23.290 - 23.292

The Texas Higher Education Coordinating Board (Coordinating Board) adopts repeal of Title 19, Part 1, Chapter 23, Subchapter J, §§23.290 - 23.292, Math and Science Scholars Loan Repayment Program, without changes to the proposed text as published in the July 26, 2024, issue of the *Texas Register* (49 TexReg 5481). The rules will not be republished.

The adopted repeal consolidates provisions into other rules to better reflect Coordinating Board practices or eliminates rules that are duplicative with the General Provisions in Chapter 23, Subchapter A, adopted by the Board in July 2024.

The Coordinating Board is authorized to adopt rules as necessary for the administration of the program by Texas Education Code (TEC), Section 61.9840.

Rule 23.290 is repealed. To better align the structure of the subchapter to others in Chapter 23, the provisions within this section are relocated elsewhere in the subchapter. Subsection (a) is relocated to new rule §23.295(b) (relating to Provisions Specific to Teachers Who Established Eligibility for the Program Based on an Application Submitted Prior to September 1, 2023) and subsection (b) is relocated to rule §23.294(b) (relating to Limitations).

Rule 23.291 is repealed. Historically, eligibility for this program has been a two-step process, with applicants establishing initial eligibility for the program and then, after completing a service period, becoming eligible for disbursement of funds. These processes have since been combined, with applicants establishing eligibility after their first service period. Accordingly, subsection (a) is incorporated into eligibility criteria established in new rule §23.295(a) (relating to Provisions Specific to Teachers Who Established Eligibility for the Program Based on an Application Submitted Prior to September 1, 2023) and subsection (b) is similarly incorporated into rule §23.288 (relating to Applicant Eligibility).

Rule 23.292 is repealed. The provisions of this rule have been incorporated into rule §23.2 (relating to Eligible Lender and Eligible Education Loan) in the general provisions of this chapter. Accordingly, this section is duplicative and can be eliminated without affected Coordinating Board operations.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Education Code, Section 61.9840, which provides the Coordinating Board with the authority to adopt rules as necessary to administer the Math & Science Scholars Loan Repayment Program.

The adopted repeal affects 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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TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 343. CONTESTED CASE PROCEDURE

The Texas Board of Physical Therapy Examiners adopts the amendments to 22 TAC §343.1, Definitions; §343.23, Hearings; §343.24, Payment of Costs for a Contested Case Hearing Resulting in the Discipline of a Licensee or the Denial of an Application for License; §343.26, Commutation of Time; §343.27, Probation; §343.28, Records Retention Schedule; §343.29, Failure To Appear at Informal Settlement Conference or Hearing; §343.35, Complaint Investigation and Disposition; §343.48, Dismissal of Complaint; §343.50, Application for Reinstatement of License; §343.51, Evaluation for Reinstatement; §343.52, Procedure upon Request for Reinstatement; §343.53, Board Action Possible upon Reinstatement of Revoked License; §343.55, Failure To Appear, and §343.56, Monitoring of Licensees, and adopts the repeal of §343.25, Continuance. The amendments and repeal are adopted without changes to the proposed text as published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 6961) and will not be republished.

The amendments are adopted in order to provide clarity to the procedures for contested cases, to correct inaccurate and outdated references, and to conform the rules in Chapter 343 with the physical therapy provisions in Chapter 453, Occupations Code, with the administrative procedures in Chapter 2001, Government Code, and with Title 1 Texas Administrative Code. The repeal is adopted as the procedure is covered under the State Office of Administrative Hearings (SOAH) rules for hearings.

The repeal is adopted as the procedure is covered under the State Office of Administrative Hearings (SOAH) rules for hearings.

There was no public comment.

22 TAC §§343.1, 343.23, 343.24, 343.26 - 343.29, 343.35, 343.48, 343.50 - 343.53, 343.55, 343.56

The amendments are 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.

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

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

TRD-202405053
Ralph Harper
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: November 15, 2024
Proposal publication date: September 6, 2024
For further information, please call: (512) 305-6900

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22 TAC §343.25

The repeal is adopted under Texas Occupation Code §453.102, which authorizes the board to adopt rules necessary to implement chapter 453.

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

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

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

SUBCHAPTER D. SPECIALTY CERTIFICATIONS

22 TAC §463.25

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Psychologists adopts the repeal of §463.25, relating to Health Service Psychologist Specialty Certification. Section 463.25 is repealed without changes as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5630) and will not be republished.

Reasoned Justification.

The adopted repeal is appropriate as the addition of a Health Service Psychologist Specialty Certification onto a psychologist's license no longer provides a meaningful public benefit necessitating regulation by the Council.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §501.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Psychologists previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §501.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 501 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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

TRD-202405004
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
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Proposal publication date: August 2, 2024
For further information, please call: (512) 305-7706

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PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

SUBCHAPTER B. RULES OF PRACTICE

22 TAC §781.302

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Social Worker Examiners adopts amendment to §781.302, relating to The Practice of Social Work. Section 781.302 is adopted with changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5631) and will be republished.

Reasoned Justification.

The adopted amendments clarify under what employment setting and supervision an LBSW and LMSW may practice. The amendments also remove restrictions on the locations an LBSW or LMSW may practice from, while preserving restrictions on LBSWs and LMSWs authorization to practice independently.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

Three commenters disagreed with adoption of the amended rule, noting the rule was confusing for license holders and that former section "(i)" as amended would be written in an incorrect or ungrammatical syntax. One commenter also objected to removing language related to prohibiting an LMSW from renting office space and opening up their own independent practice setting. The commenter suggested adding additional language to specify an LMSW must ensure who has oversight of the LMSW and responsibility for clients.

List of interested groups or associations for the rule.

National Association of Social Workers - Texas Chapter.

Summary of comments for the rule.

One commenter offered support for the proposed amendment, stating the changes clean up rule language to allow an LMSW to work remotely, such as at home, while still employed by and overseen by an agency and supervisor. The commenter also noted the improper syntax of the former section "(i)" as needing addressing.

Agency Response.

The Executive Council thanks the commenter for their supportive comments. Regarding the syntax error in the proposed rule, this was a typographical error made in the posting of the rule amendment to the *Texas Register*. The Council voted the adopt the rule with changes to reflect the original language proposed by the social work board to read as follows: "An LBSW or LMSW who is not recognized for independent practice may bill directly to patients or bill directly to third party payers if the LBSW or LMSW is under a formal supervision plan." The Council declines to return language describing the work setting for LMSWs, as board rules currently specify numerous times that an LMSW is not allowed to open an independent practice, regardless of the physical setting.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §505.2015 of the Tex. Occ. Code the Texas State Board of Social Worker Examiners previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §505.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed the rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 505 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§781.302. The Practice of Social Work.

(a) Practice of Baccalaureate Social Work--Applying social work theory, knowledge, methods, ethics and the professional use of self to restore or enhance social, psychosocial, or bio-psychosocial functioning of individuals, couples, families, groups, organizations and communities. Baccalaureate Social Work is generalist practice and may include interviewing, assessment, planning, intervention, evaluation, case management, mediation, counseling, supportive counseling, direct practice, information and referral, problem solving, supervision, consultation, education, advocacy, community organization, and policy and program development, implementation, and administration. An LBSW may only practice social work in an agency employment setting or under contract with an agency, unless under a non-clinical supervision plan per §781.402(d)(1) of this title.

(b) Practice of Independent Non-Clinical Baccalaureate Social Work--An LBSW recognized for independent practice, known as LBSW-IPR, may provide any non-clinical baccalaureate social work services in either an employment or an independent practice setting. An LBSW-IPR may work under contract, bill directly for services, and bill third parties for reimbursements for services. An LBSW-IPR must restrict his or her independent practice to providing non-clinical social work services.

(c) Practice of Master's Social Work--Applying social work theory, knowledge, methods and ethics and the professional use of self to restore or enhance social, psychosocial, or bio-psychosocial functioning of individuals, couples, families, groups, organizations and communities. Master's Social Work practice may include applying specialized knowledge and advanced practice skills in assessment, treatment, planning, implementation and evaluation, case management, mediation, counseling, supportive counseling, direct practice, information and referral, supervision, consultation, education, research, advocacy, community organization and developing, implementing and administering policies, programs and activities. An LMSW may engage in Baccalaureate Social Work practice. An LMSW may only practice social work in an agency employment setting or under contract with an agency, unless under a non-clinical supervision plan per §781.402(d)(1) of this title. An LMSW may practice clinical social work, as defined by subsection (f) of this section, in an agency employment setting or under contract with an agency if under clinical supervision per §781.404(a)(2) of this title or under a clinical supervision plan per §781.404(a)(3) of this title.

(d) Advanced Non-Clinical Practice of LMSWs--An LMSW recognized as an Advanced Practitioner (LMSW-AP) may provide any non-clinical social work services in either an employment or an independent practice setting. An LMSW-AP may work under contract, bill directly for services, and bill third parties for reimbursements for services. An LMSW-AP must restrict his or her practice to providing non-clinical social work services.

(e) Independent Practice for LMSWs--An LMSW recognized for independent practice may provide any non-clinical social work services in either an employment or an independent practice setting. This licensee is designated as LMSW-IPR. An LMSW-IPR may work under contract, bill directly for services, and bill third parties for reimbursements for services. An LMSW-IPR must restrict his or her independent practice to providing non-clinical social work services.

(f) Practice of Clinical Social Work--The practice of social work that requires applying social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or bio-psychosocial functioning of individuals, couples, families, groups, and/or persons who are adversely affected by social or psychosocial stress or health impairment. The practice of clinical social work requires applying specialized clinical knowledge and advanced clinical skills in assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions, including severe mental illness and serious emotional disturbances in adults, adolescents, and children. The clinical social worker may engage in Baccalaureate Social Work practice and Master's Social Work practice. Clinical treatment methods may include but are not limited to providing individual, marital, couple, family, and group therapy, mediation, counseling, supportive counseling, direct practice, and psychotherapy. Clinical social workers are qualified and authorized to use the Diagnostic and Statistical Manual of Mental Disorders (DSM), the International Classification of Diseases (ICD), Current Procedural Terminology (CPT) Codes, and other diagnostic classification systems in assessment, diagnosis, treatment and other practice activities. An LCSW may provide any clinical or non-clinical social work service or supervision in either an employment or independent practice setting. An LCSW may work under contract, bill directly for services, and bill third parties for service reimbursements.

(g) A licensee who is not recognized for independent practice and who is not under a non-clinical supervision plan must not engage in any independent practice that falls within the definition of social work practice in §781.102 of this title (relating to Definitions) unless the person is licensed in another profession and acting solely within the

scope of that license. If the person is practicing professionally under another license, the person may not use the titles "licensed master social worker," "licensed social worker," or "licensed baccalaureate social worker," or any other title or initials that imply social work licensure.

(h) An LBSW or LMSW who is not recognized for independent practice may bill directly to patients or bill directly to third party payers if the LBSW or LMSW is under a formal supervision plan.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
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For further information, please call: (512) 305-7706

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PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

SUBCHAPTER C. APPLICATIONS AND LICENSING

22 TAC §801.114

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists adopts amendments to §801.114, relating to Academic Course Content. Section 801.114 is adopted without changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5633) and will not be republished.

Reasoned Justification.

The adopted amendments have been made so the rule will better align with Section 502.252 of the Occupations Code.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
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Proposal publication date: August 2, 2024
For further information, please call: (512) 305-7706

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22 TAC §801.115

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists adopts the repeal of §801.115, relating to Academic Re-

quirements and Supervised Clinical Internship. The repeal of §801.115 is adopted without changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5635) and will not be republished.

Reasoned Justification.

The adopted repeal has been made so the licensing rules better align with Chapter 502 of the Occupations Code.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule repeal is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule repeal pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule repeal to the Executive Council. The rule repeal is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule repeal in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule repeal to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule repeal.

Lastly, the Executive Council also adopts this rule repeal under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
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Texas State Board of Examiners of Marriage and Family Therapists
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For further information, please call: (512) 305-7706

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22 TAC §801.142

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists adopts amendments to §801.142, relating to Supervised Clinical Experience Requirements and Conditions. Section 801.142 is adopted with changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5636) and will be republished.

Reasoned Justification.

The adopted amendments change the amount of supervision hours that may be counted towards licensure that are provided by telephone. Additionally, amendments have been made so the rule will better align with Section 502.252 of the Occupations Code.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

One commenter supported the rule amendment, noting that having the option of telephonic supervision would be helpful in some circumstances.

Agency Response.

The Council thanks the commenter for their support.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules nec-

essary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§801.142. Supervised Clinical Experience Requirements and Conditions.

An applicant for LMFT must complete supervised clinical experience acceptable to the council.

(1) The LMFT Associate must have completed a minimum of two years of work experience in marriage and family therapy, which includes a minimum of 3,000 hours of supervised clinical practice. The required 3,000 hours must include at least 1,500 hours providing direct clinical services, of which:

(A) no more than 750 hours may be provided via technology-assisted services (as approved by the supervisor); and

(B) at least 500 hours must be providing direct clinical services to couples or families.

(2) The remaining required hours, not covered by paragraph (1) above, may come from related experiences, including workshops, public relations, wrting case notes, consulting with referral sources, etc.

(3) An LMFT Associate must obtain a minimum of 200 hours of supervision by an LMFT-S during the required 3,000 hours, and at least 100 of these hours must be individual supervision.

(A) An LMFT Associate, when providing services, must receive a minimum of one hour of supervision every week, except for good cause shown.

(B) Supervision may be provided in person or by live video or, if the supervisor determines that in-person or live video supervision is not accessible, by telephone.

(C) An LMFT Associate may apply up to 100 graduate internship supervision hours toward the required 200 hours of supervision required for licensure as an LMFT.

(4) For an LMFT applicant who begins the graduate degree program used for their license application before September 1, 2025, staff may count graduate internship hours exceeding the requirements set in §801.114(b)(8) of this title toward the minimum requirement of at least 3,000 hours of supervised clinical practice under the following conditions.

(A) No more than 500 excess graduate internship hours, of which no more than 250 hours may be direct clinical services to couples or families, completed under a Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) accredited graduate program may be counted toward the minimum requirement of at least 3,000 hours of supervised clinical practice.

(B) No more than 400 excess graduate internship hours, of which no more than 200 hours may be direct clinical services to couples or families, completed under a non-COAMFTE-accredited graduate program may be counted toward the minimum requirement of at least 3,000 hours of supervised clinical practice.

(5) An LMFT Associate may practice marriage and family therapy in any setting under supervision, such as a private practice, public or private agencies, hospitals, etc.

(6) During the post-graduate, supervised clinical experience, both the supervisor and the LMFT Associate may have disciplinary actions taken against their licenses for violations of the Act, the Council Act, or council rules.

(7) Within 30 days of the initiation of supervision, an LMFT Associate must submit to the council a Supervisory Agreement Form for each council approved supervisor.

(8) An LMFT Associate may have no more than two council-approved supervisors at a time, unless given prior approval by the council or its designee.

(9) Applicants with a master's degree that qualifies under §§801.112 and 801.113 may count any supervision and experience (e.g., practicum, internship, externship) completed after conferral of the master's degree and as part of a doctoral program, toward the supervision and experience requirements set out in §801.142. A doctoral program must lead to a degree that qualifies under §§801.112 and 801.113 before the Council will award credit for supervision and experience under this provision.

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

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Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
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For further information, please call: (512) 305-7706

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22 TAC §801.143

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists adopts amendments to §801.143, relating to Supervisor Requirements. Section 801.143 is adopted with changes to the

proposed text as published in the May 17, 2024, issue of the *Texas Register* (49 TexReg 3479) and will be republished.

Reasoned Justification.

The adopted amendments are intended to set equitable requirements for achieving supervisor status; to standardize provisions concerning automatic revocation of supervisor status after a disciplinary order imposes a probated suspension, suspension, or revocation of a license; and makes typographical updates.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§801.143. Supervisor Requirements.

(a) To apply for supervisor status, an LMFT must be in good standing and submit:

(1) an application and applicable fee;

(2) documentation of the completion of at least 3,000 hours of LMFT practice over a minimum of 3 years; and

(3) documentation of one of following:

(A) successful completion of a 3-semester-hour, graduate course in marriage and family therapy supervision from an accredited institution;

(B) a 40-hour continuing education course in clinical supervision; or

(C) successful completion of an American Association for Marriage and Family Therapy (AAMFT) approved Fundamentals of Supervision course.

(b) A supervisor may not be employed by the person he or she is supervising.

(c) A supervisor may not be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to the person whom he or she is supervising.

(d) Within 60 days of the initiation of supervision, a supervisor must process and maintain a complete supervision file on the LMFT Associate. The supervision file must include:

(1) a photocopy of the submitted Supervisory Agreement Form;

(2) proof of council approval of the Supervisory Agreement Form;

(3) a record of all locations at which the LMFT Associate will practice;

(4) a dated and signed record of each supervision conference with the LMFT Associate's total number of hours of supervised experience, direct client contact hours, and direct client contact hours with couples or families accumulated up to the date of the conference;

(5) an established plan for the custody and control of the records of supervision for each LMFT Associate in the event of the supervisor's death or incapacity, or the termination of the supervisor's practice; and

(6) a copy of any written plan for remediation of the LMFT Associate.

(e) Within 30 days of the termination of supervision, a supervisor must submit written notification to the council.

(f) Both the LMFT Associate and the council-approved supervisor are fully responsible for the marriage and family therapy activities of the LMFT Associate.

(1) The supervisor must ensure the LMFT Associate knows and adheres to all statutes and rules that govern the practice of marriage and family therapy.

(2) A supervisor must maintain objective, professional judgment; a dual relationship between the supervisor and the LMFT Associate is prohibited.

(3) A supervisor may only supervise the number of individuals for which the supervisor can provide adequate supervision.

(4) If a supervisor determines the LMFT Associate may not have the therapeutic skills or competence to practice marriage and family therapy under an LMFT license, the supervisor must develop and implement a written plan for remediation of the LMFT Associate.

(5) A supervisor must timely submit accurate documentation of supervised experience.

(g) Supervisor status expires with the LMFT license.

(h) A supervisor who fails to meet all requirements for licensure renewal may not advertise or represent themselves as a supervisor in any manner.

(i) A supervisor whose license status is other than "active" is no longer an approved supervisor. Supervised clinical experience hours accumulated under that person's supervision after the date their license status changed from "active" or after removal of the supervisor designation will not count as acceptable hours unless approved by the council.

(j) Upon execution of a Council order for probated suspension, suspension, or revocation of the LMFT license with supervisor status, the supervisor status is revoked. A licensee whose supervisor status is revoked must:

(1) inform each LMFT Associate of the council disciplinary order;

(2) refund all supervisory fees received after date the council disciplinary order was ratified to the LMFT Associate who paid the fees; and

(3) assist each LMFT Associate in finding alternate supervision.

(k) Supervision of an LMFT Associate without being currently approved as a supervisor is grounds for disciplinary action.

(l) The LMFT Associate may compensate the supervisor for time spent in supervision if the supervision is not part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.

(m) At a minimum, the 40-hour continuing education course in clinical supervision, referenced in subsection (a)(3)(B) of this section, must meet each of the following requirements:

(1) the course must be taught by a graduate-level licensee holding supervisor status issued by the Council:

(2) all related coursework and assignments must be completed over a time period not to exceed 90 days; and

(3) the 40-hour supervision training must include at least:

(A) three (3) hours for defining and conceptualizing supervision and models of supervision;

(B) three (3) hours for supervisory relationship and marriage and family therapist development;

(C) twelve (12) hours for supervision methods and techniques, covering roles, focus (process, conceptualization, and personalization), group supervision, multi-cultural supervision (race, ethnic, and gender issues), and evaluation methods;

(D) twelve (12) hours for supervision and standards of practice, codes of ethics, and legal and professional issues; and

(E) three (3) hours for executive and administrative tasks, covering supervision plan, supervision contract, time for supervision, record keeping, and reporting.

(n) Subsection (m) of this section is effective May 1, 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 October 25, 2024.

TRD-202405022
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: November 14, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 305-7706

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22 TAC §801.201

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists adopts new rule §801.201, relating to Temporary License. Section 801.201 is adopted without changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5638) and will not be republished.

Reasoned Justification.

The adopted new rule creates a temporary Texas license for marriage and family therapists who are licensed to practice independently in another jurisdiction. Temporary license holders are allowed to use this license for up to thirty (30) days within one year from the date of issuance, and the thirty days are not required to be consecutive. Temporary license holders are required to report the use of this license after utilizing the full thirty days or the expiration of one year from licensure, whichever occurs first.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose the adoption of this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also adopts this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may adopt this rule.

Lastly, the Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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

TRD-202405024
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Effective date: November 14, 2024
Proposal publication date: August 2, 2024
For further information, please call: (512) 305-7706

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PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

CHAPTER 882. APPLICATIONS AND LICENSING

SUBCHAPTER A. LICENSE APPLICATIONS

22 TAC §882.14

The Texas Behavioral Health Executive Council adopts new rule §882.14, relating to Petition for Waiver or Remediation of Deficiency. Section 882.14 is adopted without changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5640) and will not be republished.

Reasoned Justification.

The adopted new rule authorizes the Council through its member boards to accept remediation of any licensing requirement that is not required by statute or federal law.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Two commenters expressed support for the rule as a reasonable and logical change to support those seeking licensure.

Agency Response.

The Council thanks commenters for their supportive comments.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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

TRD-202405009
Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Effective date: November 14, 2024
Proposal publication date: August 2, 2024
For further information, please call: (512) 305-7706

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SUBCHAPTER B. LICENSE

22 TAC §882.21

The Texas Behavioral Health Executive Council adopts amendments to §882.21, relating to License Statuses. Section 882.21 is adopted without changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5641) and will not be republished.

Reasoned Justification.

The adopted amendments update the definition of inactive and delinquent licenses to ensure a license with a pending disciplinary complaint or investigation does not expire until after

the complaint has been resolved. The amendments also clarify which licenses' statuses allow practice and the process for requesting retirement of a license.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

One commenter expressed support for the proposed amendment. The commentor also raised a question about a separate portion of the amended rule unrelated to the proposed amendment.

Agency Response.

The Council thanks the commenter for their support.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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

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Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
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Proposal publication date: August 2, 2024
For further information, please call: (512) 305-7706

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CHAPTER 884. COMPLAINTS AND ENFORCEMENT
SUBCHAPTER B. INVESTIGATIONS AND DISPOSITION OF COMPLAINTS

22 TAC §884.10

The Texas Behavioral Health Executive Council adopts amendments to §884.10, relating to Investigation of Complaints. Section 884.10 is adopted without changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5643) and will not be republished.

Reasoned Justification.

This amendment would allow Council staff to close without investigation a complaint that lacks sufficient evidence to identify a violation or where the complainant is uncooperative.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

Three commenters offered support for the amendment, with one noting the change was efficient and that closing complaints that do not have sufficient evidence to go forward makes sense. One commenter suggested also adding a new category of "medium priority" when prioritizing complaint investigations that do not rise to the level of a high priority such as physical danger, but that could nevertheless result in potential mental or emotional abuse.

Agency Response.

The Council thanks commenters for their supportive comments. At this time the agency declines to add an additional prioritization category, but will keep the suggestion under advisement.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
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For further information, please call: (512) 305-7706

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SUBCHAPTER H. CONTESTED CASES

22 TAC §884.60

The Texas Behavioral Health Executive Council adopts the repeal of §884.60, relating to Witness Fees. Section 884.60 is repealed without changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5644) and will not be republished.

Reasoned Justification.

The adopted repeal of this rule is necessary because it is replaced with a new rule. The new rule will clarify agency procedures for the issuance of subpoenas and commissions for depositions during a contested case at SOAH.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Effective date: November 14, 2024
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For further information, please call: (512) 305-7706

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22 TAC §884.60

The Texas Behavioral Health Executive Council adopts new rule §884.60, relating to Depositions, Subpoenas, and Witness Expenses. Section 884.60 is adopted without changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5644) and will not be republished.

Reasoned Justification.

The adopted new rule clarifies agency procedures for the issuance of subpoenas and commissions for depositions during a contested case at SOAH.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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

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Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
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For further information, please call: (512) 305-7706

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CHAPTER 885. FEES

22 TAC §885.1

The Texas Behavioral Health Executive Council adopts amendments to §885.1, relating to Executive Council Fees. Section 885.1 is adopted with changes to the proposed text as published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5647) and will be republished.

Reasoned Justification.

The adopted amendments clarify that only individuals eligible to reinstate an expired license may apply for reinstatement. In addition, the amendments clarify the requirements for receiving waiver of licensing and examination fees for military service-related applicants. The amendments remove fees for an LMFT Associate license renewal or extension, which are no longer authorized under agency rules, and for a mailing list the agency no longer provides. Another rule proposal would create a temporary MFT licenses, so a $103 fee is established. The adopted amendments clarify fee components for application to upgrade an LMFT Associate license and for examinations.

List of interested groups or associations against the rule.

None.

Summary of comments against the rule.

None.

List of interested groups or associations for the rule.

None.

Summary of comments for the rule.

None.

Agency Response.

None.

Statutory Authority.

The rule is adopted under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council adopts this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also adopts this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§885.1 Executive Council Fees.

(a) General provisions.

(1) All fees are nonrefundable, nontransferable, and cannot be waived except as otherwise permitted by law. Any attempt to cancel, initiate a chargeback, or seek recovery of fees paid to the Council may result in the opening of a complaint against a licensee or applicant.

(2) Fees required to be submitted online to the Council must be paid by debit or credit card. All other fees paid to the Council must be in the form of a personal check, cashier's check, or money order.

(3) For applications and renewals the Council is required to collect fees to fund the Office of Patient Protection (OPP) in accordance with Texas Occupations Code §101.307, relating to the Health Professions Council.

(4) For applications, examinations, and renewals the Council is required to collect subscription or convenience fees to recover costs associated with processing through Texas.gov.

(5) All examination fees are to be paid to the Council's designee.

(b) The Executive Council adopts the following chart of fees:

(1) Fees effective through August 31, 2023.
Figure: 22 TAC §885.1(b)(1) (No change.)

(2) Fees effective on September 1, 2023.
Figure: 22 TAC §885.1(b)(2)

(c) Late fees. (Not applicable to Inactive Status)

(1) If the person's license has been expired (i.e., delinquent) for 90 days or less, the person may renew the license by paying to the Council a fee in an amount equal to one and one-half times the base renewal fee.

(2) If the person's license has been expired (i.e., delinquent) for more than 90 days but less than one year, the person may renew the license by paying to the Council a fee in an amount equal to two times the base renewal fee.

(3) If the person's license has been expired (i.e., delinquent) for one year or more, the person may not renew the license; however, if eligible the person may apply for reinstatement of the license.

(d) Open Records Fees. In accordance with §552.262 of the Government Code, the Council adopts by reference the rules developed by the Office of the Attorney General in 1 TAC Part 3, Chapter 70 (relating to Cost of Copies of Public Information) for use by each governmental body in determining charges under Government Code, Chapter 552 (Public Information) Subchapter F (Charges for Providing Copies of Public Information).

(e) Military Exemption for Fees. All licensing and examination base rate fees payable to the Council are waived for applicants who are:

(1) military service members and military veterans, as those terms are defined by Chapter 55, Occupations Code, whose military service, training, or education substantially meets all licensure requirements; or

(2) military service members, military veterans, and military spouses, as those terms are defined by Chapter 55, Occupations Code, who hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements of this state.

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

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

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Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Effective date: November 14, 2024
Proposal publication date: August 2, 2024
For further information, please call: (512) 305-7706

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 281. APPLICATIONS PROCESSING

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§281.1, 281.5, and 281.22; and the repeal of §§281.30, 281.31, and 281.32.

Amended §§281.1, 281.5, and 281.22 and the repeal of §§281.30, 281.31, and 281.32 are adopted *without changes* to the proposed text as published in the May 24, 2024, issue of the *Texas Register* (49 TexReg 3704) and therefore will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

Electronic Application Submittal

The rulemaking implements Senate Bill (SB) 1397, 88th Legislature, 2023, by requiring a person who submits an application under §281.5(a) to submit an accurate duplicate of the application in electronic format. SB 1397 enacted Texas Water Code §5.1734, which requires the commission to post an electronic copy of a permit application at the time the application is declared administratively complete. Application forms will provide detailed information regarding submitting a copy of the application in electronic format such as formatting, frequency, and timing of the submittal.

Obsolete Rule Repeal

The rulemaking also deletes one subsection, §281.22(c), and repeals three sections that the commission identified as obsolete during the quadrennial rule review of Chapter 281 (44 TexReg 7717): §281.30 (Applicability of Prioritization Procedures for Commercial Hazardous Waste Management Facility Permit Applications); §281.31 (Definitions); and §281.32 (Prioritization Process). These sections implemented Texas Health and Safety Code (THSC), §361.0232 and §361.0871(c) enacted by SB 1099, 72nd Legislature, 1991, and subsequently repealed by House Bill (HB) 7, 78th Legislature, 2003, Third Called Session.

As part of this rulemaking, the commission is also adopting revisions to 30 Texas Administrative Code (TAC) Chapter 328, Waste Minimization and Recycling; Chapter 330, Municipal Solid Waste; and Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, concurrently in this issue of the *Texas Register*.

Section by Section Discussion

§281.1, Purpose

The commission amends §281.1 to replace the name of the commission's predecessor agency, Texas Natural Resource Conservation Commission, with the commission's current name, Texas Commission on Environmental Quality, and to remove obsolete rule references regarding the prioritization procedure for commercial hazardous waste management facility permit applications under §§281.30 - 281.32 by deleting §§281.30 - 281.32.

§281.5, Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits

The commission adopts new §281.5(b) to require a person who submits an application under §281.5(a) to submit an accurate duplicate of the application in electronic format to implement SB 1397. The commission also adopts amended §281.5(a)(4) to conform with drafting standards by removing the term "agency" and replacing it with the term "commission."

§281.22, Referral to Commission

The commission deletes §281.22(c). The statutory basis for this subsection was repealed.

§281.30, Applicability of Prioritization Procedures for Commercial Hazardous Waste Management Facility Permit Applications

The commission repeals §281.30. The statutory basis for this section was repealed.

§281.31, Definitions

The commission repeals §281.31. The statutory basis for this section was repealed.

§281.32, Prioritization Process

The commission repeals §281.32. The statutory basis for this section was repealed.

Final Regulatory Impact Determination

The commission reviewed the rulemaking adoption in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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."

First, the rulemaking adoption does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking adoption is to require a person who submits an application under §281.5(a) to submit an accurate duplicate of the application in electronic format and to amend and repeal obsolete TCEQ rules in Chapter 281 relating to the referral of applications to the commission and the implementation of the prioritization procedure for commercial hazardous waste management facility permit applications.

Second, the rulemaking adoption does not meet the statutory definition of a "Major environmental rule" because the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the rulemaking adoption will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Finally, the rulemaking adoption does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies 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. This rulemaking adoption does not meet any of the four preceding applicability requirements.

This rulemaking adoption does not meet the statutory definition of a "Major environmental rule," nor does it meet any of the four applicability requirements for a "Major environmental rule." Therefore, this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No public comments were received regarding the regulatory impact analysis determination.

Takings Impact Assessment

The commission has prepared a takings impact assessment for these adopted rules in accordance with Texas Government Code, §2007.043. The commission's preliminary assessment is that implementation of these adopted rules will not constitute a taking of real property. The commission adopts this rulemaking for the purpose of implementing SB 1397 and for the purpose of amending and repealing obsolete TCEQ rules in Chapter 281 that the commission identified during the quadrennial rule review.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules based upon exceptions to applicability in Texas Government Code, §2007.003(b)(4) and (5). First, the rulemaking adoption will implement SB 1397 by creating new §281.5(b) to require a person who submits an application under §281.5(a) to submit an accurate duplicate of the application in electronic format. This action is reasonably taken to fulfill an obligation mandated by state law; therefore, Texas Government Code, Chapter 2007, does not apply to this adopted rule based upon the exception to applicability in Texas Government Code, §2007.003(b)(4). Second, the rulemaking adoption will delete one subsection, §281.22(c), and repeal three sections that the commission identified as obsolete during the quadrennial rule review of Chapter 281 (44 TexReg 7717): §281.30 (Applicability of Prioritization Procedures for Commercial Hazardous Waste Management Facility Permit Applications); §281.31 (Definitions); and §281.32 (Prioritization Process). These sections implemented THSC §361.0232 and §361.0871(c) enacted by SB 1099, 72nd Legislature, 1991, and subsequently repealed by HB 778th Legislature, 2003, Third Called Session. The adopted repeal of §281.22(c) and §281.30 through §281.32 reflect TCEQ having discontinued the prioritization procedure for commercial hazardous waste management facility permit applications which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Therefore, Texas Government Code, Chapter 2007 does not apply to these adopted rule changes because the rulemaking adoption falls within the exception under Texas Government Code, §2007.003(b)(5).

Further, the commission determined that promulgation of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the adopted rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the amendments are consistent with CMP goals and policies because the rulemaking will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No public comments were received regarding the CMP.

Public Comment

The commission offered a public hearing on June 20, 2024. The comment period closed on June 25, 2024. No public comments were received.

SUBCHAPTER A. APPLICATIONS PROCESSING

30 TAC §§281.1, 281.5, 281.22

Statutory Authority

The amendments are adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC;

TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; TWC, §5.128, which authorizes the commission to utilize electronic means of transmission of information, including notices, orders, and decisions issued or sent by the commission; TWC, §5.1734, which requires the commission to post permit applications and associated materials on its website; TWC, §27.012, which requires the commission to prescribe forms for permit applications to authorize injection wells under its jurisdiction; TWC, §27.019, which requires the commission to adopt rules and procedures reasonably required for the performance of its powers, duties, and functions under TWC, Chapter 27; the Administrative Procedures Act under Texas Government Code, Chapter 2001, which authorizes the commission as a state agency to adopt rules pursuant to the rulemaking process; Texas Government Code, §2001.039 and 1 Texas Administrative Code, Chapter 91, Subchapter D, which authorize the commission as a state agency to review and consider for readoption each of its rules not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date; Texas Health and Safety Code (THSC), §361.011, which establishes the commission's jurisdiction over the regulation, management, and control of municipal solid waste; THSC, §361.015, which authorizes the commission to license and regulate radioactive waste-storage, processing and disposal activities; THSC, §361.017, which establishes the commission's jurisdiction over the regulation, management, and regulation and control of industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act in accordance with the Administrative Procedures Act; THSC, §361.061, which authorizes the commission to issue permits authorizing facilities for the storage, processing and disposal of industrial solid waste; THSC, §361.064, which requires the commission to prescribe the form of, requirements and procedures for a permit application for a solid waste facility; and THSC, §401, which grants the commission authority over licenses for the disposal of radioactive substances.

The adopted amendment to §281.5 will implement Senate Bill (SB) 1397, 88th Legislature, 2023, which enacted TWC, §5.1734. The adopted amendments will also delete one subsection, §281.22(c), that the commission identified as obsolete during the quadrennial rule review of Chapter 281 (44 TexReg 7717). These sections implemented THSC, §361.0232 and §361.0871(c), SB 1099, 72nd legislature, 1991, and subsequently repealed by House Bill 7, 78th Legislature, 2003, Third Called Session.

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) 239-6087

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30 TAC §§281.30 - 281.32

Statutory Authority

The repeals are adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; the Administrative Procedures Act under Texas Government Code, Chapter 2001, which authorizes the commission as a state agency to adopt rules pursuant to the rulemaking process; Texas Government Code, §2001.039 and 1 Texas Administrative Code, Chapter 91, Subchapter D, which authorize the commission as a state agency to review and consider for readoption each of its rules not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date; Texas Health and Safety Code (THSC), §361.011, which establishes the commission's jurisdiction over the regulation, management, and control of municipal solid waste; THSC, §361.017, which establishes the commission's jurisdiction over the regulation, management, and regulation and control of industrial; solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act in accordance with the Administrative Procedures Act; THSC, §361.061, which authorizes the commission to issue permits authorizing facilities for the storage, processing and disposal of industrial solid waste; and THSC, §361.064, which requires the commission to prescribe the form of, requirements and procedures for a permit application for a solid waste facility.

The adopted repeals will repeal three sections, §§281.30 - 281.32, that the commission identified as obsolete during the quadrennial rule review of Chapter 281 (44 TexReg 7717). These sections implemented THSC, §361.0232 and §361.0871(c) which were enacted by SB 1099, 72nd Texas legislature, 1991, and subsequently repealed by House Bill 7, 78th Texas Legislature, 2003, Third Called Session.

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 328. WASTE MINIMIZATION AND RECYCLING

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §328.7; and new §§328.301 - 328.304.

Amended §328.7 and new §§328.301 - 328.304 are adopted *without changes* to the proposed text as published in the May 24, 2024, issue of the *Texas Register* (49 TexReg 3708) and therefore will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The commission adopts this rulemaking to implement House Bill (HB) 3060, 88th Texas Legislature, 2023. HB 3060 amended Texas Health and Safety Code (THSC), §361.0151 (Recycling), §361.421 (Definitions), and §361.427 (Specifications for Recycled Products); and added §361.4215 (Mass Balance Attribution). These statutory enactments require the commission to promulgate rules to: 1) identify third-party certification systems for mass balance attribution that may be used for the purposes of the definitions of "recycled material" and "recycled plastics" in THSC, §361.421(6) and §361.421(6-a), respectively; and 2) establish guidelines by which a product is eligible to be considered a recycled product in accordance with THSC, §361.4215 and §361.427.

As part of this rulemaking, the commission is adopting revisions to 30 Texas Administrative Code (TAC) Chapter 281, Applications Processing; Chapter 330, Municipal Solid Waste; and Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, concurrently in this issue of the *Texas Register.*

Section by Section Discussion

Subchapter B: Recycling, Reuse, and Materials Recovery Goals and Rates

§328.7, Definitions of Terms and Abbreviations

The commission amends §328.7(4) by replacing existing subparagraphs (A) - (H) with clauses (i) - (viii) in subparagraph (A) and adding clauses (ix) - (xii) to update the definition of "Recycled product" to reference current Environmental Protection Agency Comprehensive Procurement Guidelines and Recovered Materials Advisory Notices. The definition is also revised by reorganizing text in former subparagraph (H) under new subparagraph (B), by updating references to the Federal Trade Commission and the American Society for Testing Materials guidelines, and adding new subparagraph (C) to exclude a product sold as fuel from the definition. The amendments implement HB 3060 which amended the definition of "Recycled product" in THSC, §361.421 by replacing the phrase "which meets the requirements for recycled material content as prescribed by" with the phrase "that is eligible to be considered a recycled product under," and by clarifying that the term does not include a product sold as fuel.

Subchapter L: Third-party Certification Systems for Mass Balance Attribution

§328.301, Purpose and Applicability

The commission adopts new §328.301 to establish the purpose and applicability of the subchapter.

§328.302, Definitions

The commission adopts new §328.302 to implement HB 3060 by adopting definitions of the terms "Recycled material," "Recycled plastics," and "Recycling" to implement the definitions in THSC, §361.421; and adopting definitions of the terms "Mass balance attribution," and "Third-party certification system" to implement §361.4215.

§328.303, Third-Party Certification Systems for Mass Balance Attribution

The commission adopts new §328.303 to implement THSC, §361.4215, as promulgated by HB 3060, which requires the commission to adopt rules to identify third-party mass balance attribution certification systems.

§328.304, Recycled Products

The commission adopts new §328.304 to implement THSC, §361.427, as amended by HB 3060. HB 3060 amended THSC, §361.427 by clarifying that the guidelines the commission establishes in rule for determining whether a product is eligible to be considered to be a recycled product must be based on the percent of the total content of a product that consists of recycled material or the portion determined to consist of recycled material according to a third-party certification system for mass balance attribution, and by clarifying that post-use polymers be included among recycled material in these guidelines.

Final Regulatory Impact Determination

The commission reviewed the rulemaking adoption in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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."

First, the rulemaking adoption does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking adoption is to promulgate rules to: 1) identify third-party certification systems for mass balance attribution that may be used for the purposes of the definitions of "recycled material" and "recycled plastics" in THSC, §361.421(6) and §361.421(6-a), respectively; and 2) establish guidelines by which a product is eligible to be considered a recycled product in accordance with THSC, §361.4215 and §361.427.

Second, the rulemaking adoption does not meet the statutory definition of a "Major environmental rule" because the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the

adopted rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the rulemaking adoption will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Finally, the rulemaking adoption does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies 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. This rulemaking adoption does not meet any of the four preceding applicability requirements.

This rulemaking adoption does not meet the statutory definition of a "Major environmental rule," nor does it meet any of the four applicability requirements for a "Major environmental rule." Therefore, this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No public comments were received regarding the regulatory impact analysis determination.

Takings Impact Assessment

The commission has prepared a takings impact assessment for these adopted rules in accordance with Texas Government Code, §2007.043. The commission's preliminary assessment is that implementation of these adopted rules will not constitute a taking of real property. The commission adopts this rulemaking for the purpose of promulgating rules to: 1) identify third-party certification systems for mass balance attribution that may be used for the purposes of the definitions of "recycled material" and "recycled plastics" in THSC, §361.421(6) and §361.421(6-a), respectively; and 2) establish guidelines by which a product is eligible to be considered a recycled product in accordance with THSC, §361.4215 and §361.427.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). HB 3060 amended THSC, §361.0151 (Recycling), §361.421 (Definitions), and §361.427 (Specifications for Recycled Products); and added §361.4215 (Mass Balance Attribution). These statutory enactments require the commission promulgate rules to: 1) identify third-party certification systems for mass balance attribution that may be used for the purposes of the definitions of "recycled material" and "recycled plastics" in THSC, §361.421(6) and §361.421(6-a), respectively; and 2) establish guidelines by which a product is eligible to be considered a recycled product in accordance with THSC, §361.4215 and §361.427, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Therefore, Texas Government Code, Chapter 2007 does not apply to these adopted rule changes because the adopted rulemaking falls within the exception under Texas Government Code, §2007.003(b)(4).

Further, the commission determined that promulgation of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the adopted rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the amendments are consistent with CMP goals and policies because the rulemaking will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No public comments were received regarding the CMP.

Public Comment

The commission offered a public hearing on June 20, 2024. The comment period closed on June 25, 2024. No public comments were received.

SUBCHAPTER B. RECYCLING, REUSE, AND MATERIALS RECOVERY GOALS AND RATES

30 TAC §328.7

Statutory Authority

The amendments are adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; the Administrative Procedures Act under Texas Government Code, Chapter 2001, which authorizes the commission as a state agency to adopt rules pursuant to the rulemaking process; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to

adopt rules consistent with the general purposes of the Solid Waste Disposal Act; THSC, §361.0151, which requires the commission to base its goals or requirements for recycling or the use of recycled materials on the definitions and principles established by Subchapter N, THSC, §§361.421 - 361.431; THSC, §361.022 and §361.023, which set public policy in the management of municipal solid waste and hazardous waste to include reuse or recycling of waste; THSC, §361.041, which conditionally excludes post-use polymers and recoverable feedstock from classification as solid waste when are converted using pyrolysis, gasification, solvolysis, or depolymerization into valuable raw materials, valuable intermediate products or valuable final products, that include plastic monomers, chemicals, waxes, lubricants, and chemical feedstocks; THSC, §361.078 which identifies that THSC Chapter 361 Subchapter B does not abridge, modify or restrict the commission's authority to adopt rules issue permits and enforce the terms of permits as necessary to maintain state authorization of Texas' hazardous waste program; THSC, §361.119, which requires the commission to adopt rules and to adopt rules consistent with THSC Chapter 361 to ensure that solid waste processing facilities are regulated as solid waste facilities and not allowed to operate unregulated as recycling facilities; THSC, §361.4215 which authorizes the commission to identify third-party certification systems for mass balance attribution that may be used for the purposes of THSC, §361.421(6) and (6-a); THSC, §361.425 which provides that the commission shall adopt rules for administering governmental entity recycling programs; THSC, §361.426, which provides that the commission shall adopt rules for administering governmental entity preferences for recycled products; and THSC, §361.427 which authorizes the commission to promulgate rules to establish guidelines by which a product is eligible to be considered a recycled product.

The adopted amendments to §328.302 will implement House Bill (HB) 3060, 88th Texas Legislature, 2023, by adding the definitions of "Recycled material," "Recycled plastics," and "Recycling" so that they are consistent with the definitions under THSC, §361.421. The adopted amendments to §328.302 will also implement HB 3060 by adding the definitions of "Recycled product" and "Third-party certification system" so that they are consistent with the definitions under THSC, §361.427 and §361.4215, 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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SUBCHAPTER L. THIRD-PARTY CERTIFICATION SYSTEMS FOR MASS BALANCE ATTRIBUTION

30 TAC §§328.301 - 328.304

Statutory Authority

The new sections are adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; the Administrative Procedures Act under Texas Government Code, Chapter 2001, which authorizes the commission as a state agency to adopt rules pursuant to the rulemaking process; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act; THSC, §361.0151, which requires the commission to base its goals or requirements for recycling or the use of recycled materials on the definitions and principles established by Subchapter N, THSC, §§361.421 - 361.431; THSC, §361.022 and §361.023, which set public policy in the management of municipal solid waste and hazardous waste to include reuse or recycling of waste; THSC, §361.041, which conditionally excludes post-use polymers and recoverable feedstock from classification as solid waste when are converted using pyrolysis, gasification, solvolysis, or depolymerization into valuable raw materials, valuable intermediate products or valuable final products, that include plastic monomers, chemicals, waxes, lubricants, and chemical feedstocks; THSC, §361.078 which identifies that THSC Chapter 361 Subchapter B does not abridge, modify or restrict the commission's authority to adopt rules issue permits and enforce the terms of permits as necessary to maintain state authorization of Texas' hazardous waste program; THSC, §361.119, which requires the commission to adopt rules and to adopt rules consistent with THSC Chapter 361 to ensure that solid waste processing facilities are regulated as solid waste facilities and not allowed to operate unregulated as recycling facilities; THSC, §361.4215 which authorizes the commission to identify third-party certification systems for mass balance attribution that may be used for the purposes of THSC, §361.421(6) and (6)(a); THSC, §361.425 which provides that the commission shall adopt rules for administering governmental entity recycling programs; THSC, §361.426, which provides that the commission shall adopt rules for administering governmental entity preferences for recycled products; and THSC, §361.427 which authorizes the commission to promulgate rules to establish guidelines by which a product is eligible to be considered a recycled product.

The adopted new §328.302 will implement House Bill (HB) 3060, 88th Texas Legislature, 2023, by adding the definitions of "Recycled material." "Recycled plastics." And "Recycling." so that they are consistent with the definitions under THSC, §361.421. The adopted new §328.302 will also implement HB 3060 by adding the definitions of "Recycled product" and "Third-party certification system" so that they are consistent with the definitions under THSC, §361.427 and §361.4215, 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 330. MUNICIPAL SOLID WASTE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §§330.1, 330.3, 330.5, 330.7, 330.13, 330.15, 330.23, 330.57, 330.63, 330.65, 330.69, 330.103, 330.125, 330.147, 330.165, 330.171, 330.173, 330.217, 330.421, 330.545, 330.613, 330.615, 330.633, 330.635, 330.951, 330.953, 330.959, 330.987, 330.991, 330.993, and 330.995.

Amended §§330.1, 330.3, 330.5, 330.7, 330.13, 330.15, 330.23, 330.57, 330.63, 330.65, 330.69, 330.103, 330.125, 330.147, 330.165, 330.171, 330.173, 330.217, 330.421, 330.545, 330.613, 330.615, 330.633, 330.635, 330.951, 330.953, 330.959, 330.987, 330.991, 330.993, and 330.995 are adopted *without changes* to the proposed text as published in the May 24, 2024, issue of the *Texas Register* (49 TexReg 3713) and therefore will not be republished.

Amendments to §330.954 have been withdrawn.

Background and Summary of the Factual Basis for the Adopted Rules

Promulgation of House Bill 3060

The commission adopts this rulemaking to implement House Bill (HB) 3060, 88th Texas Legislature, 2023. HB 3060 amended Texas Health and Safety Code (THSC), §361.003 (Definitions), §361.041 (Treatment of Post-Use Polymers and Recoverable Feedstocks as Solid Waste), and §361.119 (Regulation of Certain Facilities as Solid Waste Facilities). These statutory enactments expanded existing conditional exclusions from the definition of solid waste and regulations applicable to owners and operators of facilities that convert plastics and certain other nonhazardous recyclable material through pyrolysis and gasification to include the processes of depolymerization and solvolysis. The conditional exclusion is dependent upon two conditions being satisfied: (1) an advanced recycling facility owner or operator must demonstrate that the primary function of the facility is to convert materials into products for subsequent beneficial use; and (2) that all solid waste generated from converting the materials is disposed of at a solid waste management facility authorized by the commission. The commission's implementation of HB 3060 in Chapter 330 is only applicable to material that is classified as nonhazardous municipal solid waste if discarded. Implementation of provisions enacted by HB 3060 applicable to material that will be classified as industrial solid waste if discarded is adopted in Chapter 335 (Industrial Solid Waste and Municipal Hazardous Waste).

Electronic Application Submittal

The commission also adopts this rulemaking to implement Senate Bill (SB) 1397, 88th Texas Legislature, 2023. SB 1397 enacted Texas Water Code, §5.1734 which requires the commission to post on its website an electronic copy of an administratively complete permit application and subsequent revisions to the application. The adopted rulemaking amends §330.57 by reducing the number of paper applications an applicant is required to submit from four to two, and replacing the requirement for the applicant to post the initial application on a publicly accessible website with the requirement that the commission will post an electronic copy of the application on the commission's website.

Rule Citation Corrections

This rulemaking makes minor and non-substantive updates to incorrect rule citations or references.

Correcting use of and reference to Conditionally Exempt Small Quantity Generator which has changed to Very Small Quantity Generator

The adopted rulemaking corrects the name of the lowest tier hazardous waste generator category which the Environmental Protection Agency (EPA) changed from "conditionally exempt small quantity generator" (CESQG) to "very small quantity generator" (VSQG) as part of the Hazardous Waste Generator Improvements Rule promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85732). The commission adopted the Generator Improvements Rule in Chapter 335 of this title effective February 3, 2022. The Generator Improvements Rule also introduced alternative standards applicable to VSQGs who generate greater amounts of hazardous waste during an "episodic event" as defined in 40 Code of Federal Regulations (CFR) Part 262, Subpart L. The commission adopted by reference in 30 Texas Administrative Code (TAC) §335.60 the alternative standards applicable to VSQGs who generate hazardous waste during an "episodic event" (47 TexReg 318). Under the new conditional exclusion, a VSQG may generate greater than a VSQG quantity of hazardous waste in a calendar month during an episodic event, manage the hazardous waste as regulated hazardous waste, and avoid being up-classified to a small quantity generator or a large quantity generator by complying with all of the conditions for exclusion for an episodic event which among other things include consigning the hazardous waste to be transported by a registered hazardous waste transporter accompanied by a manifest to an authorized hazardous waste facility. A VSQG may qualify for up to two episodic events per year. A second episodic event must be approved by the executive director. If a VSQG complies with the conditional exclusion for an episodic event, hazardous waste generated during a month in which a VSQG has an episodic event is classified as regulated hazardous waste and is not authorized to be disposed of in any Type of Class I Municipal Solid Waste (MSW) landfill. Additionally, delivery to a Type I MSW landfill of hazardous waste generated during a month in which a VSQG has an episodic event is prohibited for the landfill operator, the generator, and the transporter, would defeat the VSQG's conditional exclusion, and result in the VSQG being up-classified to a small quantity generator or a large quantity generator.

As part of this rulemaking, the commission is also adopting amendments of 30 TAC Chapter 281 (Applications Processing); Chapter 328 (Waste Minimization and Recycling); and Chapter 335 (Industrial Solid Waste and Municipal Hazardous Waste), concurrently in this issue of the *Texas Register.*

Section by Section Discussion

Subchapter A: General Information

§330.1, Purpose and Applicability

The commission amends §330.1(c) by revising the 30 TAC §312.121 title to read "Purpose and Applicability." The title was revised in a separate rulemaking (45 TexReg 2542).

§330.3, Definitions

The commission amends §330.3 to add four new definitions as paragraphs in alphabetical order, remove two definition paragraphs, and renumber the subsequent definition paragraphs accordingly to account for these amendments.

The commission adopts §330.3(5) to add the definition of "Advanced recycling facility." This amendment implements HB 3060 by adding the definition of "Advanced recycling facility" to implement the new definition of "Advanced recycling facility" in THSC, §361.003.

The commission amends renumbered §330.3(11)(A) and (B), the definition of "Asbestos-containing materials," by replacing the citation to Appendix A, Subpart F in 40 CFR Part 763 with a reference to Appendix E, Subpart E in 40 CFR Part 763. The appendix was moved in a federal rulemaking (60 FR 31917).

The commission amends renumbered §330.3(33), the definition of "Conditionally exempt small-quantity generator," by replacing the definition with a reference to the definition of "Very small quantity generator" in this section. EPA changed the name of the lowest tier hazardous waste generator category from "conditionally exempt small quantity generator" to "very small quantity generator" in the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This change is consistent with the commission's adoption of the Hazardous Waste Generator Improvements Rule in Chapter 335 (47 TexReg 318). Additional information is available under the Background and Summary of the Factual Basis for the Adopted Rules.

The commission adopts §330.3(39) to add the definition of "Depolymerization." This amendment implements HB 3060 by adding the definition of "Depolymerization" to implement the definition of "Depolymerization" in THSC, §361.003.

The commission amends renumbered §330.3(60), the definition of "Gasification," to implement the definition of "Gasification" in THSC, §361.003, as amended by HB 3060. The definition of "Gasification" in §361.003 was amended to remove crude oil, diesel, gasoline, diesel blend stock, gasoline blend stock, home heating oil, ethanol, or other fuels from the list of valuable raw materials, valuable intermediate products, and valuable final products that the process of gasification may convert recoverable feedstocks into.

The commission deletes existing §330.3(59) to remove the definition of "Gasification facility." This amendment implements HB 3060 which removed the definition of "Gasification facility" from THSC, §361.003.

The commission amends renumbered §330.3(93), the definition of "Municipal solid waste landfill unit," by replacing the reference to a conditionally exempt small-quantity generator with hazardous waste generated by a very small quantity generator not experiencing an episodic event. This change is necessary to conform with the commission's adoption of EPA's Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016, (81 FR 85732) in Chapter 335 of this title (47 TexReg 318). Additional information is available under the Background and Summary of the Factual Basis for the Adopted Rules.

The commission amends renumbered §330.3(118) to revise the definition of "Post-use polymers" to implement the definition of "Post-use polymers" in THSC, §361.003, as amended by HB 3060, and clarify that post-use polymers will be classified as nonhazardous waste if discarded. HB 3060 amended the definition of "Post-use polymers" in §361.003 by: replacing the term plastic polymers with the term plastics; adding agricultural, preconsumer recovered materials and postconsumer materials to the sources of plastics that post-use polymers may be derived from; removing a list of wastes, including medical waste, electronic waste, tires, and construction or demolition debris, that when mixed with used polymers will not meet the definition of post-use polymers; identifying that post-use polymers are sorted from solid waste and other regulated waste and may contain residual amounts of organic material; specifying that plastics mixed with solid waste or hazardous waste onsite or during processing at an advanced recycling facility do not meet the definition of post-use polymers; identifying that post-use polymers are used or intended for use as a feedstock or for the production of feedstocks, raw materials, intermediate products or final products using advanced recycling; and adding that post-use polymers are processed or held prior to processing at an advanced recycling facility.

The commission amends renumbered §330.3(121) to revise the definition of "Processing" consistent with the definition of "Processing" in THSC, §361.003, as amended by HB 3060. The definition of "Processing" in §361.003 was amended to except two additional activities, "Solvolysis" and "Depolymerization," from the definition.

The commission amends renumbered §330.3(124) to revise the definition of "Pyrolysis" to implement the definition of "Pyrolysis" in THSC, §361.003, as amended by HB 3060. The definition of "Pyrolysis" in §361.003 was amended to clarify which materials are included and excluded in the list of valuable raw materials, valuable intermediate products, and valuable final products that the process of pyrolysis converts post-use polymers into. The amended definition clarified this list by adding the term "polymers," and by removing a comma between the terms "plastic" and "monomer" which omitted "plastic" from the list; and by removing "crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel" from the list.

The commission deletes existing §330.3(124) to remove the definition of "Pyrolysis facility." This amendment implements HB 3060 which removed the definition of "Pyrolysis facility" from THSC, §361.003.

The commission amends §330.3(127) to revise the definition of "Recoverable feedstock" to implement the definition of "Recoverable feedstock" in THSC, §361.003, as amended by HB 3060, and clarify that recoverable feedstock may be derived from recoverable nonhazardous waste, including nonhazardous municipal solid waste and other post-industrial nonhazardous waste. The definition of "Recoverable feedstock" in §361.003 was amended to clarify that recoverable feedstock may be processed to be used as feedstock in an advanced recycling facility or through gasification and removing the term gasification facility, excluding materials and post-industrial wastes containing post-use polymers that have been processed into a

fuel, and including post-industrial waste the commission or EPA has determined are feedstocks and not solid waste.

The commission amends §330.3(128) to revise the definition of "Recyclable material" to implement the definition of "Recyclable material" in THSC, §361.421, as amended by HB 3060.

The commission amends §330.3(129) to revise the definition of "Recycling" to implement the definition of "Recycling" in THSC, §361.421, as amended by HB 3060. The definition of "Recycling" in §361.421 was revised by adding the terms "feedstocks" to the materials used in the "manufacture" of new products, excluding applicability to incineration of plastics or waste-to-energy processes, and by adding the conversion of post-use polymers and recoverable feedstocks through solvolysis or depolymerization.

The commission amends §330.3(133), the definition of "Regulated hazardous waste," by replacing the reference to a conditionally exempt small-quantity generator with a very small quantity generator not experiencing an episodic event. This change is necessary to conform with EPA's Hazardous Waste Generator Improvements Rule and will be consistent with the commission's adoption of the Hazardous Waste Generator Improvements Rule in Chapter 335 of this title (47 TexReg 318). EPA introduced a new conditional exclusion applicable to the lowest and middle tier of hazardous waste generator categories, very small quantity generator (VSQG) and small quantity generator (SQG). The new conditional exemption for episodic events allows hazardous waste generators who comply with the conjunctive requirements of the conditional episodic exclusion to avoid being up-classified as the next highest category of hazardous waste generator. A VSQG and a SQG who manage hazardous waste generated during an episodic event must temporarily comply with the conditions for exclusion for the generator category that will be applicable if the generator is not taking advantage of the episodic exclusion. Such conditions for exclusion include packaging, placarding, and transporting the hazardous waste to an authorized hazardous waste facility accompanied by a uniform hazardous waste manifest. Therefore, the exception from being classified as regulated hazardous waste that was previously applicable to hazardous waste generated by a CESQG is now only applicable to hazardous waste generated by a VSQG during a calendar month in which the VSQG did not generate hazardous waste from an episodic event. Hazardous waste generated by a VSQG during a calendar month that the VSQG generated hazardous waste from an episodic event must be managed as regulated hazardous waste and is not eligible to be managed as special waste, or to be disposed at a Type I MSW landfill authorized to accept hazardous waste as special waste, or a Type I AE MSW landfill authorized to accept hazardous waste as special waste.

The commission amends §330.3(151)(D) to revise the definition of "Solid waste" to implement revisions to the definition of "Solid waste" in THSC, §361.003, as amended by HB 3060. HB 3060 expanded the existing conditional exclusions from the definition of "Solid waste" applicable to post-use polymers and recovered feedstocks processed through pyrolysis and gasification that are not classified as hazardous waste to also include post-use polymers and recovered feedstocks processed through solvolysis or depolymerization that are not classified as hazardous waste. The conditional exclusion requires post-use polymers and recovered feedstocks to be converted into products for subsequent beneficial reuse and that solid waste generated from converting the materials be disposed of in a solid waste management facility authorized by the commission under THSC, Chapter 361.

The commission adopts §330.3(153) to add the definition of "Solvolysis." This amendment will implement HB 3060 by adding a new definition of "Solvolysis" to implement the new definition of "Solvolysis" in THSC, §361.003. The adopted definition will also implement HB 3060 by clarifying that the conditional exclusions from classification and regulation as solid waste applicable to plastics recycling is not applicable to a solvolysis manufacturing process that produces fuel products.

The commission amends renumbered §330.3(155), the definition of "Special Waste," by replacing the reference in subparagraph (A) to conditionally exempt small-quantity generators with very small quantity generators not experiencing an episodic event. This change is necessary to conform with the commission's adoption of EPA's Hazardous Waste Generator Improvements Rule in Chapter 335 of this title (47 TexReg 318). Additional information is available under the Background and Summary for the Adopted rules.

The commission adopts §330.3(177) to add the definition of "Very small quantity generator" consistent with the commission's adoption in 30 TAC §335.1 of EPA's new term describing the lowest tier hazardous waste generator category (47 TexReg 318). EPA changed the name of the lowest tier hazardous waste generator category from "conditionally exempt small quantity generator" in 40 CFR §260.10 (81 FR 85732). Additional information is available under the Background and Summary for the Adopted rules.

§330.5, Classification of Municipal Solid Waste Facilities

The commission amends §330.5(a) and (a)(2) by replacing the reference to "conditionally exempt small quantity generators" in subsection (a), and "conditionally exempt small-quantity generator" in paragraph (a)(2) with "very small quantity generators" and "very small quantity generator" respectively. This change is necessary to conform with EPA's Hazardous Waste Generator Improvements Rule and is consistent with the commission's adoption of the Hazardous Waste Generator Improvements Rule in Chapter 335 (47 TexReg 318). Additional information is available under the Background and Summary for the Adopted rules.

The commission amends §330.5(a)(1) - (3) by removing the reference to Chapter 330, Subchapter F. Subchapter F was determined to be obsolete in the Chapter 330 Quadrennial Rules Review (44 TexReg 6383) and subsequently repealed in a separate rulemaking (45 TexReg 7605). MSW facilities remain subject to National Environmental Laboratory Accreditation Conference (NELAC) standards.

The commission amends §330.5(a)(2) by removing §330.467 from the list of applicable design and operational standards and properly listing the section titles. Section 330.467 does not exist and the inclusion of the section in the list of applicable design and operational standards was a typographical error.

The commission amends §330.5(a)(7) by replacing the reference to §330.9(k) with §330.9(j). Subsection (k) was relettered in a separate rulemaking (41 TexReg 3735).

§330.7, Permit Required

The commission amends §330.7(e)(2) by revising the title for 30 TAC §106.494 to read "Non-commercial Incinerators and Crematories." The title was revised in a separate rulemaking (43 TexReg 4758).

The commission amends §330.7(i)(1)(E)(i) by replacing the reference to 25 TAC Chapter 295, Subchapter C with 25 TAC Chap-

ter 296. The provisions from Chapter 295, Subchapter C were moved to Chapter 296 in a separate rulemaking (46 TexReg 3880).

§330.13, Waste Management Activities Exempt from Permitting, Registration, or Notification

The commission amends §330.13(g) by replacing "a gasification or pyrolysis facility" with "an advanced recycling facility," updating the conditions for exclusion in §330.13(g)(1) and (2) by removing the requirement that the facility must keep records on-site to demonstrate that the primary purpose of the facility is to convert materials into products "that have a resale value greater than the cost of converting the materials for beneficial use," adding that the facility must keep records on-site to demonstrate that the primary purpose of the facility is to convert materials "into products for beneficial use" and that "all solid waste generated from converting materials has been disposed of at a disposal facility authorized by the commission to accept and dispose of the solid waste, with the exception of small amounts of solid waste that may be inadvertently and unintentionally disposed of in another manner," and adding a list of information that must be included in such documentation. These revisions will implement revised THSC, §361.003 and §361.119(c-1), as amended by HB 3060.

§330.15, General Prohibitions

The commission amends §330.15(e)(5) by removing subsection (f) from the 40 CFR §82.156 reference. The federal regulations regarding air conditioning and refrigeration equipment were revised in a federal rulemaking (81 FR 82272).

§330.23, Relationships with Other Governmental Entities

The commission amends §330.23(c) by replacing the reference to FAA Advisory Circular 150/5200.33A with the most recent version of the document, FAA Advisory Circular 150/5200-33C, "Hazardous Wildlife Attractants on or near Airports," February 21, 2020.

Subchapter B: Permit and Registration Application Procedures

§330.57, Permit and Registration Applications for Municipal Solid Waste Facilities

The commission amends §330.57(e)(1) by replacing the requirement that an applicant provide four initial copies of an application with a requirement that an applicant provide two paper copies and one accurate duplicate in electronic format, and by removing the phrase "up to 18." Additional information about the adopted changes to §330.57 is available under the Background and Summary of the Factual Basis for the Adopted Rules.

The commission adopts new §330.57(e)(2) to require the electronic copy of the application to meet the formatting and drawing requirements of the paper copy. The rulemaking adoption renumbers the subsequent paragraphs accordingly to account for the added paragraph.

The commission amends §330.57(g)(1) by clarifying paper applications shall be submitted in binders.

The commission amends renumbered §330.57(g)(7) by replacing the sentence "Dividers and tabs are encouraged" with the sentence "Use dividers and tabs."

The commission deletes §330.57(i)(1) and renumbers the subsequent paragraphs accordingly to account for the deleted paragraph, including the replacement of paragraphs "(3), (4), and (5)" with "(2), (3), and (4)" in renumbered §330.57(i)(5). Additionally, the exception applicable to Type IAE and Type IVAE landfill facilities is removed under the adopted requirement and these facilities will be required to submit an accurate duplicate of an application in an electronic format.

The commission amends renumbered §330.57(i)(1) by adding that the commission will post the electronic accurate duplicate of applications on its website and removing the requirement that applicants post their identity and web address where the application is available. The commission's implementation of SB 1397 will replace the requirement that owners and operators post applications on a publicly accessible internet website.

The commission amends renumbered §330.57(i)(4) by replacing the reference to 30 TAC §39.405(h)(2) with §39.426. The provisions from §39.405(h) were moved to §39.426 in a separate rulemaking (46 TexReg 5784).

§330.63, Contents of Part III of the Application

The commission amends §330.63(e)(3)(A) by replacing the reference to §330.63(e)(2) with a reference to §330.63(e)(1)(B), the location of the provision related to regional geologic units. The reference to §330.63(e)(2) was made in error.

§330.65, Contents of Part IV of the Application

The commission amends §330.65(b) by replacing the reference to 30 TAC §90.32 with §90.30, replacing the reference to 30 TAC §90.36 with §90.31, and removing the reference to the National Environmental Performance Track (NEPT). The provisions from §90.32 and §90.36 were moved in a separate rulemaking (37 TexReg 5310), and the NEPT was terminated May 14, 2009.

§330.69, Public Notice for Registrations

The commission amends §330.69(b)(3) by replacing the reference to 30 TAC §39.405(h)(2) with §39.426. The provisions from §39.405(h) were moved to §39.426 in a separate rulemaking (46 TexReg 5784).

Subchapter C: Municipal Solid Waste Collection and Transportation

§330.103, Collection and Transportation Requirements

The commission amends §330.103(b)(4) by revising the 30 TAC Chapter 312, Subchapter B title to read "Land Application And Storage of Biosolids and Domestic Septage." The title was revised in a separate rulemaking (45 TexReg 5784).

Subchapter D: Operational Standards for Municipal Solid Waste Landfill Facilities

§330.125, Recordkeeping Requirements

The commission amends §330.125(h) by replacing the reference to 30 TAC §305.70(k) with §305.70(l) because annual waste acceptance rate exceedance is not listed in §305.70(k). Public notice will continue to be required for modifications to increase waste acceptance rates.

§330.147, Disposal of Large Items

The commission amends §330.147(c) by removing subsection (f) from the 40 CFR §82.156 reference. The federal regulations regarding air conditioning and refrigeration equipment were revised in a federal rulemaking (81 FR 82272).

§330.165, Landfill Cover

The commission amends §330.165(d) by replacing the reference to 30 TAC §305.70(m) with §305.62(k). The provisions from

§305.70(m) were moved to §305.62(k) in a separate rulemaking (33 TexReg 4157).

§330.171, Disposal of Special Wastes

The commission amends §330.171(b)(2) by replacing "plan" with "Special Waste Management Plan" for clarity.

The commission amends §330.171(b)(2)(B) by replacing the reference to 30 TAC §335.6(c) with §335.504, the accurate location for the hazardous waste determination requirement.

The commission amends §330.171(c)(6) by replacing the reference to a "conditionally exempt small quantity generator" with "very small quantity generator" and by clarifying that the ability to accept hazardous waste is not applicable to regulated hazardous waste including hazardous waste generated by a VSQG during a calendar month in which the VSQG generated hazardous waste during an episodic event. This change is necessary to conform with EPA's Hazardous Waste Generator Improvements Rule and is consistent with the commission's adoption of the Hazardous Waste Generator Improvements Rule in Chapter 335 (47 TexReg 318). Additional information about this adopted amendment is available under the Background and Summary for the Adopted Rules.

§330.173, Disposal of Industrial Wastes

The commission amends §330.173(b) by revising the 30 TAC §335.10 title to read "Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste." The title was revised in a separate rulemaking (45 TexReg 3780).

The commission amends §330.173(g) by deleting an outdated term "waste-shipping control ticket," and by requiring a facility operator to comply with the manifest requirements in §335.10(c) and in §335.15(1) and (3). The commission has updated Class 1 industrial waste manifesting requirements to reflect current federal electronic manifest system and user fees requirements applicable when a Uniform Hazardous Waste Manifest accompanies shipments of state-regulated waste (47 TexReg 318).

Subchapter E: Operational Standards for Municipal Solid Waste Storage and Processing Units

§330.217, Pre-Operation Notice

The commission amends §330.217(a)(1) by replacing the reference to §330.207(h) with §330.207(g). This amendment corrects a typographical error.

Subchapter J: Groundwater Monitoring and Corrective Action

§330.421, Monitor Well Construction Specifications

The commission amends §330.421(a)(2)(A) by replacing the reference to "National Science Foundation-certified polyvinyl chloride" with "National Sanitation Foundation-certified polyvinyl chloride." This amendment corrects a typographical error.

The commission amends §330.421(g) by replacing the reference to 16 TAC §76.702 with 16 TAC §76.72, replacing the reference to 16 TAC §76.1004 with 16 TAC §76.104, and identifying the §76.104 title as "Technical Requirements--Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Injurious Water Zones." These revisions were made in a separate rulemaking (38 TexReg 1142).

Subchapter M: Location Restrictions

§330.545, Airport Safety

The commission amends §330.545(d) by removing the statement "Guidelines regarding location of landfills near airports can be found in Federal Aviation Administration Order 5200.5(A), January 31, 1990." This amendment removes a reference to obsolete guidance cancelled on July 1, 1997.

Subchapter N: Landfill Mining

§330.613, Sampling and Analysis Requirements for Final Soil Product

The commission amends §330.613(c), (f), and (h) by replacing the reference to Chapter 330, Subchapter F with a reference to the NELAC standards. Subchapter F was repealed in a separate rulemaking (45 TexReg 7605), and MSW facilities remain subject to NELAC standards.

§330.615, Final Soil Product Grades and Allowable Uses

The commission amends §330.615(b) by replacing the reference to Chapter 330, Subchapter F with a reference to the NELAC standards. Subchapter F was repealed in a separate rulemaking (45 TexReg 7605), and MSW facilities remain subject to NELAC standards.

Subchapter O: Regional and Local Solid Waste Management Planning and Financial Assistance General Provisions

§330.633, Definitions of Terms and Abbreviations

The commission amends §330.633(3) by replacing the reference to a "conditionally exempt small-quantity generator" with "very small quantity generator." This change is necessary to conform with EPA's Hazardous Waste Generator Improvements Rule. Additional information about this adopted amendment is available under the Background and Summary of the Factual Basis for the Adopted Rules.

§330.635, Regional and Local Solid Waste Management Plan Requirements

The commission amends §330.635(a)(2)(C)(v) by replacing the reference to Texas Health and Safety Code (THSC) §363.0635 with §363.064(10). The reference to THSC §363.0635 was a typographical error.

Subchapter T: Use of Land Over Closed Municipal Solid Waste Landfills

§330.951, Definitions

The commission amends §330.951(8) by replacing the reference to a "conditionally exempt small-quantity generator" with "very small quantity generator." This change is necessary to conform with EPA's Hazardous Waste Generator Improvements Rule. Additional information regarding this adopted amendment is available under the Background and Summary of the Factual Basis for the Adopted Rules.

The commission further amends§330.951(8) by replacing "§330.3 (relating to Definitions)" with "40 Code of Federal Regulations §257.2." The reference to §330.3 was a typographical error.

§330.953, Soil Test Required before Development

The commission amends §330.953(e) by replacing the reference to 22 TAC §131.166 with 22 TAC §137.33. The provisions regarding sealing procedures were reorganized to 22 TAC Chapter 137 in a separate rulemaking (29 TexReg 4878).

§330.954, Development Permit, Development Authorization, and Registration Requirements, Procedures, and Processing

The commission does not adopt the proposed amendment of §330.954(c)(1), (2), and (3) that would have replaced the references to 30 TAC §305.70(j)(6) with references to §305.70(k)(12). While the commission recognizes that §305.70 was reorganized in a separate rulemaking (33 TexReg 4157) and that §305.70(j)(6) is not applicable to §330.954, upon further consideration the commission has determined that 30 TAC §305.70(k)(12) is not globally applicable to the three references in 30 TAC §330.954(c)(1), (2), and (3) and elects to not adopt this proposed amendment.

§330.959, Contents of Registration Application for an Existing Structure Built Over a Closed Municipal Solid Waste Landfill Unit

The commission amends §330.959(b)(1) by replacing the reference to §330.957(e) with §330.957(h). The reference to §330.957(e) was a typographical error.

Subchapter U: Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations

§330.987, Certification Requirements

The commission amends §330.987(e) by removing paragraph (1) and renumbering the remaining paragraphs. The provisions from §116.621 were replaced with Chapter 330, Subchapter U in a separate rulemaking (31 TexReg 2490).

§330.991, Technical and Operational Requirements for all Municipal Solid Waste Landfill Sites

The commission amends §330.991(a)(11)(E) by revising the 30 TAC §116.617 title to read "State Pollution Control Project Standard Permit." The title was revised in a separate rulemaking (31 TexReg 516).

§330.993, Additional Requirements for Owners or Operators of Category 3 Municipal Solid Waste Landfills

The commission amends §330.993(a)(2) by replacing the reference to 40 CFR §60.752(2)(b)(v) with §60.752(b)(2)(v). The reference to §60.752(2)(b)(v) was a typographical error.

§330.995, Recordkeeping and Reporting Requirements for all Municipal Solid Waste Landfill Sites

The commission amends §330.995(d) by replacing the reference to 40 CFR §63.1980 with §63.1981. The provisions from §63.1980 were replaced by §63.1981 in a separate rulemaking (85 FR 17261).

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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."

First, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the adopted rulemaking is to add, remove, revise, and renumber definitions in Chapter 330 so that they are consistent with the commission's adoption of the Hazardous Waste Generator Improvements Rule in Chapter 335 (47 TexReg 318) and the definitions in THSC Chapter 361 and to make minor and non-substantive updates to incorrect rule citations or references in Chapter 330. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure.

Second, the adopted rulemaking does not meet the statutory definition of a "Major environmental rule" because the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Finally, the adopted rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies 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. This adopted rulemaking does not meet any of the four preceding applicability requirements.

This adopted rulemaking does not meet the statutory definition of a "Major environmental rule," nor does it meet any of the four applicability requirements for a "Major environmental rule." Therefore, this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No public comments were received regarding the regulatory impact analysis determination.

Takings Impact Assessment

The commission has prepared a takings impact assessment for these adopted rules in

accordance with Texas Government Code, §2007.043. The commission's preliminary

assessment is that implementation of these adopted rules will not constitute a taking

of real property. The commission adopts this rulemaking for the purpose of adding, removing, revising, and renumbering definitions in Chapter 330 so that they are consistent with the commission's adoption of the Hazardous Waste Generator Improvements Rule in Chapter 335 (47 TexReg 318) and the definitions in THSC Chapter 361 and making minor and non-substantive updates to incorrect rule citations or references in Chapter 330.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The adopted rules will add, remove,

revise, and renumber definitions in Chapter 330 so that they are consistent with the commission's adoption of the Hazardous Waste Generator Improvements Rule in Chapter 335 (47 TexReg 318) and the definitions in THSC Chapter 361 and to make minor and non-substantive updates to incorrect rule citations or references in Chapter 330., which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Therefore, Texas Government Code, Chapter 2007 does not apply to these adopted rule changes because the adopted rulemaking falls within the exception under Texas Government Code, §2007.003(b)(5).

Further, the commission determined that promulgation of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the adopted rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the amendments are consistent with CMP goals and policies because the rulemaking will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No public comments were received regarding the CMP.

Public Comment

The commission offered a public hearing on June 20, 2024. The comment period closed on June 25, 2024. No public comments were received.

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §330.1

Statutory Authority

The amendments are adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act.

The adopted amendments implement House Bill 3060, 88th Texas Legislature, 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 October 28, 2024.

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SUBCHAPTER B. PERMIT AND REGISTRATION APPLICATION PROCEDURES

30 TAC §§330.57, 330.63, 330.65, 330.69

Statutory Authority

The amendments are adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act.

The adopted amendments implement House Bill 3060, 88th Texas Legislature, 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.

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Texas Commission on Environmental Quality
Effective date: November 17, 2024
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SUBCHAPTER C. MUNICIPAL SOLID WASTE COLLECTION AND TRANSPORTATION

30 TAC §330.103

Statutory Authority

The amendment is adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act.

The adopted amendment implements House Bill 3060, 88th Texas Legislature, 2023.

§330.103. Collection and Transportation Requirements.

(a) Municipal solid waste (MSW) containing putrescibles shall be collected a minimum of once weekly to prevent propagation and attraction of vectors and the creation of public health nuisances. Collection should be made more frequently in circumstances where vector breeding or harborage potential is significant.

(b) Transporters of MSW shall be responsible for ensuring that all solid waste collected is unloaded only at facilities authorized to accept the type of waste being transported. Off-loading at an unauthorized location or at a facility not authorized to accept such waste is a violation of this subchapter. Allowable wastes at a particular solid waste management facility may be determined by reviewing the following regulations as applicable:

(1) §330.5 of this title (relating to Classification of Municipal Solid Waste Facilities);

(2) Subchapter D of this chapter (relating to Operational Standards for Municipal Solid Waste Landfill Facilities);

(3) Subchapter E of this chapter (relating to Operational Standards for Municipal Solid Waste Storage and Processing Units);

(4) Chapter 312, Subchapters A - E of this title (relating to General Provisions; Land Application and Storage of Biosolids and Domestic Septage; Surface Disposal; Pathogen and Vector Attraction Reduction; and Guidelines and Standards for Sludge Incineration); and

(5) §330.15(e) of this title (relating to General Prohibitions).

(c) All transporters of solid waste shall maintain records for at least three years to document that waste was taken to an authorized MSW facility. Upon request of the executive director or of a local government with jurisdiction, a transporter is responsible for providing adequate documentation regarding the destination of all collected waste including billing documents to prove that the proper disposal procedure is being followed.

(d) Each transporter delivering waste to a solid waste management facility shall immediately remove any non-allowable wastes delivered to the solid waste management facility or, at the option of the disposal facility operator, pay any applicable surcharges to have the disposal facility operator remove the non-allowable waste.

(e) If non-allowable wastes are discovered in a load of waste being discharged at an MSW facility, the transporter shall immediately take all necessary steps to determine the origin of the non-allowable waste and to assure that non-allowable wastes are either not collected or are taken to a facility approved to accept such wastes.

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

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SUBCHAPTER D. OPERATIONAL STANDARDS FOR MUNICIPAL SOLD WASTE LANDFILL FACILITIES

30 TAC §§330.125, 330.147, 330.165, 330.171, 330.173

Statutory Authority

The amendments are adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act.

The adopted amendments implement House Bill 3060, 88th Texas Legislature, 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.

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SUBCHAPTER E. OPERATIONAL STANDARDS FOR MUNICIPAL SOLID WASTE STORAGE AND PROCESSING

30 TAC §330.217

Statutory Authority

The amendment is adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act.

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SUBCHAPTER J. GROUNDWATER MONITORING AND CORRECTIVE ACTION

30 TAC §330.421

Statutory Authority

The amendment is adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act.

The adopted amendment implements House Bill 3060, 88th Texas Legislature, 2023.

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SUBCHAPTER M. LOCATION RESTRICTIONS

30 TAC §330.545

Statutory Authority

The amendment is adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act.

The adopted amendment implements House Bill 3060, 88th Texas Legislature, 2023.

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SUBCHAPTER N. LANDFILL MINING

30 TAC §330.613, §330.615

Statutory Authority

The amendments are adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act.

The adopted amendments implement House Bill 3060, 88th Texas Legislature, 2023.

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SUBCHAPTER O. REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLANNING AND FINANCIAL ASSISTANCE GENERAL PROVISIONS

30 TAC §330.633, §330.635

Statutory Authority

The amendments are adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act.

The adopted amendments implement House Bill 3060, 88th Texas Legislature, 2023.

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SUBCHAPTER T. USE OF LAND OVER CLOSED MUNICIPAL SOLID WASTE LANDFILLS

30 TAC §§330.951, 330.953, 330.954, 330.959

Statutory Authority

The amendments are adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act.

The adopted amendments implement House Bill 3060, 88th Texas Legislature, 2023.

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SUBCHAPTER U. STANDARD AIR PERMITS FOR MUNICIPAL SOLID WASTE LANDFILL FACILITIES AND TRANSFER STATIONS

30 TAC §§330.987, 330.991, 330.993, 330.995

Statutory Authority

The amendments are adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act. The standard air permit is also adopted under THSC, §382.002, which establishes the policy of the state and the purpose of the chapter to safeguard the state's air resources from pollution; §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; THSC, §382.017, which authorizes the commission to adopt rules; THSC, §382.051, which authorizes the commission to issue a permit to construct or modify a facility that may emit air contaminants, including a standard permit for similar sources; and THSC, §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The adopted amendments implement House Bill 3060, 88th Texas Legislature, 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.

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CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §§335.1, 335.206, 335.325, and 335.329.

Amended §§335.1, 335.206, 335.325, and 335.329 are adopted *without changes* to the proposed text as published in the May 24, 2024, issue of the *Texas Register* (49 TexReg 3770) and therefore will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

Promulgation of House Bill 3060

The commission adopts this rulemaking to implement House Bill (HB) 3060, 88th Texas Legislature, 2023. HB 3060 amended Texas Health and Safety Code (THSC), §361.003 (Definitions), §361.041 (Treatment of Post-Use Polymers and Recoverable Feedstocks as Solid Waste), and §361.119 (Regulation of Certain Facilities as Solid Waste Facilities). These statutory enactments expanded the existing conditional exclusion from the definition of solid waste and regulations applicable to owners and operators of facilities that convert plastics and certain other nonhazardous recyclable material through pyrolysis and gasification to include the processes of depolymerization and solvolysis. The conditional exclusion is dependent upon two conditions being satisfied: (1) an advanced recycling facility owner or operator must demonstrate that the primary function of the facility is to convert materials into products for subsequent beneficial use; and (2) that all solid waste generated from converting the materials is disposed of at a solid waste management facility authorized by the commission. The commission's adopted implementation of HB 3060 in Chapter 335 is only applicable to material that will be classified as nonhazardous industrial solid waste if discarded. Implementation of provisions enacted by HB 3060 applicable to material that will be classified as municipal solid waste if discarded is proposed in Chapter 330 (Municipal Solid Waste).

Rule Citation Corrections

In addition to HB 3060 implementation, this rulemaking makes minor and non-substantive updates to incorrect rule citations or references.

As part of this rulemaking, the commission is also adopting revisions to 30 Texas Administrative Code (TAC) Chapter 281 (Applications Processing); Chapter 328 (Waste Minimization and Recycling); and Chapter 330 (Municipal Solid Waste), concurrently in this issue of the *Texas Register.*

Section by Section Discussion

§335.1, Definitions

The commission amends §335.1 to add three new definitions as paragraphs in alphabetical order, remove two definition paragraphs, and renumber the subsequent definition paragraphs accordingly to account for these amendments.

The commission adopts §335.1(8) to add the definition of "Advanced recycling facility." This amendment implements HB 3060 by adding the definition of "Advanced recycling facility" to implement the new definition of "Advanced recycling facility" in THSC, §361.003.

The commission adopts §335.1(50) to add the definition of "Depolymerization." This amendment implements HB 3060 by adding the definition of "Depolymerization" to implement the new definition of "Depolymerization" in THSC, §361.003.

The commission amends renumbered §335.1(76) to revise the definition of "Gasification" to implement the amended definition of "Gasification" in THSC, §361.003, as amended by HB 3060. The definition of "Gasification" in §361.003 was amended to remove crude oil, diesel, gasoline, diesel blend stock, gasoline blend stock, home heating oil, ethanol, or other fuels from the list of valuable raw materials, valuable intermediate products, and valuable final products that the process of gasification may convert recoverable feedstocks into.

The commission deletes existing §335.1(75) to remove the definition of "Gasification facility." This amendment implements HB 3060 which removed the definition of "Gasification facility" from THSC, §361.003.

The commission amends renumbered §335.1(89)(B), the definition of "Incinerator," by removing "Gasification facility" and "Pyrolysis facility" and establishing that incinerators are not an "Advanced recycling facility" managing "Recoverable feedstock." These amendments also implement the new definition of "Advanced recycling facility" and the removal of the definitions of "Gasification facility" and "Pyrolysis facility" from THSC, §361.003 as enacted by HB 3060.

The commission amends renumbered §335.1(137) to revise the definition of "Post-use polymers" to implement the definition of "Post-use polymers" in THSC, §361.003, as amended by HB 3060, and clarify that post-use polymers will be classified as nonhazardous waste if discarded. HB 3060 amended the definition of "Post-use polymers" in §361.003 by: replacing the term plastic polymers with the term plastics; adding agricultural, preconsumer recovered materials and postconsumer materials to the sources of plastics that post-use polymers may be derived from; removing a list of wastes, medical waste, electronic waste, tires, and construction or demolition debris, that when mixed with used polymers will not meet the definition of post-use polymers; identifying that post-use polymers are sorted from solid waste and other regulated waste and may contain residual amounts of organic material; specifying that plastics mixed with solid waste or hazardous waste onsite or during processing at an advanced recycling facility do not meet the definition of post-use polymers; identifying that post-use polymers are used or intended for use as a feedstock or for the production of feedstocks, raw materials, intermediate products or final products using advanced recycling; and adding that post-use polymers are processed or held prior to processing at an advanced recycling facility.

The commission amends renumbered §335.1(143) to revise the definition of "Pyrolysis" to implement the definition of "Pyrolysis" in THSC, §361.003, as amended by HB 3060. The definition of "Pyrolysis" in §361.003 was amended to clarify which materials are included and excluded from the list of valuable raw materials, valuable intermediate products, and valuable final products that the process of pyrolysis converts post-use polymers into. The amended definition clarified this list by adding the term "polymers," and by removing a comma between the terms "plastic" and "monomer" which omitted "plastic" from the list; and by removing "crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel" from the list.

The commission deletes existing §335.1(143) to remove the definition of "Pyrolysis facility." This amendment implements HB 3060 which removed the definition of "Pyrolysis facility" from THSC, §361.003.

The commission amends §335.1(146) to revise the definition of "Recoverable feedstock" to implement the definition of "Recoverable feedstock" in THSC, §361.003, as amended by HB 3060. The definition of "Recoverable feedstock" in §361.003 was amended to clarify that recoverable feedstock may be processed to be used as feedstock in an advanced recycling facility or through gasification by removing the term gasification facility, excluding materials and post-industrial wastes containing post-use polymers that have been processed into a fuel, and including post-industrial waste that the commission or EPA has determined are feedstocks and not solid waste.

The commission amends §335.1(160)(A)(v) to revise the definition of "Solid waste" to implement revisions to the definition of "Solid waste" in THSC, §361.003, as amended by HB 3060. HB 3060 expanded the existing conditional exclusions from the definition of "Solid waste" applicable to post-use polymers and recovered feedstocks processed through pyrolysis and gasification that are not classified as hazardous waste to also include post-use polymers and recovered feedstocks processed through solvolysis or depolymerization that are not classified as hazardous waste. The conditional exclusion requires that the facility operator keep records on-site demonstrating that post-use polymers and recovered feedstocks are converted into products for subsequent beneficial reuse and that solid waste generated from converting the materials is disposed of at a solid waste management facility authorized by the commission under THSC, Chapter 361.

The commission adopts §335.1(162) to add the definition of "Solvolysis." This amendment will implement HB 3060 by adding a new definition of "Solvolysis" to implement the new definition of "Solvolysis" in THSC, §361.003. The adopted definition implements HB 3060 by clarifying that the conditional exclusions from classification and regulation as solid waste applicable to plastics recycling are not applicable to a solvolysis manufacturing process that produces fuel products.

§335.206, Petitions for Rulemaking

The commission amends §335.206 by removing an extra comma and replacing the reference to 30 TAC §275.78 with the correct citation, 30 TAC §20.15. The rules regarding rule petitions were previously moved from §275.78 to §20.15 without substantive revisions in accordance with a procedural rule reorganization project (21 TexReg 4719).

§335.325, Industrial Solid Waste and Hazardous Waste Management Fee Assessment

The commission amends §335.325(d) and (m) by replacing the reference to 30 TAC §335.69 with the correct citation, 30 TAC §335.53. The conditional exemptions from permitting requirements for hazardous waste generators were repealed from 30 TAC §335.69 and adopted in 30 TAC §335.53 as part of the commission's adoption of the federal Hazardous Waste Generator Improvements Rule (47 TexReg 318). The Generator Improvements Rule (81 FR 85732) reorganized 40 Code of Federal Regulations Part 262 and defined "condition for exemption" as requirements that must be met in order to obtain an exemption from any applicable requirement.

§335.329, Records and Reports

The commission amends §335.329(a)(2) by replacing the reference to 30 TAC §361.326 with the correct citation, 30 TAC §335.326. The reference to §361.326 is a typographical error.

Final Regulatory Impact Determination

The commission reviewed the rulemaking adoption in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "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."

First, the rulemaking adoption does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking adoption is to add, remove, and revise definitions in Chapter 335 so that they are consistent with the definitions in THSC Chapter 361 and to make minor and non-substantive updates to incorrect rule citations or references in Chapter 335.

Second, the rulemaking adoption does not meet the statutory definition of a "Major environmental rule" because the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the rulemaking adoption will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Finally, the rulemaking adoption does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies 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. This rulemaking adoption does not meet any of the four preceding applicability requirements.

This rulemaking adoption does not meet the statutory definition of a "Major environmental rule," nor does it meet any of the four applicability requirements for a "Major environmental rule." Therefore, this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No public comments were received regarding the regulatory impact analysis determination.

Takings Impact Assessment

The commission has prepared a takings impact assessment for these adopted rules in

accordance with Texas Government Code, §2007.043. The commission's preliminary assessment is that implementation of these adopted rules will not constitute a taking of real property. The commission adopts this rulemaking for the purpose of adding, removing, and revising definitions in Chapter 335 so that they are consistent with the definitions in THSC Chapter 361 and to make minor and non-substantive updates to incorrect rule citations or references in Chapter 335.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules based upon an exception to applicability in TGC, §2007.003(b)(5). The adopted rules will add, remove, and revise definitions in Chapter 335 so that they are consistent with the definitions in THSC Chapter 361 and make minor and non-substantive updates to incorrect rule citations or references in Chapter 335, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Therefore, Texas Government Code, Chapter 2007 does not apply to these adopted rule changes because the rulemaking adoption falls within the exception under Texas Government Code, §2007.003(b)(5).

Further, the commission determined that promulgation of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the adopted rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the amendments are consistent with CMP goals and policies because the rulemaking will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies. No public comments were received regarding the CMP.

Public Comment

The commission offered a public hearing on June 20, 2024. The comment period closed on June 25, 2024. No public comments were received.

SUBCHAPTER A. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

30 TAC §335.1

Statutory Authority

The amendments are adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; THSC §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act; and THSC, §361.078 which identifies that THSC Chapter 361 Subchapter B does not abridge, modify or restrict the commission's authority to adopt rules issue permits and enforce the terms of permits as necessary to maintain state authorization of Texas' hazardous waste program; and THSC, §361.119, which requires the commission to adopt rules and to adopt rules consistent with THSC, Chapter 361 to ensure that solid waste processing facilities are regulated as solid waste facilities and not allowed to operate unregulated as recycling facilities.

The adopted amendment implements House Bill 3060, 88th Texas Legislature, 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.

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Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: November 17, 2024
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SUBCHAPTER G. LOCATION STANDARDS FOR HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL

30 TAC §335.206

Statutory Authority

The amendment is adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act; and THSC, §361.078 which identifies that THSC Chapter 361 Subchapter B does not abridge, modify or restrict the commission's authority to adopt rules issue permits and enforce the terms of permits as necessary to maintain state authorization of Texas' hazardous waste program; and THSC, §361.119, which requires the commission to adopt rules and to adopt rules consistent with THSC, Chapter 361 to ensure that solid waste processing facilities are regulated as solid waste facilities and not allowed to operate unregulated as recycling facilities; and Texas Government Code, §2001.021, which requires the commission by rule to prescribe the form and procedure for the submission, consideration, and disposition of a request made by an interested person to the commission to adopt a rule.

The adopted amendment implements House Bill 3060, 88th Texas Legislature, 2023, and Texas Government Code, §2001.021.

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

Filed with the Office of the Secretary of State on October 28, 2024.

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SUBCHAPTER J. HAZARDOUS WASTE GENERATION, FACILITY AND DISPOSAL FEE SYSTEM

30 TAC §335.325, §335.329

Statutory Authority

The amendments are adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act; and THSC, §361.078 which identifies that

THSC Chapter 361 Subchapter B does not abridge, modify or restrict the commission's authority to adopt rules issue permits and enforce the terms of permits as necessary to maintain state authorization of Texas' hazardous waste program; and THSC, §361.119, which requires the commission to adopt rules and to adopt rules consistent with THSC Chapter 361 to ensure that solid waste processing facilities are regulated as solid waste facilities and not allowed to operate unregulated as recycling facilities.

The adopted amendments implement House Bill 3060, 88th Texas Legislature, 2023. The provisions regarding the conditional exemption from permitting requirements for hazardous waste generators were readopted in 30 Texas Administrative Code §335.53 in accordance with a state rule reorganization project (47 TexReg 318) necessitated by the federal reorganization of 40 Code of Federal Regulations Part 262 associated with the federal Hazardous Waste Generator Improvements Rule (81 FR 85732).

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 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 209. FINANCE

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) Chapter 209, Subchapter A, Collection of Debts, §209.1 and §209.2; Subchapter B, Payment of Fees for Department Goods and Services, §209.23; and Subchapter C, Donations and Contributions, §209.33. The department adopts §209.23 without changes to the proposed text as published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5021) and the text will not be republished. The department adopts §§209.1, 209.2, and 209.33 with changes at adoption to the proposed text as published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5021) and those sections will be republished. The changes to §§209.1, 209.2, and 209.33 are described in the Reasoned Justification section below. In conjunction with this adoption, the department adopts the repeal of 43 TAC §209.34, which is also published in this issue of the *Texas Register.*

The department adopts amendments to make the rules consistent with statute; to comply with statute; to remove unnecessary language; to add context or authority for certain rules; to clarify the rules; and to make the rules consistent with current processes, procedures, and terminology. In addition, the department adopts amendments that renumber subdivisions within the rules due to the addition or deletion of subdivisions.

REASONED JUSTIFICATION.

Subchapter A. Collection of Debts

An adopted amendment to §209.1 adds a new subsection (a) to state the purpose of the section. The department adopts §209.1(a) with a change at adoption to delete the unnecessary second sentence in the proposed text, which incorporated by reference any requirements in 1 TAC §59.2 that were not addressed in §209.1 to the extent that Government Code, §2107.002 requires a state agency to include the requirements in rule. Government Code, §2107.002 requires a state agency that collects delinquent obligations owed to the state agency to establish procedures by rule for collecting a delinquent obligation and a reasonable period for collection. Government Code, §2107.002 also requires such rules to conform to the "uniform guidelines" established by the attorney general. The Office of the Attorney General adopted 1 TAC §59.2 (Collection Process: Uniform Guidelines and Referral of Delinquent Collections), and §59.2(b) expressly contains the "uniform guidelines," which are referenced in Government Code, §2107.002. Adopted §209.1 complies with Government Code, §2107.002 because it contains the procedures for collecting a delinquent obligation and a reasonable period for collection in conformance with the uniform guidelines contained in 1 TAC §59.2(b), as well as the relevant definitions contained in 1 TAC §59.2(a). The language in 1 TAC §59.2(c) governs the referral of a delinquent obligation to an attorney, and already expressly applies to a state agency that refers a delinquent obligation to the attorney general or another attorney for collection under the "referral guidelines" referenced in Government Code, §2107.003. For these reasons, the department adopts new §209.1(a) with a change at adoption to delete the second proposed sentence as it was unnecessary. Due to the adoption of new §209.1(a), an adopted amendment to §209.1 re-letters the subsection for definitions to subsection (b).

An adopted amendment deletes the definition for the word "person" in re-lettered §209.1(b) because the word is already defined in Government Code, §311.005, which applies to administrative rules under Government Code, §311.002(4). An adopted amendment also renumbers the last definition in re-lettered §209.1(b) due to the deletion of the definition for the word "person." Adopted amendments to the definition for the word "security" in re-lettered §209.1(b) delete references to an "entity" because the definition for the word "person" in Government Code, §311.005 includes "any other legal entity."

An adopted amendment to §209.1 deletes prior subsection (b) regarding collection from contractors for the following reasons: 1) this issue is already addressed in §209.1(f)(2) regarding the warrant hold procedures of the Texas Comptroller of Public Accounts that are authorized by Government Code, §403.055 for any debtor to the state; and 2) the language in prior §209.1(b) did not reference the due process requirements under Government Code, §403.055.

Adopted amendments to §209.1(c)(1) through (3) change the words "will" and "should" to "shall" for consistency and to clarify that the department has a duty to take the actions regarding the notice and demand letters to the debtor. These adopted amendments to §209.1(c)(1) through (3), as well as other adopted amendments to change the words "will" or "should" to "shall" in this adoption order, were necessary to make the rule text

consistent with Government Code, §311.016(2), which defines the word "shall" to mean "imposes a duty," unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute. Government Code, §311.002(4) states that Government Code, Chapter 311 applies to each rule adopted under a code. The Chapter 209 rules were adopted under various codes, including the Government Code and the Transportation Code.

Adopted amendments to §209.1(c)(4) change certain instances of the word "will" to "must" to indicate that it is a condition precedent for each letter to comply with certain requirements before the letter becomes a demand letter under 1 TAC §59.2(a)(4), which defines the term "demand letter" within the definition for the term "make demand." Government Code, §311.016(3) defines the word "must" to mean "creates or recognizes a condition precedent," unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute. Adopted amendments to §209.1(c)(4) also clarify that the department shall include the notation "Return Service Requested" on the envelope for each demand letter, and shall resend the demand letter if the United States Postal Service (USPS) provides the department with an address correction. Although 1 TAC §59.2(b)(3) states that all demand letters should be mailed in an envelope bearing the notation "address correction requested" in conformity with a citation to a section in an appendix to the Code of Federal Regulations, the cited section does not currently contain the notation or mailer endorsement called "address correction requested." Also, the USPS published a document called "507 Quick Service Guide l Postal Explorer" in which the USPS stated that for first-class mail, the USPS action on the mailer endorsement "Return Service Requested" is to return the "mailpiece" with the new address or the reason for non-delivery attached at no charge. Therefore, "Return Service Requested" is the appropriate notation to include on the envelope to ensure that USPS provides the department with any new address for the recipient, so that the department can resend the demand letter.

Adopted amendments to §209.1(d)(1) replace a clause with the word "debtor" because the clause repeats a portion of the definition for the word "debtor" in re-lettered §209.1(b). Adopted amendments to §209.1(d)(2) and (3) add the word "correct" to be consistent with 1 TAC §59.2(b)(2). An adopted amendment to §209.1(d) also adds a new paragraph (4) to be consistent with 1 TAC §59.2(b)(2), which requires that the department's records contain an accurate physical address when a fiduciary or trust relationship exists between the agency as principal and the debtor as trustee. Due to the addition of new paragraph (4), adopted amendments renumber the remaining paragraphs in §209.1(d). Adopted amendments to renumbered §209.1(d)(5), (10) and (12) add a reference to the debtor for clarity. An adopted amendment to renumbered §209.1(d)(13) replaces the word "account" with the word "obligation" because the word "obligation" is defined in re-lettered §209.1(b).

An adopted amendment to §209.1(e)(1)(D) deletes the language that said the department is not required to prepare and file a proof of claim in a bankruptcy case when the department is represented by the attorney general. According to 1 TAC §59.2(b)(6)(C)(i), the attorney general will assist the state agency with the preparation of a proof of claim, but clause (i) does not say the attorney general will file the proof of claim. Also, an adopted amendment to §209.1(e)(1)(D) clarifies that the department shall prepare and file a proof of claim in the bankruptcy case when appropriate based on advice from the attorney general. When the department receives a bankruptcy notice, the department first determines whether the person owes an obligation to the department and whether the bankruptcy notice instructs creditors to not file a claim because no property appears to be available to pay creditors. If the person owes an obligation to the department and the bankruptcy notice does not instruct creditors to not file a proof of claim, the department consults with the attorney general regarding whether to file a proof of claim in the case. The adopted amendments to §209.1(e)(1)(D) reflect the department's current practice with regard to filing proofs of claim.

Adopted amendments to §209.1(e)(1)(E) modify the language to be consistent with 1 TAC §59.2(b)(6)(C)(v), which says the state agency should file a claim in each probate proceeding administering the decedent's estate, and does not provide any exception for agencies that are represented by the attorney general.

Adopted amendments to §209.1(e)(2) change the word "will" to "shall" for consistency and to indicate the department has a duty regarding the actions listed in paragraph (2). Adopted amendments to §209.1(e)(2) also clarify that the list of uncollectible obligations is illustrative, rather than exhaustive, and includes obligations that are not legally collectible or are uncollectible as a practical matter. These amendments make §209.1(e)(2) consistent with 1 TAC §59.2(b)(6).

An adopted amendment to §209.1(e)(2)(A) deletes the words "dismissed or" because the term "discharged in bankruptcy" is used to refer to an obligation that a creditor is legally prohibited from collecting. *See* 11 U.S.C. §524. Adopted amendments to §209.1(e)(2)(B) make the language consistent with 1 TAC §59.2(b)(6)(C)(ii) regarding a limitation provision in a lawsuit.

An adopted amendment to §209.1(e)(2) deletes prior subparagraph (C) because §209.1(e)(2) is a list of delinquent obligations the department shall consider to be uncollectible and shall make no further efforts to collect, consistent with 1 TAC §59.2(b)(6)(C). Although 1 TAC §59.2(b)(6)(C)(iii) provides an exception for when circumstances indicate that the account is clearly uncollectible, clause (iii) provides the general rule that the obligation should be referred to the attorney general if a corporation has been dissolved, has been in liquidation under Chapter 7 of the United States Bankruptcy Code, or has forfeited its corporate privileges or charter; or if a foreign corporation had its certificate of authority revoked. The language in prior §209.1(e)(2)(C) implied the opposite of what 1 TAC §59.2(b)(6)(C)(iii) provides by stating the general rule is that the delinquent obligation is uncollectible in these situations unless the circumstances indicate that the account is nonetheless collectible or that fraud was involved. If a corporation described in 1 TAC §59.2(b)(6)(C)(iii) owes a delinquent obligation to the department, the department shall refer the obligation to the attorney general unless the circumstances indicate that the obligation is clearly uncollectible or another exception under §209.1 or 1 TAC 59.2 applies. For example, the obligation might be legally uncollectible under Business Organizations Code, Chapter 11 regarding the termination of a domestic entity. The list of uncollectible obligations in §209.1(e)(2) is illustrative, rather than exhaustive. Adopted amendments to §209.1(e)(2) re-letter the subsequent subparagraphs due to the deletion of prior §209.1(e)(2)(C).

Adopted amendments to re-lettered §209.1(e)(2)(D) make the language consistent with 1 TAC §59.2(b)(6)(C)(v). If the debtor

is deceased, 1 TAC §59.2(b)(6)(C)(v) says state agencies should file a claim in each probate proceeding administering the debtor's estate and that the delinquent obligation should be classified as uncollectible if such probate proceeding has concluded and there are no remaining assets of the decedent available for distribution.

An adopted amendment to §209.1(e)(3) adds a reasonable tolerance below which the department shall not refer a delinquent obligation to the attorney general as required by 1 TAC §59.2(b)(8). The adopted amendment to §209.1(e)(3) expressly includes the department's current reasonable tolerance practice, which is to only refer a delinquent obligation to the attorney general if the delinquent obligation exceeds $2,500 or the attorney general advises otherwise. Adopted amendments to §209.1(e)(3) also delete the factors that 1 TAC §59.2(b)(8) requires state agencies to consider in establishing the reasonable tolerance, as well as "policy reasons or other good cause," which was a factor the department previously added to §209.1(e)(3) to consider when making a determination of whether to refer a delinquent obligation to the attorney general. With the adoption of the specific dollar threshold for referral established in rule, as well as the exception based on advice from the attorney general, the deleted factors and the complex case-by-case analysis they implied are no longer necessary.

Adopted amendments to §209.1(e)(4) change the words "will" and "should" to "shall" for consistency and to indicate the department has a duty to refer a delinquent obligation to the attorney general for collection efforts if the department determines that the delinquent obligation shall be referred.

Adopted amendments to §209.1(f)(1) make the language consistent with 1 TAC §59.2(b)(4) regarding the filing of a lien to secure an obligation.

The department adopts §209.1(f)(2) with a change at adoption to change the catchline from "Warrants" to "Warrant Holds" to accurately describe the contents of paragraph (2). An adopted amendment to §209.1(f)(2) also changes the word "will" to "shall" for consistency and to clarify that the department has a duty to comply with the "warrant hold" procedures of the Texas Comptroller of Public Accounts that are authorized by Government Code, §403.055. Although state employees at the Texas Comptroller of Public Accounts and other Texas state agencies refer to the "warrant hold" procedures, the procedures also apply to the issuance of electronic funds transfers. Government Code, §403.055 ensures that no payments in the form of a warrant or an electronic funds transfer are made to a person who is indebted to the state or has a tax delinquency, unless an exception applies. In addition, adopted amendments to §209.1(f)(2) make the language consistent with Government Code, §403.055 by referencing electronic funds transfers and the fact that there are certain exceptions that authorize the Texas Comptroller of Public Accounts to issue a warrant or initiate an electronic funds transfer to a debtor. Lastly, adopted amendments to §209.1(f)(2) clarify that the "warrant hold" procedures apply to each individual debtor.

An adopted amendment to the title of §209.2 and adopted amendments to the text throughout §209.2 change the words "check" or "checks" to "payment device" to be consistent with the terminology in Business and Commerce Code, §3.506, which authorizes the holder of a dishonored payment device to charge the drawer or indorser a processing fee not to exceed $30 when seeking to collect the face value of the payment device. An adopted amendment to the title of §209.2 and adopted amendments to §209.2(a) and (c) also clarify that §209.2 applies even if there is one instance of a dishonored payment device by changing the rule terminology from the plural to the singular regarding the payment device. In addition, adopted amendments to the text throughout §209.2 replace the word "endorser" with "indorser" to be consistent with the terminology in Business and Commerce Code, §3.506.

Adopted amendments to §209.2(b) clarify that the definitions in Business and Commerce Code, Chapter 3 govern §209.2 and control to the extent of a conflict with the definitions in §209.2(b). Adopted amendments to §209.2(b)(2) modify the definition for "dishonored payment device" by replacing the word "instrument" with the term "payment device" because Business and Commerce Code, §3.506 uses the term "payment device." Adopted amendments to §209.2(b)(2) also modify the definition for "dishonored payment device" to delete the portion of the definition that defined a check because adopted new §209.2(b)(3) adds the definition for the term "payment device" from Business and Commerce Code, §3.506. In addition, adopted amendments to §209.2(b)(2) correct a grammatical error and modify the definition for "dishonored payment device" to clarify that the listed reasons for the dishonor of the payment device are examples.

An adopted amendment to the first sentence in §209.2(c) changes the word "will" to "shall" to indicate that the department has a duty to process a dishonored payment device using the procedures outlined in §209.2. An adopted amendment to the first sentence in §209.2(c) also replaces the term "returned check" with the term "dishonored payment device," which is a defined term in §209.2(b). In addition, an adopted amendment to the first sentence in §209.2(c) clarifies that the department shall not charge a processing fee to the drawer or indorser if the department is prohibited from doing so under Business and Commerce Code, §3.506, which prohibits a person from charging a processing fee to a drawer or indorser if a reimbursement fee has been collected under Article 102.007(e) of the Code of Criminal Procedure.

Adopted amendments throughout §209.2(c) change the word "will" to "shall" for consistency and to impose a duty on the person to whom the language applies. Adopted amendments to §209.2(c)(2) and (3) replace the term "payment processor charges" with a reference to any service charge under §209.23 of this title for clarity. The department adopts §209.2(c)(3) with a change at adoption to keep the comma after the word "title" for consistency. An adopted amendment to §209.2(c)(3) also clarifies that the reference to the processing fee is a reference to the $30 processing fee.

An adopted amendment to §209.2(c)(4) clarifies that the fee that is referenced in §209.23 of this title is a service charge. An adopted amendment to §209.2(c)(4) also replaces the word "chapter" with "title" for consistency. In addition, the department adopts §209.2(c)(4) with a change at adoption to remove "(relating to Methods of Payment)" because an adopted amendment to §209.2(c)(2) adds this language, which is only required to be included the first time that §209.23 is referenced in §209.2.

An adopted amendment to §209.2(d) adds a reference to this title to correctly reference §209.1, which is contained in Title 43. An adopted amendment to §209.2(d) also replaces the term "payment processor charges" with the clause "service charge under §209.23 of this title" for clarity. In addition, an adopted amendment to §209.2(d) clarifies that the reference to the processing fee is a reference to the $30 processing fee. Lastly, an adopted

amendment to §209.2(d) breaks the sentence into two separate sentences for clarity and readability.

An adopted amendment to §209.2(e) changes the word "will" to "shall" for consistency and to impose a duty on the department regarding the order in which the drawer's or indorser's payment to the department shall be applied. An adopted amendment to §209.2(e) also clarifies that the reference to the processing fee is a reference to the $30 processing fee. In addition, adopted amendments to §209.2(e) clarify that after the drawer's or indorser's payment is applied to the $30 processing fee, the balance would first be applied to any service charge required by §209.23 of this title, and then to the face amount of the dishonored payment device.

Subchapter B. Payment of Fees

An adopted amendment to the title of Subchapter B of Chapter 209 deletes the words "for Department Goods and Services" to clarify that Subchapter B is not limited to payment of fees for department goods and services. For example, §209.23 applies to a payment for administrative penalties that are due under an administrative enforcement case, such as the penalties under Transportation Code, §643.251.

An adopted amendment to §209.23(a) states that the purpose of §209.23 is to establish the methods of payment that the department may accept and to make the public aware of a potential service charge for certain methods of payment. Although §209.23 lists many different methods of payment that the department may accept, the transaction itself dictates the methods of payment that the department will accept for that particular transaction. For example, when the department's enforcement attorneys send a Notice of Department Decision (NODD) to an alleged violator of certain Texas laws, the NODD tells the person to pay the administrative penalties with a check, cashier's check, or money order. Another example is the department's website, which provides information regarding the methods of payment that are accepted for certain transactions, such as the purchase of an oversize/overweight permit. An adopted amendment to §209.23(a) also deletes a reference to the point of sale because the reference to the "point of sale" may confuse a person who is paying an administrative penalty to the department.

An adopted amendment to §209.23(a)(3) deletes the language that says a personal or business check is not an acceptable method of payment of fees under Transportation Code, §502.094 to clarify that this exception is not the only exception for certain methods of payment. For example, §209.2(c)(3) dictates the methods of payment that the department will accept when a person is required to make certain payments to the department after the person's payment device is not honored upon presentment to a bank or other financial institution upon which the payment device is drawn or made. Adopted amendments to §209.23(b) also clarify that a person paying by debit card or electronic funds transfer has a duty to pay any applicable service charge per transaction, which is already required under current law. In addition, an adopted amendment to §209.23(b) deletes a reference to a payment made by Automated Clearing House (ACH) because the Texas Department of Information Resources (DIR) does not currently charge a service fee under Government Code, §2054.2591 when a payment is made by ACH through DIR's payment engine.

Subchapter C. Donations or Contributions

An adopted amendment to the title of Subchapter C of Chapter 209 and the title of §209.33 changes the "and" to "or," so the title is "Donations or Contributions" because adopted new §209.33(b) defines the term "donation or contribution." An adopted amendment to the title of §209.33 also deletes the words "Acceptance of" because adopted amendments to §209.33 expand the scope of the rule to include other topics, such as the standards of conduct governing the relationship between board members, department employees, and donors.

Adopted new §209.33(a) and (b) clarify that §209.33 provides uniform criteria and procedures regarding donations or contributions, as well as standards of conduct governing the relationship between the board, the department's employes, and donors, regardless of the type or value of the donation or contribution and regardless of whether the donor is a private donor.

Adopted new §209.33(a) adds language regarding the purpose of §209.33 because adopted amendments to §209.33 address criteria and procedures regarding donations or contributions under Transportation Code, §1001.008 and Government Code, Chapter 575, as well as standards of conduct that state agencies are required to address in rule under Government Code, §2255.001. As described below, the citations to the applicable statutes in adopted new §209.33(a) clarify that §209.33 applies, even though some of the cited statutes use different terminology and apply to certain kinds of donations or contributions.

Adopted new §209.33(b) adds definitions for clarity, including the definitions for the terms "board," "department," and "executive director," which are found in Transportation Code, §1001.001. Adopted new §209.33(b) also defines the term "donation or contribution" as anything of value in any form, including real or personal property, money, materials, or services, given by a donor to the board, as authorized by Transportation Code, §1001.008. Although Transportation Code, §1001.008 refers to both donations or contributions, a contribution is also a donation, and both are also gifts. The new definition for the term "donation or contribution" in adopted new §209.33(b) clarifies that §209.33 applies to any donation or contribution, even if the donation or contribution does not fall within the scope of Government Code, Chapter 575 because the donation or contribution does not fall within the definition of the word "gift" under Government Code, §575.001 or does not trigger the dollar threshold for a gift under Government Code, §575.002, which states that Government Code, Chapter 575 only applies to a gift that has a value of $500 or more. Although Government Code, Chapter 575 uses the term "gift" rather than "donation or contribution," Government Code, §575.001 defines "gift" to mean a donation of money or property.

In addition, adopted new §209.33(b) defines the word "donor" as a person who makes a donation or contribution to the board, as authorized by Transportation Code, §1001.008. According to Government Code, §311.002(4), Chapter 311 of the Government Code applies to administrative rules such as §209.33, which are adopted under a code, such as the Government Code or the Transportation Code. Government Code, §311.005 defines the word "person" to include a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity. The new definition for "donor" in adopted new §209.33(b) clarifies that §209.33 applies to a donation or contribution from any donor, even if the donation or contribution is from a public donor, such as another governmental agency, and does not fall within the scope of Government Code, §2255.001, which only applies to a donation or contribution of money from a private donor.

Due to the addition of adopted new §209.33(a) and (b), adopted amendments to §209.33 re-letter prior subsections (a) and (b) to

become subsections (c) and (d). Adopted amendments to re-lettered §209.33(c) and (d) clarify that subsections (c) and (d) apply to the donation or contribution, even if it is a single donation or contribution. An adopted amendment to re-lettered §209.33(d) also clarifies that the records of the board meeting shall include the name of the donor. Although Government Code, §575.004 does not apply to a gift that has a value of less than $500, the second sentence in adopted re-lettered §209.33(d) applies to that donation or contribution if the board accepts the donation or contribution because it is a good practice to include the required information under re-lettered §209.33(d) in the records of the board meeting for transparency. Government Code, §575.004 requires a state agency that accepts a gift that has a value of $500 or more to record the name of the donor, a description of the gift, and a statement of the purpose of the gift in the minutes of the meeting for the state agency's governing board.

Adopted new §209.33(e) requires the department to use the donation or contribution for the purpose specified by the donor to the extent the stated purpose complies with Transportation Code, §1001.008. Transportation Code, §1001.008 only authorizes the board to accept a donation or contribution for the purposes of carrying out the board's functions and duties. In addition, Transportation Code, §1001.008 prohibits the board from accepting a donation or contribution from an entity or association of entities that the board regulates.

Adopted new §209.33(f) adds language from repealed §209.34, which said the department may document terms or conditions relating to a donation or contribution through a donation agreement with the donor. Adopted new §209.33(f) also amends the language incorporated from repealed §209.34 by changing the clause "terms or conditions" to "terms and conditions," to correct the terminology, and by using the term "donation or contribution" as defined by adopted new §209.33(b). In conjunction with the repeal of §209.34, adopted new §209.33(f) consolidates the language regarding donations or contributions into one rule.

Adopted new §209.33(g) states that board members and department employees shall comply with the standards of conduct under Government Code, Chapter 572 and any other law regulating the ethical conduct of state officers and employees when interacting with a donor or potential donor. Government Code, §2255.001(a) and (b)(2), (3), and (4) require each state agency that is authorized by statute to accept money from a private donor to adopt rules that govern all aspects of conduct of the state agency in the relationship between the donor, the state agency, and the state agency's employees, including the donor's "use" of the state agency's employee or property, service by the state agency's officer or employee as an officer or director of the donor, and the donor's monetary enrichment of the state agency's officer or employee. Although Government Code, §2255.001 only applies to a donation or contribution of money from a private donor, adopted amendments to §209.33 apply to a donation or contribution from any donor, including another governmental agency, because a conflict of interest could exist for any donation or contribution. Even though Transportation Code, §1005.001 already says the board and department employees are subject to the standards of conduct under Government Code, Chapter 572 and any other law regulating the ethical conduct of state officers and employees, adopted new §209.33(g) repeats the language from Transportation Code, §1005.001 with some modifications because Government Code, §2255.001 requires each state agency that is authorized by statute to accept money from a private donor to adopt rules governing the relationship between the donor, the state agency, the state agency's officers, and the state agency's employees. The provisions in Government Code, §2255.001 regarding a private organization that exists to further the purposes and duties of a state agency do not apply to the department because there is no such private organization for the department; therefore, the department is not adopting a rule regarding such a private organization.

The department adopts §209.33(h) and (i) with changes at adoption to clarify that the subsections apply to a proposal or decision pending before a potential donor to the board, rather than a proposal or decision pending before the board regarding a potential donor's offer to make a donation or contribution to the board. Adopted new §209.33(h) states that a board member who serves as an officer or director of a potential donor to the board shall not vote on a proposal or decision pending before the potential donor to make a donation or contribution to the board. Adopted new §209.33(i) states that if the department's executive director serves as an officer or director of a potential donor to the board, the executive director shall not vote on a proposal or decision pending before the potential donor to make a donation or contribution to the board. Government Code, §2255.001(b)(3) requires each state agency that is authorized by statute to accept money from a private donor to adopt rules that govern all aspects of conduct of the state agency in the relationship between the donor, the state agency, and the state agency's employees, including service by the state agency's officer or employee as an officer or director of the donor. Adopted new §209.33(h) and (i) help to prevent a conflict of interest regarding a proposed donation or contribution to the board under Transportation Code, §1001.008.

Adopted new §209.33(j) prohibits a board member or a department employee from authorizing a donor to use department property unless the following requirements are met: 1) the board member or the department, as applicable, have statutory authority to do so; 2) the property shall only be used for a state purpose; and 3) the property shall be used in accordance with a contract between the department and the donor that complies with Texas law. Most of these requirements spell out current law; however, Government Code, §2255.001(b)(2) requires each state agency that is authorized by statute to accept money from a private donor to adopt rules that govern all aspects of conduct of the state agency in the relationship between the donor, the state agency, and the state agency's employees, including the donor's use of the state agency's property.

Only the legislature may grant power to board members and the department regarding the use of the department's property; therefore, a board member or a department employee is prohibited from authorizing a donor to use department property unless there is statutory authority to do so. Also, Government Code, §2203.004 says that state property may only be used for state purposes and that a person may not entrust state property to a person if the property will not be used for state purposes. In addition, if the department is not sufficiently compensated for the use of the department's property, the transaction must comply with Article III, §51 of the Texas Constitution, which prohibits the legislature from granting, or authorizing a state agency to grant, public money to a private individual or entity. Attorneys general have construed Article III, §51 to also apply to the granting of public property to a private individual or entity. See Tex. Att'y Gen. Op. Nos. GA-0894 (2011) at 1, MW-373 (1981) at 9. Attorneys general have also stated that Article III, §51 does not prevent the state from making an expenditure of public money or providing public property that benefits a private individual or entity if the following requirements are met: 1) the transaction

serves a legitimate public purpose; and 2) the appropriate governing body places sufficient controls on the transaction to ensure that the public purpose is carried out. *See* Tex. Att'y Gen. Op. Nos. GA-0894 (2011) at 2, JC-0244 (2000) at 5, JC-0146 (1999) at 3, MW-373 (1981) at 9. A contract is a general method of placing sufficient controls on the transaction to ensure that the public purpose is carried out.

If the department is sufficiently compensated for the use of the department's property, the transaction is not a gratuity. See Tex. Att'y Gen. Op. No. GA-0894 (2011) at 2. For transparency, adopted new §209.33(j) requires the property to be used in accordance with a contract between the department and the donor that complies with Texas law, even if Article III, §51 of the Texas Constitution does not apply to the transaction.

The department adopts the repeal of prior §209.34 regarding a donation agreement, in conjunction with the adopted amendment to incorporate the language from prior §209.34 into §209.33, with minor amendments, to consolidate the language regarding donations or contributions into one rule.

SUMMARY OF COMMENTS.

The department did not receive any written public comments on the proposed amendments or repeal.

SUBCHAPTER A. COLLECTION OF DEBTS

43 TAC §209.1, §209.2

STATUTORY AUTHORITY. The amendments are adopted under Government Code, §2107.002, which requires a state agency that collects delinquent obligations owed to the state agency to establish procedures by rule for collecting a delinquent obligation and a reasonable period for collection; Business and Commerce Code, §3.506, which authorizes the holder of a dishonored payment device to charge a maximum processing fee of $30; Transportation Code, §502.191(e), which authorizes the department to collect a service charge in an amount that is reasonably related to the expense incurred by the department in collecting the original amount of a fee under Transportation Code, Chapter 502 when the payment of the original amount by electronic funds transfer, credit card or debit card is not honored by the funding institution or by the electronic funds transfer, credit card, or debit card company on which the funds were drawn; Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and the statutory authority referenced throughout the preamble and in the rule text, which is incorporated by reference.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Government Code, Chapters 403 and 2107; Business and Commerce Code, §3.506; and Transportation Code, §502.191(e) and §1002.001.

§209.1. Collection of Debts.

(a) Purpose. The purpose of this section is to comply with Government Code, §2107.002, which requires a state agency that collects delinquent obligations owed to the state agency to establish procedures by rule for collecting a delinquent obligation.

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

(1) Attorney general--The Office of the Attorney General of Texas.

(2) Debtor--Any person liable or potentially liable for an obligation owed to the department or against whom a claim or demand for payment has been made.

(3) Delinquent--Payment is past due by law or by customary business practice, and all conditions precedent to payment have occurred or been performed.

(4) Department--The Texas Department of Motor Vehicles.

(5) Obligation--A debt, judgment, claim, account, fee, fine, tax, penalty, interest, loan, charge, or grant.

(6) Security--Any right to have property owned by a person with an obligation to the department sold or forfeited in satisfaction of the obligation, and any instrument granting a cause of action in favor of the department against a person or a person's property, such as a bond, letter of credit, or other collateral that has been pledged to the department to secure an obligation.

(c) Notification of obligation and demand letters.

(1) The department shall send to the debtor written notice of the obligation, such as an administrative enforcement order that imposes a penalty or fine.

(2) If no satisfactory response is received within 30 days after the date that the notice is sent under paragraph (1) of this subsection, the obligation becomes delinquent on the 31st day after the date that notice is sent, unless the department's notice, the law, or a department rule imposes a different deadline for payment. The department shall send the first demand letter not later than the 30th day after the date on which the obligation becomes delinquent.

(3) If no satisfactory response is received within 30 days after the day on which the first demand letter was sent, the department shall send the final demand letter no later than 60 days after the date on which the first demand letter was sent. The final demand letter shall include a deadline by which the debtor must respond and, if the department determines in accordance with subsection (e) of this section that the obligation shall be referred to the attorney general, a statement that the obligation, if not paid, shall be referred to the attorney general.

(4) Each demand letter must set forth the nature and amount of the obligation owed to the department and must be mailed by first class United States mail, in an envelope that shall bear the notation "Return Service Requested." If an address correction is provided by the United States Postal Service, the department shall resend the demand letter to that address prior to referral to the attorney general.

(d) Records. When practicable, the department shall retain a record of a delinquent obligation. A record shall contain documentation of the following information:

(1) the identity of each debtor;

(2) the correct physical address of the debtor's place of business;

(3) the correct physical address of the debtor's residence, where applicable;

(4) an accurate physical address for the trustee when a fiduciary or trust relationship exists between the department as principal and the debtor as trustee;

(5) a post office box address when it is impractical to obtain a physical address, or when the post office box address is in addition to a correct physical address for the debtor;

(6) attempted contacts with the debtor;

(7) the substance of communications with the debtor;

(8) efforts to locate the debtor and the assets of the debtor;

(9) state warrants that may be issued to the debtor;

(10) current contracts the debtor has with the department;

(11) security interests that the department has against any assets of the debtor;

(12) notices of bankruptcy, proofs of claim, dismissals and discharge orders received from the United States bankruptcy courts regarding the debtor; and

(13) other information relevant to collection of the delinquent obligation.

(e) Referrals of a delinquent obligation to the attorney general.

(1) Prior to referral of a delinquent obligation to the attorney general, the department shall:

(A) verify the debtor's address and telephone number;

(B) send a first and final demand letter to the debtor in accordance with subsection (c) of this section;

(C) verify that the obligation is not considered uncollectible under paragraph (2) of this subsection;

(D) prepare and file a proof of claim in the case of a bankruptcy when appropriate based on advice from the attorney general; and

(E) file a claim in each probate proceeding administering the decedent's estate if the debtor is deceased.

(2) The department shall consider a delinquent obligation uncollectible and shall make no further effort to collect if the obligation is not legally collectible or is uncollectible as a practical matter. Examples of an obligation that is not legally collectible or is uncollectible as a practical matter include an obligation, which:

(A) has been discharged in bankruptcy;

(B) is subject to an applicable limitations provision that would prevent a lawsuit as a matter of law, unless circumstances indicate that the applicable limitations provision has been tolled or is otherwise inapplicable;

(C) is owed by an individual who is located out-of-state, or outside the United States, unless a determination is made that the domestication of a Texas judgment in the foreign forum would more likely than not result in collection of the obligation, or that the expenditure of department funds to retain foreign counsel to domesticate the judgment and proceed with collection attempts is justified;

(D) is owed by a debtor who is deceased, where each probate proceeding has concluded, and where there are no remaining assets available for distribution; or

(E) is owed by a debtor whose circumstances demonstrate a permanent inability to pay or make payments toward the obligation.

(3) Except as advised otherwise by the attorney general, the department shall not refer a delinquent obligation to the attorney general unless the delinquent obligation exceeds $2,500.

(4) The department shall refer a delinquent obligation to the attorney general for further collection efforts if the department determines, in accordance with this subsection, that the delinquent obligation shall be referred.

(f) Supplemental and alternative collection procedures.

(1) Liens. Where state law allows a state agency to record a lien securing the obligation, the department shall file the lien in the appropriate records of the county where the debtor's principal place of business, or, where appropriate, the debtor's residence, is located or in such county as may be required by law as soon as the obligation becomes delinquent or as soon as is practicable. Unless the delinquent obligation has been paid in full, any lien securing the indebtedness may not be released without the approval of the attorney representing the department after the matter has been referred to the attorney general.

(2) Warrant Holds. The department shall utilize the "warrant hold" procedures of the Comptroller of Public Accounts authorized by Government Code, §403.055, to ensure that no treasury warrants are issued to a debtor and no electronic funds transfers are made to a debtor until the debt is paid, unless an exception applies.

§209.2. Charges for Dishonored Payment Device.

(a) Purpose. Business and Commerce Code, §3.506, authorizes the holder of a dishonored payment device, seeking collection of the face value of the payment device, to charge the drawer or indorser of the payment device a reasonable processing fee, not to exceed $30. This section prescribes policies and procedures for the processing of a dishonored payment device made payable to the department and the collection of fees because of the dishonor of a payment device made payable to the department.

(b) Definitions. The definitions contained in Business and Commerce Code, Chapter 3 govern this section and control to the extent of a conflict with the following definitions in this subsection. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Department--The Texas Department of Motor Vehicles.

(2) Dishonored payment device--A payment device that is drawn or made upon a bank or other financial institution, and that is not honored upon presentment for reasons including, but not limited to, the account upon which the payment device has been drawn or made does not exist, is closed, or does not have sufficient funds or credit for payment of the payment device in full.

(3) Payment device--A check, item, paper or electronic payment, or other device used as a medium for payment.

(c) Processing of a dishonored payment device. Upon receipt of notice from a bank or other financial institution of refusal to honor a payment device made payable to the department, the department shall process the dishonored payment device using the following procedures; however, the department shall not charge a $30 processing fee to the drawer or indorser if the department is prohibited from doing so under Business and Commerce Code, §3.506.

(1) The department shall send a written notice by certified mail, return receipt requested, to the drawer or indorser at the drawer or indorser's address as shown on:

(A) the dishonored payment device;

(B) the records of the bank or other financial institution; or

(C) the records of the department.

(2) The written notice shall notify the drawer or indorser of the dishonored payment device and shall request payment of the face amount of the payment device, any service charge under §209.23 of this title (relating to Methods of Payment), and a $30 processing fee no later than 10 days after the date of receipt of the notice. The written notice shall also contain the statement required by Penal Code, §32.41(c)(3).

(3) The face amount of the payment device, any service charge under §209.23 of this title, and the $30 processing fee must be paid to the department:

(A) with a cashier's check or money order, made payable to the Texas Department of Motor Vehicles; or

(B) with a valid credit card, approved by the department, and issued by a financial institution chartered by a state or the United States, or a nationally recognized credit organization.

(4) Payments made by credit card must include the service charge required by §209.23 of this title.

(5) If payment is not received within 10 days after the date of receipt of the notice, the obligation shall be considered delinquent and shall be processed in accordance with §209.1 of this title (relating to Collection of Debts).

(d) Supplemental collection procedures. In addition to the procedures described in §209.1 of this title, the department may notify appropriate credit bureaus or agencies if the drawer or indorser fails to pay the face amount of a dishonored payment device, any service charge required under §209.23 of this title, and the $30 processing fee. In addition, the department may refer the matter for criminal prosecution.

(e) Any payment to the department from the drawer or indorser of a dishonored payment device shall be applied first to the $30 processing fee, then to any service charge required by §209.23 of this title, and then to the face amount of the dishonored payment device.

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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Laura Moriaty
General Counsel
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For further information, please call: (512) 465-4160

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SUBCHAPTER B. PAYMENT OF FEES

43 TAC §209.23

STATUTORY AUTHORITY. The amendments are adopted under Transportation Code, §1001.009, which authorizes the board to adopt rules regarding the method of collection of a fee for any goods sold or services provided by the department, or for the administration of any department program; Transportation Code, §501.176, which authorizes the department to collect a fee for processing a title or registration payment by electronic funds transfer, credit card, or debit card in an amount that does not exceed the amount of the charges incurred by the state to process the payment; Transportation Code, §502.094, which authorizes the department to charge a service charge for a payment by credit card or escrow account for a 72-hour or a 144-hour permit; Transportation Code, §502.191, which authorizes the department to collect a fee for processing a payment by electronic funds transfer, credit card, or debit card in an amount not to exceed the amount of the charges incurred by the department to process the payment; Transportation Code, §621.356 and §623.076, which authorize the board to adopt rules that require the payment of a discount or service charge for a credit card payment in addition to the fee; Transportation Code, §643.004, which authorizes the department to adopt rules that require the payment of a discount or service charge for a credit card payment in addition to the fee; Transportation Code, §645.002, which authorizes the department to adopt rules regarding the method of payment of a fee required under the unified carrier registration plan and agreement, including rules that require the payment of a discount or service charge for a credit card payment in addition to the fee; Transportation Code, §646.003, which authorizes the department to adopt rules regarding the method of payment of a fee under Transportation Code, Chapter 646, including rules that require the payment of a discount or service charge for a credit card payment in addition to the fee; Transportation Code, §1001.009, which authorizes the board to adopt rules that require the payment of a discount or service charge for a credit card payment in addition to the fee; Government Code, §2054.1115, which authorizes a state agency that uses the state electronic internet portal to use electronic payment methods for point-of-sale transactions (including in-person transactions), telephone transactions, and mail transactions; Government Code, §2054.2591, which authorizes the Texas Department of Information Resources (DIR) to set fees that a state agency may charge for a transaction that uses the state electronic Internet portal project; Transportation Code, §§501.176, 502.191, and 520.003, which authorize the department to collect the fees that DIR sets under Government Code, §2054.2591; Transportation Code, §1002.001, which provides the board with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and the statutory authority referenced throughout the preamble and in the rule text, which is incorporated by reference.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Transportation Code, §§501.176, 502.094, 502.191, 520.003, 621.356, 623.076, 643.004, 645.002, 646.003, 1001.009, and 1002.001; and Government Code, §2054.1115 and §2054.2591.

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SUBCHAPTER C. DONATIONS OR CONTRIBUTIONS

43 TAC §209.33

STATUTORY AUTHORITY. The amendments are adopted under Transportation Code, §1001.008, which authorizes the board

to accept a donation or contribution in any form and to delegate to the executive director the authority to accept a donation or contribution that is under $500 or that is not otherwise required to be acknowledged in an open meeting; Transportation Code, §1005.001, which says the board, the executive director, and each employee of the department is subject to the standards of conduct imposed by Government Code, Chapter 572, and any other law regulating the ethical conduct of state officers and employees; Government Code, Chapter 575, which governs a state agency's acceptance of a gift, which is defined as a donation of money or property that has a value of $500 or more; Government Code, §2255.001, which requires a state agency that is authorized by statute to accept money from a private donor to adopt rules governing the relationship between the donor, the state agency, and the state agency's employees; Transportation Code, §1002.001, which provides the board with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and the statutory authority referenced throughout the preamble and in the rule text, which is incorporated by reference.

CROSS REFERENCE TO STATUTE. The adopted amendments implement Transportation Code, §§1001.008, 1002.001, and 1005.001; and Government Code, Chapters 572, 575, and 2255.

§209.33. Donations or Contributions.

(a) The purpose of this section is to establish the criteria and procedures regarding donations or contributions under Transportation Code, §1001.008 and Government Code, Chapter 575, as well as the standards of conduct governing the relationship between the board, the department's employees, and donors under Government Code, Chapter 2255.

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

(1) Board--The board of the Texas Department of Motor Vehicles.

(2) Department--The Texas Department of Motor Vehicles.

(3) Donation or contribution--Anything of value in any form, including real or personal property, money, materials, or services, given by a donor to the board, as authorized by Transportation Code, §1001.008.

(4) Donor--A person who makes a donation or contribution to the board, as authorized by Transportation Code, §1001.008.

(5) Executive director--The executive director of the Texas Department of Motor Vehicles.

(c) The executive director may accept a donation or contribution valued under $500.

(d) Board acceptance of a donation or contribution shall be made in an open meeting. The records of the meeting shall identify the name of the donor and describe the donation or contribution and its purpose.

(e) If a donor specifies the purpose of the donation or contribution, the department shall use the donation or contribution for that purpose to the extent the specified purpose complies with Transportation Code, §1001.008.

(f) The department may document terms and conditions relating to a donation or contribution through a donation or contribution agreement with the donor.

(g) Pursuant to Transportation Code, §1005.001 and Government Code, §2255.001, board members and department employees shall comply with the standard of conduct imposed by Government Code, Chapter 572 and any other law regulating the ethical conduct of state officers and employees when interacting with a donor or potential donor.

(h) A board member who serves as an officer or director of a potential donor to the board shall not vote on a proposal or decision pending before the potential donor to make a donation or contribution to the board.

(i) If the department's executive director serves as an officer or director of a potential donor to the board, the executive director shall not vote on a proposal or decision pending before the potential donor to make a donation or contribution to the board.

(j) A board member or a department employee shall not authorize a donor to use department property unless the following requirements are met:

(1) the board member or the department, as applicable, must have statutory authority to do so;

(2) the property shall only be used for a state purpose; and

(3) the property shall be used in accordance with a contract between the department and the donor that complies with Texas law.

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

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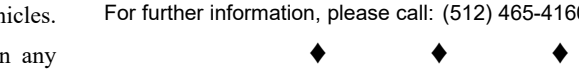

SUBCHAPTER C. DONATIONS OR CONTRIBUTIONS

43 TAC §209.34

STATUTORY AUTHORITY. The repeal is adopted under Transportation Code, §1001.008, which authorizes the board to accept a donation or contribution in any form and to delegate to the executive director the authority to accept a donation or contribution that is under $500 or that is not otherwise required to be acknowledged in an open meeting; Government Code, §2255.001, which requires a state agency that is authorized by statute to accept money from a private donor to adopt rules governing the relationship between the donor, the state agency, and the state agency's employees; Transportation Code, §1002.001, which provides the board with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and the statutory authority referenced throughout the preamble and in the rule text, which is incorporated by reference.

CROSS REFERENCE TO STATUTE. The adopted repeal implements Transportation Code, §1001.008 and §1002.001; and Government Code, Chapter 2255.

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 215. MOTOR VEHICLE DISTRIBUTION

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) Subchapter A, General Provisions, §215.1 and §215.2; adopts amendments to Subchapter C. Franchised Dealers, Manufacturers, Distributors, and Converters, 43 TAC §§215.101, 215.120, and 215.121; adopts amendments to Subchapter D. General Distinguishing Numbers and In-Transit Licenses, §§215.131 - 215.133, 215.138, 215.140, 215.141, 215.143, 215.144, 215.147, 215.148, 215.150, 215.152, 215.155 - 215.158, and 215.160; adopts new §§215.151, 215.154, and 215.162; adopts repeals of §§215.151, 215.153, 215.154 and 215.159; and adopts amendments to Subchapter E, Lessors and Lease Facilitators, §215.178. These amendments, new sections, and repeals are necessary to implement House Bill (HB) 718 and Senate Bill (SB) 224, enacted during the 88th Legislature, Regular Session (2023). HB 718 amended Transportation Code, Chapter 503 to eliminate the use of temporary tags when purchasing a motor vehicle and replaced these tags with categories of license plates, effective July 1, 2025. HB 718 requires the department to determine new distribution methods, systems, and procedures, and to set certain fees. Section 34 of HB 718 grants the department authority to adopt rules necessary to implement or administer these changes in law and requires the department to adopt related rules by December 1, 2024. Beginning July 1, 2025, if a motor vehicle is sold to a Texas resident, a Texas dealer shall assign a license plate to the vehicle unless the buyer has a specialty or other qualifying license plate, and the assigned license plate will stay with the vehicle if the vehicle is later sold to another Texas buyer. Adopted amendments implementing Occupations Code, Chapters 1956 and 2305, as amended by SB 224, require certain license holders under Occupations Code, Chapter 2301, and an owner of a garage or repair shop to keep records regarding catalytic converters and make those records available for inspection by the department.

One new adopted section, §215.162, implements the catalytic converter recordkeeping and inspection requirements for dealers in SB 224, which became effective on May 29, 2023. A new proposed section, §215.122, which would have clarified SB 244 requirements for manufacturers, distributors, and converters was not adopted.

Repeals of §215.151 and §215.154 are adopted to implement HB 718 and new replacement rules are being adopted for each of these two sections. Repeals of §215.153 and §215.159 are also adopted to implement HB 718 as §215.153 contains the specifications for all temporary tags, and §215.159 contains the requirements for temporary tags issued and displayed by a converter. Neither of these rules are necessary beginning July 1, 2025, when temporary tags will no longer exist.

In 2019, the Sunset Commission recommended the board establish advisory committees and adopt rules regarding standard advisory committee structure and operating criteria. The board adopted rules in 2019, and advisory committees have since provided valuable input on rule proposals considered by the board for proposal or adoption. In February and March 2024, the department provided an early draft of rule changes implementing HB 718 to three department advisory committees, the Vehicle Titles and Registration Advisory Committee (VTRAC), the Motor Vehicle Industry Regulation Advisory Committee (MVIRAC), and the Customer Service and Protection Advisory Committee (CSPAC). Committee members voted on formal motions and provided informal comments on other provisions. The department incorporated input from all three committees and the Tax Assessor-Collector Association (TACA) in adopted §§215.2, 215.138, 215.140, 215.150 - 215.152, 215.155 - 215.158, and 215.178. Additionally, stakeholders, including the Texas Automobile Dealers Association (TADA), the Texas Independent Automobile Dealers Association (TIADA), and the Texas Recreational Vehicle Association (TRVA), provided feedback and input on one or more rule proposals. The department also considered all written comments received during the public comment period for these proposals.

Adopted nonsubstantive amendments are necessary to modify language to be consistent with statutes and other chapters in Title 43 of the Texas Administrative Code; to modify language to be consistent with current practice including use of records or electronic systems; to improve readability through the use of consistent terminology; to clarify or delete unused, archaic, or inaccurate definitions, terms, references or other language; to clarify existing requirements; or to modernize language and improve readability.

The effective date for these rules is July 1, 2025, unless otherwise designated. The following amended sections are adopted without changes to the proposed text as published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5030) and will not be republished: §§215.1, 215.2, 215.101, 215.121, 215.131, 215.132, 215.144, 215.147, 215.148, 215.154, 215.160, 215.162, and 215.178.

The following sections are adopted with changes at adoption to the proposed text as published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5030) and will be republished: §§215.120, 215.133, 215.138, 215.140, 215.141, 215.143, 215.150 - 215.152, and 215.155 - 215.158. The following sections are adopted with substantive changes to the proposed text: §§215.120, 215.133, 215.138, 215.140, 215.143, 215.151, 215.152, 215.156, and 215.158. Each substantive change is described in the Explanation of Adopted Amendments, Repeals, and New Sections below and some of these changes are also referenced in the department's response to comments. The following sections are adopted with nonsubstantive changes to the proposed text: §§215.141, 215.150 - 215.152, and 215.155

- 215.158. Each nonsubstantive change is described in the Explanation of Adopted Amendments, Repeals, and New Sections below.

EXPLANATION OF ADOPTED AMENDMENTS, REPEALS, AND NEW SECTIONS.

Subchapter A. General Provisions.

Adopted amendments to §215.1 add references to Occupations Code, Chapter 2305, and Transportation Code, Chapters 504 and 520, as the scope of the rules in this chapter changed to include these statutes. Occupations Code, Chapter 2305 implements SB 224; Transportation Code, Chapter 504, which regulates the transfer and removal of license plates, implements HB 718; and Transportation Code, Chapter 520 contains provisions regarding dealer responsibilities that may be delegated by a county tax assessor-collector to a dealer deputy including the issuance of a license plate upon the sale of a vehicle as authorized by HB 718.

Adopted amendments to §215.2(a) add statutory references to definitions in Occupations Code, Chapter 2305, and Transportation Code, Chapter 520 to reflect the change in the scope of the chapter. An adopted amendment in §215.2(b)(4) adds a definition for "employee" and defines the term as a natural person employed directly by a license holder for wages or a salary and eliminates contractors from being considered employees under Chapter 215. Adopted amendments renumber the remaining definitions in this subsection. The effective date for this section is 20 days after the adoption is filed with the Texas Secretary of State.

Subchapter C. Franchised Dealers, Manufacturers, Distributors, and Converters.

Adopted amendments to §215.101 add references to Occupations Code, Chapter 2305, and Transportation Code, Chapters 504 and 520, as the scope of the rules in this chapter changed to include these statutes. Occupations Code, Chapter 2305 implements SB 224. Transportation Code, Chapter 504 regulates the transfer and removal of license plates, and Transportation Code, Chapter 520 contains provisions regarding dealer responsibilities that may be delegated by a county tax assessor-collector to a dealer deputy including the issuance of a license plate upon the sale of a vehicle as authorized by HB 718. The effective date for this section is 20 days after the adoption is filed with the Texas Secretary of State.

A proposed amendment to §215.102(e)(1)(K)(iv) to require an applicant for a manufacturer's, distributor's, or converter's license to inform the department whether the applicant repairs a motor vehicle with a catalytic converter in Texas and, if so, the physical address at which the applicant performs this repair was not adopted.

Adopted amendments to §215.120(d) require a manufacturer, distributor, or converter to maintain a record of the license plates assigned for its use in either the license holder's recordkeeping system or a designated electronic system that the department uses to manage these industry license plates. At adoption the phrase "either in the license holder's recordkeeping system or" was added to provide operational flexibility. Today the department's electronic licensing system, eLICENSING, houses certain data for these license plates. During the next several months, the department will be developing a new license plate system, and these license holders may need flexibility to track industry license plates either in their own recordkeeping system or in a system designated by the department. An adopted amendment to §215.120(e) adds a reference to a department designated system for consistency. A proposed amendment to §215.120(f) to encourage license holders to immediately report all stolen license plates to local law enforcement was not adopted. An adopted amendment to §215.120(g) repeals the current text as these license holders will not necessarily be required to keep local records because records will be able to be entered into a department-designated system, and the remaining subsections are re-lettered accordingly. In response to a public comment, an amendment was added at adoption to re-lettered §215.120(g) to clarify that the department will use the same criteria to evaluate a request for additional standard license plates received from any license holder eligible for standard license plates, including eligible franchised and other GDN holders, to enable fair and consistent department review and decisions regarding issuance of additional standard dealer plates.

Adopted amendments to §215.121 add sanctions for a license holder who fails to report a lost, stolen, or damaged license plate to the department and who fails to keep or maintain records related to catalytic converters. An adopted amendment to §215.121(b)(7) adds the phrase "or fails to report a lost, stolen, or damaged license plate" to inform a license holder that a sanction may apply for failure to make such a report within the timeframe required by rule. This sanction is necessary as failure to report such a plate prevents this information from being promptly transmitted to law enforcement and risks public harm. An adopted amendment to §215.121(b)(18) adds a sanction for a license holder who fails to maintain the catalytic converter records required under Occupations Code, Chapter 2305, Subchapter D. This sanction is important as a license holder's failure to keep catalytic converter records will impede law enforcement from investigating related criminal activity, which can harm Texas citizens. The effective date for this section is 20 days after the adoption is filed with the Texas Secretary of State.

Proposed new §215.122 implementing SB 224 for manufacturers, distributors, and converters was not adopted.

Subchapter D. General Distinguishing Numbers and In-Transit Licenses.

Adopted amendments to §215.131 add references to Transportation Code, Chapters 504 and 520, and Occupations Code, Chapter 2305, as the scope of the rules in this subchapter changed to include these statutes. SB 224 amended Occupations Code, Chapter 2305 to give the department authority to inspect license holders' catalytic converter records, and Transportation Code, Chapter 520 contains provisions regarding dealer responsibilities that may be delegated by a county tax assessor-collector to a dealer deputy including the issuance of a license plate upon the sale of a vehicle as authorized by HB 718. The effective date for this section is 20 days after the adoption is filed with the Texas Secretary of State.

Adopted amendments to §215.132 define certain terms used in the section: "buyer's license plate," "buyer's temporary license plate," and "dealer's temporary license plate." Adopted amendments also delete the definition of temporary tag. "Buyer's license plate" is adopted to be defined as a general issue plate or set of license plates issued by a dealer to a vehicle buyer under Transportation Code, §503.063 for a vehicle that will be titled and registered in Texas. This term is also adopted to be defined to include a buyer's provisional license plate, which is a short-term use license plate that a dealer may issue if the dealer

does not have the applicable license plate available for the type of vehicle the buyer is purchasing. A "buyer's temporary license plate" is adopted to be defined as a temporary license plate to be issued by a dealer to a non-resident vehicle buyer whose vehicle will be titled and registered out-of-state in accordance with Transportation Code, §503.063(i). A "dealer's temporary license plate" is defined as a license plate that a dealer who holds a general distinguishing number (GDN) may purchase and use for the purposes allowed under Transportation Code, §502.062. Adopted amendments to these definitions implement HB 718, which eliminates temporary paper tags and requires the department to create new categories of license plates that will be affixed to a vehicle upon purchase. Some of the remaining definitions are adopted to be re-lettered to allow for the addition and deletion of definitions.

Adopted amendments to §215.133(c)(1)(I) add a reference to the "license plate system" to implement HB 718, which eliminates temporary paper tags and becomes effective on July 1, 2025. Additionally, an adopted amendment to §215.133 adds new §215.133(c)(1)(P) to require GDN applicants to disclose whether the applicant repairs a motor vehicle with a catalytic converter in Texas, and if so, the physical address where the repair is performed. This adopted amendment will allow the department to obtain the information necessary to carry out its responsibilities under SB 224 to identify license holders that repair motor vehicles with catalytic converters and inspect related records. To allow for the additional requirement, the following subsection is re-lettered accordingly. In response to public comment, a proposed amendment to §215.133(c)(2)(J) to require applicants to complete webDEALER training as part of the application process was deleted at adoption as dealer access requirements for this system are proposed for adoption in §217.74 of this title. Adopted amendments to §215.133(c)(3)(B) add "dealer" and "temporary license" before the word "plate" to be consistent with the amended definitions in §215.132, and to implement HB 718 when it becomes effective on July 1, 2025. The effective date for this section is the first day of a calendar month following a period of 20 days after the adoption is filed with the Texas Secretary of State.

Adopted amendments to §215.138 add certain dealer's plates to those subject to the requirements of the chapter, clarify certain exceptions to the license plate requirements, and add record keeping and reporting requirements to prevent fraud and theft. Adopted amendments to §215.138 add personalized prestige and temporary license plates to the types of license plates to which the requirements of the section apply. These types of license plates are adopted to be added in §215.138(a), (b), (c), (f), and (j) to implement HB 718. This section lists the requirements for dealer's license plates. Referencing these additional types of plates in each subsection ensures these requirements are inclusive of all the types of dealer's plates that may be used by a dealer. Adopted amendments to §215.138(c) add golf carts and off-highway vehicles to §215.138(c)(3) and (4), as described by Transportation Code Chapters 551 and 551A, respectively, to ensure that §215.138(c) incorporates all the types of vehicles that dealer's plates may not be displayed on, including those with statutory exceptions, for clarity and ease of reference. Adopted amendments to §215.138(h) add the requirement that a dealer maintains records of each dealer's plate in the department's designated electronic license plate system rather than in the dealer's records. This adopted amendment allows the department to prevent fraud and allows law enforcement access to these records. Additionally, in §215.138(h)(4), which describes information that must be entered into the system, adopted language requires a dealer to enter the name of the person in control of the vehicle or license plate. This adopted change makes it easier for the department and law enforcement to identify and investigate fraud and other illegal activity, while allowing dealers flexibility to assign a license plate to a vehicle or a driver. At adoption, amendments to §215.138(i) deleted paragraph (1) in conformity with the proposed deletion of §215.138(k) because a dealer is no longer required to keep a local license plate record as the dealer will be required to maintain that information in the department's designated electronic system instead. The following two subparagraphs of §215.138(i) are renumbered accordingly. A proposed amendment to §215.138(j) to encourage a dealer to immediately alert law enforcement by reporting a stolen license plate to a local law enforcement agency was not adopted. An adopted amendment strikes §215.138(k), which previously required a dealer's license plate record to be available for inspection by the department. This adopted subsection is no longer necessary as dealers will be entering these records into the department's designated electronic license plate system. An adopted amendment re-letters (l) to (k) for continuity. An adopted amendment to §215.138(l) clarifies that a wholesale motor vehicle auction GDN holder that also holds a dealer's GDN may display a dealer's temporary license plate assigned to their dealer GDN on a vehicle that is being transported to or from the licensed auction location. This adopted language clarifies that persons who hold both types of GDNs may use a dealer's temporary license plate to legally transport vehicles between their businesses. In response to public comment, at adoption, §215.138(m) was added to clarify that recordkeeping requirements in subsection (d) do not apply to a vehicle that is being operated solely for the purposes of demonstration, which is commonly referred to as a test drive.

Adopted amendments to §215.140 add requirements regarding delivery of buyer's license plates and storage of those license plates. HB 718 eliminated temporary tags and created a need for buyer's plates to be delivered to dealers so that dealers may issue license plates to buyers upon vehicle purchase. This statutory change requires dealers to properly receive, secure, and store license plates to prevent fraud, plate theft, and related criminal activity. An adopted amendment to §215.140(a)(5)(F) adds buyer's plates to the types of license plates that will not be mailed to an out-of-state address, but that will only be delivered or mailed to a dealer's physical location in Texas. These adopted amendments are necessary to responsibly implement HB 718, which eliminates temporary tags and creates a need for buyer's plates to be delivered to dealers so that they may issue them to buyers upon vehicle purchase. Another adopted amendment to §215.140 adds §215.140(a)(6)(E), which requires a dealer to store all license plates in a dealer's possession in a locked or otherwise secured room or closet or in at least one securely locked and substantially constructed safe or steel cabinet bolted or affixed to the floor in such a way that it cannot be readily removed, to deter theft or fraudulent misuse of license plates. A proposed amendment to §215.140(b)(5) adding subparagraph (E), was intended to create a similar requirement for a wholesale motor vehicle auction GDN holder to securely store license plates removed from vehicles sold at auction to out-of-state buyers or for export. However, this proposed amendment was deleted at adoption in response to a public comment because a rule addressing license plate security at wholesale motor vehicle auctions requires further stakeholder input and department consideration. Further rulemaking on this issue will be proposed at a future board meeting.

In response to public comment, at adoption, the phrases "or set of plates," "or set of license plates," "or sets of license plates," and "sets of plates" were deleted in §§215.141, 215.150 - 215.152, and 215.155 - 215.158, to improve consistency and readability. The definition of buyer's license plate in §215.132(2) defines the term as including a set of plates so the phrase does not need to be repeated.

Adopted amendments to §215.141 remove references to temporary tags and add sanctions that the department may assess if a license holder fails to comply with new license plate requirements or catalytic converter record requirements. These adopted changes are necessary to enforce the provisions of HB 718 and SB 224. An adopted amendment to §215.141(b)(10) adds references to buyer's "license plate or buyer's temporary license plate" to reflect the new plate types that the department has developed to implement HB 718, which will become effective July 1, 2025. Adopted amendments to §215.141(b)(12) and (13) add an expiration date for temporary tags of July 1, 2025, to implement HB 718. An adopted amendment to §215.141(b)(25) updates the title of a referenced rule to reflect the adopted new title for that rule. Adopted new §215.141(b)(26) authorizes sanctions should a license holder fail to securely store a license plate. Adopted new §215.141(b)(27) authorizes sanctions should a license holder fail to maintain a record of dealer license plates as required under §215.138. Adopted new §215.141(b)(28) authorizes sanctions should a license holder fail to file or enter a vehicle transfer notice. Adopted new §215.141(b)(29) authorizes sanctions should a license holder fail to enter a lost, stolen, or damaged license plate in the electronic system designated by the department within the time prescribed by rule. Adopted new §215.141(b)(34) authorizes sanctions should a license holder fail to remove a license plate or set of license plates from a vehicle sold to an out-of-state buyer or from a vehicle sold for export. The adopted amendments for §215.141(b)(26)-(29) and (34) make the requirements of HB 718 enforceable by the department when HB 718 becomes effective on July 1, 2025. Adopted new §215.141(b)(35) authorizes sanctions should a license holder fail to keep or maintain records required under Occupations Code, Chapter 2305, Subchapter D or to allow an inspection of these records by the department both of which are required by SB 224. The effective date for this section is 20 days after the adoption is filed with the Texas Secretary of State.

An adopted amendment to §215.143(c) streamlines license plate recordkeeping for in-transit license plates by requiring a drive-a-way operator to maintain required license plate data in the department-designated system instead of in a local record. Additionally, in §215.143(c)(4), an adopted amendment changes the requirement that the record contain the name of the person in control of the vehicle to the name of the person in control of the license plate. This adopted amendment allows a drive-a-way operator to designate in the license plate system which employee is currently responsible for an in-transit plate, which will inform the department or law enforcement in case of a complaint. An adopted amendment in §215.143(d)(1) strikes "operator's plate record" and replaces it with "department-designated system" for consistency. A proposed amendment to §215.143(e) to add language encouraging a drive-a-way operator to immediately alert law enforcement by reporting a stolen license plate was not adopted. An adopted amendment strikes §215.143(f), which required that a drive-a-way operator's license plate record be available for inspection, as this is no longer necessary because these license holders will be required to enter that information into the department's designated system. The remaining sections are re-lettered for continuity.

Adopted amendments to §215.144 replace references to the electronic title system in subsection §215.144(e)(8) and (9) with references to webDEALER as defined in §217.71 to clarify the system to be used. An adopted amendment to §215.144(e)(9) deletes an inadvertent use of "new" to describe a motor vehicle as the paragraph covers both new and used motor vehicles and adds "properly stamped" which was inadvertently deleted in the June 1, 2024, amendment to this rule upon publication. Adopted amendments to §215.144(f)(3) add a reference to title to clarify that the reasonable time periods apply to both filing of a title and registration, simplify language to improve readability, and add a new subparagraph (C) regarding timeliness for filing a title or registration for certain military personnel in compliance with Transportation Code, §501.145(c). An adopted amendment to §215.144(i)(2)(C) changes the requirement to make title application on public motor vehicle auctions from 20 working days of sale to a reasonable time as defined in §215.144(f) for consistency. Adopted amendments to §215.144(l) add punctuation and create two new subsections. The first subsection is retitled "webDEALER" and incorporates existing language regarding the department's web-based title application. The adopted new subsection is titled "License Plate System." This section requires a license holder to comply with §215.151, which contains general requirements for the issuance of license plates by dealers and is an important reference for dealers.

Adopted amendments to §215.147(d) add a requirement that a dealer remove, void, and destroy or recycle any license plate or registration insignia as required under §215.158 before transferring ownership of a vehicle to be exported, and strike paragraphs (1)-(3) relating to temporary tags. These amendments are necessary to implement HB 718 and to prevent theft and fraud of these plates which are no longer assigned to a vehicle registered in Texas.

An adopted amendment to §215.148 makes a non-substantive change to delete a repetitive phrase and parenthetical in §215.148(c). The effective date for this section is 20 days after the adoption is filed with the Texas Secretary of State.

In response to public comment, at adoption, the phrase "general issue" was either deleted or changed to "buyer's" throughout §§215.150 - 215.152, 215.155, 215.157, and 215.158 for consistency in terminology. The definition of "buyer's license plate" in §215.132(2) defines the plate as a general issue plate so that phrase does not need to be repeated.

An adopted amendment to §215.150 changes the name of the section to strike "Temporary Tags" and replace that phrase with "License Plates" to implement HB 718, which eliminated temporary tags. An adopted amendment to §215.150(a) requires a dealer to issue a buyer's license plate for a vehicle type the dealer is authorized to sell to (1) a buyer of a new vehicle, unless the buyer has an authorized plate which may be assigned to the vehicle, and (2) a buyer of a used vehicle, if a buyer's license plate did not come with the vehicle and if the buyer does not have authorized plates that can be assigned to the vehicle. The adopted amendments to §215.150 recognize that under HB 718, a converter may not issue a temporary tag or license plate effective July 1, 2025, and that the purpose of the department's database will change from the tracking and issuance of temporary tags to the tracking and issuing of license plates on July 1, 2025. Other adopted amendments throughout this section im-

plement HB 718 by striking all language referencing temporary tags.

Adopted new §215.150(b) adds an exception to the requirements in §215.150(a) for vehicles sold to commercial fleet buyers authorized by a county tax assessor-collector as a dealer deputy under §217.166 because these commercial fleet buyers are authorized as dealer deputies to assign license plates to vehicles purchased from a dealer. Adopted new §215.150(c) requires a dealer to issue a buyer's temporary license plate to an out-of-state buyer for a vehicle to be registered in another state.

Adopted amendments to relettered §215.150(d) replace "license holder" with "dealer" for consistency in terminology. Another amendment to relettered §215.150(d) removes a list of the types of temporary tags and substitutes a citation to license plates under Transportation Code, §503.063, which was amended by HB 718 to replace temporary tags with license plates. Additionally, adopted amendments to relettered §215.150(d) replace references to the temporary tag database with references to the license plate system and update associated statutory and rule references to implement HB 718.

Adopted amendments to prior §215.150(c) re-letter it to §215.150(e), delete "federal, state, or local" to describe a governmental agency as this descriptor is unnecessary, clarify that a governmental agency may issue either a buyer's license plate or a buyer's temporary license plate unless the buyer has a qualifying license plate to place on the vehicle, remove references to buyer's temporary tags and internet-down tags, and update Transportation Code and rule citations.

Adopted amendments to prior §215.150(d) re-letter it to §215.150(f), strike the term "converter," and strike references to the temporary tag database, replacing those references with "license plate system" to implement HB 718. Additionally, an adopted amendment to re-lettered §215.150(f)(4) deletes prior language and replaces it with a requirement for a dealer to secure all license plates, including license plates assigned to vehicles in inventory, dealer's license plates, and unissued buyer's license plates in a locked and secured room or closet or in one or more securely locked, substantially constructed safes or steel cabinets bolted or affixed to the floor or wall. An adopted amendment also requires dealers to properly mark and destroy, recycle, or return all void license plates as required under §215.158. These amendments are necessary to responsibly implement license plate management required under HB 718 and to deter license plate theft and fraud.

Prior §215.151 is adopted for repeal as this section describes how to use and affix temporary tags, which HB 718 has eliminated. Adopted new §215.151, titled "License Plate General Use Requirements," implements HB 718, which requires the department set rules for affixing license plates to vehicles. Adopted new §215.151 maintains consistency with how plates are currently affixed under §217.27. Adopted new §215.151(a) sets out the requirements for securing a license plate to a vehicle for a Texas buyer, in accordance with §217.27. Adopted new §215.151(b) requires a dealer to issue a buyer's temporary license plate and secure this license plate to the vehicle for a vehicle purchased by a non-resident buyer who intends to title and register the vehicle under the laws of the home state. Adopted new §215.151(c) requires a dealer to remove and destroy a plate on a used vehicle if the buyer has a specialty, personalized or other qualifying plate to put on the vehicle. Adopted new §215.151(d) specifies a dealer's responsibilities to remove and store a buyer's license plate when the dealer purchases a vehicle with an assigned license plate, and the dealer's responsibilities upon vehicle sale to update the license plate database and provide, securely transfer, or destroy or recycle the assigned license plate depending on the type of purchaser. In response to a public comment, at adoption, an amendment to §215.151(d) corrects the citation to §215.150 to reference subsection (f), rather than subsection (d). In response to public comment, at adoption, amendments to §215.151(d) split the first sentence into two sentences to improve readability by separating the dealer's responsibilities upon purchase of a vehicle from the dealer's responsibilities when the vehicle is sold. Sentence punctuation was added as was the introductory phrase: "Upon vehicle sale, the dealer must update the license plate database and:" to clarify that a dealer is required to update the license plate system for any type of vehicle sale not just sales to out-of-state dealers or for export. In response to public comment, at adoption, the separate duties of dealers to retail buyers and dealer buyers were split out and clarified: "Texas buyer" in §215.151(d)(1) was specified to be a "Texas retail buyer," and new §215.151(d)(2) was added to address a vehicle sale to a Texas dealer requiring the selling dealer to securely transfer the license plate to the purchasing dealer. Also at adoption, proposed §215.151(d)(2) was renumbered to §215.151(d)(3) and the requirement to update the license plate database was deleted as that language was moved to the second sentence in §215.151(d). These adopted revisions are necessary to implement HB 718 and further clarify dealer responsibilities. At adoption, the department also corrected an error in new §215.151(d)(3) by changing the word "the" to "this" before the word "title."

Adopted amendments to new §215.152 replace all references to temporary tags with references to dealer-issued buyer's license plates to implement HB 718, which eliminated temporary tags and the temporary tag database and requires a dealer to issue or reassign a license plate to most vehicle buyers. Adopted amendments to §215.152(a) strike the terms "converter" and "temporary tag database" and replace those terms with "webDEALER" and "the license plate system," and add language requiring a dealer to be responsible for verifying receipt of license plates in the license plate system. These adopted amendments recognize that under HB 718, a converter may not issue a temporary tag or license plate effective July 1, 2025, and that the purpose of the database will change from the tracking and issuance of temporary tags to the tracking and issuing of license plates on July 1, 2025.

At adoption, the department amends §215.152(b) to update the cross-reference with the adopted new title of §215.157, "Issuing Buyer's License Plates and License Plate Receipts When Internet Not Available." Adopted amendments to §215.152(b) also replace prior language by substituting requirements for a dealer to enter information in the license plate system, including information about the vehicle, the buyer, and the license plate number assigned.

Adopted amendments to §215.152(c) require the department to inform each dealer of the annual maximum number of buyer's license plates the dealer is authorized to obtain, substitute "obtain" for "issue," and add a reference to Transportation Code, §503.063. Additional adopted amendments to §215.152(c) add language to describe the two types of buyer's license plate allotments that a dealer is eligible to obtain from the department, which are: (1) an allotment of unassigned buyer's license plates for vehicles to be titled and registered in Texas, and (2) a sep-

arate allotment of buyer's temporary license plates for non-resident buyers. This distinction reflects the new license plate types the department has developed to implement HB 718.

Adopted amendments to §215.152(d)(1) provide that a dealer's allotment will be based on vehicle title transfers, sales, or license plate issuance data as determined from the department's systems from the previous fiscal year, as well as previously used multipliers based on time in operation or actual in-state and out-of-state sales transactions. Adopted amendments to these previously existing factors in §215.152(d)(3)(A) and (B) replace the "number of dealer's temporary tags issued" with the "number of transactions processed through the department." Adopted amendments to §215.152(d)(4) strike temporary tags and add the word "annual" to be clear that the allotment of license plates is on an annual basis.

An adopted amendment strikes as unnecessary current §215.152(e), which relates to allocating temporary tags for converters because a converter may not issue a temporary tag or license plate effective July 1, 2025, under Transportation Code, Chapter 503, as amended by HB 718. The remaining subsections of §215.152 are adopted to be re-lettered accordingly.

Adopted amendments to current §215.152(f), adopted to be re-lettered as §215.152(e), strike references to "converter," and replace references to temporary tags with references to general issue and buyer's temporary license plates. Additionally, adopted amendments to relettered §215.152(e)(1) provide that a new franchised dealer may be issued 200 general issue license plates and 100 buyer's temporary plates annually, and provide that the franchised dealer may request more license plates based on credible information indicating a higher quantity is warranted. These adopted plate allocations are based on historical data for newly licensed franchised dealers. Adopted amendments strike relettered §215.152(e)(1)(A) and (B) because they relate only to temporary tags. Adopted amendments to relettered §215.152(e)(2) provide the annual allocation of license plates for new non-franchised dealers as 100 general issue license plates and 48 buyer's temporary license plates. These adopted plate allocations are based on historical data for newly licensed non-franchised dealers. Another adopted amendment to relettered §215.152(e) strikes §215.152(e)(3), because it relates only to the converter's temporary tag allocation. Under Transportation Code, Chapter 503 as amended by HB 718, a converter may not issue a temporary tag or license plate effective July 1, 2025.

Adopted amendments to relettered §215.152(f) and (g) replace references to temporary tags with references to license plates throughout, changes "license" to "GDN" and "dealership" to "dealer" for consistency in terminology, and update subsection designations based on adopted amendments.

New adopted §215.152(h) states that the plates will be distributed on a quarterly basis, so that dealers will have enough inventory on hand to conduct business but will not have to store the entirety of the annual plate allotment at once, and clarifies that a dealer's remaining unissued plates at the end of the allocation period will count towards the dealer's next allocation. At adoption, a clause was added to the end of the first sentence of new §215.152(h) to allow for a twice-yearly allocation to a dealer that sells only special interest vehicles or antique vehicles as defined in Transportation Code, §683.077(b). For consistency with this new language, the term "quarterly" was deleted at adoption from the second sentence of new §215.152(h) describing allocations and allocation periods. A dealer who sells only these types of vehicles requested this change at adoption because a quarterly allocation would not work with that dealer's business model, which is to sell large quantities of these vehicles through auctions held only twice per year.

New adopted §215.152(i) explains when a dealer may submit a request for additional plates to ensure that dealers are able to order more plates well in advance of needing them and paralleling the current requirements for temporary tag requests in prior §215.152(i). The adopted amendments delete prior language that is no longer applicable under HB 718. New adopted §215.152(j) requires a dealer to submit a request in the license plate system. New adopted §215.152(k) explains the process by which a dealer must submit the request for additional plates and the information that is required from the dealer, modifying language currently in §215.152(i) with the terms and statutory citations changed for consistency with HB 718 implementation. Adopted amendments to the language in §215.152(i), incorporated into new §215.152(k)(3), change the division within the department where appeals will be reviewed from the Motor Vehicle Division to the Vehicle Titles and Registration Division to be consistent with current agency operations. Other adopted amendments re-letter prior §215.152(j) and (k), delete references to converters and temporary tags because a converter may not issue a temporary tag or license plate effective July 1, 2025, under Transportation Code, Chapter 503, as amended by HB 718, add references to license plate system activity, and update statutory references. At adoption, §215.152(k) was renumbered. An adopted amendment strikes §215.152(l), as this subsection, prohibiting rollover of temporary tag allotments from one calendar year to the next, is no longer necessary. Each of these adopted amendments is necessary to implement HB 718.

Section 215.153 is adopted for repeal as part of HB 718 implementation because it only sets out the specifications for the design of temporary tags and is therefore no longer necessary. Similarly, §215.154 is adopted for repeal because it only describes how dealer's temporary tags are to be used, and these temporary tags will no longer exist following the implementation of HB 718.

Adopted new §215.154 implements HB 718 by addressing the allocation of a new license plate type created by HB 718, a dealer's temporary license plate. Adopted new §215.154(a) bases the number of dealer's temporary license plates a dealer may order on the type of license for which the dealer applied and the number of vehicles the dealer sold during the previous year, to deter theft and fraudulent misuse of temporary plates by limiting supply. Adopted new §215.154(b) gives the maximum number of dealer's temporary license plates issued to new license applicants during the applicants' first license term in a graphic table. Adopted new §215.154(c) provides all dealers licensed on July 1, 2025, with the opportunity to obtain the number of dealer's temporary plates that a new dealer of the same license type is eligible for on that date as defined in §215.154(b), and an additional number based on dealer sales in the previous year as defined in §215.154(e). This new adopted subsection helps to ensure that existing dealers have access to enough dealer's temporary plates during the transition from using agent and vehicle temporary tags to using dealer's temporary plates. Adopted new §215.154(d) lists the exceptions for which a dealer will not be subject to the initial allotment so that certain dealers who previously qualified for more license plates may continue using their current allocation. Adopted new §215.154(e) allows a dealer to obtain more than the maximum initial allotment limits for dealer's temporary plates by providing sales numbers from the prior year

that justify an increased allocation, to allow for flexibility and business continuity for those dealers who have a documented need for additional plates. Similarly, adopted new §215.154(f) allows wholesale motor vehicle dealers to obtain more than the maximum initial allotment of dealer's temporary plates by providing the department with the numbers of vehicles purchased over the past 12 months to predict a dealer's need for additional license plates, to ensure that a wholesaler has sufficient temporary plates to meet documented demand. Adopted new §215.154(g) allows the department to waive maximum issuance restrictions if the waiver is essential for the continuity of business if the dealer provides the department with sales data and reason for the waiver request to allow the department flexibility to meet the demonstrated business needs of its license holders with appropriate allocations on a case-by-case basis. Adopted new §215.154 will thus implement HB 718 with an allocation system for dealer temporary license plates that balances the need to limit allocations to avoid excess inventory creating an increased risk of license plate fraud or theft with the need to provide license holders with enough dealer temporary license plates to meet business needs.

Adopted amendments to §215.155 replace all references to buyer's temporary tags with references to buyer's license plates or buyer's temporary license plates to implement HB 718, which eliminated temporary tags in favor of license plates. An adopted amendment to §215.155(c) requires that a dealer may not issue a buyer's license plate for a wholesale transaction; rather, the purchaser must use its own dealer's plate to display on a purchased vehicle. If a general issue plate or set of plates is already assigned to the vehicle, the selling dealer must provide the general issue plates to the purchasing dealer. This adopted amendment is to ensure that an assigned license plate stays with the vehicle to which the license plate was originally assigned, consistent with the requirement in Transportation Code, §504.901(b). The adopted amendments to §215.155 include striking §215.155(e) as unnecessary because it only addresses requirements for temporary tags, which HB 718 has eliminated. The remaining subsections of §215.155 are re-lettered accordingly. Adopted amendments to prior §215.155(f) strike the current temporary tag fee and prescribe a new $10 fee for buyer's plates. Adopted amendments to prior §215.155(f) similarly strike the prior temporary tag fee that governmental agencies may charge and prescribe a new $10 fee that governmental agencies may charge for buyer's plates. HB 718 amended Transportation Code, §503.063(g) to eliminate the temporary tag fee and to require the department to prescribe a fee to be charged by the dealer to the buyer for license plates that are issued or assigned to the buyer upon vehicle purchase. The department has determined that a $10 fee will be sufficient to cover the expected costs associated with registering and processing the new license plates required by HB 718. Additionally, an adopted amendment to prior §215.155(f)(1) replaces "electronic title system" with "designated electronic system" to better reflect current department procedure.

Adopted amendments to §215.156 replace all references to temporary tags with references to buyer's license plates to implement HB 718, which eliminated temporary tags in favor of license plates. The purpose of §215.156 is to describe the requirements for a dealer to provide a vehicle buyer with a buyer's receipt. Adopted amendments requiring a dealer to print a receipt from the department's designated electronic system reflect that HB 718 will require dealers to print a buyer's receipt from a different electronic system. The adopted amendments to §215.156 delete unnecessary language describing the process for printing temporary tag receipts, since HB 718 abolished temporary tags. Adopted amendments also remove references to metal plates in favor of "vehicle registration insignia" to reflect new processes and standardize terminology across the department's rule chapters. Additionally, adopted new §215.156(7) requires the receipt to include the procedure by which the vehicle registration insignia will be provided to the buyer, as is required under Transportation Code, §503.0631(d-1), as amended by HB 718. The adopted amendments to §215.156 also delete unnecessary language and punctuation. In response to public comment, at adoption, clarifying amendments to §215.156 added the phrase "or buyer's temporary license plate" to clarify that a dealer must issue a buyer's license plate receipt to every purchaser of a vehicle in Texas even if the vehicle is to be registered out-of-state, and added the phrase "if the vehicle is to be registered in Texas" to clarify that the requirement to include the procedure by which the vehicle's registration insignia will be provided only applies to vehicles to be registered in Texas. These amendments help clarify which buyer's license plate receipt requirements apply to a particular type of vehicle sale.

Adopted amendments to §215.157 implement HB 718 by describing the process for a dealer to issue a license plate and a license plate receipt when internet access is not available by replacing the prior requirement for a dealer to print out an internet-down tag with a requirement for a dealer to document the issuance of a buyer's general issue license plate and then enter that information in the license plate system not later than the close of the next business day. These adopted amendments are necessary to implement HB 718 and maintain the integrity of the data in the license plate database.

Adopted amendments to §215.158 describe the general requirements for buyer's license plates necessary to implement HB 718. Adopted amendments to the title of §215.158 add "for Buyer's License Plates" and delete an unnecessary reference to "Preprinted Internet-down Temporary Tag Numbers." Adopted amendments to §215.158 delete language related to internet-down temporary tags, which are obsolete since HB 718 eliminated temporary tags, and replace it with language about license plates. Adopted amendments to §215.158(a) also make nonsubstantive wording and punctuation changes and delete an unnecessary descriptive phrase for a governmental agency to improve readability and retain the dealer and governmental agency's responsibility for safekeeping of license plates and for prompt reporting of license plates that are lost, stolen, or destroyed. A proposed amendment to §215.158(a) to encourage a dealer or governmental agency to immediately report all stolen license plates to local law enforcement was not adopted. In response to public comment, an amendment added at adoption to §215.158(a) adds the phrase "or buyer's temporary license plate" to clarify that a dealer's responsibility to report any loss, theft, or destruction of license plates includes a buyer's temporary license plate. Adopted amendments to §215.158(b) require a dealer to remove and void any previously assigned plates that cannot stay with the motor vehicle. Under the adopted amendment, the dealer must mark these license plates as void and destroy, recycle the void license plates with a metal recycler registered under Occupations Code, Chapter 1956, or return the void license plates to the department or a county tax assessor-collector. These steps are intended to prevent potential theft or fraud relating to plates that have been removed from a vehicle. These amendments are necessary to responsibly implement HB 718. Adopted amendments to

§215.158(c) require a dealer to return all license plates in their possession to the department within 10 days of closing the associated license or within 10 days of the department revoking, canceling, or closing the associated license, to reduce the risk of theft or fraudulent misuse of the plates. At adoption, an amendment to §215.158(c) deleted the word "buyer's" in describing license plates to clarify that all license plates in the dealer's possession must be returned to the department within 10 days if the dealer's license is revoked, cancelled, or closed. The remaining subsections of §215.158 are adopted for deletion as these subsections refer only to internet-down tags and are no longer necessary with the implementation of HB 718.

Adopted for repeal, §215.159 describes the requirements for converter's temporary tags, which will not exist when HB 718 is implemented, making §215.159 unnecessary.

Adopted amendments to §215.160(a) and §215.160(b) replace the references to titles under Transportation Code, §501.100 with the words "issued a title" to clarify that if dealers know a motor vehicle has formerly been a salvage vehicle, they must disclose this fact, regardless of whether the motor vehicle is currently titled under Transportation Code, §501.100. The effective date for the amendments to this section is 20 days after the adoption is filed with the Texas Secretary of State.

Adopted new §215.162 implements SB 224 by requiring dealers that repair a motor vehicle with a catalytic converter to comply with the statutory recordkeeping requirements in Occupations Code, Chapter 2305, Subchapter D, and to allow the department to inspect those records during business hours. The effective date for this section is 20 days after the adoption is filed with the Texas Secretary of State.

Subchapter E. Lessors and Lease Facilitators

An adopted amendment to §215.178(a)(2) simplifies language for improved readability by changing "a request from a representative of the department" to "a department records request." Adopted amendments to §§215.178(c)(7)(C) and (D) and §215.178(c)(8) replace references to the electronic title system with references to webDEALER, as defined in 43 TAC §217.71, relating to Automated and Web-Based Vehicle Registration and Title Systems, to provide additional context to the specific part of the electronic title system to which the section applies. An adopted amendment in §215.178(c)(8) adds an "a" before motor vehicle to correct sentence grammar. An adopted amendment to §215.178(g) adds an exception to those records that may be kept electronically for documents listed in subsection (c)(8) of this section, which are records that dealers are required to keep in webDEALER. The effective date for the amendments to this section is 20 days after the adoption is filed with the Texas Secretary of State.

SUMMARY OF COMMENTS.

The department received five written comments on the proposal from two individuals, the National Auto Auction Association (NAAA), the Texas Automobile Dealers Association (TADA), and the Texas Independent Automobile Dealers Association (TIADA).

Comment: TADA comments that in §215.120 (g) and (h), the term "license holder" is used rather than manufacturer, distributor, or converter, and requests that the department change the rule language accordingly.

Response: The department disagrees with this comment. At adoption, the department clarified that the criteria for evaluating applications for additional standard license plates is the same for all eligible license holders, including franchised and GDN dealers.

Comment: An individual commenter requests the department define "repair of a catalytic converter."

Response: The department disagrees with this comment because these terms are defined in statute. The term "repair" is defined in Occupations Code, §2305.001(2) and "catalytic converter" is defined in Occupations Code, §2305.151. The amendments and new rule adopted by the department do not change, expand, or diminish these statutory definitions.

Comment: TIADA requests a streamlined process be added to §215.133 for a dealer who has been licensed for 10 years to renew a license.

Response: The department disagrees that streamlining the dealer license renewal process is a change that can be made within the scope of this rule package but welcomes suggestions for streamlining the process that may be considered in a future rule proposal.

Comment: TADA requests that the webDEALER training requirement in §215.133 not be added to the current licensing requirements.

Response: The department agrees with this comment. At adoption, the department deleted the licensing requirement, and webDEALER access requirements are addressed in §217.74.

Comment: An individual commenter and TADA note a typographical error in a referenced citation to §217.74(g).

Response: The department agrees with this comment. Correcting the citation was unnecessary because the language was struck at adoption as noted in the response to the previous public comment.

Comment: TADA and TIADA request that in §215.138, the department not require the vehicle information to be entered into the license plate system for a test drive.

Response: The department agreed with this comment and exempted vehicle demonstrations from this rule at adoption.

Comment: An individual commenter suggests replacing the words "dealer's license plate record" with "electronic license plate system designed by the department" in §215.138(i)(1).

Response: The department agrees that the reference to dealer's license plate record is unnecessary. At adoption, the department struck all text in proposed §215.138(i)(1) and renumbered the remaining paragraphs. Substituting language in proposed §215.138(i)(1) is not necessary because the requirement to report the dealer's license plate in the electronic system designated by the department was included in proposed §215.138(i)(2), renumbered at adoption as §215.138(i)(1).

Comment: An individual commenter recommends including the option of returning voided dealer license plates to a county tax assessor-collector's office for consistency with other sections in §215.138(j).

Response: The department disagrees with this comment. Currently, dealers must return void dealer's standard license plates to the department and this requirement has allowed the department to track these plates, confirm dealer compliance with Transportation Code, §503.038, and properly dispose of these plates to prevent related fraud. Requiring dealers also to

return void dealer's temporary license plates to the department is consistent with the current requirement for standard plates and will allow the department to more efficiently manage these plates and prevent related fraud.

Comment: NAAA and an individual commenter request that language be added in §215.140 or §215.150, to define Texas license plates as securely stored if the license plates are: (1) physically stored inside a motor vehicle while the vehicle is stored on an auction's property; or (2) remain physically attached to the vehicle while it is stored on an auction's property.

Response: The department disagrees with this comment because it is unclear how effective either of these methods would be in preventing bad actors from stealing license plates from vehicles at auction. The department recognizes that motor vehicles sold at auction require coordination between the seller, the auction, and the buyer, and will solicit further input from stakeholders before proposing a future rule regarding the handling of these vehicle license plates.

Comment: NAAA and an individual commenter request that auctions should be exempt from any Texas license plate removal, reporting and storage requirements because of the wholesale (non-retail) nature of the transactions and the substantial cost outweighing any potential benefits.

Response: The department disagrees with this comment. NAAA estimates that based on 2023 data, approximately 100,000 vehicles in Texas are sold annually to out-of-state dealers. Not recovering these 100,000 Texas license plates per year represents a significant risk of fraud. The department also recognizes that transferring and securing license plates may have operational and cost impacts on both dealers and auctions and will solicit additional input from stakeholders on how these license plates could be efficiently and effectively secured and managed before proposing a rule regarding the handling of license plates for vehicles at auction. In the proposed rules, the only requirement for a wholesale motor vehicle auction was to have secure storage for license plates. At adoption, the department struck this requirement in anticipation of future rulemaking.

Comment: TADA thanks the department for allowing a dealer multiple options with respect to the location and means to store the license plates in the dealer's possession in §215.140.

Response: The department agrees with this comment. The department seeks to provide flexibility when possible.

Comment: TADA requests that if the department's electronic plate system is not available for use by the dealer at the time of the test drive, that sanctions not be available for assessment in §215.141.

Response: The department disagrees that a change to §215.141 is required. The department's enforcement team investigates and considers relevant facts and circumstances surrounding a potential violation before issuing a violation notice and assessing a penalty. These facts and circumstances would include any downtime of associated systems.

Comment: TADA requests that §215.150 include language allowing a buyer to request new general issue license plates regardless of whether the used vehicle did or did not come with a set of plates and suggests a reference be added to Transportation Code, §504.007.

Response: The department disagrees with this comment as this request is outside the scope of this rulemaking. This request may be considered in a future rulemaking consistent with the department's statutory authority.

Comment: An individual commenter recommends in §215.151(b) changing "titled and registered in another state" as a qualification for issuance of a temporary license plate as titling or registering may not be required under the applicable state law.

Response: The department agrees with this comment. At adoption, the department substituted the phrase "titled and registered in accordance with the laws of the buyer's state of residence."

Comment: An individual commenter requested that a reference in §215.151(d) be corrected to §215.150(f).

Response: The department agrees and corrected the citation at adoption.

Comment: NAAA requests that the department resolve any inconsistency between proposed §215.151(d) and §217.53(a) and (b).

Response: The department agrees with this comment, and at adoption has revised both sections for consistency as described in the explanation section of each rule adoption.

Comment: TADA suggests that §215.151(d)(1) state that a dealer who removes and stores the general issue license plates shall offer the assigned license plates to a Texas buyer that purchases the vehicle; otherwise, the buyer and seller may believe he or she is required to accept the previous owner's plates.

Response: The department disagrees with this comment as this request is outside the scope of this rulemaking. This request may be considered in a future rulemaking consistent with the department's statutory authority.

Comment: TIADA recommends allowing dealers to request additional license plates at any time by eliminating the 50 percent requirement in §215.152(i)(l) and (i)(2).

Response: The department disagrees with this comment. Based on the department's experience in managing temporary tags allocations, requiring a dealer to use 50% of an allocation before requesting additional license plates is an effective and practical way for both the dealer and the department to manage license plate requests and license plate inventory.

Comment: TADA expresses a concern that the initial allotment in §215.152 may be too narrow and requests TxDMV to continue to be receptive to a dealer's request for a greater number of buyer's license plates.

Response: The department agrees that the department must continue to be receptive to dealers' requests for a greater number of license plates based on business need and has adopted language to facilitate these requests. The adopted allotments are based on data currently available in department systems and the department will review usage and propose adjustments to these allocations in future rule proposals as required.

Comment: TADA requests that the department repeat the approved uses in Transportation Code, §503.062 in §215.154 and add a new provision that a dealer's temporary license plate may be used on a vehicle that is driven under a conditional delivery agreement as provided for in the Finance Code, §348.013 to provide a clearer understanding of the allowed uses.

Response: The department disagrees with this comment. A reference to Transportation Code, §503.062 is included in the definition of a dealer's temporary license plate in §215.132(2). Repeating statutory language in rule is unnecessary and doing so would require the department to amend the rule if the statutory language changes in the future.

Comment: An individual commenter requests clarification in §215.156 regarding whether a dealer will be required to print a receipt for a buyer's temporary license plate, and recommended that if so, including the expiration date on the receipt to coincide with the expiration date affixed on the plate to help mitigate malpractice or fraud.

Response: The department agrees that clarifying whether a receipt will be issued for a buyer's temporary license plate would be helpful. At adoption, the department clarified that §215.156 and §215.158 apply to a buyer's license plate and a buyer's temporary license plate. The department agrees with the recommendation to add language regarding the expiration to the temporary license plate receipt but chose not to add "expiration date" to the rule text at adoption because the department has not finalized the receipt text and the department has a choice whether to refer to the statutory 60-day period from the date of issuance or include a specific expiration date.

Comment: TADA requests that §215.157 be amended to allow the required information to be entered into the license plate system when the dealer or governmental agency has access to the internet, but no later than the close of the next business day after internet access is permanently secured.

Response: The department disagrees with this comment. Transportation Code, §503.0631(d) requires a dealer to submit the required information not later than the next business day after the time of sale. The department's enforcement team investigates and considers relevant facts and circumstances surrounding a violation before issuing a violation notice and assessing a penalty, including extenuating circumstances that may cause a prolonged outage, such as a natural disaster or extreme weather event.

Comment: An individual commenter requests removal of the references to "non-resident" and "out-of-state resident" from sections impacting the issuance of buyer's temporary license plates.

Response: The department disagrees because Transportation Code, §503.063(i) limits the applicability of these temporary license plates to non-resident buyers.

Comment: An individual commenter requests that the defined term "buyer's license plate" be used in all related rules for consistency in terminology.

Response: The department agrees with this comment and made multiple edits in the adopted text to make terminology more consistent. These nonsubstantive changes are described in the Explanation of Adopted Amendments, Repeals, and New Sections of the preamble.

Comment: NAAA recommends clarifying which license plate status updates must be completed by the selling Texas dealer or by the buying Texas dealer, as applicable.

Response: The department agrees that clarifying responsibilities is important and at adoption made changes to §215.151(d) to clarify certain dealer responsibilities when a dealer buys or sells a vehicle with an assigned license plate. Once the design for the new license plate system is finalized, the department anticipates that additional helpful clarification can be provided to dealers in rule and in system training and documentation.

Comment: TIADA requests that the adopted rules not include a suggestion to report stolen license plates to law enforcement.

Response: The department agrees with this comment and made changes at adoption to remove the referenced language.

Comment: An individual commenter requests multiple advanced system capabilities be included in the new license plate system and related webDEALER tools for the allocation, storage, and reporting of license plates and issuance of registration insignia.

Response: The department disagrees that this comment is within the scope of this rule proposal. However, the department will consider these requests as the department works with a vendor to design and implement the new system.

Comment: TADA requests that the department consider allowing the information in the electronic license plate system to be maintained as a secure confidential record.

Response: The department disagrees with this comment. The department understands dealers and the public may have confidentiality concerns. However, the department must comply with state law regarding the classification of information as public or confidential under Government Code, Chapter 552. The department anticipates that the information in the license plate system will be a mix of confidential and public/non-confidential information.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §215.1

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts amendments to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Transportation Code, §503.061, which allows the board to adopt rules regulating the issuance and use of dealer's license plates; Transportation Code, §503.0631 which requires the department to adopt rules to implement and manage the department's database of dealer-issued buyer's license plates; §503.0633 which allows the department to establish the maximum number of license plates or sets of license plates a dealer may obtain annually under Transportation Code, §503.063 and §503.065; Transportation Code, §520.0071 which requires the

board to adopt rules classifying deputies performing titling and registration duties, the duties and obligations of these deputies, the type and amount of bonds that may be required by a county tax assessor-collector for a deputy performing titling and registration duties, and the fees that may be charged or retained by deputies; Transportation Code, §520.021 which allows the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts amendments under the authority of Transportation Code, §§501.0041, 502.0021, 503.002, and 520.003; and Government Code, §2001.004 and §2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503. Transportation Code, §520.003 authorizes the department to adopt rules to administer Chapter 520.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These adopted amendments implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2305; and Transportation Code, Chapters 501-503, 520, and 1001-1005.

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

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

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For further information, please call: (512) 465-4160

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43 TAC §215.2

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts amendments to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Transportation Code, §503.061, which allows the board to adopt rules regulating the issuance and use of dealer's license plates; Transportation Code, §503.0631 which requires the department to adopt rules to implement and manage the department's database of dealer-issued buyer's license plates; §503.0633 which allows the department to establish the maximum number of license plates or sets of license plates a dealer may obtain annually under Transportation Code, §503.063 and §503.065; Transportation Code, §520.0071 which requires the board to adopt rules classifying deputies performing titling and registration duties, the duties and obligations of these deputies, the type and amount of bonds that may be required by a county tax assessor-collector for a deputy performing titling and registration duties, and the fees that may be charged or retained by deputies; Transportation Code, §520.021 which allows the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts amendments under the authority of Transportation Code, §§501.0041, 502.0021, 503.002, and 520.003; and Government Code, §2001.004 and §2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503. Transportation Code, §520.003 authorizes the department to adopt rules to administer Chapter 520.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These adopted amendments implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2305; and Transportation Code, Chapters 501-503, 520, and 1001-1005.

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. FRANCHISED DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CONVERTERS

43 TAC §215.101, §215.121

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts amendments and new sections to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Transportation Code, §503.061, which allows the board to adopt rules regulating the issuance and use of dealer's license plates; Transportation Code, §503.0631 which requires the department to adopt rules to implement and manage the department's database of dealer-issued buyer's license plates; §503.0633 which allows the department to establish the maximum number of license plates or sets of license plates a dealer may obtain annually under Transportation Code, §503.063 and §503.065; Transportation Code, §520.0071 which requires the board to adopt rules classifying deputies performing titling and registration duties, the duties and obligations of these deputies, the type and amount of bonds that may be required by a county tax assessor-collector for a deputy performing titling and registration duties, and the fees that may be charged or retained by deputies; Transportation Code, §520.021 which allows the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts amendments under the authority of Transportation Code, §§501.0041, 502.0021, and 503.002; and Government Code, §2001.004 and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These adopted new sections and amendments implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2305; and Transportation Code, Chapters 501-503, 520, and 1001-1005.

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

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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Proposal publication date: July 12, 2024
For further information, please call: (512) 465-4160

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43 TAC §215.120

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts amendments and new sections to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure

before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Transportation Code, §503.061, which allows the board to adopt rules regulating the issuance and use of dealer's license plates; Transportation Code, §503.0631 which requires the department to adopt rules to implement and manage the department's database of dealer-issued buyer's license plates; §503.0633 which allows the department to establish the maximum number of license plates or sets of license plates a dealer may obtain annually under Transportation Code, §503.063 and §503.065; Transportation Code, §520.0071 which requires the board to adopt rules classifying deputies performing titling and registration duties, the duties and obligations of these deputies, the type and amount of bonds that may be required by a county tax assessor-collector for a deputy performing titling and registration duties, and the fees that may be charged or retained by deputies; Transportation Code, §520.021 which allows the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts amendments under the authority of Transportation Code, §§501.0041, 502.0021, and 503.002; and Government Code, §2001.004 and 2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These adopted new sections and amendments implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2305; and Transportation Code, Chapters 501-503, 520, and 1001-1005.

§215.120. Standard License Plates.

(a) A manufacturer, distributor, or converter may apply for a manufacturer or converter standard license plate for use on a new unregistered vehicle of the same vehicle type assembled or modified in accordance with Transportation Code §503.064 or §503.0618, as applicable:

(1) when applying for a new or renewal license, or

(2) by submitting a standard license plate request application electronically in the system designated by the department.

(b) A manufacturer may use a manufacturer's standard license plate to test a prototype motor vehicle on a public street or highway including a commercial motor vehicle prototype designed to carry a load. A manufacturer's standard license plate may not be used on a commercial motor vehicle prototype or new commercial motor vehicle to carry a load for which the manufacturer or other person receives compensation.

(c) A manufacturer, distributor, or converter shall attach a standard license plate to the rear of a vehicle in accordance with §217.27 of this title (relating to Vehicle Registration Insignia).

(d) A manufacturer, distributor, or converter shall maintain a record of each standard license plate issued to the manufacturer, distributor, or converter by the department either in the license holder's recordkeeping system or in the department-designated system. The license plate record must contain:

(1) the license plate number;

(2) the year and make of the vehicle to which the license plate is affixed;

(3) the VIN of the vehicle, if one has been assigned; and

(4) the name of the person in control of the license plate.

(e) If a manufacturer, distributor, or converter cannot account for a standard license plate or a standard license plate is damaged, the manufacturer, distributor, or converter shall:

(1) document the license plate as "void" in the department-designated system; and

(2) within three days of discovering that the license plate is missing or damaged, report the license plate as lost, stolen, or damaged electronically in the system designated by the department; and

(3) if found after reported missing, cease use of the license plate.

(f) A standard license plate is no longer valid for use after the manufacturer, distributor, or converter reports to the department that the license plate is lost, stolen, or damaged. A manufacturer, distributor, or converter must render a void license plate unusable by permanently marking the front of the plate with the word "VOID" or a large "X" and once marked, shall destroy or recycle the license plate, or return the license plate to the department within 10 days.

(g) In evaluating requests for additional standard license plates from any eligible license holder, including a franchised or other GDN dealer, the department shall consider the business justification provided by a license holder including the following:

(1) the number of vehicles assembled or modified;

(2) the highest number of motor vehicles in inventory in the prior 12 months;

(3) the size and type of business;

(4) how the license holder typically uses standard licenses plates;

(5) the license holder's record of tracking and reporting missing or damaged license plates to the department; and

(6) any other factor the Department in its discretion deems necessary to support the number of license plates requested.

(h) a license holder shall return a department-issued license plate to the department within 10 days of the license holder closing the associated license or the associated license being revoked, canceled, or closed by the department.

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

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SUBCHAPTER D. GENERAL DISTINGUISHING NUMBERS AND IN-TRANSIT LICENSES

43 TAC §§215.131, 215.141, 215.148, 215.160, 215.162

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts amendments and new sections to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Transportation Code; Transportation Code, §503.061, which allows the board to adopt rules regulating the issuance and use of dealer's license plates; Transportation Code, §503.0631 which requires the department to adopt rules to implement and manage the department's database of dealer-issued buyer's license plates; §503.0633 which allows the department to establish the maximum number of license plates or sets of license plates a dealer may obtain annually under Transportation Code, §503.063 and §503.065; Transportation Code, §504.0011 which allows the board to adopt rules to implement and administer Chapter 504; Transportation Code, §520.0071 which requires the board to adopt rules classifying deputies performing titling and registration duties, the duties and obligations of these deputies, the type and amount of bonds that may be required by a county tax assessor-collector for a deputy performing titling and registration duties, and the fees that may be charged or retained by deputies; Transportation Code, §520.021 which allows the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts amendments under the authority of Transportation Code, §§501.0041, 502.0021, 503.002, 504.0011, and 520.003; and Government Code, §2001.004 and §2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503. Transportation Code, §504.0011 authorizes the board to adopt rules to implement and administer Chapter 504. Transportation Code, §520.003 authorizes the department to adopt rules to administer Chapter 520.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These adopted new sections and amendments implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2305; and Transportation Code, Chapters 501 - 504, 520, and 1001-1005.

§215.141. Sanctions.

(a) The board or department may take the following actions against a license applicant, a license holder, or a person engaged in business for which a license is required:

(1) deny an application;

(2) revoke a license;

(3) suspend a license;

(4) assess a civil penalty;

(5) issue a cease and desist order; or

(6) or take other authorized action.

(b) The board or department may take action described in subsection (a) of this section if a license applicant, a license holder, or a person engaged in business for which a license is required:

(1) fails to maintain a good and sufficient bond or post the required bond notice if required under Transportation Code §503.033 (relating to Security Requirement);

(2) fails to meet or maintain the requirements of §215.140 (relating to Established and Permanent Place of Business Premises Requirements);

(3) fails to maintain records required under this chapter;

(4) refuses or fails to comply with a request by the department for electronic records or to examine and copy electronic or physical records during the license holder's business hours at the licensed business location:

(A) sales records required to be maintained by §215.144 of this title (relating to Vehicle Records);

(B) ownership papers for a vehicle owned by that dealer or under that dealer's control;

(C) evidence of ownership or a current lease agreement for the property on which the business is located; or

(D) the Certificate of Occupancy, Certificate of Compliance, business license or permit, or other official documentation confirming compliance with county and municipal laws or ordinances for a vehicle business at the licensed physical location.

(5) refuses or fails to timely comply with a request for records made by a representative of the department;

(6) holds a wholesale motor vehicle dealer's license and sells or offers to sell a motor vehicle to a person other than a licensed or authorized dealer;

(7) sells or offers to sell a type of vehicle that the person is not licensed to sell;

(8) fails to submit a license amendment application in the electronic licensing system designated by the department to notify the department of a change of the license holder's physical address, mailing address, telephone number, or email address within 10 days of the change;

(9) fails to submit a license amendment application in the electronic licensing system designated by the department to notify the department of a license holder's name change, or management or ownership change within 10 days of the change;

(10) issues more than one buyer's license plate or buyer's temporary license plate for a vehicle sold on or after July 1, 2025, or more than one temporary tag for a vehicle sold before July 1, 2025, for the purpose of extending the purchaser's operating privileges for more than 60 days;

(11) fails to remove a license plate or registration insignia from a vehicle that is displayed for sale;

(12) misuses a dealer's license plate, or a temporary tag before July 1, 2025;

(13) fails to display a dealer's license plate, or temporary tag before July 1, 2025, as required by law;

(14) holds open a title or fails to take assignment of a certificate of title, manufacturer's certificate, or other basic evidence of ownership for a vehicle acquired by the dealer, or fails to assign the certificate of title, manufacturer's certificate, or other basic evidence of ownership for a vehicle sold;

(15) fails to remain regularly and actively engaged in the business of buying, selling, or exchanging vehicles of the type for which the GDN is issued by the department;

(16) violates a provision of Occupations Code, Chapter 2301; Transportation Code Chapters 503 and 1001-1005; a board order or rule; or a regulation of the department relating to the sale, lease, distribution, financing, or insuring of vehicles, including advertising rules under Subchapter F of this chapter (relating to Advertising);

(17) is convicted of an offense that directly relates to the duties or responsibilities of the occupation in accordance with §211.3 of this title (relating to Criminal Offense Guidelines);

(18) is determined by the board or department, in accordance with §215.89 of this title (relating to Fitness), to be unfit to hold a license;

(19) has not assigned at least five vehicles in the prior 12 months, provided the dealer has been licensed more than 12 months;

(20) files or provides a false or forged:

(A) title document, including an affidavit making application for a certified copy of a title; or

(B) tax document, including a sales tax statement or affidavit;

(21) uses or allows use of that dealer's license or location for the purpose of avoiding a provision of Occupations Code, Chapter 2301; Transportation Code, Chapters 503 and 1001 - 1005; or other laws;

(22) omits information or makes a material misrepresentation in any application or other documentation filed with the department including providing a false or forged identity document or a false or forged photograph, electronic image, or other document;

(23) fails to remit payment as ordered for a civil penalty assessed by the board or department;

(24) sells a new motor vehicle without a franchised dealer's license issued by the department;

(25) fails to comply with a dealer responsibility under §215.150 of this title (relating to Dealer Authorization to Issue License Plates);

(26) on or after July 1, 2025, fails to securely store a license plate;

(27) fails to maintain a record of dealer license plates as required under §215.138 of this title (relating to Use of Dealer's License Plates);

(28) on or after July 1, 2025, fails to file or enter a vehicle transfer notice;

(29) fails to enter a lost, stolen, or damaged license plate in the electronic system designated by the department within the time limit prescribed by rule;

(30) violates any state or federal law or regulation relating to the sale of a motor vehicle;

(31) knowingly fails to disclose that a motor vehicle has been repaired, rebuilt, or reconstructed and issued a title under Transportation Code, §501.100 (relating to Application for Regular Certificate of Title for Salvage Vehicle);

(32) fails to issue a refund as ordered by the board or department; or

(33) fails to acquire or maintain a required certificate of occupancy, certificate of compliance, business license or permit, or other official documentation for the licensed location confirming compliance with county or municipal laws or ordinances or other local requirements for a vehicle business;

(34) on or after July 1, 2025, fails to remove a license plate from a vehicle sold to an out-of-state buyer or from a vehicle sold for export; or

(35) fails to keep or maintain records required under Occupations Code, Chapter 2305, Subchapter D or to allow an inspection of these records by the department.

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

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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43 TAC §§215.132, 215.138, 215.140, 215.143, 215.144, 215.147, 215.150 - 215.152, 215.154 - 215.158

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts amendments and new sections to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Transportation Code; Transportation Code, §503.061, which allows the board to adopt rules regulating the issuance and use of dealer's license plates; Transportation Code, §503.0631 which requires the department to adopt rules to implement and manage the department's database of dealer-issued buyer's license plates; §503.0633 which allows the department to establish the maximum number of license plates or sets of license plates a dealer may obtain annually under Transportation Code, §503.063 and §503.065; Transportation Code, §504.0011 which allows the board to adopt rules to implement and administer Chapter 504; Transportation Code, §520.0071 which requires the board to adopt rules classifying deputies performing titling and registration duties, the duties and obligations of these deputies, the type and amount of bonds that may be required by a county tax assessor-collector for a deputy performing titling and registration duties, and the fees that may be charged or retained by deputies; Transportation Code, §520.021 which allows the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts amendments under the authority of Transportation Code, §§501.0041, 502.0021, 503.002, 504.0011, and 520.003; and Government Code, §2001.004 and §2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503. Transportation Code, §504.0011 authorizes the board to adopt rules to implement and administer Chapter 504. Transportation Code, §520.003 authorizes the department to adopt rules to administer Chapter 520.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These adopted new sections and amendments implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2305; and Transportation Code, Chapters 501 - 504, 520, and 1001-1005.

§215.138. Use of Dealer's License Plates.

(a) A dealer's standard, personalized prestige, or temporary license plate must be attached to the rear of a vehicle in accordance with §217.27 of this title (relating to Vehicle Registration Insignia).

(b) A copy of the receipt for a dealer's standard, personalized prestige, or temporary license plate issued by the department should be carried in the vehicle to present to law enforcement personnel upon request.

(c) A dealer's standard, personalized prestige, or temporary license plate may not be displayed on:

(1) a laden commercial vehicle being operated or moved on the public streets or highways;

(2) the dealer's service or work vehicle, except as provided by Transportation Code, §503.068(b-1);

(3) a golf cart as defined under Transportation Code Chapter 551; or

(4) an off-highway vehicle as defined under Transportation Code Chapter 551A.

(d) For purposes of this section, a dealer's service or work vehicle includes:

(1) a vehicle used for towing or transporting another vehicle;

(2) a vehicle, including a light truck, used in connection with the operation of the dealer's shops or parts department;

(3) a courtesy car on which a courtesy car sign is displayed;

(4) a rental or lease vehicle; and

(5) a boat trailer owned by a dealer or manufacturer that is used to transport more than one boat.

(e) For purposes of this section, a light truck as defined by Transportation Code, §541.201, is not considered a laden commercial vehicle when it is:

(1) mounted with a camper unit; or

(2) towing a trailer for recreational purposes.

(f) A dealer's standard, personalized prestige, or temporary license plate may be displayed only on the type of vehicle for which the GDN is issued and for which a dealer is licensed to sell. A nonfranchised dealer may not display a dealer's standard or personalized prestige license plate on a new motor vehicle.

(g) A dealer's standard or personalized prestige license plate may be displayed only on a vehicle that has a valid inspection in accordance with Transportation Code, Chapter 548.

(h) A dealer shall maintain in an electronic license plate system designated by the department a record of each dealer's standard, personalized prestige, or temporary license plate issued by the department to that dealer. The license plate record must contain:

(1) the license plate number;

(2) the year and make of the vehicle to which the dealer's license plate is affixed;

(3) the VIN of the vehicle; and

(4) the name of the person in control of the vehicle or license plate.

(i) If a dealer cannot account for a dealer's standard or personalized prestige license plate that the department issued to that dealer, the dealer shall:

(1) within three days of discovering that the dealer's license plate is missing or damaged, report the dealer's license plate as lost, stolen, or damaged in the electronic system designated by the department; and

(2) if found, cease use of the dealer's license plate.

(j) A dealer's standard, personalized prestige, or temporary license plate is no longer valid for use after the dealer reports to the department that the dealer's license plate is lost, stolen, or damaged. A dealer shall:

(1) render a void plate unusable by permanently marking the front of the plate with the word "VOID" or a large "X"; and

(2) destroy or recycle the license plate or return the license plate to the department within 10 days.

(k) A dealer shall return a department-issued license plate, sticker, or receipt to the department within 10 days of the dealer closing the associated license or the department revoking or canceling the license.

(l) A wholesale motor vehicle auction GDN holder that also holds a dealer GDN may display a dealer's temporary license plate assigned to that dealer GDN on a vehicle that is being transported to or from the licensed auction location.

(m) The recordkeeping requirements in §215.138(h) do not apply when a vehicle is being operated solely for the purpose of demonstration.

§215.140. Established and Permanent Place of Business Premises Requirements.

(a) A dealer must meet the following requirements at each licensed location and maintain the requirements during the term of the license. If multiple dealers are licensed at a location, each dealer must maintain the following requirements during the entire term of the license.

(1) Business hours for retail dealers.

(A) A retail dealer's office must be open at least four days per week for at least four consecutive hours per day and may not be open solely by appointment.

(B) The retail dealer's business hours for each day of the week must be posted at the main entrance of the retail dealer's office in a manner and location that is accessible to the public. The owner or a bona fide employee of the retail dealer shall be at the retail dealer's licensed location during the posted business hours for the purposes of buying, selling, exchanging, or leasing vehicles. If the owner or a bona fide employee is not available to conduct business during the retail dealer's posted business hours due to special circumstances or emergencies, a separate sign must be posted indicating the date and time the retail dealer will resume operations. Regardless of the retail dealer's business hours, the retail dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able to speak to a natural person or leave a message during these hours.

(2) Business hours for wholesale motor vehicle dealers. A dealer that holds only a wholesale motor vehicle dealer's GDN must post its business hours at the main entrance of the wholesale motor vehicle dealer's office in a manner and location that is accessible to the public. A wholesale motor vehicle dealer or bona fide employee shall be at the wholesale motor vehicle dealer's licensed location at least two weekdays per week for at least two consecutive hours per day. A wholesale motor vehicle dealer may not be open solely by appointment. Regardless of the wholesale motor vehicle dealer's business hours, the wholesale motor vehicle dealer's telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able to speak to a natural person or leave a message during these hours.

(3) Business sign requirements for retail dealers.

(A) A retail dealer must display a conspicuous, permanent sign with letters at least six inches in height showing the retail dealer's business name or assumed name substantially similar to the name reflected on the retail dealer's GDN under which the retail dealer conducts business. A business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main entrance of the business office. A business sign is considered permanent only if it is made of durable, weather-resistant material.

(B) The sign must be permanently mounted at the physical address listed on the application for the retail dealer's GDN. A business sign is considered permanently mounted if bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign support permanently installed in the ground.

(C) A retail dealer may use a temporary sign or banner if that retail dealer can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(D) A retail dealer is responsible for ensuring that the business sign complies with municipal ordinances, and that any lease signage requirements are consistent with the signage requirements in this paragraph.

(4) Business sign requirements for wholesale motor vehicle dealers.

(A) Exterior Sign

(i) A wholesale motor vehicle dealer must display a conspicuous, permanent sign with letters at least six inches in height

showing the wholesale motor vehicle dealer's business name or assumed name substantially similar to the name reflected on the wholesale motor vehicle dealer's GDN under which the wholesale motor vehicle dealer conducts business. Effective September 1, 2023, the sign must also include the statement that "Purchasers must be Licensed Dealers" in letters at least three inches in height. A business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main entrance of the business office. A business sign is considered permanent only if it is made of durable, weather-resistant material.

(ii) The sign must be permanently mounted on the business property at the physical address listed on the application. A business sign is considered permanently mounted if bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign support permanently installed in the ground. A wholesale motor vehicle dealer may use a temporary exterior sign or banner if the wholesale motor vehicle dealer can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(B) Interior Sign

(i) If the wholesale motor vehicle dealer's office is located in an office building with one or more other businesses and an outside sign is not permitted by the property owner, a conspicuous permanent business sign permanently mounted on or beside the main door to the wholesale motor vehicle dealer's office with letters at least two inches in height is acceptable. Effective September 1, 2023, the sign must also include the statement that "Purchasers must be Licensed Dealers" in letters at least one inch in height.

(ii) An interior business sign is considered conspicuous if it is easily visible to the public within 10 feet of the main entrance of the wholesale motor vehicle dealer's office. An interior sign is considered permanent if made from durable material and has lettering that cannot be changed. An interior sign is considered permanently mounted if bolted or otherwise permanently affixed to the main door or nearby wall. A wholesale motor vehicle dealer may use a temporary interior sign or banner if the wholesale motor vehicle dealer can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(C) A wholesale motor vehicle dealer is responsible for ensuring that the business sign complies with municipal ordinances and that any lease signage requirements are consistent with the signage requirements in this paragraph.

(5) Office requirements for a retail dealer and a wholesale motor vehicle dealer.

(A) A dealer's office must be located in a building with a permanent roof and connecting exterior walls on all sides.

(B) A dealer's office must comply with all applicable municipal ordinances, including municipal zoning ordinances. The dealer is responsible for obtaining a certificate of occupancy, certificate of compliance, or other required document issued by a municipal government to show compliance, including a new certificate or document when the building is altered or remodeled, or when the building use changes.

(C) A dealer's office may not be located in a residence, apartment, hotel, motel, rooming house, or any room or building not open to the public.

(D) A dealer's office may not be located in a restaurant, gas station, or convenience store, unless the office has a separate entrance door that does not require a dealer's customer to pass through the other business.

(E) A dealer's office may not be virtual or provided by a subscription for office space or office services. Access to an office space or office services is not considered an established and permanent location.

(F) The physical address of the dealer's office must be in Texas and recognized by the U.S. Postal Service, be capable of receiving U.S. mail, and have an assigned emergency services property address. The department will not mail a dealer's or buyer's license plate to an out-of-state address and will only mail or deliver a license plate to a dealer's physical location.

(G) A portable-type office building may qualify as an office only if the building meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(H) The dealer's office space must:

(i) include at least 100 square feet of interior floor space, exclusive of hallways, closets, or restrooms;

(ii) have a minimum seven-foot-high ceiling;

(iii) accommodate required office equipment; and

(iv) allow a dealer and customer to safely access the office and conduct business in private while seated.

(6) Required office equipment for a retail dealer and a wholesale motor vehicle dealer. At a minimum, a dealer's office must be equipped with:

(A) a desk;

(B) two chairs;

(C) internet access;

(D) a working telephone number listed in the business name or assumed name under which the dealer conducts business; and

(E) a locked and secured room or closet or at least one securely locked, substantially constructed safe or steel cabinet bolted or affixed to the floor or wall in such a way that the safe or steel cabinet cannot be readily removed and of sufficient size to store all dealer's and buyer's license plates in a dealer's possession including both assigned plates for vehicles in inventory and unissued buyer's license plates.

(7) Number of retail dealers in one building. Not more than four retail dealers may be located in the same building. Each retail dealer located in the same building must meet the requirements of this section.

(8) Number of wholesale motor vehicle dealers in one office building. Not more than eight wholesale motor vehicle dealers may be located in the same office building. Each wholesale motor vehicle dealer located in the same office building must meet the requirements of this section.

(9) Office sharing prohibition for retail dealers and wholesale motor vehicle dealers. Unless otherwise authorized by the Transportation Code, a retail dealer and a wholesale motor vehicle dealer licensed after September 1, 1999, may not be located in the same building.

(10) Dealer housed with other business.

(A) If a person conducts business as a dealer in conjunction with another business owned by the same person and under the same name as the other business, the same telephone number may be used for both businesses. If the name of the dealer differs from the

name of the other business, a separate telephone listing and a separate sign for each business are required.

(B) A person may conduct business as a dealer in conjunction with another business not owned by that person only if the dealer owns the property on which business is conducted or has a separate lease agreement from the owner of that property that meets the requirements of this section. The same telephone number may not be used by both businesses. The dealer must have separate business signs, telephone listings, and office equipment required under this section.

(C) A dealer's office must have permanent interior walls on all sides and be separate from any public area used by another business.

(11) Display area and storage lot requirements.

(A) A wholesale motor vehicle dealer is not required to have display space at the wholesale motor vehicle dealer's business premises.

(B) A retail dealer must have an area designated as display space for the retail dealer's inventory. A retail dealer's designated display area must comply with the following requirements.

(i) The display area must be located at the retail dealer's physical business address or contiguous to the retail dealer's physical address. The display area may not be in a storage lot.

(ii) The display area must be of sufficient size to display at least five vehicles of the type for which the GDN is issued. The display area must be reserved exclusively for the retail dealer's inventory and may not be used for customer parking, employee parking, general storage, or shared or intermingled with another business or a public parking area, a driveway to the office, or another dealer's display area.

(iii) The display area may not be on a public easement, right-of-way, or driveway unless the governing body having jurisdiction of the easement, right-of-way, or driveway expressly consents in writing to use as a display area. If the easement, right-of-way, or driveway is a part of the state highway system, use as a display area may only be authorized by a lease agreement.

(iv) If a retail dealer shares a display or parking area with another business, including another dealer, the dealer's vehicle inventory must be separated from the other business's display or parking area by a material object or barrier that cannot be readily removed. A barrier that cannot be readily removed is one that cannot be easily moved by one person and typically weighs more than 50 pounds. A material object or barrier must be in place on all sides except for the space necessary to allow for entry and exit of vehicle inventory.

(v) If a dealer's business location includes gasoline pumps or a charging station or includes another business that sells gasoline or has a charging station, the dealer's display area may not be part of the parking area for fuel or charging station customers and may not interfere with access to or from the gasoline pumps, fuel tanks, charging station, or fire prevention equipment.

(vi) The display area must be adequately illuminated if the retail dealer is open at night so that a vehicle for sale can be properly inspected by a potential buyer.

(vii) The display area may be located inside a building; however, if multiple dealers are displaying vehicles inside a building, each dealer's display area must be separated by a material object or barrier that cannot be readily removed. A barrier that cannot be readily removed is one that cannot be easily moved by one person and typically weighs more than 50 pounds. A material object or barrier must be in place on all sides except for the space necessary to allow for entry and exit of vehicle inventory.

(C) A GDN holder may maintain a storage lot only if the storage lot is not accessible to the public and no sales activity occurs at the storage lot. A sign stating the license holder's name, contact information, and the fact the property is a storage lot is permissible. A storage lot must be fenced or in an access-controlled location to be considered not accessible to the public. A GDN holder or applicant must disclose the address of a storage lot or the location of a vehicle in inventory upon request by the department.

(12) Dealers authorized to sell salvage motor vehicles. If an independent motor vehicle dealer offers a salvage motor vehicle for sale on the dealer's premises, the vehicle must be clearly and conspicuously marked with a sign informing a potential buyer that the vehicle is a salvage motor vehicle.

(13) Lease requirements. If the premises from which a dealer conducts business, including any display area, is not owned by the dealer, the dealer must maintain a lease that is continuous during the period of time for which the dealer's license will be issued. The lease agreement must be on a properly executed form containing at a minimum:

(A) the name of the property owner as the lessor of the premises and the name of the dealer as the tenant or lessee of the premises;

(B) the period of time for which the lease is valid;

(C) the street address or legal description of the property, provided that if only a legal description of the property is included, a dealer must attach a statement verifying that the property description in the lease agreement is the physical street address identified on the application as the physical address for the established and permanent place of business;

(D) the signature of the property owner as the lessor and the signature of the dealer as the tenant or lessee; and

(E) if the lease agreement is a sublease in which the property owner is not the lessor, the dealer must also obtain a signed and notarized statement from the property owner including the following information:

(i) property owner's full name, email address, mailing address, and phone number; and

(ii) property owner's statement confirming that the dealer is authorized to sublease the location and may operate a vehicle sales business from the location.

(14) Dealer must display GDN and bond notice. A dealer must display the dealer's GDN issued by the department at all times in a manner that makes the GDN easily readable by the public and in a conspicuous place at each place of business for which the dealer's GDN is issued. A dealer required to obtain a surety bond must post a bond notice adjacent to and in the same manner as the dealer's GDN is displayed. The notice must include the bond company name, bond identification number, and procedure by which a claimant can recover under the bond. The notice must also include the department's website address and notify a consumer that a dealer's surety bond information may be obtained by submitting a request to the department. If the dealer's GDN applies to more than one location, a copy of the GDN and bond notice must be displayed in each supplemental location.

(b) Wholesale motor vehicle auction premises requirements. A wholesale motor vehicle auction must comply with the following premises requirements:

(1) a wholesale motor vehicle auction GDN holder must hold a motor vehicle auction on a regular periodic basis at the licensed location, and an owner or bona fide employee must be available at the business location during each auction and during posted business hours. If the owner or a bona fide employee is not available to conduct business during the posted business hours due to special circumstances or emergencies, a separate sign must be posted indicating the date and time operations will resume.

(2) the business telephone must be answered from 8:00 a.m. to 5:00 p.m. weekdays by a bona fide employee, owner, answering service, voicemail service, or answering machine. A caller must be able to speak to a natural person or leave a message during these hours.

(3) a wholesale motor vehicle auction GDN holder must display a business sign that meets the following requirements:

(A) The sign must be a conspicuous, permanent sign with letters at least six inches in height showing the business name or assumed name substantially similar to the name reflected on the GDN under which the GDN holder conducts business. A business sign is considered conspicuous if it is easily visible to the public within 100 feet of the main entrance of the business office. A business sign is considered permanent only if it is made of durable, weather-resistant material.

(B) The sign must be permanently mounted at the physical address listed on the application for the wholesale motor vehicle auction GDN. A business sign is considered permanently mounted if bolted to an exterior building wall or bolted or welded to a dedicated sign pole or sign support permanently installed in the ground.

(C) An applicant may use a temporary sign or banner if the applicant can show proof that a sign that meets the requirements of this paragraph has been ordered and provides a written statement that the sign will be promptly and permanently mounted upon delivery.

(D) An applicant or holder is responsible for ensuring that the business sign complies with municipal ordinances, and that any lease signage requirements are consistent with the signage requirements in this paragraph.

(4) The business office of a wholesale motor vehicle auction GDN applicant and holder must meet the following requirements:

(A) The office must be located in a building with a permanent roof and connecting exterior walls on all sides.

(B) The office must comply with all applicable municipal ordinances, including municipal zoning ordinances. The wholesale motor vehicle auction is responsible for obtaining a certificate of occupancy, certificate of compliance, or other required document issued by a municipal government to show compliance, including a new certificate or document when the building is altered or remodeled, or when the building use changes.

(C) The office may not be located in a residence, apartment, hotel, motel, rooming house, or any room or building not open to the public.

(D) The office may not be located in a restaurant, gas station, or convenience store, unless the office has a separate entrance door that does not require a customer to pass through the other business.

(E) The office may not be virtual or provided by a subscription for office space or office services. Access to office space or office services is not considered an established and permanent location.

(F) The physical address of the office must be in Texas and recognized by the U.S. Postal Service, capable of receiving U.S. mail, and have an assigned emergency services property address.

(G) A portable-type office building may qualify as an office only if the building meets the requirements of this section and is not a readily moveable trailer or other vehicle.

(5) A wholesale motor vehicle auction GDN applicant and holder must have the following office equipment:

(A) a desk;

(B) a chair;

(C) internet access; and

(D) a working telephone number listed in the business name or assumed name under which business is conducted.

(6) A wholesale motor vehicle auction must meet the following display area and storage lot requirements:

(A) The area designated as display space for inventory must be located at the physical business address or contiguous to the physical address. The display area may not be in a storage lot.

(B) The display area must be of sufficient size to display at least five vehicles. Those spaces must be reserved exclusively for inventory and may not be used for customer parking, employee parking, general storage, or shared or intermingled with another business or a public parking area, or a driveway to the office.

(C) The display area may not be on a public easement, right-of-way, or driveway unless the governing body having jurisdiction of the easement, right-of-way, or driveway expressly consents in writing to use as a display area. If the easement, right-of-way, or driveway is a part of the state highway system, use as a display area may only be authorized by a lease agreement.

(D) If the business location includes gasoline pumps or a charging station or includes another business that sells gasoline or has a charging station, the display area may not be part of the parking area for fuel or charging station customers and may not interfere with access to or from the gasoline pumps, fuel tanks, charging station, or fire prevention equipment.

(E) The display area must be adequately illuminated if open at night so that a vehicle for sale can be properly inspected by a potential buyer.

(F) The display area may be located inside a building.

(G) A wholesale motor vehicle auction may maintain a storage lot only if the storage lot is not accessible to the public and no sales activity occurs at the storage lot. A sign stating the business name, contact information, and the fact the property is a storage lot is permissible. A storage lot must be fenced or in an access-controlled location to be considered not accessible to the public. A GDN holder or applicant must disclose the address of a storage lot or the location of a vehicle in inventory upon request by the department.

(7) A wholesale motor vehicle auction must meet the following lease requirements if the business premises, including any display area, is not owned by the wholesale motor vehicle auction:

(A) the applicant or holder must maintain a lease that is continuous during the period of time for which the GDN will be issued;

(B) The lease agreement must be on a properly executed form containing at a minimum:

(i) the name of the property owner as the lessor of the premises and the name of the GDN applicant or holder as the tenant or lessee of the premises;

(ii) the period of time for which the lease is valid;

(iii) the street address or legal description of the property, provided that if only a legal description of the property is included, a wholesale motor vehicle auction must attach a statement verifying that the property description in the lease agreement is the physical street address identified on the application as the physical address for the established and permanent place of business;

(iv) the signature of the property owner as the lessor and the signature of the applicant or holder as the tenant or lessee; and

(C) if the lease agreement is a sublease in which the property owner is not the lessor, the wholesale motor vehicle auction must also obtain a signed and notarized statement from the property owner including the following information:

(i) property owner's full name, email address, mailing address, and phone number; and

(ii) property owner's statement confirming that the wholesale motor vehicle auction is authorized to sublease the location and may operate a wholesale motor vehicle auction business from the location.

§215.143. Drive-a-way Operator In-Transit License Plates.

(a) A drive-a-way operator may apply for a drive-a-way in-transit standard license plate:

(1) when applying for a new or renewal in-transit license, or

(2) by submitting a plate request application electronically in the system designated by the department.

(b) A drive-a-way operator must display an in-transit license plate in the rear of each transported motor vehicle from the vehicle's point of origin to its point of destination in Texas in accordance with §217.27 of this title (relating to Vehicle Registration Insignia).

(c) A drive-a-way operator shall maintain a record of each license plate issued to the operator by the department in the department-designated system. The record of each license plate issued must contain:

(1) the license plate number;

(2) the year and make of the vehicle to which the license plate is affixed;

(3) the VIN of the vehicle; and

(4) the name of the person in control of the license plate.

(d) If a drive-a-way operator cannot account for a license plate or a license plate is damaged, the operator must:

(1) document the license plate as "void" in the department-designated system;

(2) within three days of discovering that the license plate is missing or damaged, report the license plate as lost, stolen, or damaged in the electronic system designated by the department; and

(3) if found once reported, cease use of the license plate.

(e) A license plate is no longer valid for use after the drive-a-way operator reports to the department that the plate is lost, stolen, or damaged. A drive-a-way operator must render a void plate unusable by permanently marking the front of the plate with the word "VOID" or a large "X" and once marked, may destroy or recycle the license plate, or return the license plate to the department for recycling within 10 days.

(f) In evaluating requests for additional license plates, the department will consider the business justification provided by a drive-a-way operator including the following:

(1) the number of vehicles currently being transported to a location in Texas;

(2) the highest number of motor vehicles transported in the prior 12 months;

(3) the size and type of business; and

(4) the operator's record of tracking and reporting missing or damaged plates to the department.

(g) If a drive-a-way operator closes the associated license or the associated license is revoked or canceled by the department, the operator must return a license plate to the department within 10 days.

§215.150. Dealer Authorization to Issue License Plates.

(a) A dealer that holds a GDN must issue a buyer's license plate for a vehicle type the dealer is authorized to sell to:

(1) a buyer of a new vehicle to be titled and registered in Texas, unless the buyer has a specialty, personalized, or other qualifying license plate eligible to be assigned to the vehicle with approval of the department; or

(2) a buyer of a used vehicle to be titled and registered in Texas if a buyer's license plate did not come with the vehicle and the buyer does not have a specialty, personalized, or other qualifying license plate eligible to be assigned to the vehicle with approval of the department.

(b) Notwithstanding subsection (a), a dealer that holds a GDN is not required to issue a buyer's license plate to a vehicle sold to a commercial fleet buyer authorized as a Dealer Deputy under §217.166 of the title (relating to Dealer Deputies).

(c) A dealer that holds a GDN must issue a buyer's temporary license plate to an out-of-state buyer for a vehicle that is to be registered in accordance with the laws of the buyer's state of residence.

(d) A dealer may issue a license plate under Transportation Code §503.063 until:

(1) the department denies access to the license plate system under Transportation Code §503.0633(f) and §224.58 of this title (relating to Denial of Dealer Access to License Plate System);

(2) the dealer issues the maximum number of license plates authorized under Transportation Code, §503.0633(a) - (d); or

(3) the GDN is canceled, revoked, or suspended.

(e) A governmental agency that is exempt under Transportation Code, §503.024 from the requirement to obtain a dealer general distinguishing number may issue a buyer's license plate or a buyer's temporary license plate to the buyer of a vehicle owned by the governmental agency unless the buyer has a specialty, personalized, or other qualifying license plate that is eligible to be assigned to the vehicle with approval of the department. A governmental agency that issues a buyer's license plate or buyer's temporary license plate under this subsection:

(1) is subject to the provisions of Transportation Code §503.0631 and §503.0671 applicable to a dealer; and

(2) is not required to charge the registration fee authorized under Transportation Code §503.063(g) and specified in §215.155(g) of this title (relating to Buyer's License Plates).

(f) A dealer is responsible for all use of and access to all license plates in the dealer's possession and the license plate system under the dealer's account, including access by any user or unauthorized person. Dealer duties include monitoring license plate storage and issuance, managing account access, and taking timely and appropriate actions to maintain license plate and system security, including:

(1) establishing and following reasonable password policies, including preventing the sharing of passwords;

(2) limiting authorized users to owners and bona fide employees with a business need to access license plates and the license plate system;

(3) removing users who no longer have a legitimate business need to access the system;

(4) securing all license plates, including license plates assigned to vehicles in inventory, dealer's license plates, and unissued buyer's license plates, by storing license plates in a locked and secured room or closet or one or more securely locked, substantially constructed safes or steel cabinets bolted or affixed to the floor or wall of sufficient size to store all dealer and buyer's license plates in a dealer's possession, and by promptly marking and destroying, recycling, or returning void license plates as required under §215.158 of this title (relating to General Requirements for Buyer's License Plates; and

(5) securing equipment used to access the license plate system.

§215.151. License Plate General Use Requirements.

(a) If a buyer purchases a vehicle to be registered in Texas, a dealer must secure, or a government agency may secure, a license plate to the vehicle in accordance with §217.27 of this title (relating to Vehicle Registration Insignia) and update the license plate system accordingly.

(1) A dealer must secure, or a governmental agency may secure, a buyer-provided license plate on the purchased vehicle if a buyer provides a specialty, personalized, or other qualifying license plate that is eligible to be assigned to the vehicle with approval of the department and update the license plate system accordingly.

(2) A dealer must issue a buyer's license plate to the buyer if a buyer purchases a new vehicle from a dealer and the buyer does not have a specialty, personalized, or other qualifying license plate to transfer to the vehicle.

(3) A dealer must issue, or a governmental agency may issue, a buyer's license plate to a buyer purchasing a used vehicle if the vehicle does not have an assigned license plate in the license plate system or the assigned license plate is missing or damaged and the buyer does not have a specialty, personalized, or other qualifying license plate to transfer to the vehicle.

(b) If a non-resident buyer purchases a vehicle to be titled and registered in accordance with the laws of the buyer's state of residence, a dealer must issue, or a governmental agency may issue, a buyer's temporary license plate and secure the temporary license plate to the rear of a vehicle in accordance with §217.27 of this title and update the license plate system accordingly.

(c) If a vehicle has an assigned license plate and the buyer provides a specialty, personalized, or other qualifying license plate to transfer to the vehicle, a dealer must update the license plate status in the license plate system, mark the license plate as void and destroy, recycle, or return the license plate as required in §215.158 of the title (relating to General Requirements for Buyer's License Plates).

(d) A dealer, including a wholesale dealer, must remove a buyer's license plate from a purchased vehicle and store the license plate in a secure location in accordance with §215.150(f) of this title (relating to Dealer Authorization to Issue License Plates). Upon vehicle sale, the dealer must update the license plate database and:

(1) provide the assigned license plate to a Texas retail buyer that purchases the vehicle; or

(2) if the vehicle is sold to a Texas dealer, securely transfer the assigned license plate to the purchasing dealer; or

(3) if the vehicle is sold to an out-of-state buyer or for export, mark the license plate as void and destroy, recycle, or return the license plate as required in §215.158 of this title.

§215.152. Obtaining Dealer-Issued Buyer's License Plates.

(a) A dealer or governmental agency is required to have internet access to connect to webDEALER and the license plate system maintained by the department and is responsible for verifying receipt of license plates in the license plate system.

(b) Except as provided by §215.157 of this title (relating to Issuing Buyer's License Plates and License Plate Receipts When Internet Not Available) before a license plate may be issued or secured on a vehicle, a dealer or governmental agency must enter in the license plate system true and accurate information about:

(1) the vehicle;

(2) the buyer; and

(3) the license plate number issued or assigned to the vehicle.

(c) The department will inform each dealer annually of the maximum number of buyer's license plates the dealer is authorized to obtain during the calendar year under Transportation Code, §503.063, including:

(1) an allotment of unassigned buyer's license plates to be issued to a buyer of a vehicle that is to be titled and registered in Texas, and

(2) a separate allotment of buyer's temporary license plates to be issued to a non-resident buyer for a vehicle that will be registered and titled in another state.

(d) The department will calculate a dealer's maximum annual allotment of unassigned buyer's license plates and buyer's temporary license plates based on the following formula:

(1) Vehicle title transfers, sales, or license plate issuance data determined from the department's systems from the previous fiscal year;

(2) the total value of paragraph (1) of this subsection will be increased by a multiplier based on the dealer's time in operation giving a 10 percent increase for each year the dealer has been in operation up to 10 years; and

(3) the total value of paragraph (2) of this subsection will be increased by a multiplier that is the greater of:

(A) the dealer's actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of in-state or out-of-state sales transactions processed through the department-designated registration and title system or license plate system, except that it may not exceed 200 percent; or

(B) the statewide actual growth rate percentage identified from the preceding two fiscal years, calculated by the growth of the number of relevant transactions processed through the department-designated registration and title system or license plate system, not less than zero, to determine the dealer's annual allotment; and

(4) the department may increase the annual allotment for dealers in the state, in a geographic or population area, or in a county, based on:

(A) changes in the market;

(B) temporary conditions that may affect sales; and

(C) any other information the department considers relevant.

(e) A dealer licensed after the commencement of a calendar year shall be allocated the number of buyer's license plates and buyer's temporary plates allocated in this subsection prorated on all or part of the remaining months until the commencement of the calendar year after the dealer's initial license expires. The initial allocations shall be as determined by the department in granting the license, but not more than:

(1) 200 buyer's license plates and 100 buyer's temporary license plates for a franchised dealer unless the dealer provides credible information indicating that a greater number of buyer's license plates is warranted based on anticipated sales, and growth, to include new and used vehicle sales, including information from the manufacturer or distributor, or as otherwise provided in this section.

(2) 100 buyer's license plates and 48 buyer's temporary license plates for a nonfranchised dealer unless the dealer provides credible information indicating that a greater number of license plates is warranted based on anticipated sales as otherwise provided in this section.

(f) An existing dealer that is:

(1) moving its operations from one location to a different location will continue with its allotment of buyer's license plates and buyer's temporary license plates and not be allocated license plates under subsection (e) of this section;

(2) opening an additional location will receive a maximum allotment of buyer's license plates and buyer's temporary license plates based on the greater of the allotment provided to existing locations, including franchised dealers opening additional locations for different line makes, or the amount under subsection (e) of this section;

(3) purchased as a buy-sell ownership agreement will receive the maximum allotment of buyer's license plates and buyer's temporary license plates provided to the location being purchased and not be allocated license plates under subsection (e) of this section; and

(4) inherited by will or laws of descent will receive the maximum allotment of buyer's license plates and buyer's temporary license plates provided to the location being inherited and not be allocated license plates under subsection (e) of this section.

(g) A new dealer may also provide credible information supporting a request for additional buyer's license plates and buyer's temporary license plates to the amount allocated under subsection (e) of this section based on:

(1) franchised dealer, manufacturer, or distributor sales expectations;

(2) a change in GDN required by death or retirement, except as provided in subsection (f) of this section;

(3) prior year's sales by a dealer moving into the state; or

(4) other similar change of location or ownership that indicates some continuity in existing operations.

(h) The annual allotment of buyer's issue license plates and buyer's temporary license plates will each be divided by four and allocated to a dealer on a quarterly basis, unless a dealer sells only antique or special interest vehicles as defined by Transportation Code, §683.077(b), in which case each allocation may be divided by two and allocated on a half-yearly basis. A dealer's remaining unissued license plates at the end of the allocation period will count towards the dealer's next allotment.

(i) A dealer may request more buyer's license plates or buyer's temporary license plates:

(1) after using 50 percent of the quarterly allocation of general issue plates or buyer temporary plates, a dealer may request an advance on the next quarter's allotment; or

(2) after using 50 percent of the allotted annual maximum number of general issue plates or buyer temporary plates a dealer may request an increase in the annual allotted number of license plates.

(j) To receive more buyer's license plates or buyer's temporary license plates under subsection (i), a dealer must submit a request in the department's designated license plate system.

(k) A dealer requesting an increase in the maximum annual allotment of buyer's license plates or buyer's temporary license plates must provide information demonstrating the need for additional license plates results from business operations, including anticipated needs, as required by Transportation Code, §503.0633(c). Information may include documentation of sales and tax reports filed as required by law, information of anticipated need, or other information of the factors listed in Transportation Code, §503.0633(b).

(1) The department shall consider the information presented and may consider information not presented that may weigh for or against granting the request that the department in its sole discretion determines to be relevant in making its determination. Other relevant information may include information of the factors listed in Transportation Code, §503.0633(b), the timing of the request, and the requestor's license plate activity.

(2) The department may allocate a lesser or greater number of additional license plates than the amount requested. Allocation of a lesser or greater number of additional license plates is not a denial of the request. Allocation of additional license plates under this paragraph does not limit the dealer's ability to submit additional requests for more license plates.

(3) If a request is denied, the denial will be sent to the dealer by email to the requestor's email address.

(A) A dealer may appeal the denial to the designated director in the Vehicle Titles and Registration Division.

(B) The appeal must be requested though the designated license plate system within 15 days of the date the department emailed the denial to the dealer.

(C) The appeal may discuss information provided in the request but may not include additional information.

(D) The designated director in the Vehicle Titles and Registration Division will review the appeal and any additional statements concerning the information submitted in the original request and render an opinion within 15 days of receiving the appeal. The designated director in the Vehicle Titles and Registration Division may de-

cide to deny the appeal and issue no additional license plates or award an amount of additional license plates that is lesser, equal to, or greater than the request.

(E) The requesting dealer will be notified as follows:

(i) If the designated director in the Vehicle Titles and Registration Division decides to deny the appeal, the department will contact the requesting dealer by email regarding the decision and options to submit a new request with additional relevant credible supporting documentation or to pursue a claim in district court; or

(ii) If the designated director in the Vehicle Titles and Registration Division awards an amount of additional license plates that is lesser, equal to, or greater than the request, the additional license plates will be added to the dealer's allocation and the dealer will be contacted by email regarding the decision, informed that the request has not been denied, and options to submit a new request.

(4) The designated director in the Vehicle Titles and Registration Division's decision on appeal is final.

(5) Once a denial is final, a dealer may only submit a subsequent request for additional license plates during that calendar year if the dealer is able to provide additional information not considered in a prior request.

(l) A change in the allotment under subsection (i) of this section does not create a dealer base for subsequent year calculations.

(m) The department may at any time initiate an enforcement action against a dealer if license plate system activity suggests that misuse or fraud has occurred as described in Transportation Code §503.0633(f) or §503.0671.

§215.155. Buyer's License Plates.

(a) A dealer may issue and secure a buyer's license plate or a buyer's temporary license plate only on a vehicle:

(1) from the selling dealer's inventory; and

(2) that can be legally operated on the public streets and highways; and

(3) for which a sale or lease has been consummated; and

(4) that has a valid inspection in accordance with Transportation Code Chapter 548, unless:

(A) an inspection is not required under Transportation Code §503.063(i) or (j); or

(B) the vehicle is exempt from inspection under Chapter 548.

(b) A dealer may not issue a buyer's general issue or temporary license plate to the buyer of a vehicle that is to be titled but not registered.

(c) For a wholesale transaction:

(1) a dealer may not issue a buyer's license plate; rather the purchasing dealer places on the motor vehicle its own:

(A) dealer's temporary license plate; or

(B) dealer's standard or personalized prestige license plate.

(2) if a general issue plate is assigned to a vehicle, the selling dealer must provide the license plate to the purchasing dealer for placement on the vehicle at time of retail sale.

(d) A buyer's temporary license plate is valid until the earlier of:

(1) the date on which the vehicle is registered; or

(2) the 60th day after the date of purchase.

(e) A dealer shall charge a buyer a fee of $10, unless the vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456. A dealer shall remit the fee to the county with the title transfer application for deposit to the credit of the Texas Department of Motor Vehicles fund. If the vehicle is sold by a dealer to an out-of-state resident:

(1) the dealer shall remit the entire fee to the department for deposit to the credit of the Texas Department of Motor Vehicles fund if payment is made through the department's designated electronic system; or

(2) the dealer shall remit the fee to the county for deposit to the credit of the Texas Department of Motor Vehicles fund.

(f) A governmental agency may charge a buyer a fee of $10 unless the vehicle is exempt from payment of registration fees under Transportation Code, §502.453 or §502.456. If collected by a governmental agency, the fee must be sent to the county for deposit to the credit of the Texas Department of Motor Vehicles fund.

§215.156. Buyer's License Plate Receipt.

A dealer or governmental agency must print a buyer's license plate receipt from the department's designated electronic system and provide the receipt to the buyer of each vehicle for which a buyer's license plate or buyer's temporary license plate is issued. The dealer or governmental agency, shall instruct the buyer to keep a copy of the buyer's license plate receipt in the vehicle until the vehicle is registered in the buyer's name and the vehicle registration insignia is affixed to the motor vehicle windshield or plate, as applicable. The buyer's license plate receipt must include the following information:

(1) the issue date of the buyer's license plate or buyer's temporary license plate;

(2) the year, make, model, body style, color, and VIN of the vehicle sold;

(3) the license plate number;

(4) the date of the sale;

(5) the name of the issuing dealer and the dealer's license number or the name of the issuing federal, state, or local governmental agency;

(6) the buyer's name and mailing address; and

(7) if the vehicle is to be registered in Texas, the procedure by which the vehicle's registration insignia will be provided to the buyer as required under Transportation Code, §503.0631.

§215.157. Issuing Buyer's License Plates and License Plate Receipts When Internet Not Available.

In accordance with Transportation Code, §503.0631(d), if a dealer or governmental agency is unable to access the internet at the time of a sale, the dealer or governmental agency must document the issuance of a buyer's license plate or a buyer's temporary license plate on a receipt form prescribed by the department and enter the required information regarding the sale in the license plate system not later than the close of the next business day. The buyer's receipt must include a statement that the dealer or governmental agency, has internet access but, at the time of the sale, the dealer or governmental agency, was unable to access the internet or the license plate system and meet the requirements in §215.156 of this title (relating to Buyer's License Plate Receipt).

§215.158. General Requirements for Buyer's License Plates.

(a) A dealer or governmental agency is responsible for the safekeeping of all license plates in the dealer's or governmental agency's possession consistent with the requirements in §215.150 (relating to Dealer Authorization to Issue License Plates). A dealer or governmental agency shall report any loss, theft, or destruction of a buyer's license plate or buyer's temporary license plate to the department in the system designated by the department within 24 hours of discovering the loss, theft, or destruction.

(b) When a dealer is required to remove and void a previously assigned buyer's license plate or other type of license plate from a vehicle sold to an out-of-state buyer or for another reason allowed by rule, the dealer shall render a void plate unusable by permanently marking the front of the plate with the word "VOID" or a large "X"; and within 10 days:

(1) destroy the license plate; or

(2) recycle the license plate using a metal recycler registered under Occupations Code, Chapter 1956; or

(3) return the license plate to the department or county tax assessor-collector.

(c) A dealer or governmental agency must return all license plates in the dealer's possession to the department within 10 days of closing the associated license or within 10 days of the associated license being revoked, canceled, or closed by the department.

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

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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Proposal publication date: July 12, 2024
For further information, please call: (512) 465-4160

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43 TAC §215.133

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts amendments and new sections to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Transportation Code; Transportation Code, §503.061, which allows the board to adopt rules regulating the issuance and use of dealer's license plates; Transportation Code, §503.0631 which requires the department to adopt rules to implement and manage the department's database of dealer-issued buyer's license plates; §503.0633 which allows the department to establish the maximum number of license plates or sets of license plates a dealer may obtain annually under Transportation Code, §503.063 and §503.065; Transportation Code, §504.0011 which allows the board to adopt rules to implement and administer Chapter 504; Transportation Code, §520.0071 which requires the board to adopt rules classifying deputies performing titling and registration duties, the duties and obligations of these deputies, the type and amount of bonds that may be required by a county tax assessor-collector for a deputy performing titling and registration duties, and the fees that may be charged or retained by deputies; Transportation Code, §520.021 which allows the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts amendments under the authority of Transportation Code, §§501.0041, 502.0021, 503.002, 504.0011, and 520.003; and Government Code, §2001.004 and §2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503. Transportation Code, §504.0011 authorizes the board to adopt rules to implement and administer Chapter 504. Transportation Code, §520.003 authorizes the department to adopt rules to administer Chapter 520.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These adopted new sections and amendments implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2305; and Transportation Code, Chapters 501 - 504, 520, and 1001-1005.

§215.133. GDN Application Requirements for a Dealer or a Wholesale Motor Vehicle Auction.

(a) No person may engage in business as a dealer or as a wholesale motor vehicle auction unless that person has a valid GDN assigned by the department for each location from which the person engages in business. A dealer must also hold a GDN for a consignment location, unless the consignment location is a wholesale motor vehicle auction.

(b) Subsection (a) of this section does not apply to a person exempt from the requirement to obtain a GDN under Transportation Code §503.024.

(c) A GDN dealer or wholesale motor vehicle auction application must be on a form prescribed by the department and properly completed by the applicant as required under §215.83 of this title (relating to License Applications, Amendments, or Renewals). A GDN dealer or wholesale motor vehicle auction application must include all required information, required supporting documents, and required fees and must be submitted to the department electronically in the licensing system designated by the department. A GDN dealer or wholesale motor vehicle auction GDN holder renewing or amending its GDN must verify current license information, provide related information and documents for any new requirements or changes to the GDN, and pay required fees including any outstanding civil penalties owed the department under a final order. An applicant for a new dealer or wholesale motor vehicle auction GDN must provide the following:

(1) Required information:

(A) type of GDN requested;

(B) business information, including the name, physical and mailing addresses, telephone number, Secretary of State file number (as applicable), and website address, as applicable;

(C) contact name, email address, and telephone number of the person submitting the application;

(D) contact name, email address, and telephone number of a person who can provide information about business operations and the motor vehicle products or services offered;

(E) the name, social security number, date of birth, identity document information, and ownership percentage for each owner, partner, member, or principal if the applicant is not a publicly traded company;

(F) the name, social security number, date of birth, and identity document information for each officer, director, manager, trustee, or other representative authorized to act on behalf of the applicant if the applicant is owned in full or in part by a legal entity;

(G) the name, employer identification number, ownership percentage, and non-profit or publicly traded status for each legal entity that owns the applicant in full or in part;

(H) the name, social security number, date of birth, and identity document information of at least one manager or other bona fide employee who will be present at the established and permanent place of business if the owner is out of state or will not be present during business hours at the established and permanent place of business in Texas;

(I) if a dealer, the name, telephone number, and business email address of the account administrator for the temporary tag database prior to July 1, 2025, or for the license plate system on or after July 1, 2025, designated by the applicant who must be an owner or representative listed in the application;

(J) criminal history record information under the laws of Texas, another state in the United States, the United States, and any foreign jurisdiction for each person listed in the application, including offense description, date, and location;

(K) military service status;

(L) licensing history required to evaluate fitness for licensure under §215.89 of this title (relating to Fitness);

(M) information about the business location and business premises, including whether the applicant will operate as a salvage vehicle dealer at the location;

(N) history of insolvency, including outstanding or unpaid debts, judgments, or liens, unless the debt was discharged under 11 U.S.C. §§101 et seq. (Bankruptcy Act) or is pending resolution under a case filed under the Bankruptcy Act;

(O) signed Certification of Responsibility, which is a form provided by the department; and

(P) if a dealer, whether the applicant repairs a motor vehicle with a catalytic converter in Texas, and if so, the physical address where the repair is performed; and

(Q) any other information required by the department to evaluate the application under current law and board rules.

(2) A legible and accurate electronic image of each applicable required document:

(A) proof of a surety bond if required under §215.137 of this title (relating to Surety Bond);

(B) the certificate of filing, certificate of incorporation, or certificate of registration on file with the Secretary of State, as applicable;

(C) each assumed name certificate on file with the Secretary of State or county clerk;

(D) at least one of the following unexpired identity documents for each natural person listed in the application:

(i) driver license;

(ii) Texas Identification Card issued by the Texas Department of Public Safety under Transportation Code, Chapter 521, Subchapter E;

(iii) license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H;

(iv) passport; or

(v) United States military identification card.

(E) a certificate of occupancy, certificate of compliance, or other official documentation confirming the business location complies with municipal ordinances, including zoning, occupancy, or other requirements for a vehicle business;

(F) documents proving business premises ownership, or lease or sublease agreement for the license period;

(G) business premises photos and a notarized affidavit certifying that all premises requirements in §215.140 of this title (relating to Established and Permanent Place of Business Premises Requirements) are met and will be maintained during the license period;

(H) evidence of franchise if applying for a franchised motor vehicle dealer GDN;

(I) proof of completion of the dealer education and training required under Transportation Code §503.0296, if applicable; and

(J) any other documents required by the department to evaluate the application under current law and board rules.

(3) Required fees:

(A) the fee for each type of license requested as prescribed by law; and

(B) the fee, including applicable taxes, for each dealer's standard plate, and dealer's temporary license plate on or after July 1, 2025, requested by the applicant as prescribed by law.

(d) An applicant for a dealer or wholesale auction GDN must also comply with fingerprint requirements in §211.6 of this title (relating to Fingerprint Requirements for Designated License Types), as applicable.

(e) An applicant for a GDN operating under a name other than the applicant's business name shall use the assumed name under which the applicant is authorized to do business, as filed with the Secretary of State or county clerk, and the assumed name of such legal entity shall be recorded by the applicant on the application using the letters "DBA." The applicant may not use a name or assumed name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public.

(f) A wholesale motor vehicle dealer GDN holder may sell or exchange vehicles with licensed or authorized dealers only. A wholesale motor vehicle dealer GDN holder may not sell or exchange vehicles at retail.

(g) An independent mobility motor vehicle dealer shall retain and produce for inspection all records relating to the license requirements under Occupations Code, §2301.002(17-b) and all information and records required under Transportation Code §503.0295.

(h) In evaluating a new or renewal GDN application or an application for a new GDN location, the department may require a site visit to determine if the business location meets the requirements in §215.140. The department will require the applicant or GDN holder to provide a notarized affidavit confirming that all premises requirements are met and will be maintained during the license period.

(i) A person holding an independent motor vehicle GDN does not have to hold a salvage vehicle dealer's license to:

(1) act as a salvage vehicle dealer or rebuilder; or

(2) store or display a motor vehicle as an agent or escrow agent of an insurance company.

(j) A person holding an independent motor vehicle GDN and performing salvage activities under subsection (i) must apply for a National Motor Vehicle Title Information System (NMVTIS) identification number and provide the number to the department in the GDN application.

(k) To be eligible for an independent motor vehicle GDN, a person must complete dealer education and training specified by the department, except as provided in this subsection:

(1) once a person has completed the required dealer education and training, the person will not have to retake the dealer education and training for subsequent GDN renewals, but may be required to provide proof of dealer education and training completion as part of the GDN renewal process;

(2) a person holding an independent motor vehicle GDN for at least 10 years as of September 1, 2019, is exempt from the dealer education and training requirement; and.

(3) a military service member, military spouse, or military veteran will receive appropriate credit for prior training, education, and professional experience and may be exempted from the dealer education and training requirement.

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

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

43 TAC §§215.151, 215.153, 215.154, 215.159

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts repeals to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, Transportation Code; Transportation Code, §503.061, which allows the board to adopt rules regulating the issuance and use of dealer's license plates; Transportation Code, §503.0631 which requires the department to adopt rules to implement and manage the department's database of dealer-issued buyer's license plates; §503.0633 which allows the department to establish the maximum number of license plates or sets of license plates a dealer may obtain annually under Transportation Code, §503.063 and §503.065; Transportation Code, §504.0011 which allows the board to adopt rules to implement and administer Chapter 504; Transportation Code, §520.021 which allows the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts repeals under the authority of Transportation Code, §§501.0041, 502.0021, 503.002, 504.0011, and 520.003; and Government Code, §2001.004 and §2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the board to adopt

rules for the administration of Transportation Code, Chapter 503. Transportation Code, §504.0011 authorizes the board to adopt rules to implement and administer Chapter 504.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These repeals implement Government Code, Chapter 2001; Occupations Code, Chapter 2301; and Transportation Code, Chapters 501 - 504, and 1001-1005.

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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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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SUBCHAPTER E. LESSORS AND LEASE FACILITATORS

43 TAC §215.178

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts amendments to Chapter 215 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Transportation Code, §503.061, which allows the board to adopt rules regulating the issuance and use of dealer's license plates; Transportation Code, §503.0631 which requires the department to adopt rules to implement and manage the department's database of dealer-issued buyer's license plates; §503.0633 which allows the department to establish the maximum number of license plates or sets of license plates a dealer may obtain annually under Transportation Code, §503.063 and §503.065; Transportation Code, §520.0071 which requires the board to adopt rules classifying deputies performing titling and registration duties, the duties and obligations of these deputies, the type and amount of bonds that may be required by a county tax assessor-collector for a deputy performing titling and registration duties, and the fees that may be charged or retained by deputies; Transportation Code, §520.021 which allows the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts amendments under the authority of Transportation Code, §§501.0041, 502.0021, 503.002, and 520.003; and Government Code, §2001.004 and §2001.054, in addition to the statutory authority referenced throughout this preamble.

Transportation Code, §501.0041 authorizes the department to adopt rules to administer Transportation Code, Chapter 501. Transportation Code, §502.0021 authorizes the department to adopt rules to administer Transportation Code, Chapter 502. Transportation Code, §503.002 authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503. Transportation Code, §520.003 authorizes the department to adopt rules to administer Chapter 520.

Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These adopted amendments implement Government Code, Chapter 2001; Occupations Code, Chapters 2301 and 2305; and Transportation Code, Chapters 501-503, 520, and 1001-1005.

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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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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CHAPTER 217. VEHICLE TITLES AND REGISTRATION

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments, a new section and repeals

to 43 Texas Administrative Code (TAC) Chapter 217, Subchapter A, Motor Vehicle Titles; §§217.2 - 217.9, 217.11, and 217.14 - 217.16; Subchapter B, Motor Vehicle Registration, §§217.22, 217.23, 217.25 - 217.29, 217.33, 217.36, 217.37, 217.40, 217.41, 217.43, 217.45, 217.46, 217.50 - 217.56; Subchapter C, Registration and Title Systems, §§217.71, 217.74, and 217.75; Subchapter D, Nonrepairable and Salvage Motor Vehicles, §§217.81 - 217.86, 217.88, and 217.89; Subchapter E, Title Liens and Claims, §217.106; Subchapter F, Motor Vehicle Records, §§217.122 - 217.125, 217.129, and 217.131; Subchapter G, Inspections §217.143 and §217.144; Subchapter H, Deputies, §§217.161 and 217.168; Subchapter I, Fees, §§217.181 - 217.185; Subchapter J, Performance Quality Recognition Program, §217.205; and Subchapter L, Assembled Vehicles, §217.404. The department adopts new §217.31 in Subchapter B and adopts repeals of §217.34 in Subchapter B and §217.87 in Subchapter D.

The department adopts the following sections without changes to the proposed text as published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5066) and they will not be republished: §§217.3, 217.4, 217.6, 217.7, 217.8, 217.9, 217.11, 217.14, 217.15, 217.16, 217.23, 217.25, 217.26, 217.28, 217.29, 217.31, 217.33, 217.36, 217.37, 217.40, 217.41, 217.43, 217.45, 217.46, 217.50, 217.51, 217.52, 217.54, 217.55, 217.56, 217.71, 217.75, 217.85, 217.86, 217.88, 217.89, 217.106, 217.122, 217.124, 217.125, 217.129, 217.131, 217.143, 217.144, 217.161, 217.168, 217.181, 217.182, 217.183, 217.184, and 217.205.

The following sections are adopted with revisions to the proposed text as published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5066) and will be republished: §§217.2, 217.5, 217.22, 217.27, 217.53, 217.74, 217.81, 217.82, 217.83, 217.84, 217.123, 217.185 and 217.404.

In conjunction with this adoption, the department is adopting the repeal of §217.34 and §217.87, which is also published in this issue of the *Texas Register.* The rule sections will not be republished.

The department adopts amendments, a new section, and repeals to bring the rules into alignment with statute; to remove language that is redundant with statute; to clarify the purpose of a rule by amending the title and language; to clarify existing requirements; to modernize language and improve readability through the use of consistent terminology; to clarify or delete unused, archaic, or inaccurate definitions, terms, and references; and to more specifically describe the department's methods and procedures.

Amendments are also adopted to implement House Bill (HB) 718, 88th Legislature, Regular Session (2023), which amended various sections in Transportation Code, Chapters 501, 502, 503, 504, 520, and 548 to remove provisions authorizing a vehicle dealer or converter to issue a temporary tag for a vehicle and replace these tags with categories of license plates, effective July 1, 2025. Accordingly, HB 718 requires a motor vehicle dealer to issue to a person who buys a vehicle from the dealer a license plate or a set of license plates. HB 718 requires the department to determine new distribution methods, systems, and procedures; set certain fees; and adopt related rules by December 1, 2024. Beginning July 1, 2025, if a new motor vehicle is sold to a Texas resident, a Texas dealer will assign a license plate to the vehicle unless the buyer has a specialty or other qualifying license plate, and the assigned license plate will stay with the vehicle if the vehicle is later sold to another Texas buyer.

Additionally, amendments are adopted to implement HB 3297, 88th Legislature, Regular Session (2023), which amended various sections in Transportation Code, Chapters 502, 547, and 548. HB 3297 repealed Transportation Code provisions mandating vehicle safety inspections for noncommercial vehicles but maintained safety inspections for commercial vehicles and vehicle emissions inspections for vehicles in certain counties. HB 3297 is effective January 1, 2025.

Due to the delayed effective dates of HB 718 and HB 3297, it is necessary to delay the effective dates of the rules implementing those bills. As a result, the amendments to §§217.4, 217.15, 217.27 and 217.89 are adopted to be effective January 1, 2025, and adopted amendments to §§217.8, 217.16, 217.40, 217.46, 217.52, 217.53, 217.168, 217.182 and 217.185 are adopted to be effective July 1, 2025. While the amendments to §217.83 were proposed to be effective immediately, the amendments to §217.83 are adopted to be effective January 1, 2025, to allow insurance companies time for the preparation and training necessary to file owner-retained applications in webDEALER, as required by the amendments to §217.83. All other adopted rules will be effective 20 days after filing with the Secretary of State.

REASONED JUSTIFICATION.

Subchapter A. Motor Vehicle Titles

Adopted amendments to §217.2 delete the definitions for "all-terrain vehicle or ATV," "house moving dolly," "implements of husbandry," "obligor," "off-highway vehicle," "recreational off-highway vehicle or ROV," "sand rail," and "utility vehicle or UTV" because none of these terms are used in adopted amended Chapter 217. Another adopted amendment adds a new definition for "current photo identification" in new §217.2(4), using language that currently appears in §217.5(d)(4) to allow the department the flexibility to accept government-issued photo identification as well as state-issued personal identification certificates that do not have expiration dates. At adoption and in response to a public comment, the phrase "within 12 months of the expiration date" in the definition of "current photo identification" was replaced with "expired not more than 12 months" to make the definition clearer and provide for ease of reading. The remaining paragraphs in §217.2 are adopted to be renumbered accordingly. An adopted amendment to §217.2(25) deletes subparagraphs A, B, and C from the definition of "verifiable proof," as those subparagraphs are unnecessary and duplicative of language in §217.7, relating to Replacement of Title.

An adopted amendment to the introductory sentence in §217.3 adds the words "or this subchapter" to clarify that the rules in 43 TAC Chapter 217, Subchapter A, relating to Motor Vehicle Titles, regulate applications for title by motor vehicle owners. An adopted amendment deletes §217.3(1)(B) to remove unnecessary language that is duplicative of the definition of "moped" in §217.2 and removes the letter for subparagraph (A) because there would only be one subparagraph in §217.3(1) due to the adopted deletion of subparagraph (B). An adopted amendment deletes §217.3(2)(A) to conform the rule to the Texas Transportation Code, Chapter 501, which does not prohibit the titling of implements of husbandry. An adopted amendment to §217.3(2)(C) replaces "farm tractors" with "tractors" to clarify that while farm tractors may be exempt from registration, tractors used to mow rights of way or to move commodities are not. Another adopted amendment deletes §217.3(2)(D) to remove unnecessary language that is duplicative of language in the Transportation Code. The remaining subsections of §217.3(2) are adopted to be renumbered accordingly. An adopted amend-

ment to §217.3(4) deletes the portion of the paragraph reciting the weight requirements for mandatory titling of trailers, as well as the portion of the paragraph stating that trailers under 4,000 pounds may be permissively titled, to remove unnecessary language that is duplicative of language in the Transportation Code.

An adopted amendment to §217.4(d)(4) deletes language requiring completion of a vehicle inspection under Transportation Code, Chapter 548 for all title applications, and substitutes language specifying that for vehicles last registered in another state, applicants must verify the vehicle identification number (VIN) by a process described on a department self-certification form if the vehicle is not subject to Transportation Code, Chapter 548. The adopted changes would implement HB 3297, which removed the vehicle safety inspection as a prerequisite for registration and titling while still allowing the department to deter fraud by verifying the VINs of out-of-state vehicles. The adopted amendment also clarifies that if an applicant is registering or titling a vehicle in a county subject to emissions testing, the emissions testing requirements must be satisfied. An adopted amendment to §217.4(d)(5) deletes paragraphs (A) and (B) and re-organizes the rule accordingly. The adopted deletion of paragraphs (A) and (B) removes language that is unnecessary because it is duplicative of language in the Transportation Code. These amendments to §217.4 are adopted for a future effective date of January 1, 2025, in accordance with the effective date of HB 3297.

An adopted amendment to §217.5(a)(1)(A) adds new requirements for a manufacturer's certificate of origin (MCO). Adopted new §217.5(a)(1)(A)(i) requires that a manufacturer's name be listed on the MCO, to eliminate confusion as to the name of the manufacturer when shortened versions or abbreviations of a manufacturer's name are printed on an MCO. Adopted new §217.5(a)(1)(A)(vi) requires that motor bus MCOs list seating capacity (number of passengers), to help the department quickly determine, based on the seating capacity, whether a vehicle should be registered or titled as a bus. The remainder of §217.5(a)(1)(A) is renumbered accordingly.

Section 217.5(a)(2) sets requirements for the evidence of motor vehicle ownership that must accompany an application for title on a used motor vehicle. The adopted amendment to §217.5(a)(2) deletes vague language relating to "other evidence of ownership" because the term is confusing and does not offer clear guidance to the public as to the type of ownership evidence that is acceptable to the department. Adopted new paragraphs §217.5(a)(2)(A) - (E) clarify the application requirements by listing the specific types of evidence of ownership that must be submitted as part of a title application, reflecting current department procedure. At adoption, the department corrected a capitalization error in the proposed text for §217.5(a)(2)(A).

An adopted amendment to §217.5(a)(4)(C)(ii) modernizes the rule by deleting a reference to "an original United States Customs stamp" that is not required under relevant statutes governing importation of motor vehicles. An adopted amendment to §217.4(a)(4)(C)(v) inserts a hyphen into the phrase "non United States" to correct a grammatical error.

An adopted amendment to §217.5(b)(4) changes the case of the term "Statement of Fact" from upper to lower case to correct a syntax error. An adopted amendment to §217.5(d)(1) removes "and expiration date" and replaces "document" with "current photo identification" to employ the adopted new defined term. An additional adopted amendment to §217.5(d)(1) deletes "concealed handgun license or," as this term is not used in the Texas Government Code. Another adopted amendment deletes the definition of "current" from §217.5(d)(4) because it is adopted into new §217.2(4). The remaining subsections of §217.5(d) are renumbered accordingly. The adopted amendments to renumbered §§217.5(d)(5) and (6) remove an inaccurate reference to Occupations Code, Chapter 2301 as the source of authority for issuing a general distinguishing number (GDN).

An adopted amendment to §217.6 adds a new subsection (d) clarifying the requirements for the department to place a hold on processing a title application under Transportation Code, §501.051(d). Adopted new §217.6(d)(1) clarifies the requirements for evidence of a legal action regarding ownership of a lien interest in a motor vehicle by specifying that the evidence must show a legal action that was filed in a district, county, statutory probate, or bankruptcy court. Adopted new §217.6(d)(1) allows the parties to maintain the status quo in a legal dispute over a motor vehicle by placing a hold on the transfer of the title until the dispute is resolved, without the necessity of obtaining a temporary injunction against the department. This enhances procedural efficiency for the department and saves resources for both the department and the parties involved in the legal dispute.

Adopted new §217.6(d)(2) clarifies that evidence of a legal action filed in a municipal or justice of the peace court is not sufficient evidence for a title processing hold unless the legal action is related to Code of Criminal Procedure, Chapter 47 or Government Code, §27.031. This adopted amendment makes the rule consistent with Transportation Code, §501.0521, which states that a justice of the peace or municipal court may not issue an order related to a motor vehicle title except in limited circumstances.

Adopted new §217.6(d)(3) clarifies that to qualify for a title processing hold, the legal action regarding ownership of or a lien interest in a motor vehicle must be active on a court's docket, and that evidence of a legal action that has been resolved through a final nonappealable judgment will not support placing of a title processing hold. Adopted new §217.6(d)(5) defines "final nonappealable judgment" as one for which 30 days have passed from the date of judgment without appeal, to eliminate ambiguity as to what constitutes a non-appealable judgment for the purposes of releasing a title processing hold. When there is a final nonappealable judgment, adopted new §217.6(d)(3) requires evidence of post-judgment legal action before the department can place a hold on processing a title. These adopted amendments make the department's procedures consistent with Transportation Code, §501.051(d), which states that a hold is terminated when a case is resolved by a final judgment.

Adopted new §217.6(d)(4) requires the department to place a ten-day temporary hold when a party submits the vehicle's VIN and an explanation that the hold is requested to commence legal action. This adopted amendment reflects the current department practice of providing a temporary 10-day processing hold to allow a party to time to file a lawsuit and to present evidence of the legal action to the department. The adopted amendment acknowledges that title or lienholders, who are challenging legal bonded title applications or engaged in other types of disputes related to their title or lien interests, need time to prepare a legal action. Adopted new §217.6(d)(4) requires a party to submit a VIN for the vehicle at issue because title processing holds are placed in the department's record system by VIN. Adopted new §217.6(d)(4) also requires a party to attest that the temporary hold is being requested in order to commence a legal action disputing a title or lien interest in a motor vehicle and not for pur-

poses of delay, to ensure that the temporary hold is in furtherance of Transportation Code, §501.051(d).

Adopted amendments to §217.7 implement the adopted new defined term "current photo identification" in §217.2(4) by adding it §217.7(b)(1) in place of "document," adding it to §217.7(b)(3)(A) - (C), and deleting the definition of "current" from §217.7(b)(4). The remaining subsections of §217.7(b) are renumbered accordingly. These adopted amendments improve readability of the rule and ensure consistent use of terminology throughout the subchapter. An adopted amendment to §217.7(b)(1)(F) deletes the phrase "concealed handgun license" because Government Code, Chapter 411 does not use the term "concealed handgun license" and this type of license is no longer required by law.

The adopted amendments to §217.8 implement HB 718, which amended Transportation Code, §501.147 to mandate that dealers holding a GDN submit notifications to the department of sales or transfers of motor vehicles to the dealer. An adopted amendment to §217.8(a) removes dealers that hold a GDN from the rule on voluntary notifications to the department since notification is now mandatory rather than voluntary under Transportation Code, §501.147, as amended by HB 718. Adopted new §217.8(b) requires dealers with a GDN to submit notifications to the department of sales or transfers of motor vehicles to the dealer, including all information required under Transportation Code, §501.147(b), as amended by HB 718. Adopted new §217.8(b) also clarifies that dealers with a GDN can submit the written notification to the department through a variety of methods, including electronically through the department's website portal, as is required by Transportation Code, §501.147, as amended by HB 718. The other subsections of §217.8 are renumbered accordingly to accommodate the addition of adopted new §217.8(b). An adopted amendment to prior §217.8(b) clarifies that dealers that hold a GDN are identified as transferors for purposes of the department updating its records documenting the vehicle transfer. These amendments to §217.8 are adopted for a future effective date of July 1, 2025, in accordance with the effective date of HB 718.

Adopted amendments to §217.9(a)(1) delete the phrase "and the surety bonding company ensures lien satisfaction or" and insert new language specifying that an applicant, rather than a surety bond company, must provide both a release of all liens and a bond. The adopted amendment conforms the rule with Transportation Code, §501.053(a)(3), which requires an applicant to produce a release of all liens with a bond and does not authorize a surety bond company to ensure lien satisfaction in lieu of a release of all liens from the relevant lienholders. An adopted amendment to §217.9(e)(7) deletes language related to certification of lien satisfaction by the surety bond company and a notice of determination letter. This adopted amendment makes the paragraph consistent with the adopted amendment to §217.9(a)(1) and conforms the rule to Transportation Code, §501.053(a)(3), which does not provide for certification of lien satisfaction by a surety bond company, but instead requires a release of all liens and a surety bond for an applicant to qualify for bonded title.

Adopted amendments to §217.11(a) delete unnecessary and duplicative language that simply repeats requirements from Transportation Code §501.051(b), and substitute citations to Transportation Code §501.051(b). The adopted amendments create new paragraph (b) from former paragraph (a)(5), delete language from former paragraph (a)(5) referring to language in paragraph (a)(3)(B) that is adopted for deletion, and add language to the adopted new paragraph (b) clarifying and restating the current requirement that an affidavit for recission must be accompanied by an odometer disclosure statement if the vehicle was ever in the possession of the title applicant. The adopted amendments also delete prior §217.11(b) because it refers to language in paragraph (a)(3)(B) that is adopted for deletion. The adopted amendments thus remove unnecessary language and improve readability.

An adopted amendment to §217.14 deletes the phrase "registered with the following distinguishing license plates" and replaces it with the "eligible for machinery license plates and permit license plate, in accordance with Transportation Code, §502.146." The adopted deletion clarifies that the exemption from titling for vehicles eligible for machinery license and permit plates is not limited to vehicles that have been registered and applies to all vehicles eligible for machinery license plates and permit license plates. An additional amendment deletes unnecessary language that is duplicative of statute.

An adopted amendment to §217.15(c) implements HB 3297 by replacing a reference to a "state inspection" fee with a broader reference to any fee "under Transportation Code, Chapter 548." The adopted amendment aligns the rule with HB 3297 which amended Transportation Code, Chapter 548 to eliminate the requirement for a state safety inspection. These amendments to §217.15 are adopted for a future effective date of January 1, 2025, in accordance with the effective date of HB 3297.

An adopted amendment to §217.16(f)(4) implements HB 718 by replacing "buyer's temporary tag fee" with "fee associated with the issuance of a license plate or set of plates." The adopted amendment aligns the rule with HB 718, which amended Transportation Code Chapter 503 to eliminate buyer's temporary tags. The amendments to §217.16 are adopted for a future effective date of July 1, 2025, in accordance with the effective date of HB 718.

Subchapter B. Motor Vehicle Registration.

Adopted amendments to §217.22 add a new definition of "current photo identification" in new §217.22(11), using language that appears prior in §217.26(c) to allow the department the flexibility to accept government-issued photo identification as well as state-issued personal identification certificates that do not have expiration dates. At adoption, the phrase "within 12 months of the expiration date" to describe the definition of current photo identification" in new §217.22(11) was replaced with "expired not more than 12 months" in response to a public comment to make the definition clearer and provide for ease of reading.

Other adopted amendments to §217.22 delete the definition "legally blind" in §217.22(24) because it is not used in the subchapter, and delete the definition of "vehicle inspection sticker" in §217.22(47) to align with changes to the law to no longer require separate vehicle inspection stickers. The remaining subsections of §217.22 are renumbered accordingly. An adopted amendment to §217.22(27) adds a citation to Transportation Code, Chapter 503 for completeness, clarity, and ease of reference. An adopted amendment to §217.22(38) removes the phrase "under SA" to remove unnecessary and confusing wording. At adoption, a minor grammatical change was made to §217.22(11) and (22) by removing a space following the hyphens.

Adopted amendments to §217.23(b)(1) add a cross reference to §217.5, relating to Evidence of Motor Vehicle Ownership, for

clarity and ease of reference, and remove an unnecessary statutory reference.

Adopted amendments to §217.25 add a reference to Transportation Code, §502.145 to clarify that the statute creates an exception to the rule: Transportation Code, §502.145 allows a nonresident owner of a privately owned passenger car that is registered in the state or country in which the person resides and that is not operated for compensation to not register in Texas as long as the car's licenses in the owner's state of residence are valid.

Adopted amendments to §217.26(a) implement the adopted new defined term "current photo identification" in §217.22(11) by adding it to §217.26(a) in place of "document," adding it to §§217.26(b)(2)(B), 217.26(b)(3), and 217.26(b)(4)(B) in place of "government issued," deleting the definition of "current" from §217.26(c), and relettering the remaining subsections of §217.26 accordingly. An adopted amendment to §217.26(a)(6) deletes "concealed handgun license" from the list of acceptable forms of identification as this type of license is no longer required by law.

Adopted amendments to §§217.27(a)(1) add the defined term "vehicle registration insignia" for clarity and consistency and delete unused or archaic terms and references. At adoption and in response to a public comment, the phrase "the symbol, tab, or other device prescribed by and issued by the department" was replaced in §217.27(a)(2) with "the vehicle registration insignia," which is a defined term in §217.22, to align the use of that same phrase in §217.27(a)(1). Adopted amendments to §217.27(b) move the carve-out for a vehicle described by Transportation Code, §621.2061 to place the rear license plate so that it is clearly visible, readable, and legible, from paragraph (b)(1), which addresses vehicles that display two plates, to paragraph (b)(2), which addresses vehicles that only display one plate. This amendment acknowledges that vehicles described in Transportation Code, §621.2061 are carrying a load that obscures the license plate.

Adopted amendments to §217.27(c)(2)(A) implement HB 3297, which amended Transportation Code, §502.0024 to specify which vehicles may obtain a registration insignia for a period consisting of 12, 24, 36, 48 or 60 consecutive months on payment of all fees for each full year of registration. The adopted amendments to §217.27(c)(2)(A) further implement HB 3297 by deleting outdated text that referenced vehicle inspections and sections of the Transportation Code that HB 3297 eliminated. Due to the adopted amendments implementing HB 3297, the amendments to §217.27 are adopted for a future effective date of January 1, 2025, in accordance with the effective date of HB 3297.

Adopted amendments to §217.27(d)(1)(2), (2)(A), (3), (e), (f), and (h) substitute the term "license plate number" for "alphanumeric pattern" to implement HB 718, which requires that the department issue license plates rather than temporary tags. An adopted amendment to §217.27(d)(1) substitutes the term "general issue" for the word "regular" to implement HB 718 with consistent terminology that distinguishes among types of license plates that the department will now issue.

The repeal of §217.28(e)(1) is adopted because the language is redundant with statute. The remaining sections are renumbered accordingly. Adopted amendments add new §217.28(e)(6) to clarify that the operation of a vehicle with an expired registration that has been stored or otherwise not in operation, that is driven only to an inspection station for the purpose of obtaining an inspection if required for registration, will not affect the determination of whether the registrant has a valid or invalid reason for being delinquent. This adopted amendment removes a deterrent to inspection and further clarifies when a vehicle will be assessed delinquency penalties.

Adopted amendments to §217.29 repeal §217.29(d) and §217.29(f) as these subsections are outdated and apply only to vehicle registrations expiring prior to January 1, 2017. The remaining subsections are adopted to be relettered accordingly. Adopted amendments to relettered §217.29(e) remove outdated language about vehicle registrations around January 1, 2017. Adopted amendments to relettered §217.29(f) modernize the rule by removing more outdated language about registration renewals in 2017, and by updating the wording to require the department and the department's third-party centralized vendor to promptly facilitate and mail vehicle registration insignias to applicants who submit registration renewals via the Internet.

Adopted new §217.31 is a standalone rule regarding the federal heavy vehicle use tax (HVUT) requirements, which are imposed by 26 U.S.C. §4481, et seq. and 26 C.F.R. Part 41. Although the Internal Revenue Service (IRS) collects the HVUT, the department requires compliance with the HVUT requirements prior to issuing vehicle registration for applicable vehicles, to prevent the state's loss of federal-aid highway funds under 23 U.S.C. §141(c) and 23 U.S.C. §104(b)(1). The department also complies with 23 C.F.R. Part 669, Federal Highway Administration (FHWA) regulations regarding the enforcement of the HVUT requirements via the vehicle registration process for a highway motor vehicle as defined by the federal law on the HVUT.

Adopted new §217.31 also incorporates by reference IRS regulation 26 C.F.R. §41.6001-2 regarding the circumstances under which a state must require proof of payment of the HVUT and the required manner in which such proof of payment must be received by a state as a condition of issuing a registration for a highway motor vehicle as defined by the federal law regarding the HVUT. Section 41.6001-2(c) states that proof of payment of the HVUT consists of a receipted Schedule 1 (Form 2290 "Heavy Vehicle Use Tax Return") that is returned by the IRS, by mail or electronically. Section 41.6001-2(c) also authorizes an acceptable substitute for a receipted Schedule 1. The IRS provides guidance on its website regarding Form 2290 for the collection of the HVUT. The IRS website for Form 2290 is located at the following address: https://www.irs.gov/forms-pubs/about-form-2290.

Although the department complies with the HVUT requirements for all applicable vehicle registrations, multiple rules in Chapter 217 reference the HVUT requirements. New §217.31 helps vehicle registration applicants find the applicable HVUT requirements because new §217.31 is titled "Heavy Vehicle Use Tax." Also, federal law imposes the requirements for the payment of the HVUT, as well as the circumstances under which a state must require proof of payment of the HVUT and the required manner in which such proof of payment must be received by a state.

Adopted amendments to §217.33 implement HB 718 by adding the word "license" before "plate" in several places in subparagraphs (a), (b), and (d) to improve readability through the use of consistent terminology.

The repeal of §217.34 is adopted to remove language that is redundant with statute.

Amendments to §§217.36(c)(1), 217.36(c)(4), and 217.36(c)(5) are adopted to modernize language and match current practices

by removing references to submitting information to the department on magnetic tape and replacing them with references to submitting information through the secure transfer portal.

Adopted amendments to §217.37 clarify that the department and the county will only charge fees provided by statute or rule. The adopted amendments repeal §217.37(b) because it is a restatement of the $2 fee for a duplicate registration receipt required in Transportation Code, §502.058(a).

Adopted amendments to §217.40 implement HB 718 by creating new plate types and ensuring consistency in the terminology used to refer to the new plates in rule. In accordance with the effective date of HB 718, the amendments to §217.40 are adopted for a future effective date of July 1, 2025. Adopted amendments to §217.40(a) implement HB 718 by updating terminology and adding "special registration license plates" in addition to "special registration permits."

Adopted amendments to §217.40(b)(1) add a statutory reference to Transportation Code, §502.434 and delete unnecessary language in §217.40(b)(1)(A) - (D) that is redundant with the statute to streamline the rule text and to improve readability and ease of reference. The remaining subsections in §217.40(b)(1) are relettered accordingly. Adopted amendments to §217.40(b)(2) add a reference to Transportation Code, §502.093 and delete unnecessary language in subparagraph (A) for ease of reference. An adopted amendment deletes §217.40(b)(2)(B) because it is redundant with statute, and the remaining subsections of §217.40(b)(2) are relettered accordingly. Adopted amendments to create new §217.40(b)(2)(C) implement HB 718 by specifying that the department will issue a license plate for an annual permit under Transportation Code, §502.093, and also provide a definition for the term "foreign commercial motor vehicle." Adopted amendments delete §217.40(b)(2)(C)(ii) because it is redundant with statute. Adopted amendments to §217.40(b)(3) clarify that 72-hour permits and 144-hour permits are governed in accordance with Transportation Code, §502.094 and delete existing language in subparagraphs (3)(A-D), and (4)(A-D) that is redundant with the statutory requirements, to streamline the rules and improve readability and consistency with other subsections.

Adopted new §217.40(c) implements HB 718 by providing for the issuance of various categories of special registration license plates and incorporates language that is currently §217.40(b)(5) - (6). An adopted amendment to renumbered §217.40(c)(1) implements HB 718 by substituting "license plates" for "permits," and removes unnecessary language that duplicates the requirements of Transportation Code, §502.095. The remaining subsections of §217.40(c) are relettered and renumbered accordingly. Adopted new §217.40(c)(1)(C) requires a one-trip license plate to be displayed as required by §217.27(b), relating to Vehicle Registration Insignia, for clarity, ease of reference, and consistency with other subsections.

Adopted amendments to prior §217.40(b)(6), adopted to be renumbered §217.40(c)(2), substitute "license plates" for "temporary registration permits" to implement HB 718, and remove language that is redundant of Transportation Code §502.095. An adopted amendment to adopted relettered §217.40(c)(2)(A) substitutes "license plate" for "temporary permit" and "30-day license plate" for "permit" to implement HB 718. Another adopted amendment to §217.40(b)(6), adopted to be relettered as §217.40(c)(2)(A), aligns the rule with statute by striking motorcycles from the list of the types of vehicles for which a 30-day license plate is available because Transportation Code §502.095 does not allow issuance of 30-day license plates to motorcycles. The remaining subsections are relettered accordingly. Adopted new §217.40(c)(2)(B) clarifies that a 30-day license plate must be displayed as required by §217.27(b), relating to Vehicle Registration Insignia, for clarity, ease of reference, and consistency with other subsections.

An adopted amendment to prior §217.40(c), which is adopted to be relettered as §217.40(d)(1), implements HB 718 by substituting the word "special" for "temporary" and adding "or special registration license plate" for consistency with other subsections. Adopted amendments to §217.40(d)(3)(A) delete unnecessary, redundant language. Adopted amendments to prior §217.40(c)(4)(B), which is adopted to be relettered as §217.40(d)(4)(B), delete temporary agricultural permits from being obtained through the county tax assessor-collectors' offices. This amendment implements HB 718 and aligns the rule with statute because HB 718 repealed Transportation Code, §502.092. Adopted amendments to adopted relettered §217.40(d)(4)(C) implement HB 718 by substituting "license plates" for "permits" and "temporary registration permits."

Adopted amendments to prior §217.40(d), which is adopted to be relettered as §217.40(e), implement HB 718 by adding "special registration" and "or special registration license plate" where "permit" appears throughout the subsection for consistency in the description of the new plate. The adopted amendments to prior §217.40(d) delete unnecessary language that is redundant with statute. Adopted amendments to prior §217.40(e), which is adopted to be relettered to §217.40(f), implement HB 718 by replacing "temporary" with "special registration" and adding "or special registration license plates" wherever "permit" appears throughout the subsection, for consistency in the description of the new plate.

Adopted amendments to §217.41(b)(2)(A) replace "regular motor vehicle license plates" with "general issue license plates" to implement HB 718, modernize language and improve readability through the use of consistent terminology. Adopted amendments to §217.41(b)(3) update applicable statutory references governing the issuance of windshield disabled parking placards.

Adopted amendments to §217.43 add the word "license" in multiple places to improve readability through consistent terminology.

Adopted amendments to §217.45(b)(2)(B) remove language that is redundant with statute. Adopted amendments to §217.45(b)(4) add the word "license" to modify "plate" in several places to implement HB 718 with consistent terminology. Adopted amendments to §217.45(c)(2)(A)(iii) implement HB 718 by replacing "alpha numeric pattern" with "license plate number" to modernize language and improve readability with consistent terminology. Adopted amendments to §§217.45(c), (d), (e), (f), (h), and (i) implement HB 718 with consistent terminology by adding "license" to modify "plate" in multiple places.

An adopted amendment to §217.46(a) clarifies that a motor vehicle is required to register as a commercial vehicle if it meets the definition under Transportation Code, §502.001(7) and deletes unnecessary language that repeats the statutory requirements. An adopted amendment to §217.46(b)(3)(A) deletes the words "and full trailers" because Transportation Code, §502.255 only authorizes a truck-tractor or commercial motor vehicle with a combination license plate to be used in combination with a semitrailer that has a gross weight of more than 6,000 pounds. Although Transportation Code, §502.255(e) says that for registration purposes, a semitrailer that has been converted to a

trailer by means of an auxiliary axle assembly retains its status as a semitrailer, this exception under §502.255(e) is already addressed in §217.46(b)(3)(B). Another adopted amendment to §217.46(b)(3)(A) also clarifies that a truck or truck-tractor displaying a combination license plate issued under Transportation Code, §502.255 may only pull a semitrailer issued a license plate from another state to the extent authorized under a registration reciprocity agreement under Transportation Code, §502.091. Transportation Code, §502.255 regarding combination license plates does not authorize a truck or truck-tractor with a combination license plate to pull a semitrailer with a license plate issued by another state; however, Transportation Code, §502.091 provides such authority if there is a registration reciprocity agreement that authorizes it.

Adopted amendments to §217.46(b)(3)(A)(i) and (ii) modify the language because Transportation Code, §502.255(a) requires the truck or truck tractor in the combination to have a gross weight of "more than 10,000 pounds," which means a truck or truck-tractor that has a gross weight of 10,000 pounds or less does not qualify for registration under Transportation Code, §502.255. Adopted amendments to §217.46(b)(3)(A)(ix) replace "temporary" with "special registration," replace "permits" with "special registration license plates," and replace "permits" with "license plates" to improve readability through consistent terminology. An adopted amendment to §217.46(b)(3)(B) deletes the word "full" from the term "full trailers" because the language summarizes the authority under Transportation Code, §502.255(e) for a semitrailer that has been converted to a trailer by means of an auxiliary axle assembly to retain its status as a semitrailer. Transportation Code, §502.001 defines the word "trailer," but does not define the term "full trailer." Therefore, the adopted amendment deletes the word "full" from the term "full trailers" to provide clarity. An adopted amendment to §217.46(b)(3)(D)(iii) adds the word "license" to modify "plates," to improve readability and clarity through consistent terminology. An adopted amendment deletes §217.46(b)(6) because in transit license plates under Transportation Code, §503.035 are addressed under 43 TAC §215.143. The remaining paragraphs of §217.46(b) are adopted to be renumbered accordingly.

An adopted amendment to renumbered §217.46(b)(7)(A) replaces the word "required" with the word "authorized" because a token trailer license plate is available for semitrailers that qualify for a token trailer license plate under the law. An adopted amendment to renumbered §217.46(b)(7)(B) deletes language regarding an exemption under Transportation Code, §502.094 because Transportation Code, §502.001(40) and §502.255 do not provide an exemption. Transportation Code, §502.001(40) defines a token trailer and states that a token trailer is only authorized to be operated in combination with a truck or truck-tractor that has been issued an apportioned license plate, a combination license plate or a forestry vehicle license plate. Transportation Code, §502.001(40) does not list a truck or truck-tractor registered with a special registration permit under Transportation Code, §502.094, so a special registration permit under Transportation Code, §502.094 may not be used to increase the combined gross weight of a truck or truck-tractor to pull a token trailer, even if the truck or truck-tractor is registered for a lower combined gross weight under one of the types of registration referenced in Transportation Code, §502.001(40). If the truck or truck-tractor is only authorized to operate at a higher combined gross weight (combined gross weight of the truck or truck-tractor and the token trailer) because of the authority under Transportation Code, §502.094 for a 72- or 144-hour permit, then the truck or truck-tractor is operating under the registration authority under Transportation Code, §502.094, rather than the registration authority of a registration type referenced in Transportation Code, §502.001(40). However, a vehicle combination may be eligible under Transportation Code, Chapters 621 through 623 to operate at a higher gross weight than a registered gross weight of 80,000 pounds provided the vehicle combination is operated in compliance with such laws, but provisions in Transportation Code, Chapters 621 through 623 might require such vehicle combination to operate at less than 80,000 pounds gross weight even if the combination is registered for 80,000 pounds gross weight. Vehicle registration is a different issue than maximum weight authorized under Transportation Code, Chapters 621 through 623. Also, Transportation Code, §623.011 is not the only statute in Transportation Code, Chapter 623 that might authorize the vehicle combination to exceed 80,000 pounds gross weight. For these reasons, an adopted amendment to renumbered §217.46(b)(7)(B) replaces the reference to Transportation Code, §623.011 with a reference to Transportation Code, Chapters 621 through 623.

Adopted amendments to renumbered §217.46(b)(7)(D) change the catchline from "Full trailers" to "Trailer" and delete the word "full" from the term "full trailer" because Transportation Code, §502.255 only authorizes a semitrailer to be eligible for a token trailer license plate, and Transportation Code, §502.001 defines the word "trailer," but does not define the term "full trailer." §217.46(b)(3)(B) already includes the exception under Transportation Code, §502.255(e), which says that for registration purposes, a semitrailer converted to a trailer by means of an auxiliary axle assembly retains its status as a semitrailer. An adopted amendment to renumbered §217.46(b)(7)(D) also replaces the word "will" with the word "shall" before the word "not" because Government Code, §311.016 defines the word "shall" to impose a duty. Because Transportation Code, §502.255 does not authorize the department to issue a token trailer license plate for a trailer, this adopted amendment to renumbered §217.46(b)(7)(D) clarifies that the department is prohibited from issuing a token trailer license plate for a trailer. Government Code, Chapter 311 applies to each rule adopted under a code, such as the rules under Chapter 217.

An adopted amendment to §217.46(c)(1) clarifies that an applicant shall apply to the appropriate county tax assessor-collector or the department, as applicable, for commercial license plates. An adopted amendment to §217.46(c)(3)(B)(ii) clarifies the reference to the laws regarding overweight vehicles. An adopted amendment to §217.46(c)(4) provides an option to establish ownership of a vehicle by securing a bond if no VIN or serial number can be identified, to give vehicle owners flexibility with more avenues to establish ownership.

Adopted amendments to §217.46(c)(5)(C) clarify the sentence and remove an outdated reference to an international stamp under Chapter 218 of Title 43. Transportation Code, §502.046 says that evidence of financial responsibility as required by Transportation Code, §601.051, other than for a trailer or semitrailer, shall be submitted with the application for registration under Transportation Code, §502.046. If the vehicle is registered in compliance with Chapter 218, this is evidence that Transportation Code, §601.051 does not apply because Transportation Code, §601.007(c) says that Transportation Code, Chapter 601 (other than §601.054) does not apply to a motor vehicle that is subject to Transportation Code, Chapter 643. If Transportation Code, Chapter 643 requires a motor carrier to register its vehicle under Chapter 643, the motor

carrier must obtain such registration under 43 TAC Chapter 218 and Transportation Code, Chapter 643. The reference to registration under Chapter 218 is a reference to operating authority, rather than vehicle registration as provided under Transportation Code, Chapter 502.

Adopted amendments to §217.46(c) delete paragraphs (6) and (7) because the department is adopting new §217.31, which provides the HVUT requirements. Federal law imposes the requirements for the payment of the HVUT, the circumstances under which a state must require proof of payment of the HVUT and the required manner in which such proof of payment must be received by a state. Adopted new §217.31 cites to the applicable federal law regarding the HVUT and incorporates the applicable IRS regulation by reference.

Adopted amendments to §217.46(d)(1) delete language regarding fixed five-year vehicle registration terms for rental trailers and token trailers because the language is not supported by statute. Transportation Code 502.0024(a), as amended by HB 3297, states, "Payment for all applicable fees...for the entire registration period is due at the time of registration." Also, Transportation Code, §502.0024 authorizes the applicant to choose a registration term up to five years. Further, HB 2357, 82nd Legislature, Regular Session (2011) deleted language regarding a five-year registration period for a token trailer. In addition, the department does not require trailers that are registered under Transportation Code, §502.0024 to have a March 31st expiration date, unless the registration term begins on April 1st.

An adopted amendment to §217.46(e)(1) adds the word "license" to modify "plates" for improved readability and clarity through consistent terminology. In accordance with the effective date of HB 718, the amendments to §217.46 are adopted for a future effective date of July 1, 2025.

An adopted amendment to §217.50 adds the word "license" to modify "plate" for improved readability and clarity through consistent terminology. Another adopted amendment to §217.50 deletes the definition of highway construction project to remove unused, archaic language.

Adopted amendments to §217.51 add the word "license" to modify "plate" for improved readability and clarity through consistent terminology.

Adopted amendments to §217.52 add the word "license" to modify "plate" in multiple places to implement HB 718, and for improved readability and clarity through consistent terminology. In addition, adopted amendments to §217.52(e)(3) add the word "special" and the term "specialty license plate" to implement HB 718 and clarify with consistent terminology. Adopted amendments to §217.52(h)(7) remove references to "alphanumeric patterns" and instead use "department-approved alpha numeric license plate numbers" to implement HB 718 with consistent terminology. Amendments are also adopted for §217.52(h)(7) to replace the word "pattern" with "license plate number" and to add the word "license" to modify "plate" to implement HB 718 with consistent terminology. Additionally, adopted amendments to §217.52(h)(9) add the word "license" to modify "plates" in several places to use consistent terminology for clarity. Amendments are adopted to §217.52(k) to add "specialty" to modify "license plate" for clarity with consistent use of terminology, and to replace "will need to be remanufacturered" with "may be remanufactured" for clarity and to provide flexibility. Adopted amendments to §217.52(k)(5) add "to law enforcement" to clarify where license plate numbers and license plates must be reported stolen. Adopted amendments to §217.52(l)(1) create consistent use of the term "specialty license plates" throughout the section to implement HB 718 and to align with the terminology used in other provisions of this chapter. An adopted amendment to §217.52(l)(1)(B) deletes the word "particular" as unnecessary language. Adopted amendments to §217.52(l)(2) update terminology by adding "specialty license plate" number and "license plate" to replace "pattern" and "alphanumeric pattern" to implement HB 718 and to be consistent in the use of terminology throughout the chapter. Adopted amendments to §217.52(m) add the word "license" to modify "plates" in multiple places to implement HB 718 and to create consistency in terminology for clarity. Adopted amendments to §217.52(n)(1)(A) clarify, implement HB 718, and create consistent use of terminology by replacing "pattern is an auction pattern" with "license plate number was purchased through auction." In accordance with the effective date of HB 718, the amendments to §217.52 are adopted for a future effective date of July 1, 2025.

Adopted amendments to the §217.53 section title substitute the word "disposition" for "removal" and add "or transfer" to implement HB 718 by broadening the heading language to incorporate allowing license plates to remain with the vehicle when it is sold or transferred, while the registration insignia is removed and disposed of. Adopted amendments to §217.53(a) implement Transportation Code, §502.491 and §504.901, as amended by HB 718, clarifying that upon the sale or transfer of a motor vehicle to a dealer that holds a GDN, general issue license plates shall be removed and retained for issuance to a subsequent purchaser or transferor of that motor vehicle and the registration insignia shall be removed and disposed of by the dealer.

At adoption, §217.53(a) was modified in response to a public comment by substituting a reference to §215.151(d) for the proposed broader references to the Transportation Code and to another rule in Chapter 215, and by removing a vague statement about license plates transferring with the motor vehicle in a nonretail sale. Section 215.151(d) specifically addresses the disposition of general issued license plates upon a subsequent retail or nonretail sale of a motor vehicle by a dealer to an in-state or out of state purchaser. This modification will align §217.53(a) with §215.151(d) as to the disposition of general issue license plates for motor vehicles purchased and sold by dealers.

Adopted amendments to §217.53(b) implement Transportation Code, §502.491(b) and §504.901(b), as amended by HB 718, by clarifying that upon the sale or transfer of a motor vehicle in which neither party is a dealer, the registration insignia and the general issue license plates remain with the motor vehicle. At adoption, the proposed language of §217.53(b) was modified to remove references to registration insignia and to Transportation Code, §502.491(b). These changes at adoption align the adopted rule with Transportation Code, §502.491(a), which requires removal of registration insignia at the time of sale.

Adopted new §217.53(c) implements HB 718 and mitigates the risk of license plate fraud by requiring that a license plate other than a general issue license plate shall be removed by the owner of a motor vehicle that is sold or transferred, and that removed license plates may be transferred if eligible. Otherwise, such plates must be disposed of in a manner that renders the license plate unusable or that ensures the license plates will not be available for fraudulent use on a motor vehicle. The adopted amendments delete prior §217.53(c) to remove language that is redundant with statute. Adopted amendments create new §217.53(d) to implement HB 718 and to mitigate the risk of license plate

fraud by requiring that a retail purchaser who chooses to obtain replacement general issue license plates dispose of the replaced license plates in a manner that renders the license plates unusable. In accordance with the effective date of HB 718, the amendments to §217.53 are adopted for a future effective date of July 1, 2025.

Adopted amendments to §217.54(c)(2)(F) and §217.54(j) modify language to implement HB 3297 by replacing language regarding the state's portion of the inspection fee with language regarding any fee that is required to be collected at the time of registration under Transportation Code, §548.509 for the first year of registration under Transportation Code, §502.0023 and on an annual basis thereafter for the remainder of the registration term.

An adopted amendment to §217.55(a) uses consistent terminology for clarity by adding the word "license" to modify "plate" in several places. Adopted amendments to §217.55(b)(5) update the language and correct a cross-reference to clarify that an affidavit for alias exempt registration must be accompanied not by a regular title application, but instead by the specific, separate application required by the department to create the alias record of vehicle registration and title as outlined in §217.13, relating to Alias Certificate of Title. Adopted amendments to §217.55(e)(3) and §217.55(e)(6) modify the language to implement HB 3297 by replacing language regarding the state's portion of the inspection fee with language regarding any fee that is required to be collected at the time of registration under Transportation Code, §548.509 for the first year of registration under Transportation Code, §502.0025 and on an annual basis thereafter for the remainder of the registration term.

Adopted amendments to §217.56(b)(5) update terminology by replacing "rejection letters" with "notices of determination" to better describe the department's processes. An adopted amendment to §217.56(b)(6) deletes the word "permit" in accordance with the implementation of HB 718.

An adopted amendment to §217.56(c)(2)(B) incorporates by reference the January 1, 2024, version of the International Registration Plan (IRP). Texas is bound by IRP, which is a vehicle registration reciprocity agreement between the 48 contiguous states, the District of Columbia, and the Canadian provinces. Section 217.56 must incorporate the latest edition of IRP because it contains language regarding the nature and requirements of vehicle registration under IRP. Texas is a member of IRP, as authorized by Transportation Code, §502.091 and 49 U.S.C. §31704, and must comply with the current edition of IRP. The jurisdictions that are members of IRP amended the January 1, 2022, version of IRP to create the January 1, 2024, version of the IRP. An adopted amendment to §217.56(c)(2)(B) also provides the online address where one can obtain a copy of the January 1, 2024, version of the IRP, as well as the January 1, 2016, version of the IRP Audit Procedures Manual and prior versions of both of these IRP documents. Because the department adopted documents by reference into an administrative rule, 1 TAC §91.40(e) requires the department to maintain and distribute a copy of the documents to interested parties. In addition, adopted amendments to §217.56(c)(2)(B) move the rule text regarding a request to the department for a copy of the documents and delete rule text regarding the review of the IRP documents in the department's Motor Carrier Division, which allows the department to comply with 1 TAC §91.40(e) in the most efficient manner.

An adopted amendment to §217.56(c)(2)(M)(v) replaces "TxIRP" with "TxFLEET" because the department rebranded the TxIRP system as the TxFLEET system, which the department launched on September 16, 2024. The department will refer to the system as the TxFLEET system throughout this preamble, except when summarizing an adopted amendment that replaces "TxIRP" with "TxFLEET."

Subchapter C. Registration and Title Systems

Adopted amendments to §217.71(a)(3) delete the phrase "for users who opt" as all dealers will be required to use webDEALER to submit title and registration applications effective July 1, 2025.

Adopted amendments to §217.74 implement Transportation Code, §520.0055, created by HB 718, which requires all motor vehicle dealers to use the webDEALER system to submit title and registration applications for purchasers after July 1, 2025. An adopted amendment to the title of §217.74 revises the section title to "webDEALER Access, Use, and Training" to accurately reflect the scope of the section. Adopted amendments to §217.74(c) implement HB 718 by making it required, rather than discretionary, for all motor vehicle dealers who hold a GDN to get access to webDEALER, and by requiring that all active holders must obtain access to webDEALER prior to July 1, 2025. To ensure that all dealers are able to meet the deadline of July 1, 2025, adopted amendments to §217.74(c) allow the department to provide dealers access to webDEALER in the county where the dealer is located without waiting for a county tax assessor-collector to process the dealer's application and provide access. Adopted amendments to §217.74(e) add an "entity" to the webDEALER users that may have their authorization to use webDEALER revoked, rescinded, or cancelled to allow the department to cancel the access of tax assessor-collectors and their deputies or employees who abuse their access to webDEALER to perpetuate fraud or other wrongdoing.

Adopted new §217.74(g) requires all existing webDEALER users who process title and registration transactions through webDEALER complete training by April 30, 2025, and all new webDEALER users created on or after April 30, 2025, complete webDEALER training before being given webDEALER permissions. New adopted §217.74(g)(1) provides that the required webDEALER training will include, at a minimum, training regarding transactions performed in webDEALER and proper use of the system. The adopted amendments to new §217.74(g)(2) provide for an exemption from webDEALER training for users who have had access to webDEALER for more than six months and who have submitted more than 100 transactions within the system as of October 1, 2024. At adoption, the first paragraph of 217.74(g) was amended to clarify that the training is for individual users of webDEALER under a holder's account, but is not required of individual license holders who do not personally enter transactions into webDEALER and instead have employees that will be trained as users of webDEALER. Also at adoption, new §217.74(g)(2) was amended to replace "holder" with "user" to ensure that all new users of webDEALER, including those accessing webDEALER under an experienced holder's account, must receive training before accessing webDEALER. The adopted amendments to new §217.74(g)(3) provide that the failure of holders and users to complete the required webDEALER training shall result in denial of access to webDEALER. These adopted amendments to §217.74 implement HB 718 by ensuring that webDEALER users are appropriately trained and given access to the webDEALER system before the July 1, 2025, effective date for mandatory webDEALER use by all dealers.

Adopted amendments delete §217.75(c)(5), which references training required by August 31, 2020, because it is outdated. The remaining subsections in §217.75 are renumbered accordingly. Adopted amendments to renumbered §217.75(c)(5) remove "after August 31, 2020" because it is outdated and unnecessary.

Subchapter D. Nonrepairable and Salvage Motor Vehicles.

Adopted amendments throughout the entire Subchapter D eliminate the hyphen for the term "non-repairable" to align with the use of that same term in Transportation Code, Chapter 501 and maintain consistency. Additional adopted amendments throughout the subchapter add the phrase "nonrepairable or salvage record of title" to each mention of nonrepairable or salvage vehicle title to account for the department's statutory authority under Transportation Code, Chapter 501 to issue electronic titles for nonrepairable and salvage motor vehicles and the department's current practice of issuing electronic versions of nonrepairable and salvage vehicle titles in lieu of paper titles at the request of applicants.

Adopted amendments to §217.81 clarify wording by replacing "certificates of" with "titles" and adding "motor" to describe nonrepairable, salvage and rebuilt salvage motor vehicles. The adopted changes provide consistency in the terms used throughout §217.81 to describe the purpose and scope of the subchapter. At adoption, the department eliminated the hyphen in the term "non-repairable" in §217.81 to maintain consistency with the use of that same term elsewhere in this chapter and in Transportation Code, Chapter 501.

Adopted amendments to §217.82 define terms with the definitions of those same terms provided in Transportation Code, §501.002 and §501.091 for purposes of consistency: "casual sale," as defined in Transportation Code, §501.091(2); "certificate of title" as defined by Transportation Code, §501.002(1-a); "damage" as defined by Transportation Code, §501.091(3); "insurance company" as defined by Transportation Code, §501.091(5); "metal recycler" as defined by Transportation Code §501.091(7); "nonrepairable vehicle title" as defined by §501.091(10); "out-of-state buyer" as defined by Transportation Code, §501.091(11); "salvage vehicle dealer" as defined by Transportation Code, §501.091(17); and "salvage vehicle title" as defined by Transportation Code, §501.091(16). Adopted amendments to §217.82 create a new §217.82(15) and §217.82(23) to add the defined terms "nonrepairable record of title" and "salvage record of title," respectively. These terms are used throughout the subchapter and the adopted definitions align with their use and meaning in Transportation Code, Chapter 501. Prior §217.82(15) through §217.82(21) are renumbered accordingly based on the addition of adopted new §217.82(15). An adopted amendment to renumbered §217.82(19) deletes "certificate of" and "regular certificate of" from the defined term "Rebuilt salvage certificate of title" to account for the department's current practice of issuing electronic or paper titles and is consistent with the standalone term "title" that is defined in Transportation Code, Chapter 501 to encompass both electronic and paper versions of a motor vehicle title. An adopted amendment to renumbered §217.82(20) moves "is" under §217.82(20)(A) to §217.82(20)(A)(i) and deletes "damaged and" from §217.82(20)(A)(ii) to conform the definition of "salvage motor vehicle" to the definition of the same term provided in Transportation Code, §501.091(15), as the statutory definition does not specify that a salvage motor vehicle coming into the state on an out of state title to evidence damage. At adoption, minor grammatical changes were made to §217.82 by capitalizing the first word in each of the descriptions for the defined terms.

The adopted amendment to §217.83(a)(2) makes a minor change by substituting "any" for "alternate" to account for all methods developed and commonly used by insurance companies to assess the condition of a motor vehicle to determine if the motor vehicle should be classified as a nonrepairable motor vehicle. At adoption, a minor correction was made to §217.83(a)(2) by deleting a space left between "non" and "repairable" to make it one word, "nonrepairable." The adopted amendment to §217.83(b)(1) deletes "certificate of" as the term "certificate of title" is limited to paper titles, but the department issues both paper and electronic versions of titles that are more accurately captured with the standalone term of "title." The adopted repeal of prior §217.83(c)(1) eliminates text specifying a Texas title requirement for a motor vehicle retained by an owner that becomes classified as a nonrepairable or salvage motor vehicle, as this requirement conflicts with Transportation Code, §501.1002 where no such requirement is specified for an owner-retained motor vehicle. The adopted amendment to renumbered §217.83(c)(1) clarifies the method required for insurance companies to submit owner-retained motor vehicle notice forms to the department by specifying that it be submitted to the department through the department's electronic system known as webDEALER. The department's infrastructure and operations have been modernized and this adopted amendment provides guidance to insurance companies on the proper filing method for such forms. The adopted repeal of §217.83(c)(5) eliminates text that is duplicative of the text in §217.83(c)(3) and §217.83(c)(4) that prohibits the transfer of owner-retained motor vehicles that become classified as nonrepairable or salvage motor vehicles without owners first securing the respective titles for the motor vehicles. Adopted amendments to §§217.83(c)(2), 217.83(c)(3), 217.83(c)(4), and 217.83(c)(6) renumber those sections based on the adopted repeal of §§217.83(c)(1) and 217.83(c)(5).

The adopted amendment to §217.84(b)(8) deletes "certificate of" as part of the description of the application form to align with the defined terms for nonrepairable and salvage title specified in Transportation Code, §501.091 and §217.82 of this subchapter that do not include the term "certificate of." At adoption, the department withdrew the proposed amendment to §217.84(b)(5), in which the department had proposed language expanding the description of damage to a motor vehicle required for an application for a nonrepairable or salvage title. The proposed expanded language would have required the applicant to identify the major component parts that needed to be repaired or replaced on the vehicle. The department is withdrawing this proposed amendment to allow further time to make the technology enhancements required to implement such enhanced reporting.

The adopted amendments to §217.84(d)(1)(A) and (B) delete "certificate of" from "Texas Certificate of Title" to rephase the term as "Texas Title." The deletion of "certificate of" would align with the department's current practice of issuing both paper and electronic versions of titles that is more accurately captured with the standalone term "title," which is defined in Transportation Code, Chapter 501 to encompass electronic and paper titles. The adopted amendments to §217.84(d)(1)(E) and (F) add the phrase "or record of title" to account for the electronic versions of a title for a nonrepairable or salvage motor vehicle. The adopted amendment to §217.84(d)(3) deletes the words "vehicle title" from "salvage vehicle title" to create a new phrase of "salvage or nonrepairable vehicle title," which is used throughout the

subchapter for ease of reading. The adopted amendment to §217.84(d)(4) deletes the text and replaces it with a reference to Transportation Code, §501.0935, as the deleted text is duplicative of the text in statute and is therefore unnecessary. The adopted amendment to §217.84(f)(3)(B) deletes "certificate of" from the term "regular certificate of title" to be consistent with term "regular title," as specified in Transportation Code, §501.9112(b)(A).

The adopted amendment to §217.85(b) deletes "certificate of" as the term "certificate of title" is limited to paper titles, but the department issues both paper and electronic versions of titles that is more accurately captured with the standalone term of "title."

The adopted amendments to §217.86 create a new §217.86(d) that requires a receipt from the department evidencing the surrender of ownership documents for a vehicle transferred to a metal recycler as specified in §217.86(c) and a department-prescribed form detailing the transfer. The adopted amendment ensures vehicles delivered to metal recyclers follow the requirements set out in §217.86(a) - (c) as a prerequisite to their dismantling, scrapping or destruction, as well as to ensure proper documentation of the transfer and surrender of the receipt for purposes of reporting such information to the department by the metal recycler. The adopted amendments to §§217.86(d), 217.86(e) and 217.86(f) re-letter the provisions to §§217.86(e), 217.86(f) and 217.86(g) based on the addition of adopted new §217.86(d). Also, an adopted amendment to prior §217.86(f) clarifies that the 60-day period for reporting to the department the delivery of a vehicle for dismantling, scrapping or destruction, begins upon the delivery of the vehicle to the metal recycler to be consistent with the deadline set out in Transportation Code, §501.107.

The adopted repeal of §217.87 eliminates text that is duplicative to Transportation Code, §501.09111 and is therefore unnecessary.

The adopted amendment to §217.88(a) adds the phrase "Sale, transfer or release with" to the title of the subsection to clarify its scope. The adopted amendments to §217.88(b) add the phase "Sale, transfer or release without" to the title of the subsection to clarify its scope. Adopted amendments to §217.88(b) also delete the remaining text for the subsection and replace it with a reference to Transportation Code, §501.095(a), because the deleted text is duplicative to the text in statute and is therefore unnecessary. The adopted amendment to §217.88(d) incorporates a reference to Transportation Code, §501.091(2)(A-C) to exempt those persons not subject to the numerical limit for casual sales. This adopted amendment acknowledges these persons or entities are not subject to the limitations of the rule provided the sales are consistent with the requirements specified in the statute. The adopted amendment to §217.88(e)(1)(D) deletes the existing description for a photo identification and adds a reference to the list of current photo identifications provided in §217.7(b). The adopted amendment provides consistency throughout Chapter 217 as to what forms of current photo identification are acceptable to the department for purposes of the titling and/or registration of motor vehicles. The adopted amendment to §217.88(g)(1) adds a three-year retention requirement for export-only sales records to align with the records retention requirement specified in Transportation Code, §501.099(g). The adopted amendment to §217.88(g)(2)(C) deletes the existing description for a photo identification and adds a reference to the list of photo identifications provided in §217.88(f)(1)(B). The adopted amendment provides consistency as to what photo identifications are acceptable to the department for purposes of export-only sales of motor vehicles. The adopted amendments to §217.88(g)(2)(E) delete certain data collection items from the export-only sale list and renumber the list accordingly, to align with the requirements provided in Transportation Code, §501.099(g)(2).

Adopted amendments throughout §217.89 delete the words "certificate of" from the phrase "rebuilt salvage certificate of title" to read "rebuilt salvage title". These adopted amendments account for the department's current practice of issuing electronic or paper titles and is consistent with the standalone term "title" that is defined in Transportation Code, Chapter 501 that encompasses electronic and paper versions of a motor vehicle title. The adopted amendments to §§217.89(a), 217.89(d), 217.89(f), and 217.89(g) delete "certificate of" from the phrase "certificate of title" as the term "certificate of title" is limited to paper titles, while the department issues both paper and electronic versions of titles, which are more accurately captured with the standalone term of "title." The adopted repeal of §217.89(d)(3), which required the submission of a motor vehicle safety inspection, is necessary to comply with amendments to Transportation Code, Chapter 548 as amended by HB 3297, which eliminated the mandatory motor vehicle safety inspections in the state. Adopted amendments to §217.89(d)(4) through §217.89(d)(7) are renumbered accordingly based on the repeal of §217.89(d)(3). An additional adopted amendment to prior §217.89(d)(5) qualifies the requirement for submitting proof of financial responsibility in those instances where the vehicle is to be registered at the time of application. The adopted amendment clarifies that such proof is not required where the application seeks only to retitle the vehicle without registration. An additional adopted amendment to prior §217.89(d)(6) deletes the requirement for attaining a motor vehicle inspection report for vehicles last titled or registered in another state or country. The adopted amendment also clarifies the requirement for motor vehicles last titled or registered in another country to secure a VIN inspection and require those vehicles last titled or registered in another state to submit a form as referenced by §217.4(d)(4) that would self-certify the VIN. The adopted amendments to §217.89(d)(5) are necessary to comply with HB 3297, which eliminated the mandatory motor vehicle safety inspections in the state. The amendments also ensure that motor vehicles being brought into the state from another state or country are in alignment with the statutory requirements set out for VIN inspections under Transportation Code, §501.030 and §501.032. The adopted amendment to §217.89(e)(1) adds the phrase "or record title" to account for the electronic version of a title for a salvage motor vehicle. The adopted amendment to §217.89(e)(2) substitutes "does" for "may" as it pertains to what is considered evidence of ownership for a rebuilt salvage motor vehicle. This adopted amendment conforms to the requirements set out in Transportation Code, Chapters 501 and 683 that prohibit the items listed in this subsection as qualifying as evidence of ownership for a rebuilt salvage motor vehicle. The adopted amendment to §217.89(g) deletes "on its face" as being unnecessary language. In accordance with the effective date of HB 3297, the amendments to §217.89 are adopted for a future effective date of January 1, 2025.

Subchapter E. Title Liens and Claims

An adopted amendment to §217.106 adds language providing a citation to Transportation Code, §501.115, which governs the time limits for a lienholder to provide a discharge of lien after receiving final payment. The adopted amendment to §217.106

adds clarity, ease of reference, and improved guidance to the public.

Subchapter F. Motor Vehicle Records

Adopted amendments to §217.122(b)(2) add a citation to Transportation Code, §730.003(5) to define "person" for clarity and consistency between the rules and statutes.

An adopted amendment to §217.123(b)(5) deletes a concealed handgun license as a method of current identification for a requestor of motor vehicle records as a concealed handgun license is no longer required by law. Adopted amendments to §217.123(c)(3) align this section with statute by requiring a law enforcement requestor seeking personal information from agency records to identify its intended use or the agency's incident or case number for which the personal information is needed. Adopted amendments create new §217.123(e)(1)(D) and (E) to require a requestor of the department's motor vehicle records to provide in its application for a service agreement, blank copies of agreements used by the requestor to release motor vehicle record information to third parties, and any additional material provided to third party requestors detailing the process in which they obtain motor vehicle record information and describing their limitations as how this information may be used, to ensure that requestors are in compliance with the limitations on the use of personal information under Transportation Code, Chapter 730. At adoption, §217.123(e)(1)(D) was modified in response to a public comment by clarifying that the requestor's application include blank versions of the agreements used by the requestor to release motor vehicle record information to third parties. This modification will avoid the disclosure of confidential or propriety information that could be contained in an actual agreement used by the requestor to release motor vehicle record information to third parties.

The remaining subsections of §217.123(e)(1) are adopted to be relettered accordingly. Adopted new §217.123(e)(2) clarifies that the department will not enter into a service agreement to release motor vehicle record information if it determines any of the information provided in an application is incomplete, inaccurate, or does not meet statutory requirement, to protect the confidentiality of motor vehicle records from misuse or inappropriate disclosure. Adopted new §217.123(f)(1)(D) and (E) require requestors of bulk records to provide in an application for a bulk contract blank copies of agreements used by the requestor to release motor vehicle record information to third parties, and any additional material provided to third party requestors detailing the process through which they obtain motor vehicle record information and describing their limitations as to how this information may be used, to ensure that requestors are in compliance with the limitations on the use of personal information under Transportation Code, Chapter 730. At adoption, §217.123(f)(1)(D) was modified in response to a public comment by clarifying that the requestor's application include blank versions of the agreements used by the requestor to release motor vehicle record information to third parties. This modification will avoid the disclosure of confidential or propriety information that could be contained in the actual agreements used by the requestor to release motor vehicle record information to third parties. The remaining subsections of §217.123(f)(1) are adopted to be renumbered accordingly. Adopted new §217.123(f)(2) provides that the department will not enter into a bulk contract to release motor vehicle record information if the department determines any of the information provided by a requestor is incomplete, inaccurate, or does not meet statutory requirements, to protect the confidentiality of motor vehicle records from misuse or inappropriate disclosure. The remaining subsections of §217.123(f) are adopted to be renumbered accordingly.

Adopted amendments to §217.124(e) delete "and" before "toll project entities" and add "and federal governmental entities" as being exempt from the payment of fees except for the fees listed in §217.124(d)(1), (6), or (8), to expedite and streamline the delivery of documents to federal government entities. Adopted amendments to §217.124(f) add an "a" before "reciprocity," delete the "s" in agreements, replace "other" with "another" before "governmental," and replace "entities" with "entity" to improve readability and to use consistent terminology.

An adopted amendment to §217.125(b)(2) adds the word "proof" where it was inadvertently left out of the rule to make the sentence comprehensible. Another adopted amendment to §217.125(b)(2) clarifies that a requestor who is not yet involved in litigation must provide proof that the request is in anticipation of litigation that would necessitate the release of the documents requested, to limit the unnecessary release of confidential motor vehicle records and the resulting potential for misuse of personal information. Adopted amendments to §217.125(b)(3), to further limit the inappropriate release of confidential motor vehicle records, replace the requirement that a requestor prove they are "in a researching occupation" with a more specific requirement that the requestor is "employed by an entity in the business of conducting research related to the requested information," and gives the department discretion to determine whether the employment is valid and the business research sufficiently related to the requested information.

An adopted amendment to §217.129(a) adds a citation to Transportation Code §730.005 and §730.006 for clarity and ease of reference. An adopted amendment to §217.129(c) adds "has previously been terminated" to align with the title of §217.130, relating to Approval for Persons Whose Access to Motor Vehicle Records has Previously Been Terminated.

An adopted amendment to §217.131 deletes prior §217.131(a) and combines the language "has previously received personal information from the department and" into renumbered §217.131(a) to streamline the rule and improve readability. The remaining subsections of §217.131 are adopted to be relettered accordingly.

Subchapter G. Inspections.

The adopted amendment to §217.143(c) adds a reference to Transportation Code, §731.102 to the inspection requirements for an assembled vehicle. This adopted amendment clarifies the minimum requirements set forth in statute that must be met to evaluate the function and structural integrity of an assembled vehicle. The adopted amendment to §217.143(g) substitutes "any applicable" for "an" as it pertains to an inspection or reinspection of an assembled vehicle under Transportation Code, Chapter 548. The adopted amendment is necessary to comply with amendments to Transportation Code, Chapter 548 by HB 3297, which eliminated the mandatory motor vehicle safety inspections in the state.

Adopted amendments to §217.144 create new §217.144(b) and move the existing text in §217.144 under new §217.144(a). These amendments restructure §217.144 for ease of reading, to separate text addressing the training for inspectors from text addressing the outcome of identification number inspections. Adopted new §217.144(b) prohibits the department from titling or registering a motor vehicle where the inspector is unable

to ascertain the motor vehicle's make or year of manufacture and further prohibits a motor vehicle being classified as an assembled, homemade, or shop vehicle where the inspection is unable to determine the vehicle's make or year of manufacture. The adopted amendment clarifies the department's existing interpretation of Transportation Code, Chapter 501 and the department's existing practices and procedures for identification number inspections performed on motor vehicles that are subject to such inspections under Transportation Code, §501.032. The adopted amendments align those interpretations and practices to provide guidance to the public on the requirements and consequences associated with a motor vehicle's identity.

Subchapter H. Deputies.

An adopted amendment to §217.161 removes unnecessary transition language regarding a deputy appointed under Transportation Code, §520.0071, on or before December 31, 2016. HB 2202 and HB 2741, 83rd Legislature, Regular Session, 2013, added Transportation Code, §520.0071 and repealed Transportation Code, §§520.008, 520.009, 520.0091 and 520.0092, effective September 1, 2013. Both HB 2202 and HB 2741 stated that a deputy appointed under Transportation Code, §520.0091 on or before August 31, 2013, may continue to perform the services authorized under Transportation Code, §§520.008, 520.009, 520.0091 and 520.0092 until the effective date of rules adopted by the board regarding the types of deputies authorized to perform titling and registration duties under Transportation Code, §520.0071 as added by HB 2202 and HB 2741. The board adopted rules under Transportation Code, §520.0071, effective March 12, 2015; however, §217.161 authorized a deputy appointed under Transportation Code, §520.0071 on or before December 31, 2016, additional time to comply with the rules. All deputies were required to comply with the new and amended rules regarding deputies, beginning on January 1, 2017. An adopted amendment to §217.161 also removes the unnecessary reference to January 1, 2017.

An adopted amendment to §217.168(b)(1) adds the word "county" before the term "tax assessor-collector" to make the terminology consistent throughout Chapter 217. An adopted amendment to §217.168(b)(1) also creates a new subparagraph (A) for the second sentence in §217.168(b)(1) due to the adopted addition of new §217.168(b)(1)(B), which clarifies that title transaction fees collected by full service deputies authorized by a county tax assessor-collector can be assessed on webDEALER title transactions where the full service deputies have been approved by a county tax assessor-collector to approve title transactions through webDEALER. The adopted amendment is necessary to address and account for the influx of title transactions due to the new requirement of Transportation Code, §520.0055, as amended by HB 718, that dealers holding a GDN use webDEALER for filing title transactions.

An adopted amendment to §217.168(d) replaces terminology related to one-trip permits and 30-day permits under Transportation Code, §502.095 with terminology describing one-trip special registration license plates and 30-day special registration license plates, to implement the license plate requirements of HB 718. In accordance with the effective date of HB 718, the amendments to §217.168 are adopted for a future effective date of July 1, 2025. An adopted amendment to §217.168(d) also replaces the word "temporary" with the term "special registration" for consistency with the terminology in §217.40(b) regarding the category of "special registration permits" under Transportation Code, §502.094, which are called 72-hour permits and 144-hour permits. In addition, adopted amendments to §217.168(d) reduce the amount of the processing and handling fee that a full service deputy may retain for special registration permits and special registration license plates under Transportation Code, §502.094 and §502.095 from $4.75 to $4.25. These adopted amendments to §217.168(d) provide that $0.50 of the processing and handling fee be remitted to the department by citing to the formula established by §217.185(b), which the department is also adopting in this adoption. This adopted amendment to §217.168(d) is necessary for the department to comply with Transportation Code, §502.356, which requires the board by rule to adopt a fee (automation fee) of not less than $0.50 and not more than $1.00 that shall be collected in addition to registration fees and deposited into a subaccount in the Texas Department of Motor Vehicles fund. Section 502.356 specifies how the department may use the automation fee to provide for or enhance the automation of and the necessary infrastructure for certain services and procedures. The board established the automation fee at $0.50 under §217.72(c). Transportation Code, §502.1911(b) requires the board by rule to include the automation fee that is established under Transportation Code, §502.356 in the processing and handling fee for registration transactions. Therefore, $0.50 of each processing and handling fee must be remitted to the department.

Subchapter I. Fees.

An adopted amendment to Subchapter I updates the title of the subchapter by adding the words "Processing and Handling" to read "Processing and Handling Fees," to more accurately describe the content and scope of the subchapter. An adopted amendment to §217.181 replaces the word "fee" with the word "fees" because Subchapter I prescribes the department's processing and handling fees authorized by Transportation Code, §502.1911. Section 217.183 includes two processing and handling fees, which are more fully described in the summary of adopted amendments to §217.183. Adopted amendments to §217.181 also amend other words to ensure that there is subject-verb agreement between the word "fees" and the applicable verbs.

Adopted amendments to §217.182(1) add the term "special registration license plate" and the words "special registration" to modify the word "permit" to clarify that each constitutes a "registration transaction," and implement HB 718, which requires the department to issue license plates rather than paper permits, with consistent use of terminology across the chapter. In accordance with the effective date of HB 718, the amendments to §217.182 are adopted for a future effective date of July 1, 2025.

Adopted amendments to §217.183 clarify that the department charges two different processing and handling fees under Transportation Code, §502.1911: 1) a flat fee of $4.75 for a registration transaction that is processed outside of the department's TxFLEET system; and 2) $4.75 plus the applicable service charge for each registration transaction processed through the TxFLEET system. Transportation Code, §502.1911(b)(2) requires the board by rule to set the applicable processing and handling fee in an amount that is sufficient to cover the expenses associated with collecting the registration fees. The applicable service charge for a registration transaction processed through the TxFLEET system is the fee that the Texas Department of Information Resources (DIR) sets under Government Code, §2054.2591, which states that a state agency may charge such fee for a transaction that uses the state electronic Internet portal project. The department uses the state electronic Internet portal project for the payment engine for the TxFLEET system as

required by Government Code, §2054.113. The department must pass the DIR fee to the registration applicant to comply with Transportation Code, §502.1911(b)(2).

Although the department included the DIR fee in the processing and handling fee of $4.75 for a registration transaction that is processed outside of the TxFLEET system, the department did not include the DIR fee in the $4.75 charge that is a portion of the processing and handling fee for a registration transaction that is processed through the TxFLEET system. For a registration transaction that is processed through the TxFLEET system, the processing and handling fee consists of the $4.75 charge plus the DIR fee, which is generally represented by the following mathematical formula: 2.25 percent plus $0.25 for each credit card or debit card transaction processed. However, $0.25 is added to the amount of the underlying fee prior to multiplying that amount by 2.25 percent, and an additional $0.25 is added to that calculation to compute the DIR fee. For example, if the underlying fee is $100.00 (including the $4.75 charge), the DIR fee would be $2.51, which would result in a total cost of $102.51 for the registration transaction.

The registration fees for the vehicle registration transactions that are processed through the TxFLEET system are typically more expensive than vehicle registration transactions that are processed outside of the TxFLEET system. For example, Transportation Code, §502.0023 authorizes the extended registration of commercial fleet vehicles for up to an eight-year term for which the applicant must pay all registration fees, as well as all other applicable fees, for the selected term at the time of registration. In addition, a commercial fleet could include vehicles with a gross weight that exceeds 6,000 pounds. Transportation Code, §502.252 states that the fee for a registration year for registration of a vehicle with a gross weight of 6,000 pounds or less is $50.75, unless otherwise provided by Transportation Code, Chapter 502. Transportation Code, §502.253 provides a fee schedule for a registration year for registration of a vehicle with a gross weight of more than 6,000 pounds, unless otherwise provided by Transportation Code, Chapter 502. The fee schedule in Transportation Code, §502.253 provides a fee for seven different ranges of weight classifications based on pounds, starting with a fee of $54.00 for a vehicle that falls within the weight classification of 6,001 pounds through 10,000 pounds and ending with a fee of $840.00 for a vehicle that falls within the weight classification of 70,001 through 80,000 pounds. If an applicant wanted to register 12 fleet vehicles for a five-year term under Transportation Code, §502.0023, the DIR fee would greatly exceed $4.75.

Adopted amendments to §217.183 also separate the language by adding subsections (a) through (c) to provide clarity. Adopted new §217.183(a) contains the current language regarding the processing and handling fee that is $4.75 for a registration transaction that is not processed through the TxFLEET system. Adopted new §217.183(a) also clarifies that the language is subject to the language in new subsections (b) and (c). Adopted new §217.183(a) also modifies the rule text to state that certain registration transactions are exempted by §217.184. Adopted new §217.183(b) replaces the existing language with clarified language to describe the processing and handling fee that applies to a registration transaction that is processed through the TxFLEET system. Adopted new §217.183(b) also clarifies that it is subject to the language in new subsection (c) and the exemptions under §217.184. Adopted new §217.183(c) separates existing rule text that explains that the department shall only collect the processing and handling fee on the registration transaction if the transaction includes both registration and issuance of a license plate or specialty plate.

Adopted amendments to §217.184 replace the word "fee" with the word "fees" because Subchapter I prescribes the department's processing and handling fees authorized by Transportation Code, §502.1911. Section 217.183 includes two processing and handling fees, which are more fully described in the summary of adopted amendments to §217.183.

An adopted amendment to the title of §217.185 changes the word "Fee" to "Fees" and an adopted amendment to §217.185(a) changes the word "amount" to "amounts" because the department has two different processing and handling fees under §217.183. Adopted amendments to §217.185(a)(1) also combine language in §217.185(a)(1) and §217.185(a)(2) for consistency and ease of understanding without changing the meaning. An adopted amendment to prior §217.185(a)(2) deletes the paragraph to remove redundancy, and renumber the remaining paragraphs accordingly. An adopted amendment to renumbered §217.185(a)(2) replaces "TxIRP" with "TxFLEET" because the department rebranded the TxIRP system as the TxFLEET system, which the department launched on September 16, 2024. At adoption, the department deleted "or (d)(1)(B)(i)" in §217.185(a)(2) as a reference to §217.46(d)(1)(B)(i) since that provision is adopted for repeal.

An adopted amendment to renumbered §217.185(a)(3) replaces a reference to the department's online registration portal with a reference to Texas by Texas (TxT) or the department's Internet Vehicle Title and Registration Service (IVTRS) because the department currently provides the $1 discount if the registration transaction was processed through either one of these systems.

An adopted amendment to §217.185(b) deletes the reference to Transportation Code, §502.092 because HB 718 repeals §502.092, effective July 1, 2025. An adopted amendment to §217.185(b) also clarifies the rule by specifying the allocation of the $4.75 processing and handling fee collected by entities that process applications for special registrations under Transportation Code, §§502.093 - 502.095. Adopted amendments to §217.185(b) further provide that the $0.50 remainder of the processing and handling fee be remitted to the department. This adopted amendment is necessary for the department to comply with Transportation Code, §502.356, which requires the board by rule to adopt an automation fee of not less than $0.50 and not more than $1.00 that shall be collected in addition to registration fees and deposited into a subaccount in the Texas Department of Motor Vehicles fund. Section 502.356 specifies how the department may use the automation fee to provide for or enhance the automation of and the necessary infrastructure for certain services and procedures. The board established the automation fee at $0.50 under §217.72(c). Transportation Code, §502.1911(b) requires the board by rule to include the automation fee that is established under Transportation Code, §502.356 in the processing and handling fee for registration transactions. Therefore, $0.50 of each processing and handling fee must be remitted to the department. Other amendments to §217.185(b) replace the word "temporary" with the words "special registration" to describe the referenced permit, and add the words "special registration license plate" to implement HB 718 and to ensure consistent use of terminology across the chapter. In accordance with the effective date of HB 718, the amendments to §217.185 are adopted for a future effective date of July 1, 2025.

Subchapter J. Performance Quality Recognition Program.

The adopted amendment to §217.205(e) replaces the current deadline of 90 calendar days for the department's decision to award or deny a service recognition in response to an application from a county tax assessor-collector's office by specifying a reoccurring annual deadline of December 31. The adopted amendment streamlines the department's process and allows the department more flexibility to address all submitted applications in a timely and efficient manner without sacrificing the quality of the review based on the current deadline structure.

Subchapter L. Assembled Vehicles

An adopted amendment to §217.404(a) deletes the phrase "prior to applying for title" because this phrase is unnecessary and clarifies that an application for title for an assembled vehicle is part of the process for an applicant applying for title. An adopted amendment to §217.404(b) adds the phrase "under Transportation Code, Chapter 731" to clarify that applications for assembled vehicles are required to comply with that chapter. At adoption, a minor correction was made to §217.404(b) by capitalizing the word "Code" that was proposed in lowercase text.

SUMMARY OF COMMENTS.

The department received four written comments on the proposal.

The department received written comments from one individual, the Texas Independent Automobile Dealers Association (TIADA), the Texas Automobile Dealers Association (TADA), and the Coalition for Sensible Public Records Access (CSPRA).

Comment: An individual commented that the phrase "within 12 months of the expiration date" within the definition of "current photo identification" in §§217.2(4) and 217.22(11) is confusing and suggests replacing the phrase with "or is expired not more than 12 months."

Response: The department agrees. The department modified the proposed language in §217.2(4) and §217.22(11) at adoption to address this concern by replacing "within 12 months of the expiration date" with "expired not more than 12 months" for clarity and ease of reading.

Comment: An individual commented that the phrase "the symbol, tab, or other device prescribed by and issued by the department" in §217.27(a)(2) should be replaced with "vehicle registration insignia" to align with the use of that same term in §217.27(a)(1), which is a defined term in §217.22.

Response: The department agrees. The department modified the proposed language in §217.27(a)(2) at adoption to address this concern by replacing "the symbol, tab, or other device prescribed by and issued by the department" with "the vehicle registration insignia" for consistent use of a defined term in the chapter.

Comment: An individual commented that since §217.4(d)(4) requires no physical documentation to comply with the vehicle inspection process under Transportation Code, Chapter 548, they request the department to make changes to webDEALER to allow dealers to comply with the VIN self-certification process electronically within webDEALER as opposed to completing and uploading the form in webDEALER.

Response: The department disagrees because this comment is outside the scope of this rulemaking process; however, the department will take the suggestion into consideration in the future development of webDEALER.

Comment: An individual commented that there is a potential conflict between §217.53(a) and §215.151(d) concerning the disposition of license plates because §215.151(d) directs a dealer to dispose of the existing license plates for a motor vehicle sold to an out of state buyer or sold by export and §217.53(a) directing the dealer to transfer the existing plates of sold motor vehicles without any specified exceptions. The comment further provided the rule did not seem to address situations of motor vehicles sold out of state through wholesale auctions or through dealer-to-dealer transactions.

Response: The department agrees. At adoption, the department modified §217.53(a) by incorporating a reference to §215.151(d) that addresses the disposition of general issue license plates upon a subsequent retail or nonretail sale of a motor vehicle by a dealer to an in-state or out of state purchaser. This modification will align §217.53(a) with §215.151(d) as to the disposition of general issue license plates for motor vehicles purchased and sold by dealers. The department anticipates future rulemaking prior to July 1, 2025, to clarify the procedures for the secure transfer of general issue license plates in the context of auction sales, after consulting with the department's advisory committees and seeking further stakeholder input.

Comment: An individual commented that §217.71(b)(7) references a nonexistent system, "webLIEN".

Response: The department agrees and acknowledges that webLIEN does not currently exist but that it represents a potential future deployment of online interface and should remain in §217.71(b)(7) as a placeholder. The webLIEN language was not proposed for amendment in this rulemaking.

Comment: TADA and TIADA commented that the webDEALER training requirements in §217.74(g) should be struck from the rule because dealers have already completed webDEALER training from alternative sources and would be unfairly penalized by having to complete a department required training program that would be duplicative of their previous training.

Response: The department disagrees. The adopted new language in §217.74(g) limits the required training to new dealers and those dealers lacking sufficient experience in processing transactions in webDEALER. A dealer who had access to webDEALER for more than six months prior to October 1, 2024, and submitted more than 100 transactions is exempt from the training requirement. The training requirements will ensure dealers have the knowledge and information they need to accurately enter transactions into webDEALER so that transactions can be efficiently reviewed and approved by the county tax assessor-collectors. To further assist dealers with these requirements, the department intends to expand accessibility to webDEALER training by offering 24/7 online access.

Comment: TADA commented that §217.74(g) should distinguish license holders who do not personally input transactions into webDEALER and instead employ staff to input the transactions from license holders who personally enter transactions into webDEALER. TADA commented that only those license holders personally entering transactions into webDEALER and staff entering transactions under a license holder's account should be required to be trained on webDEALER.

Response: The department agrees. At adoption, changes to the first paragraph of §217.74(g) and subsection §217.74(g)(2) clarify that only users entering data into webDEALER are required to complete webDEALER training.

Comment: TIADA commented that §217.40 should allow a dealer to apply for a temporary 30-day registration extension for the license plates issued by the dealer in lieu of applying for a 30-day license plate when the dealer is unable to timely obtain the permanent registration for a motor vehicle.

Response: The department disagrees. Transportation Code, §503.063, as amended by HB 718, provides that the license plates issued for a motor vehicle sold by a dealer are valid for the operation of the vehicle while the motor vehicle's application for registration is submitted by the dealer under Transportation Code, §501.0234 and is pending approval. Thus, an extension of registration is not necessary during the pendency of the application for registration nor is there a need to issue a 30-day license plate.

Comment: TADA commented that §217.36 should provide a specific reference to the exemption to registration refusals under Transportation Code, §702.003(f) to avoid any misunderstanding of the application of §217.36 by the department and/or county tax assessor-collectors.

Response: The department disagrees. §217.36 sufficiently addresses this concern by stating the refusal to register a motor vehicle must be in accordance with Transportation Code, §702.003. The reference to this statutory provision and requirement that the refusal to register be in accordance with this provision make clear that any exemption noted in the statutory provision prohibits such action by a county tax assessor-collector.

Comment: CSPRA stated the proposed language in Chapter 217, Subchapter F, requiring requestors to submit copies of the agreements they use to release motor vehicle record information to third parties, would disclose propriety information and is unnecessary given the assurances and prohibitions a requestor is obligated to comply with under Transportation Code, Chapter 730 concerning motor vehicle records.

Response: The department agrees. At adoption, §§217.123(e)(1)(D) and 217.123(f)(1)(D) were modified to clarify that the applications submitted by requestors include blank copies of the agreements used by requestors to release motor vehicle record information to third parties to avoid the disclosure of confidential or propriety information that could be contained in an actual agreement used by the requestor to release motor vehicle record information to third parties.

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §§217.2, 217.3, 217.5 - 217.7, 217.9, 217.11, 217.14

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts amendments to Chapter 217 under Transportation Code §502.0021, which gives the department authority to adopt rules to administer Transportation Code Chapter 502, Registration of Vehicles; Transportation Code §502.0024, as amended by HB 3297, which requires the department develop and implement a system of registration to allow an owner of a vehicle to register the vehicle for an extended period of not more than five years; Transportation Code §502.040, which authorizes the department to prescribe the process and procedures for applying for a motor vehicle registration; Transportation Code §502.059, which authorizes the department to adopt rules providing for an automated registration process; Transportation Code §502.095, as amended by HB 718, which gives the department authority to issue one-trip and 30-day license plates; Transportation Code §502.1911, which authorizes the board to adopt rules to set registration processing and handing fees; Transportation Code §502.451(c), which authorizes the department to adopt rules to provide for the issuance of specially designated license plates for vehicles exempt by law, and Transportation Code §502.451(f), which authorizes the department to adopt rules to provide for the issuance of regularly designed license plates not bearing the word "exempt" for a vehicle that is exempt by law. Transportation Code §504.0011, which gives the department authority to implement and administer Transportation Code, Chapter 504, License Plates; Transportation Code §504.010, which authorizes the department to adopt rules governing the placement of license plates on motor vehicles; Transportation Code §520.003, which authorizes the department to adopt rules to administer Transportation Code §520, Miscellaneous Provisions; Transportation Code §520.004, which authorizes the department to adopt rules to establish standards for uniformity and service quality for counties conducting registration and titling services; Transportation Code §520.0055, as created by HB 718, gives the department authority to mandate motor vehicle dealers use a department designated electronic system to submit title and registration applications to county tax assessor-collectors for motor vehicle transactions; and Transportation Code §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout the this preamble.

CROSS REFERENCE TO STATUTE. The adopted amendments would implement Transportation Code Chapters 502, 504 and 520.

§217.2. Definitions.

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

(1) Alias--The name of a vehicle owner reflected on a title, when the name on the title is different from the name of the legal owner of the vehicle.

(2) Alias title--A title document issued by the department for a vehicle that is used by an exempt law enforcement agency in covert criminal investigations.

(3) Bond release letter--Written notification from the United States Department of Transportation authorizing United States Customs to release the bond posted for a motor vehicle imported into the United States to ensure compliance with federal motor vehicle safety standards.

(4) Current photo identification--A government-issued photo identification that is currently valid or is expired not more than 12 months, or a state-issued personal identification certificate issued to a qualifying person if the identification states that it has no expiration.

(5) Date of sale--The date of the transfer of possession of a specific vehicle from a seller to a purchaser.

(6) Division director--The director of the department's Vehicle Titles and Registration Division.

(7) Executive administrator--The director of a federal agency, the director of a Texas state agency, the sheriff of a Texas county, or the chief of police of a Texas city who by law possesses the authority to conduct covert criminal investigations.

(8) Exempt agency--A governmental body exempt by law from paying title or registration fees for motor vehicles.

(9) Federal motor vehicle safety standards--Motor vehicle safety requirements promulgated by the United States Department of Transportation, National Highway Traffic Safety Administration, set forth in Title 49, Code of Federal Regulations.

(10) Manufacturer's certificate of origin--A form prescribed by the department showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser, whether importer, distributor, dealer, or owner and when presented with an application for title showing on appropriate forms prescribed by the department, each subsequent transfer between distributor and dealer, dealer and dealer, and dealer and owner.

(11) Moped--A motor vehicle as defined by Transportation Code, §541.201.

(12) Motor vehicle importation form--A declaration form prescribed by the United States Department of Transportation and certified by United States Customs that relates to any motor vehicle being brought into the United States and the motor vehicle's compliance with federal motor vehicle safety standards.

(13) Non-United States standard motor vehicle--A motor vehicle not manufactured in compliance with federal motor vehicle safety standards.

(14) Person--An individual, firm, corporation, company, partnership, or other entity.

(15) Safety certification label--A label placed on a motor vehicle by a manufacturer certifying that the motor vehicle complies with all federal motor vehicle safety standards.

(16) Statement of fact--A written declaration that supports an application for a title, that is executed by an involved party to a transaction involving a motor vehicle, and that clarifies an error made on a title or other negotiable evidence of ownership. An involved party is the seller, or an agent of the seller involved in the motor vehicle transaction. When a written declaration is necessary to correct an odometer disclosure error, the signatures of both the seller and buyer when the error occurred are required.

(17) Title application--A form prescribed by the division director that reflects the information required by the department to create a motor vehicle title record.

(18) Verifiable proof--Additional documentation required of a vehicle owner, lienholder, or agent executing an application for a certified copy of a title.

§217.5. Evidence of Motor Vehicle Ownership.

(a) Evidence of motor vehicle ownership properly assigned to the applicant must accompany the title application. Evidence must include, but is not limited to, the following documents.

(1) New motor vehicles. A manufacturer's certificate of origin assigned by the manufacturer or the manufacturer's representative or distributor to the original purchaser is required for a new motor vehicle that is sold or offered for sale.

(A) The manufacturer's certificate of origin must be in the form prescribed by the department and must contain, at a minimum, the following information:

(i) manufacturer's name on the face of the manufacturer's certificate of origin;

(ii) motor vehicle description including, but not limited to, the motor vehicle year, make, model, identification number, and body style;

(iii) the empty or shipping weight;

(iv) the gross vehicle weight when the manufacturer's certificate of origin is invoiced to a licensed Texas motor vehicle dealer and is issued for commercial motor vehicles as that term is defined in Transportation Code, Chapter 502;

(v) a statement identifying a motor vehicle designed by the manufacturer for off-highway use only;

(vi) if the vehicle is a motor bus, the manufacturer must show the seating capacity (number of passengers) of the motor bus on the manufacturer's certificate; and

(vii) if the vehicle is a "neighborhood electric vehicle," a statement that the vehicle meets Federal Motor Vehicle Safety Standard 500 (49 C.F.R. §571.500) for low-speed vehicles.

(B) When a motor vehicle manufactured in another country is sold directly to a person other than a manufacturer's representative or distributor, the manufacturer's certificate of origin must be assigned to the purchaser by the seller.

(2) Used motor vehicles. Applicants applying for title to a used motor vehicle must relinquish as evidence of ownership one of the following documents:

(A) a title issued by the department;

(B) a title issued by another state if the motor vehicle was last titled in another state;

(C) documents evidencing a transfer of motor vehicle ownership by operation of law as listed in Transportation Code §501.074;

(D) a registration receipt if the applicant is coming from a state that no longer titles vehicles after a certain period of time; or

(E) a bill of sale when the applicant presents:

(i) an out-of-state or out-of-country registration receipt that does not provide a transfer of ownership section;

(ii) an out of state title when all dealer reassignment sections have been completed and the issuing state does not utilize supplemental dealer reassignment forms; or

(iii) a non-titled vehicle.

(3) Evidence of Ownership for Purpose of Identification Number Assignment or Reassignment. An applicant for assignment or reassignment of an identification number under Transportation Code §501.033 who is unable to produce evidence of ownership under this section, may file a bond with the department in accordance with Transportation Code §501.053 and §217.9 of this title (relating to Bonded Titles). The bond will serve as evidence of ownership for purposes of §501.033(b).

(4) Motor vehicles brought into the United States. An application for title for a motor vehicle last registered or titled in a foreign country must be supported by documents including, but not limited to, the following:

(A) the motor vehicle registration certificate or other verification issued by a foreign country reflecting the name of the applicant as the motor vehicle owner, or reflecting that legal evidence of ownership has been legally assigned to the applicant;

(B) the identification number inspection required under Transportation Code §501.032(a)(2), except as provided in §501.032(b); and

(C) for motor vehicles that are less than 25 years old, proof of compliance with United States Department of Transportation

(USDOT) regulations including, but not limited to, the following documents:

(i) the original bond release letter with all attachments advising that the motor vehicle meets federal motor vehicle safety requirements or a letter issued by the USDOT, National Highway Traffic Safety Administration, verifying the issuance of the original bond release letter;

(ii) a legible copy of the motor vehicle importation form validated with a signature as filed with the USDOT confirming the exemption from the bond release letter required in clause (i) of this subparagraph, or a copy thereof certified by United States Customs;

(iii) a verification of motor vehicle inspection by United States Customs certified on its letterhead and signed by its agent verifying that the motor vehicle complies with USDOT regulations;

(iv) a written confirmation that a physical inspection of the safety certification label has been made by the department and that the motor vehicle meets United States motor vehicle safety standards;

(v) the original bond release letter, verification thereof, or written confirmation from the previous state verifying that a bond release letter issued by the USDOT was relinquished to that jurisdiction, if the non-United States standard motor vehicle was last titled or registered in another state for one year or less; or

(vi) verification from the vehicle manufacturer on its letterhead stationery.

(b) Alterations to documentation. An alteration to a registration receipt, title, manufacturer's certificate, or other evidence of ownership constitutes a valid reason for the rejection of any transaction to which altered evidence is attached.

(1) Altered lien information on any surrendered evidence of ownership requires a release from the original lienholder or a statement from the proper authority of the state in which the lien originated. The statement must verify the correct lien information.

(2) A strikeover that leaves any doubt about the legibility of any digit in any document will not be accepted.

(3) A corrected manufacturer's certificate of origin will be required if the manufacturer's certificate of origin contains an:

(A) incomplete or altered vehicle identification number;

(B) alteration or strikeover of the vehicle's model year;

(C) alteration or strikeover to the body style, or omitted body style on the manufacturer's certificate of origin; or

(D) alteration or strikeover to the weight.

(4) A statement of fact may be requested to explain errors, corrections, or conditions from which doubt does or could arise concerning the legality of any instrument. A statement of fact will be required in all cases:

(A) in which the date of sale on an assignment has been erased or altered in any manner; or

(B) of alteration or erasure on a Dealer's Reassignment of Title.

(c) Rights of survivorship. A signed "rights of survivorship" agreement may be executed by a natural person acting in an individual capacity in accordance with Transportation Code, §501.031.

(d) Identification required.

(1) An application for title is not acceptable unless the applicant presents a current photo identification of the owner containing a unique identification number. The current photo identification must be a:

(A) driver's license or state identification certificate issued by a state or territory of the United States;

(B) United States or foreign passport;

(C) United States military identification card;

(D) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement;

(E) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document; or

(F) license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H.

(2) If the motor vehicle is titled in:

(A) more than one name, then the identification of one owner must be presented;

(B) the name of a leasing company, then:

(i) proof of the Federal Employer Identification Number/Employee Identification Number (FEIN/EIN) of the leasing company must be submitted, written on the application, and can be entered into the department's titling system. The number must correspond to the name of the leasing company in which the vehicle is being titled; and

(ii) the leasing company may submit:

(I) a government issued photo identification, required under paragraph (1) of this subsection, of the lessee listed as the registrant; or

(II) a government issued photo identification, required under paragraph (1) of this subsection, of the employee or authorized agent who signed the application for the leasing company, and the employee's or authorized agent's employee identification, letter of authorization written on the lessor's letterhead, or a printed business card. The printed business card, employee identification, or letter of authorization written on the lessor's letterhead must contain the name of the lessor, and the employee's or authorized agent's name must match the name on the government issued photo identification;

(C) the name of a trust, then a government issued photo identification, required under paragraph (1) of this subsection, of a trustee must be presented; or

(D) the name of a business, government entity, or organization, then:

(i) proof of the Federal Employer Identification Number/Employee Identification Number (FEIN/EIN) of the business, government entity, or organization must be submitted, written on the application, and can be entered into the department's titling system. The number must correspond to the name of the business, government entity, or organization in which the vehicle is being titled;

(ii) the employee or authorized agent must present a government issued photo identification, required under paragraph (1) of this subsection; and

(iii) the employee's or authorized agent's employee identification; letter of authorization written on the business', govern-

ment entity's, or organization's letterhead; or a printed business card. The printed business card, employee identification, or letter of authorization written on the business', government entity's, or organization's letterhead must contain the name of the business, governmental entity, or organization, and the employee's or authorized agent's name must match the name on the government issued photo identification.

(3) In addition to the requirements of paragraphs (1) and (2) of this subsection, if a power of attorney is being used to apply for a title, then the applicant must show:

(A) identification, required under paragraph (1) of this subsection, matching the person named as power of attorney; or

(B) identification, required under paragraph (1) of this subsection, and employee identification or a printed business card or authorization written on the letterhead of the entity named as power of attorney that matches the identification of the employee if the power of attorney names an entity.

(4) Within this subsection, an identification document such as a printed business card, letter of authorization, or power of attorney, may be an original or a photocopy.

(5) A person who holds a general distinguishing number issued under Transportation Code, Chapter 503 is exempt from submitting to the county tax assessor-collector, but must retain:

(A) the owner's identification, as required under paragraph (1) of this subsection; and

(B) authorization to sign, as required under paragraph (2) of this subsection.

(6) A person who holds a general distinguishing number issued under Transportation Code, Chapter 503 is not required to submit photo identification or authorization for an employee or agent signing a title assignment with a secure power of attorney.

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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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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43 TAC §217.4, §217.15

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts amendments to Chapter 217 under Transportation Code §502.0021, which gives the department authority to adopt rules to administer Transportation Code Chapter 502, Registration of Vehicles; Transportation Code §502.0024, as amended by HB 3297, which requires the department develop and implement a system of registration to allow an owner of a vehicle to register the vehicle for an extended period of not more than five years; Transportation Code §502.040, which authorizes the department to prescribe the process and procedures for applying for a motor vehicle registration; Transportation Code §502.059, which authorizes the department to adopt rules providing for an automated registration process; Transportation Code §502.095, as amended by HB 718, which gives the department authority to issue one-trip and 30-day license plates; Transportation Code §502.1911, which authorizes the board to adopt rules to set registration processing and handing fees; Transportation Code §502.451(c), which authorizes the department to adopt rules to provide for the issuance of specially designated license plates for vehicles exempt by law, and Transportation Code §502.451(f), which authorizes the department to adopt rules to provide for the issuance of regularly designed license plates not bearing the word "exempt" for a vehicle that is exempt by law. Transportation Code §504.0011, which gives the department authority to implement and administer Transportation Code, Chapter 504, License Plates; Transportation Code §504.010, which authorizes the department to adopt rules governing the placement of license plates on motor vehicles; Transportation Code §520.003, which authorizes the department to adopt rules to administer Transportation Code §520, Miscellaneous Provisions; Transportation Code §520.004, which authorizes the department to adopt rules to establish standards for uniformity and service quality for counties conducting registration and titling services; Transportation Code §520.0055, as created by HB 718, gives the department authority to mandate motor vehicle dealers use a department designated electronic system to submit title and registration applications to county tax assessor-collectors for motor vehicle transactions; and Transportation Code §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout the this preamble.

CROSS REFERENCE TO STATUTE. The adopted amendments would implement Transportation Code Chapters 502, 504 and 520.

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 §217.8, §217.16

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts amendments to Chapter 217 under Transportation Code §502.0021, which gives the department authority to adopt rules to administer Transportation Code Chapter 502, Registration of Vehicles; Transportation Code §502.0024, as amended by HB 3297, which requires the department develop and implement a system of registration to allow an owner of a vehicle to register the vehicle for an extended period of not more than five years; Transportation Code §502.040, which authorizes the depart-

ment to prescribe the process and procedures for applying for a motor vehicle registration; Transportation Code §502.059, which authorizes the department to adopt rules providing for an automated registration process; Transportation Code §502.095, as amended by HB 718, which gives the department authority to issue one-trip and 30-day license plates; Transportation Code §502.1911, which authorizes the board to adopt rules to set registration processing and handing fees; Transportation Code §502.451(c), which authorizes the department to adopt rules to provide for the issuance of specially designated license plates for vehicles exempt by law, and Transportation Code §502.451(f), which authorizes the department to adopt rules to provide for the issuance of regularly designed license plates not bearing the word "exempt" for a vehicle that is exempt by law. Transportation Code §504.0011, which gives the department authority to implement and administer Transportation Code, Chapter 504, License Plates; Transportation Code §504.010, which authorizes the department to adopt rules governing the placement of license plates on motor vehicles; Transportation Code §520.003, which authorizes the department to adopt rules to administer Transportation Code §520, Miscellaneous Provisions; Transportation Code §520.004, which authorizes the department to adopt rules to establish standards for uniformity and service quality for counties conducting registration and titling services; Transportation Code §520.0055, as created by HB 718, gives the department authority to mandate motor vehicle dealers use a department designated electronic system to submit title and registration applications to county tax assessor-collectors for motor vehicle transactions; and Transportation Code §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout the this preamble.

CROSS REFERENCE TO STATUTE. The adopted amendments would implement Transportation Code Chapters 502, 504 and 520.

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. MOTOR VEHICLE REGISTRATION

43 TAC §§217.22, 217.23, 217.25, 217.26, 217.28, 217.29, 217.31, 217.33, 217.36, 217.37, 217.41, 217.43, 217.45, 217.50, 217.51, 217.54 - 217.56

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts amendments to Chapter 217 under Transportation Code §502.0021, which gives the department authority to adopt rules to administer Transportation Code Chapter 502, Registration of Vehicles; Transportation Code §502.0024, as amended by HB 3297, which requires the department develop and implement a system of registration to allow an owner of a vehicle to register the vehicle for an extended period of not more than five years; Transportation Code §502.040, which authorizes the department to prescribe the process and procedures for applying for a motor vehicle registration; Transportation Code §502.059, which authorizes the department to adopt rules providing for an automated registration process; Transportation Code §502.095, as amended by HB 718, which gives the department authority to issue one-trip and 30-day license plates; Transportation Code §502.1911, which authorizes the board to adopt rules to set registration processing and handing fees; Transportation Code §502.451(c), which authorizes the department to adopt rules to provide for the issuance of specially designated license plates for vehicles exempt by law, and Transportation Code §502.451(f), which authorizes the department to adopt rules to provide for the issuance of regularly designed license plates not bearing the word "exempt" for a vehicle that is exempt by law. Transportation Code §504.0011, which gives the department authority to implement and administer Transportation Code, Chapter 504, License Plates; Transportation Code §504.010, which authorizes the department to adopt rules governing the placement of license plates on motor vehicles; Transportation Code §520.003, which authorizes the department to adopt rules to administer Transportation Code §520, Miscellaneous Provisions; Transportation Code §520.004, which authorizes the department to adopt rules to establish standards for uniformity and service quality for counties conducting registration and titling services; Transportation Code §520.0055, as created by HB 718, gives the department authority to mandate motor vehicle dealers use a department designated electronic system to submit title and registration applications to county tax assessor-collectors for motor vehicle transactions; and Transportation Code §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout the this preamble.

CROSS REFERENCE TO STATUTE. The adopted amendments would implement Transportation Code Chapters 502, 504 and 520.

§217.22. Definitions.

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

(1) Affidavit for alias exempt registration--A form prescribed by the director that must be executed by an exempt law enforcement agency to request the issuance of exempt registration in the name of an alias.

(2) Agent--A duly authorized representative possessing legal capacity to act for an individual or legal entity.

(3) Alias--The name of a vehicle registrant reflected on the registration, different than the name of the legal owner of the vehicle.

(4) Alias exempt registration--Registration issued under an alias to a specific vehicle to be used in covert criminal investigations by a law enforcement agency.

(5) Axle load--The total load transmitted to the road by all wheels whose centers may be included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.

(6) Border commercial zone--A commercial zone established under Title 49, C.F.R., Part 372 that is contiguous to the border with Mexico.

(7) Bus--A motor vehicle used to transport persons and designed to accommodate more than 10 passengers, including the operator; or a motor vehicle, other than a taxicab, designed and used to transport persons for compensation.

(8) Carrying capacity--The maximum safe load that a commercial vehicle may carry, as determined by the manufacturer.

(9) Character--A numeric or alpha symbol displayed on a license plate.

(10) County or city civil defense agency--An agency authorized by a commissioner's court order or by a city ordinance to provide protective measures and emergency relief activities in the event of hostile attack, sabotage, or natural disaster.

(11) Current photo identification--a government-issued photo identification that is currently valid or is expired not more than 12 months, or a state-issued personal identification certificate issued to a qualifying person if the identification states that it has no expiration.

(12) Digital license plate--As defined in Transportation Code, §504.151.

(13) Digital license plate owner--A digital license plate owner is a person who purchases or leases a digital license plate from a department-approved digital license plate provider.

(14) Director--The director of the Vehicle Titles and Registration Division, Texas Department of Motor Vehicles.

(15) Division--Vehicle Titles and Registration Division.

(16) Executive administrator--The director of a federal agency, the director of a Texas state agency, the sheriff of a Texas county, or the chief of police of a Texas city that by law possesses the authority to conduct covert criminal investigations.

(17) Exempt agency--A governmental body exempted by statute from paying registration fees when registering motor vehicles.

(18) Exempt license plates--Specially designated license plates issued to certain vehicles owned or controlled by exempt agencies.

(19) Exhibition vehicle--

(A) An assembled complete passenger car, truck, or motorcycle that:

(i) is a collector's item;

(ii) is used exclusively for exhibitions, club activities, parades, and other functions of public interest;

(iii) does not carry advertising; and

(iv) has a frame, body, and motor that is at least 25-years old; or

(B) A former military vehicle as defined in Transportation Code, §504.502.

(20) Fire-fighting equipment--Equipment mounted on fire-fighting vehicles used in the process of fighting fires, including, but not limited to, ladders and hoses.

(21) Foreign commercial motor vehicle--A commercial motor vehicle, as defined by 49 C.F.R. §390.5, that is owned by a person or entity that is domiciled in or a citizen of a country other than the United States.

(22) GPS--A global positioning system tracking device that can be used to determine the location of a digital license plate through data collection by means of a receiver in a digital license plate.

(23) Highway construction project--That section of the highway between the warning signs giving notice of a construction area.

(24) International symbol of access--The symbol adopted by Rehabilitation International in 1969 at its Eleventh World Congress of Rehabilitation of the Disabled.

(25) Legend--A name, motto, slogan, or registration expiration notification that is centered horizontally at the bottom of the license plate.

(26) Make--The trade name of the vehicle manufacturer.

(27) Metal license plate--A non-digital license plate issued by the department under Transportation Code Chapter 502, 503, or Chapter 504.

(28) Nonprofit organization--An unincorporated association or society or a corporation that is incorporated or holds a certificate of authority under the Business Organizations Code.

(29) Nominating State Agency--A state agency authorized to accept and distribute funds from the sale of a specialty plate as designated by the nonprofit organization (sponsoring entity).

(30) Optional digital license plate information--Any information authorized to be displayed on a digital license plate in addition to required digital license plate information when the vehicle is in park, including:

(A) an emergency alert or other public safety alert issued by a governmental entity, including an alert authorized under Subchapter L, M, or P of Government Code Chapter 411;

(B) vehicle manufacturer safety recall notices;

(C) advertising; or

(D) a parking permit.

(31) Park--As defined in Transportation Code, §541.401.

(32) Political subdivision--A county, municipality, local board, or other body of this state having authority to provide a public service.

(33) Primary region of interest--The field on a metal or digital license plate with alphanumeric characters representing the plate number. The primary region of interest encompasses a field of 5.75 inches in width by 1.75 inches in height on metal license plates manufactured for motorcycles, mopeds, golf carts, or off-highway vehicles. The primary region of interest encompasses a field of 8.375 inches in width by 2.5625 inches in height on metal license plates manufactured for all other vehicles.

(34) Registration period--A designated period during which registration is valid. A registration period begins on the first day of a calendar month and ends on the last day of a calendar month.

(35) Required digital license plate information--The minimum information required to be displayed on a digital license plate: the registration expiration month and year (unless the vehicle is a token trailer as defined by Transportation Code, §502.001), the alphanu-

meric characters representing the plate number, the word "Texas," the registration expiration notification if the registration for the vehicle has expired; and the legend (if applicable).

(36) Secondary region of interest--The field on a metal or digital license plate with the word "Texas" centered horizontally at the top of the plate. The secondary region of interest encompasses a field of 2.5 inches in width by 0.5625 inches in height on metal license plates manufactured for motorcycles, mopeds, golf carts, or off-highway vehicles. The secondary region of interest encompasses a field of 6 inches in width by 1.9375 inches in height on metal license plates manufactured for all other vehicles.

(37) Service agreement--A contractual agreement that allows individuals or businesses to access the department's vehicle registration records.

(38) Specialty license plate--A special design license plate issued by the department.

(39) Specialty license plate fee--Statutorily or department required fee payable on submission of an application for a specialty license plate, symbol, tab, or other device, and collected in addition to statutory motor vehicle registration fees.

(40) Sponsoring entity--An institution, college, university, sports team, or any other non-profit individual or group that desires to support a particular specialty license plate by coordinating the collection and submission of the prescribed applications and associated license plate fees or deposits for that particular license plate.

(41) Street or suburban bus--A vehicle, other than a passenger car, used to transport persons for compensation exclusively within the limits of a municipality or a suburban addition to a municipality.

(42) Tandem axle group--Two or more axles spaced 40 inches or more apart from center to center having at least one common point of weight suspension.

(43) Unconventional vehicle--A vehicle built entirely as machinery from the ground up, that is permanently designed to perform a specific function, and is not designed to transport property.

(44) Vehicle classification--The grouping of vehicles in categories for the purpose of registration, based on design, carrying capacity, or use.

(45) Vehicle description--Information regarding a specific vehicle, including, but not limited to, the vehicle make, model year, body style, and vehicle identification number.

(46) Vehicle identification number--A number assigned by the manufacturer of a motor vehicle or the department that describes the motor vehicle for purposes of identification.

(47) Vehicle registration insignia--A license plate, symbol, tab, or other device issued by the department evidencing that all applicable fees have been paid for the current registration period and allowing the vehicle to be operated on the public highways.

(48) Vehicle registration record--Information contained in the department's files that reflects, but is not limited to, the make, vehicle identification number, model year, body style, license number, and the name of the registered owner.

(49) Volunteer fire department--An association that is organized for the purpose of answering fire alarms, extinguishing fires, and providing emergency medical services.

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

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43 TAC §217.27

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts amendments to Chapter 217 under Transportation Code §502.0021, which gives the department authority to adopt rules to administer Transportation Code Chapter 502, Registration of Vehicles; Transportation Code §502.0024, as amended by HB 3297, which requires the department develop and implement a system of registration to allow an owner of a vehicle to register the vehicle for an extended period of not more than five years; Transportation Code §502.040, which authorizes the department to prescribe the process and procedures for applying for a motor vehicle registration; Transportation Code §502.059, which authorizes the department to adopt rules providing for an automated registration process; Transportation Code §502.095, as amended by HB 718, which gives the department authority to issue one-trip and 30-day license plates; Transportation Code §502.1911, which authorizes the board to adopt rules to set registration processing and handing fees; Transportation Code §502.451(c), which authorizes the department to adopt rules to provide for the issuance of specially designated license plates for vehicles exempt by law, and Transportation Code §502.451(f), which authorizes the department to adopt rules to provide for the issuance of regularly designed license plates not bearing the word "exempt" for a vehicle that is exempt by law. Transportation Code §504.0011, which gives the department authority to implement and administer Transportation Code, Chapter 504, License Plates; Transportation Code §504.010, which authorizes the department to adopt rules governing the placement of license plates on motor vehicles; Transportation Code §520.003, which authorizes the department to adopt rules to administer Transportation Code §520, Miscellaneous Provisions; Transportation Code §520.004, which authorizes the department to adopt rules to establish standards for uniformity and service quality for counties conducting registration and titling services; Transportation Code §520.0055, as created by HB 718, gives the department authority to mandate motor vehicle dealers use a department designated electronic system to submit title and registration applications to county tax assessor-collectors for motor vehicle transactions; and Transportation Code §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout the this preamble.

CROSS REFERENCE TO STATUTE. The adopted amendments would implement Transportation Code Chapters 502, 504 and 520.

§217.27. Vehicle Registration Insignia.

(a) On receipt of a complete initial application for registration with the accompanying documents and fees, the department will issue

vehicle registration insignia to be displayed on or kept in the vehicle for which the registration was issued for the current registration period.

(1) If the vehicle has a windshield, the vehicle registration insignia shall be attached to the inside lower left corner of the vehicle's front windshield in a manner that will not obstruct the vision of the driver, unless the vehicle is registered under Transportation Code, Chapter 504, Subchapter B-1.

(2) If the vehicle has no windshield, the vehicle registration insignia shall be attached to the rear license plate unless the vehicle is registered under Transportation Code, Chapter 504, Subchapter B-1, except that registration receipts, retained inside the vehicle, may provide the record of registration for vehicles with permanent trailer plates.

(3) If the vehicle is registered under Transportation Code, Chapter 504, Subchapter B-1, the registration receipt, symbol, tab, or other device prescribed by and issued by the department must be retained with the vehicle and may provide the record of registration for vehicles with a digital license plate. The expiration month and year must appear digitally on the electronic visual display of the rear digital license plate.

(4) If the vehicle is registered as a former military vehicle as prescribed by Transportation Code, §504.502, the vehicle's registration number shall be displayed instead of displaying a symbol, tab, or license plate.

(A) Former military vehicle registration numbers shall be displayed on a prominent location on the vehicle in numbers and letters of at least two inches in height.

(B) To the extent possible, the location and design of the former military vehicle registration number must conform to the vehicle's original military registration number.

(b) Unless otherwise prescribed by law, each vehicle registered under this subchapter:

(1) must display two license plates that are clearly visible, readable, and legible, one at the exterior front and one at the exterior rear of the vehicle that are securely fastened at the exterior front and rear of the vehicle in an upright horizontal position of not less than 12 inches from the ground, measuring from the bottom; or

(2) must display one plate that is securely fastened at or as close as practical to the exterior rear of the vehicle in a position not less than 12 inches from the ground, measuring from the bottom if the vehicle is a road tractor, motorcycle, trailer or semitrailer, except that a vehicle described by Transportation Code, §621.2061 may place the rear plate so that it is clearly visible, readable, and legible.

(c) Each vehicle registered under this subchapter must display license plates:

(1) assigned by the department for the period; or

(2) validated by a registration insignia issued by the department for a registration period consisting of 12 consecutive months at the time of application for registration, except that:

(A) vehicles described by Transportation Code, §502.0024 may obtain a registration insignia for a period consisting of 12, 24, 36, 48 or 60 consecutive months on payment of all fees for each full year of registration; and

(B) vehicles may be registered for 24 consecutive months in accordance with Transportation Code, §548.102 on payment of all fees for each year of registration, regardless of the number of months remaining on the inspection at the time of registration, provided:

(i) the vehicle receives a two-year inspection under Transportation Code, §548.102; and

(ii) the application for registration is made in the name of the purchaser under Transportation Code, §501.0234.

(d) The department may cancel any license plate issued with a personalized license plate number if the department subsequently determines or discovers that the personalized license plate number did not comply with this section when the license plate was issued, or if due to changing language usage, meaning, or interpretation, the personalized license plate number no longer complies with this section. When reviewing a personalized license plate number, the department need not consider the applicant's subjective intent or declared meaning. The department will not issue any license plate containing a personalized license plate number that meets one or more of the following criteria:

(1) The license plate number conflicts with the department's current or proposed general issue license plate numbering system.

(2) The director or the director's designee finds that the personalized license plate number may be considered objectionable. An objectionable license plate number may include words, phrases, or slang in any language; phonetic, numeric, or reverse spelling; acronyms; patterns viewed in mirror image; or code that only a small segment of the community may be able to readily decipher. An objectionable pattern may be viewed as:

(A) indecent (defined as including a direct reference or connotation to a sexual act, sexual body parts, excreta, or sexual bodily fluids or functions. Additionally, the license plate number "69" is prohibited unless used with the full year (1969) or in combination with a reference to a vehicle;

(B) vulgar, directly or indirectly (defined as profane, swear, or curse words);

(C) derogatory, directly or indirectly (defined as an expression that is demeaning to, belittles, or disparages any person, group, race, ethnicity, nationality, gender, or sexual orientation. "Derogatory" may also include a reference to an organization that advocates the expressions described in this subparagraph);

(D) a direct or indirect negative instruction or command directed at another individual related to the operation of a motor vehicle;

(E) a direct or indirect reference to gangs, illegal activities, implied threats of harm, or expressions that describe, advertise, advocate, promote, encourage, glorify, or condone violence, crime, or unlawful conduct;

(F) a direct or indirect reference to controlled substances or the physiological state produced by such substances, intoxicated states, or a direct or indirect reference that may express, describe, advertise, advocate, promote, encourage, or glorify such substances or states;

(G) a direct representation of law enforcement or other governmental entities, including any reference to a public office or position exclusive to government; or

(H) a pattern that could be misread by law enforcement.

(3) The license plate number is currently on a license plate issued to another owner.

(e) Notwithstanding the provisions of this section, the department may issue license plates with personalized license plate numbers that refer to:

(1) military branches, military rank, military units, military equipment, or status; or

(2) institutions of higher education, including military academies, whether funded privately, by the state, or by the federal government.

(f) A decision to cancel or not to issue a license plate with a personalized license plate number under subsection (d) of this section may be appealed to the executive director of the department or the executive director's designee within 20 days of notification of the cancellation or non-issuance. All appeals must be in writing, and the requesting party may include any written arguments, but shall not be entitled to a contested case hearing. The executive director or the executive director's designee will issue a decision no later than 30 days after the department receives the appeal, unless additional information is sought from the requestor, in which case the time for decision is tolled until the additional information is provided. The decision of the executive director or the executive director's designee is final and may not be appealed to the board. An appeal to the executive director or the executive director's designee is denied by operation of law 31 days from the receipt of the appeal, or if the requestor does not provide additional requested information within ten days of the request.

(g) The provisions of subsection (a) of this section do not apply to vehicles registered with annual license plates issued by the department.

(h) A person whose initial application has been denied will receive a refund if the denial is not appealed in accordance with subsection (f) of this section. If an existing license plate with a personalized license plate number has been canceled, the person may choose a new personalized license plate number that will be valid for the remainder of the term, or the remaining term of the canceled license plate will be forfeited.

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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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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43 TAC §217.34

Statutory Authority. The department adopts a repeal to Chapter 217 under Transportation Code §551.202, which identifies the operation on roadways of electric personal assistive mobility devices.

Cross Reference to Statute. The adopted repeal would implement Transportation Code Chapter 551.

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 §§217.40. 217.46, 217.52, 217.53

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts amendments to Chapter 217 under Transportation Code §502.0021, which gives the department authority to adopt rules to administer Transportation Code Chapter 502, Registration of Vehicles; Transportation Code §502.0024, as amended by HB 3297, which requires the department develop and implement a system of registration to allow an owner of a vehicle to register the vehicle for an extended period of not more than five years; Transportation Code §502.040, which authorizes the department to prescribe the process and procedures for applying for a motor vehicle registration; Transportation Code §502.059, which authorizes the department to adopt rules providing for an automated registration process; Transportation Code §502.095, as amended by HB 718, which gives the department authority to issue one-trip and 30-day license plates; Transportation Code §502.1911, which authorizes the board to adopt rules to set registration processing and handing fees; Transportation Code §502.451(c), which authorizes the department to adopt rules to provide for the issuance of specially designated license plates for vehicles exempt by law, and Transportation Code §502.451(f), which authorizes the department to adopt rules to provide for the issuance of regularly designed license plates not bearing the word "exempt" for a vehicle that is exempt by law. Transportation Code §504.0011, which gives the department authority to implement and administer Transportation Code, Chapter 504, License Plates; Transportation Code §504.010, which authorizes the department to adopt rules governing the placement of license plates on motor vehicles; Transportation Code §520.003, which authorizes the department to adopt rules to administer Transportation Code §520, Miscellaneous Provisions; Transportation Code §520.004, which authorizes the department to adopt rules to establish standards for uniformity and service quality for counties conducting registration and titling services; Transportation Code §520.0055, as created by HB 718, gives the department authority to mandate motor vehicle dealers use a department designated electronic system to submit title and registration applications to county tax assessor-collectors for motor vehicle transactions; and Transportation Code §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout the this preamble.

CROSS REFERENCE TO STATUTE. The adopted amendments would implement Transportation Code Chapters 502, 504 and 520.

§217.53. Disposition of License Plates and Registration Insignia upon Sale or Transfer of Motor Vehicle.

(a) Upon the sale or transfer of a motor vehicle to a dealer, the dealer shall remove and retain the assigned general issue license plates for disposition at the time of a subsequent purchase in accordance with §215.151(d) (relating to License Plate General Use Requirements), and the dealer shall remove and dispose of the registration insignia as provided in Transportation Code, §502.491.

(b) Upon the sale or transfer of a motor vehicle in which neither party is a dealer, the general issue license plates remain with the motor vehicle as provided in Transportation Code, §504.901.

(c) A license plate other than a general issue license plate shall be removed by the owner of a motor vehicle that is sold or transferred. Removed license plates may be transferred if eligible; otherwise, must be disposed of in a manner that renders the license plates unusable or that ensures the license plates will not be available for fraudulent use on a motor vehicle.

(d) If the purchaser at a retail sale chooses to obtain replacement general issue license plates, the replaced license plates must be disposed of in a manner that renders the license plates unusable or that ensures the license plates will not be available for fraudulent use on a motor vehicle.

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

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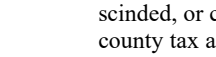

SUBCHAPTER C. REGISTRATION AND TITLE SYSTEMS

43 TAC §§217.71, 217.74, 217.75

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts amendments to Chapter 217 under Transportation Code §502.0021, which gives the department authority to adopt rules to administer Transportation Code Chapter 502, Registration of Vehicles; Transportation Code §502.040, which authorizes the department to prescribe the process and procedures for applying for a motor vehicle registration; Transportation Code §502.059, which authorizes the department to adopt rules providing for an automated registration process; Transportation Code §520.003, which authorizes the department to adopt rules to administer Transportation Code §520, Miscellaneous Provisions; Transportation Code §520.004, which authorizes the department to adopt rules to establish standards for uniformity and service quality for counties conducting registration and titling services; Transportation Code §520.0055, as created by HB 718, gives the department authority to mandate motor vehicle dealers use a department designated electronic system to submit title and registration applications to county tax assessor-collectors for motor vehicle transactions; and Transportation Code §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout the this preamble.

CROSS REFERENCE TO STATUTE. The adopted amendments would implement Transportation Code Chapters 502 and 520.

§217.74. webDEALER Access, Use, and Training.

(a) Each county tax assessor-collector shall request access to, and accept title applications submitted through, webDEALER. A county tax assessor-collector must utilize webDEALER in order to accept a title application in the county as provided by subsections (b) and (c) of this section.

(b) Except as provided in subsection (c) of this section, a person who wishes to become a user of webDEALER must contact each entity to whom they submit title applications for authorization to utilize webDEALER. A user must receive authorization from each entity, including each county tax assessor-collector, to whom the user submits title applications. Title applications submitted to the department require the authorization by the department.

(c) A motor vehicle dealer who holds a general distinguishing number (holder) must contact each county tax assessor-collector to whom they submit title applications for webDEALER access. The county must provide the holder access. A holder must obtain access from each county to whom the user submits title applications. All active holders must obtain access to webDEALER in advance of July 1, 2025. If a holder does not have webDEALER access by April 30, 2025, the department may provide the holder access to webDEALER in the county where the holder is located.

(d) A county tax assessor-collector may authorize a deputy appointed by the county tax assessor-collector in accordance with subchapter H of this chapter (relating to Deputies) to utilize webDEALER.

(e) An entity or person authorized under subsection (b) of this section may have their authorization to use webDEALER revoked, rescinded, or cancelled at any time, with no notice, at the discretion of a county tax assessor-collector or the department.

(f) When submitting a title application through webDEALER, a user must:

(1) stamp the word "SURRENDERED" across the front face and the next open assignment or reassignment space of any secure title document or other acceptable ownership evidence as determined by the department in:

(A) arial font;

(B) black ink; and

(C) a size of 1/4" height x 2 1/4" length;

(2) retain the physical document described in paragraph (1) of this subsection for a minimum of four calendar years from the date of submitting a scanned copy of the stamped title document using the webDEALER system; and

(3) submit any documents required to be submitted with the title application with a scanned resolution of at least 200 dots per inch (DPI).

(g) Required webDEALER training. Each user accessing webDEALER under the account of a holder that is described under subsection (c) and required to process title and registration transactions through webDEALER in accordance with Transportation Code, Section 520.0055, must complete webDEALER training conducted by the department by April 30, 2025. New users created on or after April 30, 2025, must complete webDEALER training before being given webDEALER permissions.

(1) Required training will include, at a minimum, training regarding transactions performed in webDEALER and proper use of the system.

(2) A user who has had access to webDEALER for more than six months and submitted more than 100 transactions within the system as of October 1, 2024, is not required to take the webDEALER training under this section.

(3) Failure for holders and users accessing webDEALER under the holder's account to complete the required training as outlined in this section shall result in denial of access to webDEALER.

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

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SUBCHAPTER D. NONREPAIRABLE AND SALVAGE MOTOR VEHICLES

43 TAC §§217.81, 217.82, 217.84 - 217.86, 217.88

STATUTORY AUTHORITY. The department adopts amendments to Chapter 217 under Transportation Code, §501.0041, which gives the department authority to adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act; Transportation Code, §501.030, which authorizes the department to adopt rules governing identification number inspections for motor vehicles brought into the state; Transportation Code, §501.0925, which authorizes the department to adopt rules governing the issuance of titles to insurance companies; Transportation Code, §501.097, which authorizes the department to prescribe the process and procedures for applying for nonrepairable and salvage vehicle titles; Transportation Code, §501.1003, which authorizes the department to require salvage dealers to report nonrepairable and salvage motor vehicles that are dismantled, scrapped or destroyed and to surrender ownership documents for such vehicles; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

CROSS REFERENCE TO STATUTE. The adopted amendments would implement Transportation Code Chapter 501; and Occupations Code Chapter 2302.

§217.81. Purpose and Scope.

Transportation Code, Chapter 501, Subchapter E, charges the department with the responsibility of issuing titles for nonrepairable and salvage motor vehicles and titles for rebuilt salvage motor vehicles. For the department to efficiently and effectively issue the vehicle titles, maintain records, collect the applicable fees, and ensure the proper application by motor vehicle owners, this subchapter prescribes the policies and procedures for the application for and issuance of vehicle titles for nonrepairable and salvage motor vehicles, and titles for rebuilt salvage motor vehicles.

§217.82. Definitions.

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

(1) Casual sale--Sale as defined by Transportation Code, §501.091(2).

(2) Certificate of title--Title as defined by Transportation Code, §501.002(1-a).

(3) Application for Title--A form prescribed by the director of the department's Vehicle Titles and Registration Division that reflects the information required by the department to create a motor vehicle title record.

(4) Damage--Damage as defined by Transportation Code, §501.091(3).

(5) Date of sale--The date of the transfer of possession of a specific vehicle from a seller to a purchaser.

(6) Department--The Texas Department of Motor Vehicles.

(7) Export-only sale--The sale of a nonrepairable or salvage motor vehicle, by a salvage vehicle dealer, including a salvage pool operator acting as agent for an insurance company, or a governmental entity, to a person who resides outside the United States.

(8) Flood damage--A title remark that is initially indicated on a nonrepairable or salvage vehicle title to denote that the damage to the vehicle was caused exclusively by flood and that is carried forward on subsequent title issuance.

(9) Insurance company--As defined by Transportation Code, §501.091(5).

(10) Manufacturer's certificate of origin--A form prescribed by the department showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser, whether importer, distributor, dealer, or owner, and when presented with an application for title, showing, on appropriate forms prescribed by the department, each subsequent transfer between distributor and dealer, dealer and dealer, and dealer and owner.

(11) Metal recycler--A person as defined by Transportation Code §501.091(7).

(12) Motor vehicle--A vehicle described by Transportation Code, §501.002(17).

(13) Nonrepairable motor vehicle--A motor vehicle as defined by Transportation Code, §501.091(9).

(14) Nonrepairable vehicle title--Title as defined by Transportation Code, §501.091(10).

(15) Nonrepairable record of title--Title as defined by Transportation Code, §501.091(10-a).

(16) Out-of-state buyer--Buyer as defined by Transportation Code, §501.091(11).

(17) Out-of-state ownership document--A negotiable document issued by another jurisdiction that the department considers sufficient to prove ownership of a nonrepairable or salvage motor vehicle and to support issuance of a comparable Texas certificate of title for the motor vehicle. The term does not include a title issued by the department, including a:

(A) regular certificate of title;

(B) nonrepairable vehicle title;

(C) salvage vehicle title;

(D) salvage certificate;

(E) Certificate of Authority to Demolish a Motor Vehicle; or

(F) any other ownership document issued by the department.

(18) Person--An individual, partnership, corporation, trust, association, or other private legal entity.

(19) Rebuilt salvage title--A title evidencing ownership of a nonrepairable motor vehicle that was issued a nonrepairable vehicle title prior to September 1, 2003, or salvage motor vehicle that has been rebuilt.

(20) Salvage motor vehicle--A motor vehicle, regardless of the year model:

(A) that:

(i) is damaged or is missing a major component part to the extent that the cost of repairs exceeds the actual cash value of the motor vehicle immediately before the damage; or

(ii) comes into this state under an out-of-state ownership document that states on its face "accident damage," "flood damage," "inoperable," "rebuildable," "salvageable," or similar notation, and is not an out-of-state ownership document with a "rebuilt," "prior salvage," or similar notation, or a nonrepairable motor vehicle; and

(B) does not include:

(i) a motor vehicle for which an insurance company has paid a claim for repairing hail damage, or theft, unless the motor vehicle was damaged during the theft and before recovery to the extent that the cost of repair exceeds the actual cash value of the motor vehicle immediately before the damage;

(ii) the cost of materials or labor for repainting the motor vehicle; or

(iii) sales tax on the total cost of repairs.

(21) Salvage vehicle dealer--Dealer as defined by Transportation Code, §501.091(17).

(22) Salvage vehicle title--Title as defined by Transportation Code, §501.091(16).

(23) Salvage record of title--Title as defined by Transportation Code, §501.091(16-a).

§217.84. Application for Nonrepairable or Salvage Vehicle Title or Nonrepairable or Salvage Record of Title.

(a) Place of application. The owner of a nonrepairable or salvage motor vehicle who is required to obtain or voluntarily chooses to obtain a nonrepairable or salvage vehicle title, as provided by §217.83 of this title (relating to Requirement for Nonrepairable or Salvage Vehicle Title or Nonrepairable or Salvage Record of Title), shall apply for a nonrepairable or salvage vehicle title or nonrepairable or salvage record of title by submitting an application, the required accompanying documentation, and the statutory fee to the department.

(b) Information on application. An applicant for a nonrepairable or salvage vehicle title or nonrepairable or salvage record of title shall submit an application on a form prescribed by the department. A completed form, in addition to any other information required by the department, must include:

(1) the name and current address of the owner;

(2) a description of the motor vehicle, including the model year, make, body style, and vehicle identification number;

(3) a statement describing whether the motor vehicle is a nonrepairable or salvage motor vehicle;

(4) whether the damage was caused exclusively by flood;

(5) a description of the damage to the motor vehicle;

(6) the odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements, if the motor vehicle is a salvage motor vehicle;

(7) the name and mailing address of any lienholder and the date of lien, as provided by subsection (e) of this section; and

(8) the signature of the applicant or the applicant's authorized agent and the date the title application was signed.

(c) Accompanying documentation. A nonrepairable or salvage vehicle title or nonrepairable or salvage record of title application must be supported, at a minimum, by:

(1) evidence of ownership, as described by subsection (d)(1) or (3) of this section, if the applicant is an insurance company that is unable to locate one or more of the owners;

(2) an odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if the motor vehicle is less than 10 model years old and the motor vehicle is a salvage motor vehicle; and

(3) a release of any liens.

(d) Evidence of nonrepairable or salvage motor vehicle ownership.

(1) Evidence of nonrepairable or salvage motor vehicle ownership properly assigned to the applicant must accompany the application for a nonrepairable or salvage vehicle title or nonrepairable or salvage record of title, except as provided by paragraph (2) of this subsection. Evidence must include documentation sufficient to show ownership to the nonrepairable or salvage motor vehicle, such as:

(A) a Texas Title;

(B) a certified copy of a Texas Title;

(C) a manufacturer's certificate of origin;

(D) a Texas Salvage Certificate;

(E) a nonrepairable vehicle title or record of title;

(F) a salvage vehicle title or record of title;

(G) a comparable ownership document issued by another jurisdiction, except that if the applicant is an insurance company, evidence must be provided indicating that the insurance company is:

(i) licensed to do business in Texas; or

(ii) not licensed to do business in Texas, but has paid a loss claim for the motor vehicle in this state; or

(H) a photocopy of the inventory receipt or a title and registration verification evidencing surrender to the department of the negotiable evidence of ownership for a motor vehicle as provided by §217.86 of this title (relating to Dismantling, Scrapping, or Destruction of Motor Vehicles), and if the evidence of ownership surrendered was from another jurisdiction, a photocopy of the front and back of the surrendered evidence of ownership.

(2) An insurance company that acquires ownership or possession of a nonrepairable or salvage motor vehicle through payment of a claim may apply for a nonrepairable or salvage vehicle title to be issued in the insurance company's name without obtaining an ownership document or if it received an ownership document without the proper assignment of the owner if the company is unable to obtain a title from the owner, in accordance with paragraph (1) of this subsection, and the application is not made earlier than the 30th day after the date of payment of the claim. The application must also include:

(A) a statement that the insurance company has provided at least two written notices to the owner and any lienholder attempting to obtain the title or proper assignment of title for the motor vehicle;

(B) a statement that the insurance company paid a loss claim for the vehicle that was accepted; and

(C) any unassigned or improperly assigned title in the insurance company's possession.

(3) An insurance company that acquires, through payment of a claim, ownership or possession of a salvage motor vehicle or nonrepairable motor vehicle covered by an out-of-state ownership document may obtain a salvage or nonrepairable vehicle title or salvage or nonrepairable record of title in accordance with paragraph (1) or (2) of this subsection if:

(A) the motor vehicle was damaged, stolen, or recovered in this state; or

(B) the motor vehicle owner from whom the company acquired ownership resides in this state.

(4) A salvage pool operator may apply for title consistent with Transportation Code, §501.0935.

(5) Proof of notice under this subsection consists of:

(A) the validated receipts for registered or certified mail and return receipt or an electronic certified mail receipt, including signature receipt; and

(B) any unopened certified letters returned by the post office as unclaimed, undeliverable, or with no forwarding address.

(e) Recordation of lien on nonrepairable and salvage vehicle titles. If the motor vehicle is a salvage motor vehicle, a new lien or a currently recorded lien may be recorded on the salvage vehicle title. If the motor vehicle is a nonrepairable motor vehicle, only a currently recorded lien may be recorded on the nonrepairable vehicle title.

(f) Issuance. Upon receipt of a completed nonrepairable or salvage vehicle title application, accompanied by the statutory application fee and the required documentation, the department will, before the sixth business day after the date of receipt, issue a nonrepairable or salvage vehicle title or nonrepairable or salvage record of title, as appropriate.

(1) If the condition of salvage is caused exclusively by flood, a "Flood Damage" notation will be reflected on the face of the document and will be carried forward upon subsequent title issuance.

(2) If a lien is recorded on a nonrepairable or salvage vehicle title, the vehicle title will be mailed to the lienholder. For proof of ownership purposes, the owner will be mailed a receipt or printout of the newly established motor vehicle record, indicating a lien has been recorded.

(3) A nonrepairable vehicle title will state on its face that the motor vehicle may:

(A) not be repaired, rebuilt, or reconstructed;

(B) not be issued a regular title or registered in this state;

(C) not be operated on a public highway; and

(D) may only be used as a source for used parts or scrap metal.

§217.85. Replacement of Nonrepairable or Salvage Motor Vehicle Ownership Documents.

(a) Location. Applications for certified copies of ownership documents for nonrepairable or salvage motor vehicles will only be processed at the department's Austin headquarters office.

(b) Notation. The certified copy will contain the words "Certified Copy" and the date issued, and the motor vehicle record will be noted accordingly until ownership of the nonrepairable or salvage motor vehicle is transferred. Then the notation will be eliminated from the new title and from the motor vehicle record.

(c) Replacement of nonrepairable or salvage vehicle titles. If a nonrepairable or salvage vehicle title is lost or destroyed, the department will issue a certified copy of the ownership document type originally issued, except as provided by subsection (d)(2) of this section, to the motor vehicle owner, lienholder, or verifiable agent on submission of verifiable proof and payment of the appropriate fee as provided in §217.7 of this title (relating to Replacement of Title).

(d) Replacement of nonrepairable or salvage ownership documents issued prior to September 1, 2003.

(1) If a salvage certificate of title issued by this state prior to September 1, 2003, is lost or destroyed, the department will issue a certified copy of a salvage vehicle title, to the motor vehicle owner, lienholder, or verifiable agent on proper application, submission of verifiable proof, and payment of the appropriate fee as provided in §217.7.

(2) If a nonrepairable certificate of title or salvage certificate issued by this state prior to September 1, 2003, is lost or destroyed, the department will issue a salvage vehicle title to the motor vehicle owner, lienholder, or verifiable agent on proper application, submission of verifiable proof, and payment of the appropriate fee as provided in §217.7.

§217.86. Dismantling, Scrapping, or Destruction of Motor Vehicles.

(a) A person who acquires ownership of a nonrepairable or salvage motor vehicle for the purpose of dismantling, scrapping, or destruction shall, not later than the 30th day after the motor vehicle was acquired:

(1) submit to the department a report, on a form prescribed by the department:

(A) stating that the motor vehicle will be dismantled, scrapped, or destroyed; and

(B) certifying that all unexpired license plates and registration validation stickers have been removed from the motor vehicle, in accordance with Occupations Code, §2302.252; and

(2) surrender to the department the properly assigned ownership document.

(b) The person shall:

(1) maintain records of each motor vehicle that will be dismantled, scrapped, or destroyed, as provided by Chapter 221, Subchapter D of this title (relating to Records); and

(2) store all unexpired license plates and registration validation stickers removed from those vehicles in a secure location.

(c) The department will issue the person a receipt with surrender of the report and ownership documents.

(d) For purposes of dismantling, scrapping, or destruction, a nonrepairable or salvage motor vehicle may only be transferred to a metal recycler upon issuance of a receipt as provided in subsection (c) of this section. The transfer shall be documented on a form prescribed by the department and be included with the transfer of the vehicle along with the receipt as provided in subsection (c) of this section.

(e) License plates and registration validation stickers removed from vehicles reported under subsection (a)(1) of this section may be destroyed upon receipt of the acknowledged report from the department.

(f) The department will place an appropriate notation on motor vehicle records for which ownership documents have been surrendered to the department.

(g) Not later than 60 days after the motor vehicle is delivered to the metal recycler for purposes of the vehicle being dismantled, scrapped, or destroyed, the person shall report to the department and provide evidence that the motor vehicle has been dismantled, scrapped, or destroyed.

§217.88. Sale, Transfer, or Release of Ownership of a Nonrepairable or Salvage Motor Vehicle.

(a) Sale, transfer or release with a nonrepairable or salvage motor vehicle title or nonrepairable or salvage record of title. The ownership of a motor vehicle for which a nonrepairable vehicle title, nonrepairable record of title, salvage vehicle title, salvage record of title, or a comparable out-of-state ownership document has been issued, including a motor vehicle that has a "Flood Damage" notation on the title, may be sold, transferred, or released to anyone.

(b) Sale, transfer or release without a nonrepairable or salvage motor vehicle title or nonrepairable or salvage record of title shall be consistent with Transportation Code, §501.095(a).

(c) Sale of self-insured nonrepairable or salvage motor vehicle. The owner of a self-insured nonrepairable or salvage motor vehicle that has been damaged and removed from normal operation shall obtain a nonrepairable or salvage vehicle title or nonrepairable or salvage record of title before selling or otherwise transferring ownership of the motor vehicle.

(d) Casual sales. A salvage vehicle dealer, salvage pool operator, or insurance company may sell up to five nonrepairable or salvage motor vehicles, for which nonrepairable or salvage vehicle titles or nonrepairable or salvage record of title have been issued, to a person, not to include those specified in Transportation Code, §501.091(2)(A-C), in a casual sale during a calendar year.

(e) Records of casual sales.

(1) A salvage vehicle dealer, salvage pool operator, or insurance company must maintain records of each casual sale made during the previous 36 months, in accordance with Transportation Code, §501.108, that at a minimum contain:

(A) the date of sale;

(B) the sales price;

(C) the name and address of the purchaser;

(D) a legible photocopy of a form of current photo identification as specified in §217.7(b) of this title (Relating to Replacement of Title);

(E) the form of identification provided, the identification document number, and the name of the jurisdiction that issued the identification document;

(F) the description of the motor vehicle, including the vehicle identification number, model year, make, body style, and model;

(G) a photocopy of the front and back of the properly assigned ownership document provided to the purchaser; and

(H) the purchaser's certification, on a form provided by the department, that the purchase of motor vehicles in a casual sale is not intended to circumvent the provisions of Transportation Code, Chapter 501 (relating to Certificates of Title) and Occupations Code, Chapter 2302 (relating to Salvage Vehicle Dealers).

(2) Records may be maintained on a form provided by the department or in an electronic format.

(3) Records must be maintained on the business premises of the seller, and shall be made available for inspection upon request.

(f) Export-only sales.

(1) In accordance with Transportation Code, §501.099, only a licensed salvage vehicle dealer, including a salvage pool operator acting as agent for an insurance company, or governmental entity may sell a nonrepairable or salvage motor vehicle to a person who resides outside the United States, and only:

(A) when a nonrepairable or salvage vehicle title has been issued for the motor vehicle prior to offering it for export-only sale; and

(B) prior to the sale, the seller obtains a legible photocopy of a government-issued photo identification of the purchaser that can be verified by law enforcement, issued by the jurisdiction in which the purchaser resides that may consist of:

(i) a passport;

(ii) a driver's license;

(iii) consular identity document;

(iv) national identification certificate or identity document; or

(v) other government-issued identification that includes the name of the jurisdiction issuing the document, the purchaser's full name, foreign address, date of birth, photograph, and signature.

(2) The seller must obtain the purchaser's certification, on a form prescribed by the department, that the purchaser will remove the motor vehicle from the United States and will not return the motor

vehicle to any state of the United States as a motor vehicle titled or registered under its manufacturer's vehicle identification number.

(3) The seller must provide the buyer with a properly assigned nonrepairable or salvage vehicle title.

(4) The seller must stamp FOR EXPORT ONLY and the seller's salvage vehicle dealer license number or the governmental entity's name, whichever applies, on the face of the title and on any unused reassignments on the back of the title.

(g) Records of export-only sales.

(1) A salvage vehicle dealer or governmental entity that sells a nonrepairable or salvage motor vehicle for export-only must maintain records of all export-only sales until the third anniversary of the date of the sale.

(2) Records of each sale must include:

(A) a legible copy of the stamped and properly assigned nonrepairable or salvage vehicle title;

(B) the buyer's certified statement required by subsection (f)(2) of this section;

(C) a legible photocopy of a form of photo identification as specified in subsection (f)(1)(B) of this section;

(D) a legible copy of any other documents related to the sale of the motor vehicle; and

(E) a listing of each motor vehicle sold for export-only that states the:

(i) date of sale;

(ii) name of the purchaser;

(iii) purchaser's identification document number;

(iv) name of the country that issued the identification document;

(v) the form of identification provided by the purchaser; and

(vi) vehicle identification number of the motor vehicle.

(3) The listing required by paragraph (2)(E) of this subsection must be maintained either on a form provided by the department or in an electronic format approved by the department.

(4) The salvage vehicle dealer or governmental entity shall submit the listing prescribed by paragraph (2)(E) of this subsection to the department within 30 days from the date of sale.

(5) Upon receipt of the listing prescribed by paragraph (2)(E) of this subsection, the department will place an appropriate notation on the motor vehicle record to identify it as a motor vehicle sold for export-only that may not be operated, retitled, or registered in this state.

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

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Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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43 TAC §217.83, §217.89

STATUTORY AUTHORITY. The department adopts amendments to Chapter 217 under Transportation Code, §501.0041, which gives the department authority to adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act; Transportation Code, §501.030, which authorizes the department to adopt rules governing identification number inspections for motor vehicles brought into the state; Transportation Code, §501.0925, which authorizes the department to adopt rules governing the issuance of titles to insurance companies; Transportation Code, §501.097, which authorizes the department to prescribe the process and procedures for applying for nonrepairable and salvage vehicle titles; Transportation Code, §501.1003, which authorizes the department to require salvage dealers to report nonrepairable and salvage motor vehicles that are dismantled, scrapped or destroyed and to surrender ownership documents for such vehicles; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

CROSS REFERENCE TO STATUTE. The adopted amendments would implement Transportation Code Chapter 501; and Occupations Code Chapter 2302.

§217.83. Requirement for Nonrepairable or Salvage Vehicle Title or Nonrepairable or Salvage Record of Title.

(a) Determination of condition of vehicle.

(1) Salvage motor vehicle. When a vehicle is damaged, the actual cash value of the motor vehicle immediately before the damage and the cost of repairs shall be used to determine whether the damage is sufficient to classify the motor vehicle as a salvage motor vehicle.

(2) Nonrepairable motor vehicle. When a vehicle is damaged, the actual cash value of the motor vehicle immediately before the damage and the cost of repairs, or any method commonly used by the insurance industry, shall be used to determine whether the damage is sufficient to classify the motor vehicle as a nonrepairable motor vehicle.

(3) The actual cash value of the motor vehicle is the market value of a motor vehicle as determined:

(A) from publications commonly used by the automotive and insurance industries to establish the values of motor vehicles; or

(B) if the entity determining the value is an insurance company, by any other procedure recognized by the insurance industry, including market surveys, that is applied in a uniform manner.

(4) The cost of repairs, including parts and labor, shall be determined by:

(A) using a manual of repair costs or other instrument that is generally recognized and used in the motor vehicle industry to determine those costs; or

(B) an estimate of the actual cost of the repair parts and the estimated labor costs computed by using hourly rate and time allocations that are reasonable and commonly assessed in the repair industry in the community in which the repairs are performed.

(5) The cost of repairs does not include:

(A) the cost of:

(i) repairs related to gradual damage to a motor vehicle;

(ii) repairs related to hail damage; or

(iii) materials and labor for repainting or when the damage is solely to the exterior paint of the motor vehicle; or

(B) sales tax on the total cost of repairs.

(b) Who must apply.

(1) An insurance company licensed to do business in this state that acquires ownership or possession of a nonrepairable or salvage motor vehicle that is covered by a title issued by this state or a manufacturer's certificate of origin shall obtain a nonrepairable or salvage vehicle title or nonrepairable or salvage record of title, as provided by §217.84 of this title (relating to Application for Nonrepairable or Salvage Vehicle Title or Nonrepairable or Salvage Record of Title), before selling or otherwise transferring the nonrepairable or salvage motor vehicle, except as provided by subsection (c) of this section.

(2) A salvage vehicle dealer shall obtain a Nonrepairable or Salvage Vehicle Title or Nonrepairable or Salvage Record of Title, or comparable out-of-state ownership document, before selling or otherwise transferring the motor vehicle, except as provided by §217.88(b) of this title (relating to Sale, Transfer, or Release of Ownership of a Nonrepairable or Salvage Motor Vehicle).

(3) A person, other than an insurance company or salvage vehicle dealer, who acquires ownership of a nonrepairable or salvage motor vehicle that has not been issued a nonrepairable vehicle title, a salvage vehicle title, or a comparable out-of-state ownership document, shall obtain a nonrepairable or salvage vehicle title or nonrepairable or salvage record of title, as provided by §217.84, before selling or otherwise transferring the motor vehicle, unless the motor vehicle will be dismantled, scrapped, or destroyed.

(c) Owner-retained vehicles.

(1) When an insurance company pays a claim on a nonrepairable or salvage motor vehicle and does not acquire ownership of the motor vehicle, the company shall submit through webDEALER to the department before the 31st day after the date of the payment of the claim, on a form prescribed by the department, a report stating that:

(A) the insurance company has paid a claim on the nonrepairable or salvage motor vehicle; and

(B) the insurance company has not acquired ownership of the nonrepairable or salvage motor vehicle.

(2) Upon receipt of the report described in paragraph (2) of this subsection, the department will place an appropriate notation on the motor vehicle record to prevent registration and transfer of ownership prior to the issuance of a salvage or nonrepairable vehicle title or salvage or nonrepairable record of title.

(3) The owner who retained the nonrepairable or salvage motor vehicle to which this subsection applies shall obtain a nonrepairable or salvage vehicle title or nonrepairable or salvage record of title, as provided by §217.84, before selling or otherwise transferring the nonrepairable or salvage motor vehicle.

(4) The owner of an owner retained nonrepairable or salvage motor vehicle may not operate or permit operation of the motor vehicle on a public highway, until the motor vehicle is rebuilt, titled as a rebuilt salvage motor vehicle or rebuilt nonrepairable motor vehicle, if applicable, and is registered in accordance with Subchapter B of this chapter.

(d) Self-insured vehicles. The owner of a nonrepairable or salvage motor vehicle that is self-insured and that has been removed from normal operation by the owner shall apply to the department for a nonrepairable or salvage vehicle title or nonrepairable or salvage record of title, as provided by §217.84, before the 31st day after the damage occurred, and before selling or otherwise transferring ownership of the nonrepairable or salvage motor vehicle.

(e) Casual sales. A salvage vehicle dealer, salvage pool operator, or insurance company that acquires a nonrepairable or salvage motor vehicle shall apply to the department for a nonrepairable or salvage vehicle title or nonrepairable or salvage record of title, in accordance with §217.84, prior to offering the motor vehicle for sale in a casual sale.

(f) Export-only vehicles. A salvage vehicle dealer, including a salvage pool operator acting as agent for an insurance company, or governmental entity that acquires a nonrepairable or salvage motor vehicle and offers it for sale to a non-United States resident shall apply to the department for a nonrepairable or salvage vehicle title, as provided by §217.84, before selling or otherwise transferring the nonrepairable or salvage motor vehicle and before delivery of the nonrepairable or salvage motor vehicle to the buyer. A salvage vehicle dealer or governmental entity shall maintain records of all export-only nonrepairable or salvage motor vehicle sales as provided by §217.88(g).

(g) Voluntary application. A person who owns or acquires a motor vehicle that is not a nonrepairable or salvage motor vehicle may voluntarily, and on proper application, as provided by §217.84, apply for a nonrepairable or salvage vehicle title or nonrepairable or salvage record of title.

§217.89. Rebuilt Salvage Motor Vehicles.

(a) Filing for title. When a salvage motor vehicle or a nonrepairable motor vehicle for which a nonrepairable vehicle title was issued prior to September 1, 2003, has been rebuilt, the owner shall file a title application, as described in §217.4 of this title (relating to Initial Application for Title), for a rebuilt salvage title.

(b) Place of application. An application for a rebuilt salvage title shall be filed with the county tax assessor-collector in the county in which the applicant resides, in the county in which the motor vehicle was purchased or is encumbered, or to any county tax assessor-collector who is willing to accept the application.

(c) Fee for rebuilt salvage title. In addition to the statutory fee for a title application and any other applicable fees, a $65 rebuilt salvage fee must accompany the application.

(d) Accompanying documentation. The application for a title for a rebuilt nonrepairable or salvage motor vehicle must be supported, at a minimum, by the following documents:

(1) evidence of ownership, properly assigned to the applicant, as described in subsection (e) of this section;

(2) a rebuilt statement, on a form prescribed by the department that includes:

(A) a description of the motor vehicle, which includes the motor vehicle's model year, make, model, identification number, and body style;

(B) an explanation of the repairs or alterations made to the motor vehicle;

(C) a description of each major component part used to repair the motor vehicle and showing the identification number required by federal law to be affixed to or inscribed on the part;

(D) the name of the owner and the name and address of the rebuilder;

(E) a statement by the owner that the owner is the legal and rightful owner of the vehicle, the vehicle is rebuilt, repaired, reconstructed, or assembled and that the vehicle identification number disclosed on the rebuilt affidavit is the same as the vehicle identification number affixed to the vehicle;

(F) the signature of the owner, or the owner's authorized agent; and

(G) a statement by the rebuilder that the vehicle has been rebuilt, repaired, or reconstructed by the rebuilder and that all component parts used were obtained in a legal and lawful manner, signed by the rebuilder or the rebuilder's authorized agent or employee;

(3) an odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if applicable;

(4) proof of financial responsibility in the title applicant's name, as required by Transportation Code §502.046, unless otherwise exempted by law, if the motor vehicle will be registered at the time of application;

(5) unless otherwise exempted by law, a vehicle identification number inspection under Transportation Code, §501.0321 if the motor vehicle was last titled or registered in another country, or a document described under 217.4(d)(4) of this title (relating to Initial Application for Title) if the vehicle was last titled or registered in another state; and

(6) a release of any liens, unless there is no transfer of ownership and the same lienholder is being recorded as is recorded on the surrendered evidence of ownership.

(e) Evidence of ownership of a rebuilt salvage motor vehicle:

(1) may include:

(A) a Texas Salvage Vehicle Title or Record of Title;

(B) a Texas Nonrepairable Certificate of Title issued prior to September 1, 2003;

(C) a Texas Salvage Certificate; or

(D) a comparable salvage certificate or salvage certificate of title issued by another jurisdiction, except that this ownership document will not be accepted if it indicates that the motor vehicle may not be rebuilt in the jurisdiction that issued the ownership document; but

(2) does not include:

(A) a Texas nonrepairable vehicle title issued on or after September 1, 2003;

(B) an out-of-state ownership document that indicates that the motor vehicle is nonrepairable, junked, for parts or dismantling only, or the motor vehicle may not be rebuilt in the jurisdiction that issued the ownership document; or

(C) a certificate of authority to dispose of a motor vehicle issued in accordance with Transportation Code, Chapter 683.

(f) Rebuilt salvage title issuance. Upon receiving a completed title application for a rebuilt salvage motor vehicle, along with the applicable fees and required documentation, the transaction will be processed and a rebuilt salvage title will be issued. The title will include a "Rebuilt Salvage" notation and a description or disclosure of the motor vehicle's former condition on its face.

(g) Issuance of rebuilt salvage title to a motor vehicle from another jurisdiction. On proper application, as prescribed by §217.4, by the owner of a motor vehicle that is brought into this state from another jurisdiction and for which a certificate of title issued by the other jurisdiction contains a "Rebuilt," "Salvage," or analogous title remark, the department will issue the applicant a title or other appropriate document for the motor vehicle. A title or other appropriate document issued under this subsection will show:

(1) the date of issuance;

(2) the name and address of the owner;

(3) any registration number assigned to the motor vehicle;

(4) a description of the motor vehicle as determined by the department; and

(5) any title remark the department considers necessary or appropriate.

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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Laura Moriaty
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Texas Department of Motor Vehicles
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For further information, please call: (512) 465-4160

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43 TAC §217.87

STATUTORY AUTHORITY. The department adopts a repeal to Chapter 217 under Transportation Code, §501.09111, which identifies the rights and limitations of rights to owners of nonrepairable and salvage motor vehicles.

CROSS REFERENCE TO STATUTE. The adopted repeal implements Transportation Code, Chapter 501.

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

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SUBCHAPTER E. TITLE LIENS AND CLAIMS

43 TAC §217.106

STATUTORY AUTHORITY. The department adopts amendments to Chapter 217 under Transportation Code §501.115, which provides the department authority to govern the discharge of a lien on a title, and Transportation Code, §1002.001, which authorizes the department to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. The adopted amendments would implement Transportation Code Chapter 501.

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. MOTOR VEHICLE RECORDS

43 TAC §§217.122 - 217.125, 217.129, 217.131

STATUTORY AUTHORITY. The department adopts amendments to Chapter 217 under Transportation Code §730.014, which give the department authority to adopt rules to administer Transportation Code, Chapter 730, Motor Vehicle Records Disclosure Act; and Transportation Code §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and duties of the department, as well as the statutes referenced throughout this preamble.

CROSS REFERENCE TO STATUTE. The adopted amendments would implement Transportation Code, Chapter 730.

§217.123. Access to Motor Vehicle Records.

(a) Except as required under subsection (f) of this section, a requestor seeking personal information from department motor vehicle records shall submit a written request in a form required by the department. A completed and properly executed form must include:

(1) the name and address of the requestor;

(2) a description of the requested motor vehicle records, including the Texas license plate number, title or document number, or vehicle identification number of the motor vehicle about which information is requested;

(3) proof of the requestor's identity, in accordance with subsections (b) or (c) of this section;

(4) a statement that the requestor:

(A) is the subject of the record;

(B) has the written consent of the person who is the subject of the record; or

(C) will strictly limit the use of the personal information in department motor vehicle records to a permitted use under Transportation Code Chapter 730, as indicated on the form;

(5) a certification that the statements made on the form are true and correct; and

(6) the signature of the requestor.

(b) Except as required by subsection (c) of this section, a requestor must provide the requestor's current photo identification containing a unique identification number. The identification must be a:

(1) driver's license, Texas Department of Public Safety identification, or state identification certificate issued by a state or territory of the United States;

(2) United States or foreign passport;

(3) United States military identification card;

(4) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document;

(5) license to carry a handgun issued by the Texas Department of Public Safety under Government Code Chapter 411, Subchapter H; or

(6) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement.

(c) A requestor seeking personal information from department motor vehicle records for use by a law enforcement agency must:

(1) present the requestor's current law enforcement credentials;

(2) electronically submit the request in a manner that the department can verify that the requestor is acting on behalf of a law enforcement agency; or

(3) provide a written statement from a higher level in the chain of command on the law enforcement agency's letterhead stating that the requestor is not authorized to provide current law enforcement credentials and identifying the intended use or the agency's incident or case number for which the personal information is needed.

(d) A requestor seeking personal information from department motor vehicle records for use by a law enforcement agency may submit a verbal request to the department if the law enforcement agency has provided reasonable assurances that were accepted by the department as to the identity of the requestor within the last 12 months on a form required by the department. If a request is submitted verbally, the department may require the requestor to confirm the request in writing.

(e) A requestor may receive electronic access to department motor vehicle records under the terms and conditions of a service agreement.

(1) Before a requestor can enter into a service agreement, the requestor must file a completed application on a form required by the department, for review and approval by the department. An application for a service agreement must include:

(A) a statement that the requestor will strictly limit the use of the personal information from department motor vehicle records to a permitted use under Transportation Code Chapter 730, as indicated on the application;

(B) the name and address of the requestor;

(C) proof of the requestor's identity, in accordance with subsections (b) or (c) of this section;

(D) blank copies of agreements used by the requestor to release motor vehicle record information to third parties;

(E) any additional material provided to third-party requestors detailing the process through which they obtain motor vehicle record information and describing their limitations as to how this information may be used;

(F) the signature of the requestor or, if the requestor is an organization or entity, the signature of an officer or director of the requestor; and

(G) a certification that the statements made in the application are true and correct.

(2) If the department determines any of the information provided in the application is incomplete, inaccurate, or does not meet statutory requirements the department will not enter into a service agreement to release motor vehicle record information.

(3) Unless the requestor is exempt from the payment of fees, a service agreement must contain an adjustable account, in which an initial deposit and minimum balance is maintained in accordance with §217.124 of this title (relating to Cost of Motor Vehicle Records). Notwithstanding §217.124 of this title, the department may modify initial deposit and minimum balance requirements depending on usage.

(f) Access to bulk motor vehicle records. A requestor seeking access to department motor vehicle records in bulk must enter into a bulk contract with the department.

(1) Before a requestor can enter into a bulk contract, the requestor must file a completed application on a form required by the department, for review and approval by the department. An application for a bulk contract must include:

(A) a statement that the requestor will strictly limit the use of the personal information to a permitted use under Transportation Code Chapter 730, as indicated on the application;

(B) the name and address of the requestor;

(C) proof of the requestor's identity, in accordance with §217.123(b) or (c) of this title (relating to Access to Motor Vehicle Records);

(D) blank copies of agreements used by the requestor to release motor vehicle record information to third parties;

(E) any additional material provided to third party requestors detailing the process in which they obtain motor vehicle record information and describing their limitations as to how this information may be used;

(F) a certification that the statements made on the form are true and correct; and

(G) the signature of the requestor or, if the requestor is an organization or entity, the signature of an officer or director of the requestor.

(2) If the department determines any of the information provided is incomplete, inaccurate, or does not meet statutory requirements the department will not enter into a bulk contract to release motor vehicle record information.

(3) Prior to the execution of a bulk contract, a requestor must provide proof the requestor has:

(A) posted a $1 million performance bond, payable to this state, conditioned upon the performance of all the requirements of Transportation Code Chapter 730 and this subchapter; and

(B) insurance coverage in the amount of at least $3 million and that meets the requirements of Transportation Code §730.014(c)(3).

(g) If a person is convicted of an offense under Transportation Code Chapter 730 or is found by a court to have violated a rule under this subchapter, then any contract with that person to access department motor vehicle records is terminated as of the date of the court's final determination.

(h) The requirements of this section do not apply to discovery, subpoena, or other means of legal compulsion for the disclosure of personal information.

(i) An authorized recipient will receive requested motor vehicle records in accordance with Title 18 U.S.C. §2721 et seq.; Transportation Code Chapter 730; Government Code §552.130; and this subchapter.

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 G. INSPECTIONS

43 TAC §217.143, §217.144

STATUTORY AUTHORITY. The department adopts amendments to Chapter 217 under Transportation Code, §501.0041, which gives the department authority to adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act; Transportation Code, §501.030, which authorizes the department to adopt rules governing identification number inspections for motor vehicles brought into the state; Transportation Code, §501.0321, which authorizes the department to adopt rules establishing the training requirements for personnel conducting identification number inspections; Transportation Code, §501.0322, which provides the department with authority to adopt rules to establish an alternative identification number inspection; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

CROSS REFERENCE TO STATUTE. The adopted amendments would implement Transportation Code, Chapters 501 and 731.

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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Laura Moriaty
General Counsel
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SUBCHAPTER H. DEPUTIES

43 TAC §217.161

STATUTORY AUTHORITY: The department adopts amendments to Chapter 217 under Transportation Code §502.095, as amended by HB 718, which gives the department authority to issue one-trip and 30-day license plates; Transportation Code §502.1911, which authorizes the department to adopt rules to set registration processing and handling fees; Transportation Code §520.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 520, Miscellaneous Provisions; Transportation Code, §520.004, which authorizes the department to adopt rules to establish standards for uniformity and service quality for counties conducting registration and titling services; and Transportation Code, §1002.001, which authorizes the department to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. The adopted amendments would implement Transportation Code Chapters 502 and 520.

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 §217.168

STATUTORY AUTHORITY: The department adopts amendments to Chapter 217 under Transportation Code §502.095, as amended by HB 718, which gives the department authority to issue one-trip and 30-day license plates; Transportation Code §502.1911, which authorizes the department to adopt rules to set registration processing and handling fees; Transportation Code §520.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 520, Miscellaneous Provisions; Transportation Code, §520.004, which authorizes the department to adopt rules to establish standards for uniformity and service quality for counties conducting registration and titling services; and Transportation Code, §1002.001, which authorizes the department to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE. The adopted amendments would implement Transportation Code Chapters 502 and 520.

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. PROCESS AND HANDLING FEES

43 TAC §§217.181, 217.183, 217.184

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts amendments to Chapter 217 under Transportation Code §502.0021, which gives the department authority to adopt rules to administer Transportation Code Chapter 502, Registration of Vehicles; Transportation Code §502.040, which authorizes the department to prescribe the process and procedures for applying for a motor vehicle registration; Transportation Code §502.059, which authorizes the department to adopt rules providing for an automated registration process; Transportation Code §502.1911 which authorizes the board to adopt rules to set registration processing and handling fees; Transportation Code §520.003, which authorizes the department to adopt rules to administer Transportation Code Chapter 520, Miscellaneous Provisions; Transportation Code §520.004, which authorizes the department to adopt rules to establish standards for uniformity and service quality for counties conducting registration and titling services; Transportation Code §520.0055, as created by HB 718, gives the department authority to mandate motor vehicle dealers use a department designated electronic system to submit title and registration applications to the county tax assessor-collectors for motor vehicle transactions; and Transportation Code §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers of the department, as well as the statutes throughout this preamble.

CROSS REFERENCE TO STATUTE. The adopted amendments would implement Transportation Code Chapters 502 and 520; and Government Code Chapter 2054.

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 §217.182, §217.185

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts amendments to Chapter 217 under Transportation Code §502.0021, which gives the department authority to adopt rules to administer Transportation Code Chapter 502, Registration of Vehicles; Transportation Code §502.040, which authorizes the department to prescribe the process and procedures for applying for a motor vehicle registration; Transportation Code §502.059, which authorizes the department to adopt rules providing for an automated registration process; Transportation Code §502.1911 which authorizes the board to adopt rules to set registration processing and handling fees; Transportation Code §520.003, which authorizes the department to adopt rules to administer Transportation Code Chapter 520, Miscellaneous Provisions; Transportation Code §520.004, which authorizes the department to adopt rules to establish standards for uniformity and service quality for counties conducting registration and titling services; Transportation Code §520.0055, as created by HB 718, gives the department authority to mandate motor vehicle dealers use a department designated electronic system to submit title and registration applications to the county tax assessor-collectors for motor vehicle transactions; and Transportation Code §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers of the department, as well as the statutes throughout this preamble.

CROSS REFERENCE TO STATUTE. The adopted amendments would implement Transportation Code Chapters 502 and 520; and Government Code Chapter 2054.

§217.185. Allocation of Processing and Handling Fees.

(a) For registration transactions, except as provided in subsection (b) of this section, the fee amounts established in §217.183 of this title (relating to Fee Amount) shall be allocated as follows:

(1) If the registration transaction was processed in person at the office of the county tax assessor-collector or mailed to an office of the county tax assessor-collector:

(A) the county tax assessor-collector may retain $2.30; and

(B) the remaining amount shall be remitted to the department.

(2) If the registration transaction was processed through the department or the TxFLEET system or is a registration processed under Transportation Code, §§502.0023, 502.091, or 502.255; or §217.46(b)(5) of this title (relating to Commercial Vehicle Registration):

(A) $2.30 will be remitted to the county tax assessor-collector; and

(B) the remaining amount shall be retained by the department.

(3) If the registration transaction was processed through Texas by Texas (TxT) or the department's Internet Vehicle Title and Registration Service (IVTRS), the fee established in §217.183 of this title is discounted by $1:

(A) Texas Online receives the amount set pursuant to Government Code, §2054.2591, Fees;

(B) the county tax assessor-collector may retain $.25; and

(C) the remaining amount shall be remitted to the department.

(4) If the registration transaction was processed by a limited service deputy or full service deputy appointed by the county tax assessor-collector in accordance with Subchapter H of this chapter (relating to Deputies):

(A) the deputy may retain:

(i) the amount specified in §217.168(c) of this title (relating to Deputy Fee Amounts). The deputy must remit the remainder of the processing and handling fee to the county tax assessor-collector; and

(ii) the convenience fee established in §217.168, if the registration transaction is processed by a full service deputy;

(B) the county tax assessor-collector may retain $1.30; and

(C) the county tax assessor-collector must remit the remaining amount to the department.

(5) If the registration transaction was processed by a dealer deputy appointed by the county tax assessor-collector in accordance with Subchapter H of this chapter (relating to Deputies):

(A) the deputy must remit the processing and handling fee to the county tax assessor-collector;

(B) the county tax assessor-collector may retain $2.30; and

(C) the county tax assessor-collector must remit the remaining amount to the department.

(b) For transactions under Transportation Code, §§502.093 - 502.095, the entity receiving the application and processing the transaction collects the $4.75 processing and handling fee established in §217.183:

(1) the entity may retain $4.25;

(2) the entity must remit the remaining amount to the department; and

(3) a full service deputy processing a special registration permit or special registration license plate transaction may not charge a convenience fee for that transaction.

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

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SUBCHAPTER J. PERFORMANCE QUALITY RECOGNITION PROGRAM

43 TAC §217.205

STATUTORY AUTHORITY. The department adopts amendments to Chapter 217 under Transportation Code, §520.003, which authorizes the department to adopt rules to administer Transportation Code,

Chapter 520, Miscellaneous Provisions; Transportation Code, §520.004, which authorizes the department

to adopt rules to establish standards for uniformity and service quality for counties conducting registration and titling services; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

CROSS REFERENCE TO STATUTE. The adopted amendments would implement Transportation Code Chapter 520.

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

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SUBCHAPTER L. ASSEMBLED VEHICLES

43 TAC §217.404

STATUTORY AUTHORITY: The department adopts amendments to Chapter 217 under Transportation Code §731.002 which authorizes the department to adopt rules as necessary to implement Chapter 731, governing assembled vehicles; and §1002.001, which authorizes the department to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE: The adopted amendments would implement Transportation Code Chapters 501 and 731.

§217.404. Initial Application for Title.

(a) An applicant must submit to the department a complete application for title. The application may be submitted in person, by mail, or electronically, to the department. The application must include:

(1) photographs of the front, rear, and side of the assembled vehicle, and if a replica, a photograph of what the vehicle is a replica of;

(2) evidence of ownership of the basic component parts of the assembled vehicle as described in §217.405 of this subchapter (relating to Evidence of Ownership), as applicable to the type of assembled vehicle;

(3) if applicable, proof, on a form prescribed by the department, of a safety inspection required under §217.143 of this chapter (relating to Assembled Vehicle Inspection Requirements), and Transportation Code §731.101;

(4) if applicable, a copy of the Automobile and Light Truck certification, or a successor certification, for the master technician who completed the inspection described in paragraph (3) of this subsection;

(5) a copy of the inspection that may be required under Transportation Code Chapter 548 if the assembled vehicle is to be registered for operation on the roadway;

(6) a Rebuilt Vehicle Statement;

(7) a weight certificate;

(8) identification as required in §217.5(d) of this chapter (relating to Evidence of Motor Vehicle Ownership); and

(9) any of the following means to establish the vehicle identification number:

(A) an Application for Assigned or Reassigned Number, and Notice of Assigned Number or Installation of Reassigned Vehicle Identification Number, on forms prescribed by the department;

(B) an Application for Assigned or Reassigned Number, establishing the vehicle identification number assigned by the manufacturer of the component part by which the assembled vehicle will be identified;

(C) acceptable proof, as established by the department, of a vehicle identification number assigned by the maker of the kit used to construct the assembled vehicle; or

(D) acceptable proof, as established by the department, of a vehicle identification number assigned by the manufacturer of the replica, custom vehicle, street rod, or glider kit.

(b) Following receipt of all information required under subsection (a) of this section, the department will review the application for completeness and to determine if the vehicle meets assembled vehicle qualifications under Transportation Code, Chapter 731.

(c) If the department determines that the application is complete and the vehicle meets assembled vehicle qualifications, the department will issue a letter to the applicant on department letterhead, stating that the application is complete and that the vehicle qualifies as an assembled vehicle. The letter shall include a list of the supporting documents and information identified in subsection (d)(2) of this section.

(d) Following receipt of the department's letter described in subsection (c) of this section, the applicant may then submit the letter and the completed application to the county tax assessor-collector for processing. The application must include:

(1) the department-issued letter described in subsection (c) of this section;

(2) copies of all items required to be submitted to the department in subsection (a)(1) - (9) of this section; and

(3) the requirements as identified in §217.23 of this chapter (relating to Initial Application for Vehicle Registration) if obtaining registration.

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 221. SALVAGE VEHICLE DEALERS

SUBCHAPTER C. LICENSED OPERATIONS

43 TAC §221.54

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) Subchapter C, Licensed Operations, §221.54, concerning criteria for site visits, effective July 1, 2025. These amendments are necessary to implement House Bill (HB) 718, enacted during the 88th Legislature, Regular Session (2023). HB 718 amended Transportation Code, Chapter 503 to eliminate the use of temporary tags when purchasing a motor vehicle and replaced these tags with categories of license plates, effective July 1, 2025. HB 718 requires the department to determine new distribution methods, systems, and procedures, and to set certain fees. Section 34 of HB 718 grants the department authority to adopt rules necessary to implement or administer these changes in law and requires the department to adopt related rules by December 1, 2024. Beginning July 1, 2025, when a motor vehicle is sold to a Texas resident, a Texas dealer will assign a license plate to the vehicle unless the buyer has a specialty or other qualifying license plate, and the assigned license plate will stay with the vehicle if the vehicle is later sold to a buyer, including a salvage dealer. These adopted amendments add new criteria to the site visit criteria currently used by the Enforcement Division to include the failure of a salvage dealer to remove, report, or destroy void license plates. These adopted amendments will allow the department to prioritize potential license plate-related misuse or fraud consistent with the department's enforcement obligations under HB 718. Amended §221.54 is being adopted without changes to the proposed text as published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5137) and is not being republished.

REASONED JUSTIFICATION.

Adopted amendments to §221.54 add new paragraphs (6) - (8). These adopted amendments expand the list of criteria that the department will consider in determining whether to conduct a site visit to include whether a licensed salvage vehicle dealer has: 1) failed to remove a license plate or registration insignia from a scrapped or destroyed vehicle; 2) failed to timely or accurately report to the department or enter information about a license plate from a scrapped or destroyed vehicle into the system designated by the department; or 3) failed to scrap or destroy void license plates and registration insignias from a scrapped or destroyed vehicle. These adopted amendments will ensure that violations of the statutes and rules relating to license plates are factors that the department considers when deciding the priority of conducting a site visit to a salvage vehicle dealer. An adopted amendment also changed the punctuation from a period to a semicolon in §221.54(5) to accommodate the addition of the new paragraphs.

SUMMARY OF COMMENTS.

The department did not receive any written public comments.

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts amendments to Chapter 221 under Occupations Code, Chapter 2302, and Occupations Code, §2302.051, which authorize the board to adopt rules as necessary to administer Occupations Code, Chapter 2302; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §503.002, which authorizes the department to adopt rules to administer Transportation Code, Chapter 503; Transportation Code, §503.063(d), as amended by HB 718, which gives the department authority to conduct a review of the dealer's compliance with statutory obligation to ensure safekeeping of license plates; Transportation Code, §504.0011, which allows the board to adopt rules to implement and administer Chapter 504; Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department; and Government Code, §2001.004, which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE. These adopted rule amendments implement Occupations Code, Chapter 2302; and Transportation Code, Chapters 501-504, and 1001-1003.

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 224. ADJUDICATIVE PRACTICE AND PROCEDURE

INTRODUCTION. The Texas Department of Motor Vehicles (department) adopts amendments to 43 Texas Administrative Code (TAC) Subchapter A, General Provisions, §224.27, concerning final orders and motions for rehearing, and to Subchapter B, Motor Vehicle, Salvage Vehicle, and Trailer Industry Enforcement, §224.54, concerning the assessment of civil penalties

and license revocation, and §224.58, concerning denial of access to the license plate system effective July 1, 2025. These amendments are necessary to implement and conform these rules with House Bill (HB) 718 enacted during the 88th Legislature, Regular Session (2023). HB 718 amended Transportation Code, Chapter 503 to eliminate the use of temporary tags when purchasing a motor vehicle and replaced these tags with categories of license plates effective July 1, 2025. Section 34 of HB 718 grants the department authority to adopt rules necessary to implement or administer these changes in law and requires the department to adopt related rules by December 1, 2024. Effective July 1, 2025, Transportation Code, §503.0633 requires the department to monitor the number of license plates or sets of license plates obtained by a dealer and to deny access to the license plate database if the department determines that a dealer is acting fraudulently. The adopted amendments in §224.58 implement Transportation Code, §503.0633(f). The department also adopts nonsubstantive changes to delete a duplicative word in §215.58(a)(5) and clarify language in §224.58(a)(5) and §224.58(c).

Amendments to §224.58 are being adopted without changes to the proposed text as published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5138) and are not being republished. Amendments to §224.27 are being adopted with a change to the proposed text as published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6439) and are being republished. Amendments to §224.54 are being adopted without changes to the proposed text as published in the August 23, 2024, issue of the *Texas Register* (49 TexReg 6439) and are not being republished.

REASONED JUSTIFICATION.

Subchapter A. General Provisions.

Adopted amendments to §224.27(d) delete the phrase "temporary tag database" and substitute the phrase "license plate system." This adopted amendment recognizes that under HB 718, the purpose of the database will change from the tracking and issuance of temporary tags to the tracking and issuing of license plates on July 1, 2025. At adoption the phrase "or converter" is being deleted in §224.27(d) because converters will not have access to the license plate system because they are not authorized to issue license plates under HB 718.

Subchapter B. Motor Vehicle, Salvage Vehicle, and Trailer Industry Enforcement.

An adopted amendment to §224.54(b)(5)(C) deletes the phrase "or temporary tags" because effective July 1, 2025, a dealer may only issue a license plate or set of license plates, rather than a temporary tag, under Transportation Code, Chapter 503, as amended by HB 718. Adopted amendments to §224.54(c)(4) delete the phrases "or temporary tags" and "use an internet down tag to" because effective July 1, 2025, a dealer may only issue a license plate or set of license plates, rather than a temporary tag or internet down tag, under Transportation Code, Chapter 503, as amended by HB 718. An adopted nonsubstantive amendment to §224.54(c)(6) adds a period to the end of the sentence to correct missing punctuation.

Adopted amendments to the title of §224.58 delete the phrase "or Converter" and substitute the phrase "License Plate System" for "Temporary Tag System". These adopted amendments recognize that under HB 718, a converter may not issue a temporary tag or license plate effective July 1, 2025, and that the purpose of the database will change from the tracking and issuance of temporary tags to the tracking and issuing of license plates on July 1, 2025. Adopted amendments throughout §§224.58(a)-(f) substitute the phrase "license plates" for "temporary tags" because effective July 1, 2025, a dealer may only issue a license plate or set of license plates, and not a temporary tag under Transportation Code, Chapter 503, as amended by HB 718. Adopted amendments throughout §§224.58(a) - (f) substitute the phrase "license plate system" for the terms "temporary tag database", "a database", and "database" because the purpose of the system will be to issue and track license plates effective July 1, 2025. Adopted amendments throughout §224.58(a) - (f) delete the phrases "or converter" and "or converter's" because a converter may not issue a temporary tag or license plate effective July 1, 2025, under Transportation Code, Chapter 503, as amended by HB 718.

Adopted amendments to §224.58(a) delete a statutory reference to Transportation Code, §503.0626 which was repealed by HB 718 and will no longer exist on July 1, 2025, and add references to §503.063 and §503.065. These two Transportation Code provisions authorize a dealer to issue a buyer's license plate or set of license plates to the purchaser of a motor vehicle in Texas under certain circumstances and to issue a buyer's temporary license plate to an out-of-state buyer. An adopted amendment to §224.58(a) adds "or issue" to clarify that a dealer misuses the license plate system by fraudulently obtaining or issuing a license plate. An adopted amendment to §224.58(a)(4) deletes "or" and adopted amendments to §215.58(a)(5) delete a period and add a semicolon and "or" because a new paragraph is adopted to be added as §215.58(a)(6). Adopted nonsubstantive changes to §224.58(a)(5) delete a redundant "issued," add "the dealer's" before "licensed location," and delete an unnecessary "a" before "storage lot" to clarify that license plate misuse includes a dealer obtaining or issuing a license plate for a vehicle or motor vehicle not located at the dealer's licensed location or storage lot. An adopted amendment adds new §215.58(a)(6), which defines license plate system misuse to include obtaining or issuing a license plate for a vehicle that is not titled or permitted by law to be operated on a public highway. This adopted new language addresses situations such as a dealer obtaining or issuing a license plate for a rebuilt vehicle that is not titled, or obtaining or issuing a license plate for a vehicle that has not passed a required emissions inspection in a nonattainment county and prevents the associated public harm.

An adopted amendment to §224.58(b) substitutes the phrase "or issued a license plate in the license plate system" for "temporary tags from the temporary tag database" to implement the change from temporary tags to license plates mandated by HB 718.

An adopted nonsubstantive change to §224.58(c) adds "address" after "email" to clarify that a notice under this section will be sent to the license holder's last known email address in the department-designated licensing system.

SUMMARY OF COMMENTS.

The department received two written comments from the Texas Automobile Dealers Association (TADA) and an individual.

Comment: TADA requests that a dealer not be denied access to the license plate system when a buyer returns a vehicle with an assigned license plate and the dealer later sells the same vehicle to another customer. TADA further requests the department adopt a rule to address what the dealer should do with a license plate that was assigned to a vehicle if a customer decides to return the vehicle to the dealer.

Response: The department disagrees with this comment. A dealer will not be denied access to the license plate system if the dealer documents the return of the vehicle and the assigned license plate in the department's designated system. The department denies access to the license plate system only when data suggests a dealer is committing fraud and a dealer may request a hearing prior to the decision becoming final.

The department will be providing system training to dealers which will include examples of how to properly void license plate assignments.

Comment: An individual comments that our temporary tag and license plate systems have become increasingly cumbersome and complex and reliant on the internet which can have outages, and that the department should improve related technology management or simplify the process.

Response: The department disagrees with this comment as the comment is not within the scope of this rule proposal. The department agrees that the new license plate management system must be built on a reliable technology platform and designed to be easy to use and is working with vendors to find and implement such a solution.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §224.27

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts amendments to Chapter 224 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Transportation Code, §501.0041, which authorizes the department to adopt rules to administer Transportation Code, Chapter 501; Transportation Code, §502.0021 which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.061, as amended by HB 718, which allows the board to adopt rules regulating the issuance and use of dealer's license plates; Transportation Code, §503.0631, which requires the department to adopt rules to implement and manage the department's database of dealer-issued buyer's license plates; Transportation Code, §503.0633, which allows the department to establish the maximum number of license plates or sets of license plates a dealer may obtain annually under Transportation Code, §503.063 and §503.065; Transportation Code, §504.0011, which authorizes the board to adopt rules to implement and administer Chapter 504; Transportation Code, §520.003, which authorizes the department to adopt rules to administer Chapter 520; Transportation Code, §520.021, which allows the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts amendments under the authority of Government Code, §2001.004 and §2001.054, in addition to the statutory authority referenced throughout this preamble. Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These adopted revisions implement Government Code, Chapter 2001; Occupations Code, Chapter 2301; and Transportation Code, Chapters 501-504, 520, 1001, and 1002.

§224.27. Final Order; Motion for Rehearing.

(a) The provisions of Government Code, Chapter 2001, Subchapter F, govern the issuance of a final order issued under this subchapter and a motion for rehearing filed in response to a final order.

(b) Except as provided by subsection (c) of this section and §224.29 of this title (relating to Delegation of Final Order Authority), the board has final order authority in a contested case filed under Occupations Code, Chapters 2301 or 2302, or under Transportation Code, Chapters 502, 503, 621-623, 643, 645, and 1001-1005.

(c) The hearings examiner has final order authority in a contested case filed under Occupations Code, §2301.204 or Occupations Code Chapter 2301, Subchapter M.

(d) A department determination and action denying access to the license plate system becomes final within 26 days of the date of the notice denying access to a database, unless the dealer:

(1) requests a hearing regarding the denial of access, or

(2) enters into a settlement agreement with the department.

(e) Unless a timely motion for rehearing is filed with the appropriate final order authority as provided by law, an order shall be deemed final and binding on all parties. All administrative remedies are deemed to be exhausted as of the effective date of the final order.

(f) If a timely motion for rehearing is not filed, the final order shall be deemed final and binding in accordance with the provisions of Government Code, §2001.144.

(g) If a final and binding order includes an action on a license, the department may act on the license on the date the final order is deemed final and binding, unless the action is stayed by a court order.

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. MOTOR VEHICLE, SALVAGE VEHICLE, AND TRAILER INDUSTRY ENFORCEMENT

43 TAC §224.54, §224.58

STATUTORY AUTHORITY. In addition to the rulemaking authority provided in Section 34 of HB 718, the department adopts amendments to Chapter 224 under Occupations Code, §2301.151, which gives the board authority to regulate the distribution, sale, and lease of motor vehicles and the authority to take any action that is necessary or convenient to exercise that authority; Occupations Code, §2301.152, which authorizes the board to establish the qualifications of license holders, ensure that the distribution, sale, and lease of motor vehicles is conducted as required by statute and board rules, to prevent fraud, unfair practices, discrimination, impositions, and other abuses in connection with the distribution and sale of motor vehicles, and to enforce and administer Occupations Code, Chapter 2301 and Transportation Code, Chapter 503; Occupations Code, §2301.155, which authorizes the board to adopt rules as necessary or convenient to administer Occupations Code, Chapter 2301 and to govern practice and procedure before the board; Occupations Code, §2301.651, which gives the board authority to deny an application for a license, revoke or suspend a license, place on probation, or reprimand a licensee if the applicant or license holder is unfit, makes a material misrepresentation, violates any law relating to the sale, distribution, financing, or insuring of motor vehicles, willfully defrauds a purchaser, or fails to fulfill a written agreement with a retail purchaser of a motor vehicle; Transportation Code, §501.0041, which authorizes the department to adopt rules to administer Transportation Code, Chapter 501; Transportation Code, §502.0021, which authorizes the department to adopt rules to administer Transportation Code, Chapter 502; Transportation Code, §503.002, which authorizes the board to adopt rules for the administration of Transportation Code, Chapter 503; Transportation Code, §503.009, which authorizes the board to adopt rules for certain contested cases; Transportation Code, §503.061, as amended by HB 718, which allows the board to adopt rules regulating the issuance and use of dealer's license plates; Transportation Code, §503.0631, which requires the department to adopt rules to implement and manage the department's database of dealer-issued buyer's license plates; Transportation Code, §503.0633, which allows the department to establish the maximum number of license plates or sets of license plates a dealer may obtain annually under Transportation Code, §503.063 and §503.065; Transportation Code, §504.0011, which authorizes the board to adopt rules to implement and administer Chapter 504; Transportation Code, §520.003 which authorizes the department to adopt rules to administer Chapter 520; Transportation Code, §520.021, which allows the department to adopt rules and policies for the maintenance and use of the department's automated registration and titling system; and Transportation Code, §1002.001, which authorizes the board to adopt rules that are necessary and appropriate to implement the powers and the duties of the department, as well as the statutes referenced throughout this preamble.

The department also adopts amendments under the authority of Government Code, §2001.004 and §2001.054, in addition to the statutory authority referenced throughout this preamble. Government Code, §2001.004 requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. Government Code, §2001.054 specifies the requirements regarding the grant, denial, renewal, revocation, suspension, annulment, or withdrawal of a license.

CROSS REFERENCE TO STATUTE. These adopted revisions implement Government Code, Chapter 2001; Occupations Code, Chapter 2301; and Transportation Code, Chapters 501 - 504, 520, 1001, and 1002.

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

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

TRD-202404995
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Effective date: July 1, 2025
Proposal publication date: July 12, 2024
Proposal publication date: August 23, 2024
For further information, please call: (512) 465-4160

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TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Department of State Health Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 131, Freestanding Emergency Medical Care Facilities, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 509, Freestanding Emergency Medical Care Facilities.

The rules will be transferred in the Texas Administrative Code effective November 29, 2024.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 131

TRD-202404981

Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 131, Freestanding Emergency Medical Care Facilities, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 509, Freestanding Emergency Medical Care Facilities.

The rules will be transferred in the Texas Administrative Code effective November 29, 2024.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 131

TRD-202404982

Figure: 25 TAC Chapter 131

Current Rules **Title 25. Health Services** **Part 1. Department of State Health Services** **Chapter 131. Freestanding Emergency Medical Care Facilities**	**Move to** **Title 26. Health and Human Services** **Part 1. Health and Human Services Commission** **Chapter 509. Freestanding Emergency Medical Care Facilities**
Subchapter F. Fire Prevention and Safety Requirements	**Subchapter F. Fire Prevention and Safety Requirements**
§131.121. Fire Prevention, Protection, and Emergency Contingency Plan.	§509.121. Fire Prevention, Protection, and Emergency Contingency Plan.
§131.122. General Safety.	§509.122. General Safety.
§131.123. Handling and Storage of Gases, Anesthetics, and Flammable Liquids.	§509.123. Handling and Storage of Gases, Anesthetics, and Flammable Liquids.
Subchapter G. Physical Plant and Construction Requirements	**Subchapter G. Physical Plant and Construction Requirements**
§131.141. Construction Requirements for a Pre-Existing Facility.	§509.141. Construction Requirements for a Pre-Existing Facility.
§131.142. Construction Requirements for an Existing Facility for Construction Completed after September 1, 2010.	§509.142. Construction Requirements for an Existing Facility for Construction Completed after September 1, 2010.
§131.143. Construction Requirements for a New Facility.	§509.143. Construction Requirements for a New Facility.
§131.144. Elevators, Escalators, and Conveyors.	§509.144. Elevators, Escalators, and Conveyors.
§131.145. Mobile, Transportable, and Relocatable Units.	§509.145. Mobile, Transportable, and Relocatable Units.
§131.146. Preparation, Submittal, Review and Approval of Plans, and Retention of Records.	§509.146. Preparation, Submittal, Review and Approval of Plans, and Retention of Records.
§131.147. Construction, Inspection, and Approval of Project.	§509.147. Construction, Inspection, and Approval of Project.
§131.148. Tables.	§509.148. Tables.

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Department of State Health Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 137, Birthing Centers, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 503, Birthing Centers.

The rules will be transferred in the Texas Administrative Code effective November 29, 2024.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 137

TRD-202404983

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Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 137, Birthing Centers, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 503, Birthing Centers.

The rules will be transferred in the Texas Administrative Code effective November 29, 2024.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 137

TRD-202404984

Figure: 25 TAC Chapter 137

Current Rules **Title 25. Health Services** **Part 1. Department of State Health Services** **Chapter 137. Birthing Centers**	**Move to** **Title 26. Health and Human Services** **Part 1. Health and Human Services Commission** **Chapter 503. Birthing Centers**
Subchapter A. General Provisions	**Subchapter A. General Provisions**
§137.1. Purpose and Scope.	§503.1. Purpose and Scope.
§137.2. Definitions.	§503.2. Definitions.
§137.3. Licensing Fees.	§503.3. Licensing Fees.
§137.4. General Provisions for Licensure.	§503.4. General Provisions for Licensure.
Subchapter B. Licensing Procedures	**Subchapter B. Licensing Procedures**
§137.11. Application Procedures and Issuance of Licenses.	§503.11. Application Procedures and Issuance of Licenses.
§137.12. Change of Ownership or Services and Closure.	§503.12. Change of Ownership or Services and Closure.
§137.13. Time Periods for Processing and Issuing a License.	§503.13. Time Periods for Processing and Issuing a License.
Subchapter C. Survey Procedures and Enforcement	**Subchapter C. Survey Procedures and Enforcement**
§137.21. On-Site Surveys.	§503.21. On-Site Surveys.
§137.22. License Denial, Suspension, Probation, or Revocation.	§503.22. License Denial, Suspension, Probation, or Revocation.
§137.23. Emergency Suspension.	§503.23. Emergency Suspension.
§137.24. Administrative Penalties.	§503.24. Administrative Penalties.
§137.25. Complaints.	§503.25. Complaints.
§137.26. Appointment and Qualifications of a Monitor.	§503.26. Appointment and Qualifications of a Monitor.
Subchapter D. Operational and Clinical Standards for the Provision and Coordination of Treatment and Services	**Subchapter D. Operational and Clinical Standards for the Provision and Coordination of Treatment and Services**
§137.31. Operational and Clinical Policies.	§503.31. Operational and Clinical Policies.
§137.32. Organizational Structure and Delegation of Authority.	§503.32. Organizational Structure and Delegation of Authority.
§137.33. Personnel Policies.	§503.33. Personnel Policies.
§137.34. Qualifications and Duties of Staff.	§503.34. Qualifications and Duties of Staff.
§137.36. Physical and Environmental Requirements for Centers.	§503.36. Physical and Environmental Requirements for Centers.
§137.37. Infection Control Standards.	§503.37. Infection Control Standards.
§137.38. Disposition of Medical Waste.	§503.38. Disposition of Medical Waste.
§137.39. General Requirements for the Provision and Coordination of Treatment and Services.	§503.39. General Requirements for the Provision and Coordination of Treatment and Services.
§137.40. Risk Assessments.	§503.40. Risk Assessments.

§137.41. Emergency Services.	§503.41. Emergency Services.
§137.42. Disclosure Requirements.	§503.42. Disclosure Requirements.
§137.43. Prenatal Care.	§503.43. Prenatal Care.
§137.44. Parenting and Postpartum Counseling.	§503.44. Parenting and Postpartum Counseling.
§137.46. Physician Consultant Procedures.	§503.46. Physician Consultant Procedures.
§137.47. Procedures for Drugs and Biologicals.	§503.47. Procedures for Drugs and Biologicals.
§137.48. Labor and Birth Procedures.	§503.48. Labor and Birth Procedures.
§137.49. Care of the Newborn.	§503.49. Care of the Newborn.
§137.50. Discharge Procedures.	§503.50. Discharge Procedures.
§137.51. Postpartum and Postnatal Care of the Mother and Newborn.	§503.51. Postpartum and Postnatal Care of the Mother and Newborn.
§137.52. Quality Assurance.	§503.52. Quality Assurance.
§137.53. Clinical Records.	§503.53. Clinical Records.
§137.54. Reporting and Filing Requirements.	§503.54. Reporting and Filing Requirements.
§137.55. Other State and Federal Compliance Requirements.	§503.55. Other State and Federal Compliance Requirements.

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Department of State Health Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 138, Disposition of Embryonic and Fetal Tissue Remains, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 512, Disposition of Embryonic and Fetal Tissue Remains.

The rules will be transferred in the Texas Administrative Code effective November 29, 2024.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 138

TRD-202404985

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Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 138, Disposition of Embryonic and Fetal Tissue Remains, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 512, Disposition of Embryonic and Fetal Tissue Remains.

The rules will be transferred in the Texas Administrative Code effective November 29, 2024.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 138

TRD-202404986

Figure: 25 TAC Chapter 138

Current Rules **Title 25. Health Services** **Part 1. Department of State Health Services** **Chapter 138. Disposition of Embryonic and Fetal Tissue Remains**	**Move to** **Title 26. Health and Human Services** **Part 1. Health and Human Services Commission** **Chapter 512. Disposition of Embryonic and Fetal Tissue Remains**
§138.1. Purpose.	§512.1. Purpose.
§138.2. Definitions.	§512.2. Definitions.
§138.3. Scope, Exemptions.	§512.3. Scope, Exemptions.
§138.4. Application of this Chapter.	§512.4. Application of this Chapter.
§138.5. Approved Methods of Treatment and Disposition.	§512.5. Approved Methods of Treatment and Disposition.
§138.6. Storage, Handling, and Transport Authorization.	§512.6. Storage, Handling, and Transport Authorization.
§138.7. Storage, Handling, and Transport Requirements.	§512.7. Storage, Handling, and Transport Requirements.
§138.8. Burial or Cremation Assistance Registry.	§512.8. Burial or Cremation Assistance Registry.

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Department of State Health Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 229, Food and Drug, Subchapter J, Minimum Standards for Narcotic Treatment Programs, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 563, Minimum Standards for Narcotic Treatment Programs.

The rules will be transferred in the Texas Administrative Code effective November 29, 2024.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 229, Subchapter J

TRD-202404987

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Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, certain functions previously performed by the Department of State Health Services (DSHS), including client services, certain regulatory functions, and the operation of state hospitals, transferred to the Texas Health and Human Services Commission (HHSC) in accordance with Texas Government Code, §531.0201 and §531.02011. The DSHS rules in Texas Administrative Code, Title 25, Part 1, Chapter 229, Food and Drug, Subchapter J, Minimum Standards for Narcotic Treatment Programs, that are related to these transferred functions, are being transferred to HHSC under Texas Administrative Code, Title 26, Part 1, Chapter 563, Minimum Standards for Narcotic Treatment Programs.

The rules will be transferred in the Texas Administrative Code effective November 29, 2024.

The following table outlines the rule transfer:

Figure: 25 TAC Chapter 229, Subchapter J

TRD-202404988

Figure: 25 TAC Chapter 229, Subchapter J

Current Rules **Title 25. Health Services** **Part 1. Department of State Health Services** **Chapter 229. Food and Drug** **Subchapter J. Minimum Standards for Narcotic Treatment Programs**	**Move to** **Title 26. Health and Human Services** **Part 1. Health and Human Services Commission** **Chapter 563. Minimum Standards for Narcotic Treatment Programs**
§229.141. General Provisions.	§563.141. General Provisions.
§229.142. Definitions.	§563.142. Definitions.
§229.143. Organization.	§563.143. Organization.
§229.144. State and Federal Statutes and Regulations.	§563.144. State and Federal Statutes and Regulations.
§229.145. Applications, Fees, Permits.	§563.145. Applications, Fees, Permits.
§229.146. Failure to Comply.	§563.146. Failure to Comply.
§229.147. Denial of Application; Suspension or Revocation of a Narcotic Drug Permit.	§563.147. Denial of Application; Suspension or Revocation of a Narcotic Drug Permit.
§229.148. State Operational Requirements.	§563.148. State Operational Requirements.
§229.149. Inspections and Monitoring.	§563.149. Inspections and Monitoring.
§229.150. Central Registry.	§563.150. Central Registry.
§229.151. Approved Hospital Narcotic Drug Detoxification Treatment.	§563.151. Approved Hospital Narcotic Drug Detoxification Treatment.
§229.152. Federal Regulations.	§563.152. Federal Regulations.
§229.153. Enforcement.	§563.153. Enforcement.

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Department of Aging and Disability Services

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. Certain sections in the former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 72, Memorandum of Understanding with Other State Agencies are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 3, Memorandum of Understanding with Other State Agencies.

The rules will be transferred in the Texas Administrative Code effective November 29, 2024.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 72

TRD-202405091

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Health and Human Services Commission

Rule Transfer

During the 84th Legislative Session, the Texas Legislature passed Senate Bill 200, addressing the reorganization of health and human services delivery in Texas. As a result, some agencies were abolished and their functions transferred to the Texas Health and Human Services Commission (HHSC). Texas Government Code, §531.0202(b), specified the Department of Aging and Disability Services (DADS) be abolished September 1, 2017, after all its functions were transferred to HHSC in accordance with Texas Government Code, §531.0201 and §531.02011. Certain sections in the former DADS rules in Texas Administrative Code, Title 40, Part 1, Chapter 72, Memorandum of Understanding with Other State Agencies are being transferred to Texas Administrative Code, Title 26, Part 1, Chapter 3, Memorandum of Understanding with Other State Agencies.

The rules will be transferred in the Texas Administrative Code effective November 29, 2024.

The following table outlines the rule transfer:

Figure: 40 TAC Chapter 72

TRD-202405092

Figure: 40 TAC Chapter 72

Current Rules **Title 40. Social Services and Assistance** **Part 1. Department Of Aging And Disability Services** **Chapter 72. Memorandum of Understanding with Other State Agencies**	**Move to** **Title 26. Health and Human Services** **Part 1. Health and Human Services Commission** **Chapter 3. Memorandum of Understanding with Other State Agencies**
Subchapter A. Memoranda of Understanding for Long-Term Care	**Subchapter A. Memoranda of Understanding for Long-Term Care**
§72.101. Services in Hospitals and Long-term Care Institutions.	§3.1. Services in Hospitals and Long-term Care Institutions.
§72.103. Assisted Living Facilities.	§3.3. Assisted Living Facilities.
Subchapter B. Memorandum of Understanding Concerning Coordination of Services to Persons with Disabilities	**Subchapter B. Memorandum of Understanding Concerning Coordination of Services to Persons with Disabilities**
§72.201. Basis.	§3.51. Basis.
§72.202. Texas Department of Human Services (DHS).	§3.53. Texas Department of Human Services (DHS).
§72.203. Texas Department of Health (TDH).	§3.55. Texas Department of Health (TDH).
§72.204. Texas Department of Mental Health and Mental Retardation (TXMHMR).	§3.57. Texas Department of Mental Health and Mental Retardation (TXMHMR).
§72.205. Texas Rehabilitation Commission.	§3.59. Texas Rehabilitation Commission.
§72.206. Texas Commission for the Blind.	§3.61. Texas Commission for the Blind.
§72.207. Texas Commission for the Deaf and Hearing Impaired.	§3.63. Texas Commission for the Deaf and Hearing Impaired.
§72.208. Texas Education Agency (TEA).	§3.65. Texas Education Agency (TEA).
§72.209. Texas Department of Protective and Regulatory Services (PRS).	§3.67. Texas Department of Protective and Regulatory Services (PRS).
§72.210. The Texas Interagency Council on Early Childhood Intervention (ECI).	§3.69. The Texas Interagency Council on Early Childhood Intervention (ECI).
§72.211. Agreement.	§3.71. Agreement.
§72.212. Effective Date.	§3.73. Effective Date.
Subchapter C. Memorandum of Understanding for Exchange and Distribution of Public Awareness Information	**Subchapter C. Memorandum of Understanding for Exchange and Distribution of Public Awareness Information**
§72.301. Authorization and Requirement To Exchange and Distribute Public Awareness Information.	§3.101. Authorization and Requirement To Exchange and Distribute Public Awareness Information.
Subchapter J. Memorandum of Understanding with the Texas Department of Criminal Justice	**Subchapter D. Memorandum of Understanding with the Texas Department of Criminal Justice**
§72.4001. Memorandum of Understanding with the Texas Department of Criminal Justice.	§3.151. Memorandum of Understanding with the Texas Department of Criminal Justice.

Subchapter N. MOU--Coordination Of Special Education Services To Students With Disabilities In Residential Facilities	Subchapter E. MOU--Coordination Of Special Education Services To Students With Disabilities In Residential Facilities
§72.5003. Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities.	§3.251. Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities.

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The Alamo
The Rio grande

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Motor Vehicle Crime Prevention Authority

Title 43, Part 3

The Texas Department of Motor Vehicles (department) will review and consider whether to readopt, readopt with amendments, or repeal 43 Texas Administrative Code, Chapter 57, Motor Vehicle Crime Prevention Authority. This review is being conducted pursuant to Government Code, §2001.039.

The board of the Motor Vehicle Crime Prevention Authority will assess whether the reasons for initially adopting these rules continue to exist and whether the rules should be repealed, readopted, or readopted with amendments.

If you want to comment on this rule proposal, submit your written comments by 5:00 p.m. Central Standard Time on December 9, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

Any proposed changes to sections of this chapter will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30-day comment period.

TRD-202404968
David Richards
General Counsel
Motor Vehicle Crime Prevention Authority
Filed: October 23, 2024

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Texas Department of Motor Vehicles

Title 43, Part 10

The Texas Department of Motor Vehicles (department) will review and consider whether to readopt, readopt with amendments, or repeal 43 Texas Administrative Code, Chapter 210, Contract Management, and Chapter 211, Criminal History Offense and Action on License. This review is being conducted pursuant to Government Code, §2001.039.

The board of the Texas Department of Motor Vehicles will assess whether the reasons for initially adopting these rules continue to exist and whether the rules should be repealed, readopted, or readopted with amendments.

If you want to comment on this rule review proposal, submit your written comments by 5:00 p.m. Central Standard Time on December 9, 2024. A request for a public hearing must be sent separately from your written comments. Send written comments or hearing requests by email to *rules@txdmv.gov* or by mail to Office of General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Austin, Texas 78731. If a hearing is held, the department will consider written comments and public testimony presented at the hearing.

Proposed changes to sections of Chapter 210 and Chapter 211 are published in the Proposed Rules section of this issue of the *Texas Register* and are open for a 30-day public comment period.

TRD-202404974
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Filed: October 24, 2024

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Adopted Rule Reviews

Finance Commission of Texas

Title 7, Part 1

The Finance Commission of Texas (commission) has completed the rule review of Texas Administrative Code, Title 7, Part 1, Chapter 7, concerning Texas Financial Education Endowment Fund, in its entirety. The rule review was conducted under Texas Government Code, §2001.039.

Notice of the review of 7 TAC Chapter 7 was published in the August 2, 2024, issue of the *Texas Register* (49 TexReg 5783). The commission received no comments in response to that notice. The commission believes that the reasons for initially adopting the rules contained in this chapter continue to exist.

As a result of the rule review, the commission finds that the reasons for initially adopting the rules in 7 TAC Chapter 7 continue to exist, and readopts this chapter in accordance with the requirements of Texas Government Code, §2001.039.

TRD-202405058
Matthew Nance
General Counsel, Office of Consumer Credit Commissioner
Finance Commission of Texas
Filed: October 25, 2024

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Texas Lottery Commission

Title 16, Part 9

The Texas Lottery Commission (Commission) has reviewed the Commission's rules at 16 Texas Administrative Code (TAC) Chapter 401 (Administration of State Lottery Act) in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules), and hereby readopts the rules in Chapter 401. The Commission has determined that the reasons for adopting each of the rules in Chapter 401 continue to exist, as discussed below. As a result of this review, and as discussed below, the Commission has determined that some rules in Chapter 401 need to be amended, actions which will be proposed in a separate rulemaking proceeding.

Among the more significant changes, the proposed amendments will address issues identified as rulemaking gaps in the May 2024 Texas Sunset Advisory Commission Staff Report (Staff Report). Specifically, the Staff Report noted that there was "no clarification as to whether internet sales of lottery products are prohibited" (addressed in Rules 401.153(b)(12), 401.158(b)(27), 401.160(h), and 401.355(a)), and "no explanation of what it means for a person to 'engage in a business exclusively as a (lottery) sales agent' for purposes of licensure" (addressed in Rule 401.153(b)(13)).

The proposed rule amendments will also clarify procurement procedures and the time period a bidder or proposer has to respond to an appeal of certain protest decisions issued by the agency in procurements; update several definitions; update a provision in the scratch ticket game rule to make it more consistent with the draw game rule; update the scratch and draw ticket prize claim processes; and update the language regarding lottery security to state that several divisions of the Commission are responsible for developing and maintaining security plans and procedures, and confirming that these plans and procedures are protected from required public disclosure as allowed under the Texas Public Information Act.

The Chapter 401 rules consist of seven (7) subchapters with a total of sixty-seven (67) rules. Subchapter A (Procurement) includes the following rules:

§401.101 - Lottery Procurement Procedures

§401.102 - Protests of the Terms of a Formal Competitive Solicitation

§401.103 - Protests of Contract Award

§401.104 - Contract Monitoring Roles and Responsibilities

§401.105 - Major Procurement Approval Authority, Responsibilities and Reporting

Because the Commission contracts for certain lottery-related goods and services, the Subchapter A procurement rules are necessary for the administration and operation of the lottery; thus, the reasons for these rules continue to exist.

The Commission, however, will propose amendments to Rule 401.101 to clarify the rules governing the Invitation for Bid (IFB) procurement method by reorganizing the section and by adding language that describes the process used for IFBs. The proposed amendments will also clarify certain differences between the Request for Proposals (RFP) and IFB procurement methods.

The proposed amendments to Rule 401.102 will add language stating that the email address designated by the vendor for correspondence in the procurement will also serve as the email address for notice of proceedings and decisions under this section.

The proposed amendments to Rule 401.103(g) will clarify the time period a successful bidder or proposer has to respond to an appeal of an agency determination of a vendor's protest to a contract award resulting from a competitive solicitation. Also, the proposal will add language stating that the email address designated by the vendor for correspondence in the procurement will also serve as the email address for notice of proceedings and decisions under this section.

The proposed amendments to Rule 401.104 will clarify that the agency may assign designated personnel to monitor contract compliance and facilitate historically underutilized business participation, in addition to the existing divisions within the agency that handle these matters.

Subchapter B (Licensing of Sales Agents) includes the following rules:

§401.152 - Application for License

§401.153 - Qualifications for License

§401.155 - Expiration of License

§401.156 - Renewal of License

§401.157 - Provisional License

§401.158 - Suspension or Revocation of License

§401.159 - Summary Suspension of License

§401.160 - Standard Penalty Chart

The Commission licenses approximately twenty-one thousand (21,000) lottery ticket sales agents in Texas. The Subchapter B rules set forth the license application and renewal process, qualification requirements, license terms, and disciplinary process applicable to lottery ticket sales agents. These rules are necessary for the administration of the Commission's lottery licensing program; thus, the reasons for adopting them continue to exist.

The Commission, however, has determined that proposed amendments to Rule 401.153(b)(12) are necessary to clarify that an application for a sales agent license will be denied if the applicant intends to sell lottery tickets via the internet, and proposed amendments to Rule 401.153(b)(13) are needed to reiterate the prohibition in the State Lottery Act that an application for a sales agent license will be denied if the applicant intends to engage in business exclusively as a Texas Lottery ticket sales agent (as defined in the proposed amendments). This change will address gaps that were identified by the Staff Report.

Proposed amendments to Rule 401.153 will also add a provision that, based upon consideration of the factors in Rule 401.160(g), the director may determine a person or organization whose license has been revoked, surrendered or denied is not eligible to apply for another license for one year.

The proposed amendments to Rule 401.158(b)(23) will make it an express violation to require a purchaser to buy additional items when paying for lottery tickets with a debit card and the proposed amendments to Rule 401.158(b)(27) will make it an express violation to sell lottery tickets over the internet.

The proposed amendments to Rule 401.160 will update the penalty chart and correspond with the proposed amendments to Rules 401.158(b)(23) and (27) referenced above.

Subchapter C (Practice and Procedure) includes the following rules:

§401.201 - Intent and Scope of Rules

§401.202 - Construction of Rules

§401.203 - Contested Cases

§401.205 - Initiation of a Hearing

§401.207 - Written Answer; Default Proceedings

§401.211 - Law Governing Contested Cases

§401.216 - Subpoenas, Depositions, and Orders to Allow Entry

§401.220 - Motion for Rehearing

§401.227 - Definitions

Subchapter C includes rules applicable to enforcement matters and other contested proceedings involving a lottery or bingo licensee or applicant under the State Lottery Act or the Bingo Enabling Act, respectively. In addition, the Texas Administrative Procedure Act at §2001.004 requires state agencies to adopt such rules of practice. Thus, the reasons for adopting the Subchapter C rules continue to exist. No substantive amendment or repeal of these rules is recommended at this time.

Subchapter D (Lottery Game Rules) includes the following rules:

§401.301 - General Definitions

§401.302 - Scratch Ticket Game Rules

§401.303 - Grand Prize Drawing Rule

§401.304 - Draw Game Rules (General)

§401.305 - "Lotto Texas" Draw Game Rule

§401.306 - Video Lottery Games

§401.307 - "Pick 3" Draw Game Rule

§401.308 - "Cash Five" Draw Game Rule

§401.309 - Assignability of Prizes

§401.310 - Payment of Prize Payments Upon Death of Prize Winner

§401.312 - "Texas Two Step" Draw Game Rule

§401.313 - Promotional Drawings

§401.314 - Retailer Bonus Programs

§401.315 - "Mega Millions" Draw Game Rule

§401.316 - "Daily 4" Draw Game Rule

§401.317 - "Powerball" Draw Game Rule

§401.318 - Withholding of Delinquent Child-Support Payments from Lump-sum and Periodic Installment Payments of Lottery Winnings in Excess of Six Hundred Dollars

§401.319 - Withholding of Child-Support Payments from Periodic Installment Payments of Lottery Winnings

§401.320 - "All or Nothing" Draw Game Rule

§401.321 - Scratch Tickets Containing Non-English Words

§401.324 - Prize Winner Election to Remain Anonymous

Subchapter D includes the Commission's lottery game rules. These rules provide information regarding how Texas Lottery scratch ticket and draw games are played, the prizes that can be won, the methods by which lottery tickets may be claimed and validated, as well as information relating to debt set-off for child-support payments, retailer bonus programs, payment of prize money to the estate of a deceased prize winner, and statements to be included in court orders involving assignments of prize payments. Because the Commission generates revenue for the state through the sale of lottery game tickets, the reasons for adopting each of these rules continue to exist.

The Commission, however, has determined that amendments to Rule 401.301(1), (4), (51), and (55) are necessary to make minor updates to multiple definitions to increase the clarity of those definitions. The proposed amendments will also add a definition of "Present at the terminal" that was deleted in a non-substantive rule amendment in August 2020. The purpose of re-inserting the definition, in combination with the related proposed amendment to Rule 401.304(b)(3), is to dispel any misconception that the deletion was substantive and make clear that all aspects of a sales transaction under Rule 401.304 must take place at the retail location.

The proposed amendments to Rule 401.302(a)(1) will add language from Rule 401.304(b)(3) (Draw Game Rules (General)) regarding the requirement that all aspects of a ticket purchase must take place at a licensed retail location, to make Rule 401.302 more consistent with Rule 401.304. The proposed amendments to Rule 401.302(e)(6) and (f)(2) will update the rule by requiring all scratch ticket prize claim processes to be made in accordance with Commission procedures and deleting requirements that are inapplicable to mobile prize claims.

The proposed amendments to Rule 401.304(b)(3) will add language that was deleted in a non-substantive rule amendment in 2020 to reiterate and clarify that no part of a draw game ticket sale may take place away from the terminal. The proposed amendments to Rule 401.304(d)(3) will update the rule by requiring all draw ticket prize claim processes to be made in accordance with Commission procedures and deleting requirements that are inapplicable to mobile prize claims.

Subchapter E (Retailer Rules) includes the following rules:

§401.351 - Proceeds from Ticket Sales

§401.352 - Settlement Procedures

§401.353 - Retailer Settlements, Financial Obligations, and Commissions

§401.355 - Restricted Sales

§401.357 - Texas Lottery as Retailer

§401.360 - Payment of Prizes

§401.361 - Required Purchases of Lottery Tickets

§401.362 - Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Damaged or Rendered Unsaleable, for Winning Lottery Tickets Paid and for Lottery-Related Property

§401.363 - Retailer Record

§401.364 - Training

§401.366 - Compliance with All Applicable Laws

§401.368 - Lottery Ticket Vending Machines

§401.370 - Retailer's Financial Responsibility for Lottery Tickets Received and Subsequently Stolen or Lost

§401.371 - Collection of Delinquent Obligations for Lottery Retailer Related Accounts

§401.372 - Display of License

As noted above, the Commission licenses approximately 21,000 lottery ticket sales agents. The Subchapter E rules set forth the operational requirements, duties, and obligations of sales agents, including their financial responsibility to the State of Texas. These rules are necessary for the administration and effective oversight of Texas Lottery ticket sales; thus, the reasons for adopting these rules continue to exist.

The Commission, however, has determined that amendments to Rule 401.355(a) are necessary to clarify that retailers shall not sell lottery tickets via the internet, a gap that was identified by the Staff Report, and the proposed amendments to Rule 401.355(b) will update a cross-reference.

Subchapter F (ADA Requirements) includes the following rules:

§401.401 - Definitions

§401.402 - General Requirements

§401.403 - Readily Achievable Barrier Removal

§401.404 - Priority of ADA Compliance by Lottery Licensees

§401.405 - Alternatives to Barrier Removal

§401.406 - Future Alterations to a Lottery Licensed Facility

§401.407 - Complaints Relating to Non-accessibility

§401.408 - Requests for Hearings

The Subchapter F rules address the prohibition against discrimination imposed by the federal Americans with Disabilities Act (ADA), compliance by licensed lottery ticket sales agents with ADA accessibility requirements, and the procedure for the Commission to receive and to address complaints regarding discrimination or accessibility under the ADA. Because the designated location of a Texas Lottery ticket sales agent license is subject to the ADA's requirements, the reasons for adopting each of these rules continue to exist. No substantive amendment or repeal of these rules is recommended at this time.

Subchapter G (Lottery Security) includes the following rule:

§401.501 - Lottery Security

The reasons for adopting §401.501, regarding the Commission's statutory mandate to ensure the security and integrity of the Texas Lottery, and to maintain a security plan and other security procedures, continue to exist.

The Commission, however, will propose amendments to Rule 401.501 to update the language regarding lottery security to state that several divisions of the Commission are responsible for developing and maintaining security plans and procedures, including information security, gaming security, and facility security as required by the State Lottery Act to ensure the integrity and security of the lottery games, and confirming that these plans and procedures are protected from required public disclosure as allowed under the Texas Public Information Act.

The Commission will propose amendments to the rules requiring amendments in a separate rulemaking action.

This review and readoption has been conducted in accordance with the requirements of Texas Government Code §2001.039. The Commission received no comments on the proposed review, which was published in the October 27, 2023 issue of the *Texas Register* (48 TexReg 6393).

This action concludes the Commission's review of 16 TAC Chapter 401.

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Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 30, 2024

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The Texas Lottery Commission (Commission) has reviewed the Commission's rules at 16 Texas Administrative Code (TAC) Chapter 402 (Charitable Bingo Operations Division) in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules), and hereby readopts the rules in Chapter 402. The Commission has determined that the reasons for adopting each of the rules in Chapter 402 continue to exist, as discussed below. As a result of this review, and as discussed below, the Commission has determined that some rules in Chapter 402 need to be repealed, added, or amended, actions which will be proposed in a separate rulemaking proceeding. The repeal of several rules is for organizational purposes only and their substance will remain in other rules. Further, the Commission notes that the Bingo Advisory Committee (BAC) met on April 3, 2024, June 5, 2024, and August 6, 2024, to discuss this rule review and presented the staff with its recommendations and comments. On August 7, 2024, during a meeting of the Commission, BAC Chairman Trace Smith informed the Commissioners that the BAC supports closing the rule review process and moving forward with the proposed rulemaking. The purpose of the BAC includes advising the Commission on the needs and problems of the state's bingo industry and to report their activities to the Commission. The Commission hereby takes the BAC's recommendations under advisement and will continue to work with the BAC and industry stakeholders on future rulemaking initiatives.

Among the more significant changes, the proposed amendments will address issues identified as rulemaking gaps in the May 2024 Texas Sunset Advisory Commission Staff Report (Staff Report). Specifically, the Staff Report noted that there was "no clarification of what classifies as a bingo hall's 'premises'… (addressed in Rule 402.100), "no clarification that bingo products may not be purchased using a credit card … (addressed in Rule 402.200), "no clarification of how certain grandfathered bingo licenses may be transferred" (addressed in Rule 402.443), and "no definition of what constitutes a repeat violation … (addressed in Rule 402.706). The Staff Report also recommended considering a licensee's compliance history in audit determinations (addressed in Rule 402.703) and eliminating warnings for serious offenses and repeat violations of less serious offenses (addressed in Rules 402.706 and 402.707).

The proposed amendments will also amend aspects of the BAC to ensure that it complies with the Bingo Enabling Act (BEA); break two comprehensive rules on pull-tabs and bingo paper into multiple smaller rules for ease of reference; create a single standard for determining when a form, report, application, or payment has been mailed to the Commission; clarify and update agency processes; eliminate references to terms, laws, and processes that are no longer in place; and conform the rules to the BEA.

The Chapter 402 rules consist of seven (7) subchapters with a total of seventy-nine (79) rules. Subchapter A (Administration) consists of the following rules:

§402.100 - Definitions

§402.101 - Advisory Opinions

§402.102 - Bingo Advisory Committee

§402.103 - Training Program

§402.104 - Delinquent Obligations

Subchapter A consists of rules addressing the Commission's administration of charitable bingo and the process for handling delinquent obligations owed to the Commission.

Rule 402.100 remains necessary and the reasons for initially adopting the rule continue to exist because this rule defines key terms used throughout the Chapter 402 rules.

Rule 402.101 remains necessary and the reasons for initially adopting the rule continue to exist, because this rule provides details regarding the process for requesting and issuing bingo advisory opinions, which is a duty imposed upon the Commission under Texas Occupations Code §2001.059.

Rule 402.102 governs the operations of the BAC and the reasons for initially adopting the rule continue to exist.

Rule 402.103 remains necessary and the reasons for initially adopting the rule continue to exist, because the rule implements Texas Occupations Code §2001.107, which requires the Commission to establish by

rule a training program for certain individuals associated with bingo conductors.

Finally, Rule 402.104 remains necessary and the reasons for initially adopting the rule continue to exist, because this rule implements Texas Government Code §2107.002, which requires all state agencies to establish procedures by rule for collecting delinquent obligations.

The Commission, however, intends to propose amendments to Rules 402.100, 402.101, 402.102, 402.103, and to propose a new rule at 402.105.

The proposed amendments to Rule 402.100 will include a definition of "premises", as noted in the Staff Report.

The proposed amendments to Rule 402.101 will change a reference to the bingo operations director from "his" to "his or her" and eliminate the requirement that the general counsel approve bingo advisory opinions before they are issued.

The proposed amendments to Rule 402.102 are necessary to ensure that the BAC appointment process complies with the Bingo Enabling Act (BEA) and to allow for virtual meetings.

The proposed amendments to Rule 402.103 are needed to reflect that the agency does not always offer conductors on-site training and to codify the agency's practice that non-regular conductors are not subject to training requirements.

The proposed new Rule 402.105 will provide a single standard for determining the delivery date of all submissions to the agency. No other substantive amendments are recommended at this time.

Subchapter B (Conduct of Bingo) consists of the following rules:

§402.200 - General Restrictions on the Conduct of Bingo

§402.201 - Prohibited Bingo Occasion

§402.202 - Transfer of Funds

§402.203 - Unit Accounting

§402.204 - Prohibited Price Fixing

§402.205 - Unit Agreements

§402.210 - House Rules

§402.211 - Other Games of Chance

§402.212 - Promotional Bingo

Subchapter B consists of rules governing the conduct and operation of charitable bingo, the creation and operation of bingo units, the transfer of funds into an organization's bingo account, the prohibition on price fixing for bingo equipment, and the restrictions on other games of chance conducted during a bingo occasion. These rules remain necessary and the reasons for initially adopting these rules continue to exist, because they help ensure that charitable bingo in Texas is conducted fairly and in accordance with Article III, Section 47 of the Texas Constitution and the BEA.

The Commission, however, intends to propose amendments to Rules 402.200, 402.201, 402.202, 402.203, 402.210, and 402.212.

The proposed amendments to Rule 402.200 will correct a typo and specify that formal complaints to the Commission must be in writing. The amendments will also codify a prior bingo advisory opinion holding that organizations may not accept credit payments for bingo products, which was noted in the Staff Report.

The proposed amendments to Rule 402.201 will codify the long-standing Commission practice and process of issuing cease-and-desist letters and copying local law enforcement in substantiated cases of illegal bingo.

The proposed amendments to Rule 402.202 will delete a reference to the timely submission of a transfer of funds form which is no longer necessary due to the proposed new Rule 402.105.

The proposed amendments to Rule 402.203 will conform the rules regarding the sale of pull-tabs between organizations with the BEA.

The proposed amendments to Rule 402.210 are necessary to prohibit organizations from allowing people to offer to sell bingo products or award bingo prizes to people outside of an occasion via a telecommunications device.

The proposed amendments to Rule 402.212 will clarify that approval for a promotional bingo event will only be issued if the request complies with all the requirements of the rule. No other substantive amendments are recommended at this time.

Subchapter C (Bingo Games and Equipment) consists of the following rules:

§402.300 - Pull-Tab Bingo

§402.301 - Bingo Card/Paper

§402.303 - Pull-tab or Instant Bingo Dispensers

§402.321 - Card-Minding Systems--Definitions

§402.322 - Card-Minding Systems--Site System Standards

§402.323 - Card-Minding Systems--Device Standards

§402.324 - Card-Minding Systems--Approval of Card-Minding Systems

§402.325 - Card-Minding Systems--Licensed Authorized Organizations Requirements

§402.326 - Card-Minding Systems--Distributor Requirements

§402.327 - Card-Minding Systems--Security Standards

§402.328 - Card-Minding Systems--Inspections and Restrictions

§402.331 - Shutter Card Bingo Systems - Definitions

§402.332 - Shutter Card Bingo Systems - Site System Standards

§402.333 - Shutter Card Bingo Systems - Shutter Card Station and Customer Account Standards

§402.334 - Shutter Card Bingo Systems - Approval of Shutter Card Bingo Systems

§402.335 - Shutter Card Bingo Systems - Licensed Authorized Organization Requirements

§402.336 - Shutter Card Bingo Systems - Distributor Requirements

§402.337 - Shutter Card Bingo Systems - Security Standards

§402.338 - Shutter Card Bingo Systems - Inspections and Restrictions

Subchapter C consists of rules governing bingo equipment, including pull-tab tickets, bingo cards and paper, ticket dispensers, shutter card bingo systems, and card-minding systems. These rules remain necessary and the reasons for initially adopting these rules continue to exist because they help ensure that charitable bingo games are conducted, and bingo equipment is created, in compliance with the BEA.

The Commission, however, intends to propose repeals of Rules 402.301 and 402.303, amendments to Rules 402.300, 402.324, 402.325, 402.326, and 402.334, and new Rules 402.301, 402.302,

402.303 402.304, 402.305, 402.306, 402.307, 402.308, 402.309, 402.310, and 402.311.

The changes associated with Rules 402.300-402.311 relate to breaking up Rules 402.300 (Pull-Tab Bingo) and 402.301 (Bingo Card/Paper) into smaller, more manageable rules. To that end, Rules 402.301 and 402.303 must be repealed and replaced, along with proposed amendments to Rule 402.300 and proposed new rules at 402.302, 402.304, 402.305, 402.306, 402.307, 402.308, 402.309, 402.310, and 402.311. There are no substantive changes to the text of these rules except that the proposed new Rules 402.306 and 402.310 will allow break-open bingo games to be pre-called, and will properly categorize braille and loteria cards as bingo equipment that require approval by the Commission.

The proposed amendments to Rule 402.324 will eliminate all references to the Commission's testing lab and will require manufacturers to provide any forms and documentation necessary to ensure that their card-minding systems comply with required standards.

The proposed amendments to Rule 402.325 will provide that the voided receipts organizations are required to attach to the bingo occasion report must include all payments (cash or otherwise) for pre-sales.

The proposed amendments to Rule 402.326 will delete an obsolete reference to modems.

The proposed amendments to Rule 402.334 will require a manufacturer to provide any software necessary to determine if its shutter card bingo system meets rule requirements. No other substantive amendments are recommended at this time.

Subchapter D (Licensing Requirements) consists of the following rules:

§402.400 - General Licensing Provisions

§402.401 - Temporary License

§402.402 - Registry of Bingo Workers

§402.403 - Licenses for Conduct of Bingo Occasions and to Lease Bingo Premises

§402.404 - License Classes and Fees

§402.405 - Temporary Authorization

§402.406 - Bingo Chairperson

§402.407 - Unit Manager

§402.408 - Designation of Members

§402.409 - Amendment for Change of Premises or Occasions Due to Lease Termination or Abandonment

§402.410 - Amendment of a License - General Provisions

§402.411 - License Renewal

§402.412 - Signature Requirements

§402.413 - Military Service Members, Military Veterans, and Military Spouses

§402.420 - Qualifications and Requirements for Conductor's License

§402.422 - Amendment to a Regular License to Conduct Charitable Bingo

§402.424 - Amendment of a License by Electronic Mail, Telephone or Facsimile

§402.442 - Amendment to a Commercial Lessor License

§402.443 - Transfer of a Grandfathered Lessor's Commercial Lessor License

§402.450 - Request for Waiver

§402.451 - Operating Capital

§402.452 - Net Proceeds

§402.453 - Request for Operating Capital Increase

The Commission currently licenses around thirteen hundred (1,300) charitable bingo conductors, commercial lessors, and manufacturers and distributors, and has approved around eight thousand seven hundred (8,700) individuals to be listed on the bingo worker registry in Texas. Subchapter D includes rules governing the application, renewal, and amendment process for Commission-issued licenses and listings on the bingo worker registry. These rules are necessary for the proper administration of the Commission's charitable bingo licensing and worker registry program. Therefore, the Commission has determined that the reasons for initially adopting these rules continue to exist.

Subchapter D also includes rules that implement BEA provisions that govern the amount of operating capital a bingo conductor may maintain, the net proceeds a bingo conductor must produce, and the process by which licensees may request a waiver of these requirements. These rules are necessary to help ensure that bingo proceeds are directed to statutorily-authorized purposes. Therefore, the Commission has determined that the reasons for initially adopting these rules continue to exist.

The Commission, however, intends to propose amendments to Rules 402.400, 402.401, 402.402, 402.404, 402.411, and 402.443.

The proposed amendments to Rule 402.400 will provide that the Commission will not return a license application when the applicant has failed to respond to a request for more information within 21 days.

The proposed amendments to Rule 402.401 will clarify how many temporary licenses a regular organization may retain after surrendering its regular license.

The proposed amendments to Rule 402.402 will eliminate the requirement to list an applicant's race on an application for the worker registry.

The proposed amendments to Rule 402.404 will eliminate an unnecessary term.

The proposed amendments to Rule 402.411 will delete a reference to the timely submission of license renewal applications, which is no longer necessary due to the proposed new Rule 402.105.

The proposed amendments to Rule 402.443 will codify the Commission's practice on the transfer of grandfathered lessor licenses, as noted in the Staff Report. No other substantive amendments are recommended at this time.

Subchapter E (Books and Records) consists of the following rules:

§402.500 - General Records Requirements

§402.501 - Charitable Use of Net Proceeds

§402.502 - Charitable Use of Net Proceeds Recordkeeping

§402.503 - Bingo Gift Certificates

§402.504 - Debit Card Transactions

§402.505 - Permissible Expense

§402.506 - Disbursement Records Requirements

§402.511 - Required Inventory Records

§402.514 - Electronic Fund Transfers

Subchapter E consists of rules governing the record-keeping and reporting requirements related to the conduct of charitable bingo and the standards for determining the propriety of certain expenses. These rules remain necessary and the reasons for initially adopting these rules continue to exist, because they help ensure that bingo proceeds are only used for statutorily-authorized purposes.

The Commission, however, intends to propose amendments to Rules 402.500 and 402.502.

The proposed amendments to Rule 402.500 will codify the Commission's practice requiring cash basis accounting.

The proposed amendments to Rule 402.502 will eliminate unnecessary language related to the kinds of documentation that may be relied on to prove charitable distributions were properly made. No other substantive amendments are recommended at this time.

Subchapter F (Payment of Taxes, Prize Fees and Bonds) consists of the following:

§402.600 - Bingo Reports and Payments

§402.601 - Interest on Delinquent Tax

§402.602 - Waiver of Penalty, Settlement of Prize Fees, Penalty and/or Interest

§402.603 - Bond or Other Security

§402.604 - Delinquent Purchaser

Subchapter F consists of rules governing the payment of requisite fees, the submission of bonds or other security, and the delinquent payment of the costs for bingo equipment.

Rule 402.600 governs the payment of bingo-related fees and the filing of quarterly reports, which are required by statute and used by the Commission to track its licensees' bingo-related finances. This rule remains necessary and the reasons for initially adopting the rule continue to exist because the rule helps ensure that licensees are remitting fees in the proper amount and that bingo proceeds are only used for statutorily-authorized purposes. Furthermore, the Commission is required by Texas Occupations Code §2001.504 to adopt rules governing the payment of fees.

Rule 402.601 governs the payment of interest on delinquent fees, refunds and credits, while Rule 402.602 governs the Commission's settlement of penalties and fees due. These rules remain necessary and the reasons for initially adopting the rules continue to exist, because they implement Texas Tax Code §§ 111.060 (Interest on Delinquent Tax), 111.064 (Interest on Refund or Credit), 111.101 (Settlement) and 111.103 (Settlement of Penalty and Interest Only), which are made applicable to the Commission through Texas Occupations Code §§ 2001.508 and 2001.512.

Rule 402.603 governs the submission of a bond or other security by a licensee, which is required under Texas Occupations Code §2001.514. This rule remains necessary and the reasons for initially adopting the rule continue to exist, because the rule helps secure the payment of statutorily-authorized fees by licensees.

Finally, Rule 402.604 imposes requirements when a purchaser of bingo equipment is delinquent in its payment of the amount due for the equipment. This rule implements Texas Occupations Code §2001.218, and it remains necessary to help ensure that transactions for bingo equipment comply with that statute.

Therefore, the Commission has determined that the reasons for initially adopting these rules continue to exist.

The Commission, however, intends to propose amendments to Rules 402.600, 402.601, and 402.602.

The proposed amendments to Rule 402.600 will delete references to the timely submission of bingo reports and payments, which are no longer necessary due to the proposed new Rule 402.105.

The proposed amendments to Rule 402.601 will provide that credits that were previously pre-printed on quarterly reports will be viewable on the Bingo Service Portal.

The proposed amendments to Rule 402.602 will eliminate waivers of penalties and interest based on late payment of prize fees because those waivers are not provided for in the BEA. No other substantive amendments are recommended at this time.

Subchapter G (Compliance and Enforcement) consists of the following rules:

§402.700 - Denials; Suspensions; Revocations; Hearings

§402.701 - Investigation of Applicants for Licenses

§402.702 - Disqualifying Convictions

§402.703 - Audit Policy

§402.705 - Inspection of Premises

§402.706 - Schedule of Sanctions

§402.707 - Expedited Administrative Penalty Guideline

§402.708 - Dispute Resolution

§402.709 - Corrective Action

Subchapter G includes rules governing the Commission's disciplinary, inspection, and audit processes. These rules are necessary, and the reasons for initially adopting these rules continue to exist, because they help ensure that licensees and other persons abide by all applicable statutes and rules. Subchapter G also includes rules governing the conduct of criminal background checks on applicants and criminal convictions which may disqualify a license or bingo worker registry applicant. These rules are necessary, and the reasons for initially adopting these rules continue to exist, because they help implement Texas Occupations Code §2001.541, which requires the Commission to adopt rules regarding the use of criminal history record information in the licensing process.

The Commission, however, intends to propose amendments to Rules 402.702, 402.703, 402.706 and 402.707.

The proposed amendments to Rule 402.702 will eliminate a reference to a statute that no longer exists.

The proposed amendments to Rule 402.703 will require consideration of an organization's compliance history in audit determinations, as noted in the Staff Report.

The proposed amendments to Rule 402.706 will eliminate warnings for first time violations of serious offenses and repeat violations of lesser offenses, as noted in the Staff Report.

The proposed amendments to Rule 402.707 will change a pronoun, reiterate that formal complaints must be in writing, and eliminate warnings for repeat violations. No other substantive amendments are recommended at this time.

The Commission will propose these amendments, repeals, and new rules in a separate rulemaking action. The Commission will take the recommendations of the BAC under advisement and will continue to work with the BAC and industry stakeholders on any future rulemaking actions.

This review and readoption has been conducted in accordance with the requirements of Texas Government Code §2001.039. The Commission received no written comments during the public comment period, but received oral comments regarding Chapter 402 from the BAC and other industry stakeholders at BAC meetings on April 3, 2024, June 5, 2024, and August 6, 2024. On August 7, 2024, during a meeting of the Commission, BAC Chairman Trace Smith informed the Commissioners that the BAC supports closing the rule review process and moving forward with the proposed rulemaking. The proposed review was published in the October 27, 2023 issue of the *Texas Register* (48 TexReg 6394).

This action concludes the Commission's review of 16 TAC Chapter 402.

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Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 30, 2024

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The Texas Lottery Commission (Commission) has reviewed the Commission's rules at 16 Texas Administrative Code (TAC) Chapter 403 (General Administration) in accordance with the requirements of Texas Government Code §2001.039 (Agency Review of Existing Rules), and hereby readopts the rules in Chapter 403. The Commission has determined that the reasons for adopting each of the rules in Chapter 403 continue to exist, as discussed below. As a result of this review, and as discussed below, the Commission has determined that none of the rules in Chapter 403 need to be amended at this time.

Rule 403.101 (Public Information) sets forth agency procedures under which public information may be inspected and copied, as authorized by Texas Government Code §552.230, (Rules of Procedure for Inspection and Copying of Public Information). This rule also explains the implementation of Texas Government Code §552.275 (Requests that Require Large Amounts of Employee or Personnel Time) establishing a reasonable limit of 36 hours per fiscal year as the maximum amount of time Commission personnel are required to spend producing public information for inspection or duplication by a requestor, or providing copies of public information to a requestor, without the Commission recovering costs attributable to that personnel time. This rule has been reviewed by and discussed with the Commission's Public Information Coordinator and the Commission has determined that all practices and procedures contained in the rule are current, the need for this rule still exists, and no amendments are needed.

Rule 403.102 (Items Mailed to the Commission) is necessary to establish a standard approach to determine when items are mailed to the Commission, consistent with the requirements of Texas Government Code §2001.004(1), relating to state agency rules of practice. This rule and Texas Government Code §2001.004(1) were reviewed alongside current Commission procedures and the Commission has determined that the need for this rule still exists to provide a consistent measurement for the public to know when the Commission will consider an item to have been placed in the mail. This rule is current and does not require amendment.

Rule 403.110 (Petition for Adoption of Rule Changes) is necessary to comply with the requirement set forth in Texas Government Code §2001.021(b) that a state agency adopt rules prescribing the form for a petition for adoption of rules. This rule is statutorily mandated by Texas Government Code §2001.021(b) and the procedures contained in this rule are consistent with the statute and are still needed. This rule is also consistent with current agency practice and does not need amendment at this time.

Rule 403.115 (Negotiated Rulemaking and Alternative Dispute Resolution) sets forth Commission procedures and policy to comply with the requirements of Texas Government Code §467.109, relating to Negotiated Rulemaking and Alternative Dispute Resolution Policy. This rule is statutorily mandated and upon review the Commission has determined that the reasons for this rule continue to exist. This rule does not require amendment at this time.

Rules 403.201 (Definitions), 403.202 (Prerequisites to Suit), 403.203 (Sovereign Immunity), 403.204 (Notice of Claim of Breach of Contract), 403.205 (Agency Counterclaim), 403.206 (Request for Voluntary Disclosure of Additional Information), 403.207 (Duty to Negotiate), 403.208 (Timetable), 403.209 (Conduct of Negotiation), 403.210 (Settlement Approval Procedures), 403.211 (Settlement Agreement), 403.212 (Costs of Negotiation), 403.213 (Request for Contested Case Hearing), 403.214 (Mediation Timetable), 403.215 (Conduct of Mediation), 403.216 (Qualifications and Immunity of the Mediator), 403.217 (Confidentiality of Mediation and Final Settlement Agreement), 403.218 (Costs of Mediation), 403.219 (Settlement Approval Procedures), 403.220 (Initial Settlement Agreement), 403.221 (Final Settlement Agreement), 403.222 (Referral to the State Office of Administrative Hearings), and 403.223 (Use of Assisted Negotiation Processes) were adopted to govern the submission, negotiation and mediation of certain claims against the Commission, as mandated in Texas Government Code, Chapter 2260. These rules were reviewed and are current with Commission practice and procedure and the reason for their adoption continues to exist. There are no amendments required for these rules at this time.

Rule 403.301 (Historically Underutilized Businesses) was adopted to comply with the requirement that a state agency adopt the Comptroller of Public Accounts' rules on Historically Underutilized Businesses, set forth in Texas Government Code §2161.003, relating to Agency Rules. This rule was reviewed and discussed with pertinent agency personnel, and the reason for its adoption continues to exist. No amendments to this rule are required at this time.

Rule 403.401 (Use of Commission Motor Vehicles) was adopted to comply with the requirement that a state agency adopt rules relating to the assignment and use of agency vehicles, set forth in Texas Government Code §2171.1045, relating to Restrictions on Assignment of Vehicles. This rule was reviewed by and discussed with the agency's facilities manager and the reason for its adoption continues to exist. No amendments to this rule are required at this time.

Rule 403.501 (Custody and Use of Criminal History Record Information) is necessary to implement provisions governing the Commission's access to criminal history record information obtained from the Texas Department of Public Safety, set forth in Texas Government Code §411.108, relating to Access to Criminal History Record Information: Texas Lottery Commission. This rule was reviewed and discussed with the agency's Enforcement Director and the reason for its adoption continues to exist. No amendments to this rule are required at this time.

Rule 403.600 (Complaint Review Process) sets forth agency procedures to comply with Texas Government Code §467.111, relating to Complaints, which requires the Commission to maintain a system to promptly and efficiently act on each complaint filed with the Commission; and, specifically, the requirement in §467.111(d) that the agency adopt rules governing the entire complaint process from submission to disposition. This rule was reviewed and discussed with the agency's Retailer Services Manager and the reason for its adoption continues to exist. No amendments to this rule are required at this time.

Rule 403.700 (Employee Tuition Reimbursement) sets forth necessary internal procedures under which the Commission provides financial assistance to employees who wish to improve or supplement their knowledge and skills by attending classes at accredited colleges, junior colleges, or universities while pursuing a degree plan. This rule was reviewed and discussed with the agency's Human Resources Director and the reason for its adoption continues to exist. No amendments to this rule are required at this time.

Rule 403.701 (Family Leave Pool) is necessary to comply with the requirement that a state agency adopt rules and implement procedures relating to the operation of the Commission's family leave pool, set forth in Texas Government Code, Chapter 661, Subchapter A-1, relating to State Employee Family Leave Pool. This rule was reviewed and discussed with the agency's Human Resources Director and the reason for its adoption continues to exist. No amendments to this rule are required at this time.

Rule 403.800 (Savings Incentive Program) implements Chapter 2108 of the Texas Government Code, which requires state agencies to provide notice to the Texas Comptroller of savings realized from appropriated undedicated general revenue and to retain a portion of the amounts verified by the Comptroller. While currently the Commission has no undedicated general revenue appropriated to it that would allow for a savings incentive program, the statute requires that the Commission maintain rules in case such funds are appropriated in the future. The Charitable Bingo Operations Division is currently funded by general revenue. The Charitable Bingo program is supported by bingo prize fees, license fees for manufacturers, distributors, and lessors, and administrative penalties, and the Commission does not foresee retaining any general revenue savings. This rule was reviewed and discussed with the agency's Controller and the reason for its adoption continues to exist. No amendments to this rule are required at this time.

This review and readoption has been conducted in accordance with the requirements of Texas Government Code §2001.039. The Commission received no comments on the proposed review, which was published in the October 27, 2023, issue of the *Texas Register* (48 TexReg 6395).

This action concludes the Commission's review of 16 TAC Chapter 403.

TRD-202405171
Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 30, 2024

♦ ♦ ♦

Texas State Board of Examiners of Psychologists

Title 22, Part 21

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Psychologists adopts the review of the chapters below in Title 22, Part 21 of the Texas Administrative Code:

Chapter 463, Applications and Examinations

Chapter 465, Rules of Practice

Chapter 470, Schedule of Sanctions

Notice of the review of this chapter was published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5181). The Texas Behavioral Health Executive Council received public comments identifying rules 463.9, 463.10, 463.11, 463.31, and 465.17 as needing amendments, as well as request for updates to rules related to school psychology internships, licensure requirements, and scope of practice.

The Texas Behavioral Health Executive Council has reviewed Chapters 463, 465, and 470 in accordance with Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist.

The agency has determined that the original reasons for adopting rules in the chapter continue to exist and readopts all chapters.

The identified repeals and any amendments, if applicable, to Chapters 463, 465, and 470 identified by Texas Behavioral Health Executive Council in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes the Texas Behavioral Health Executive Council review of Title 22, Part 21 as required by the Texas Government Code §2001.039.

TRD-202405015
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Psychologists
Filed: October 25, 2024

♦ ♦ ♦

Texas State Board of Examiners of Professional Counselors

Title 22, Part 30

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Professional Counselors adopts the review of the chapters below in Title 22, Part 30 of the Texas Administrative Code:

Chapter 681, Professional Counselors

Notice of the review of this chapter was published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5181). The Texas Behavioral Health Executive Council received public comments identifying rules §681.2, §681.4, §681.31, §681.35, §681.36, §681.37, §681.41, §681.42, §681.43, §681.44, §681.47, §681.49, §681.51, §681.53, §681.72, §681.73, §681.81, §681.82, §681.83, §681.91, §681.92, §681.93, §681.101, §681.140, and §681.204 as needing amendments, as wells as requests for updates to rules related to counseling in the context of court proceedings and custody agreements, requirements related to supervised experience, increasing mobility between similar license types, and continuing education requirements.

The Texas Behavioral Health Executive Council has reviewed Chapter 681 in accordance with Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist.

The agency has determined that the original reasons for adopting rules in the chapter continue to exist and readopts all chapters.

The identified repeals and any amendments, if applicable, to Chapter 681 identified by Texas Behavioral Health Executive Council in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes the Texas Behavioral Health Executive Council review of Title 22, Part 30 as required by the Texas Government Code §2001.039.

TRD-202404998
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Filed: October 25, 2024

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Texas State Board of Social Worker Examiners

Title 22, Part 34

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Social Worker Examiners adopts the review of the chapters below in Title 22, Part 34 of the Texas Administrative Code:

Chapter 781, Social Worker Licensure

Notice of the review of this chapter was published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5182). The Texas Behavioral Health Executive Council received public comments identifying rules §781.301, §781.302, §781.303, §781.304, §781.305, §781.306, §781.309, §781.312, §781.313, §781.316, §781.319, §781.401, §781.402, §781.403. and §781.404 as needing amendments, as well as requests for updates to rules related to the ability of license holders to engage in independent practices and the requirements of supervision.

The Texas Behavioral Health Executive Council has reviewed Chapter 781 in accordance with Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist.

The agency has determined that the original reasons for adopting rules in the chapter continue to exist and readopts all chapters.

The identified repeals and any amendments, if applicable, to Chapter 781 identified by Texas Behavioral Health Executive Council in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes the Texas Behavioral Health Executive Council review of Title 22, Part 34 as required by the Texas Government Code §2001.039.

TRD-202404999
Darrel D. Spinks
Executive Director
Texas State Board of Social Worker Examiners
Filed: October 25, 2024

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Texas State Board of Examiners of Marriage and Family Therapists

Title 22, Part 35

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapists adopts the review of the chapters below in Title 22, Part 35 of the Texas Administrative Code:

Chapter 801, Licensure and Regulation of Marriage and Family Therapists

Notice of the review of this chapter was published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5182). The Texas Behavioral Health Executive Council received public comments identifying rules §801.42, §801.142, and §801.261 as needing amendments, as well as request for updates to rules related to the amount of supervised experience needed to receive an MFT license.

The Texas Behavioral Health Executive Council has reviewed Chapter 801 in accordance with Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist.

The agency has determined that the original reasons for adopting rules in the chapter continue to exist and readopts all chapters.

The identified repeals and any amendments, if applicable, to Chapters 681 identified by Texas Behavioral Health Executive Council in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes the Texas Behavioral Health Executive Council review of Title 22, Part 35 as required by the Texas Government Code §2001.039.

TRD-202405016
Darrel D. Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Filed: October 25, 2024

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Texas Behavioral Health Executive Council

Title 22, Part 41

The Texas Behavioral Health Executive Council adopts the review of the chapters below in Title 22, Part 41 of the Texas Administrative Code:

Chapter 881, General Provisions

Chapter 882, Applications and Licensing

Chapter 883, Renewals

Chapter 884, Complaints and Enforcement

Chapter 885, Fees

Notice of the review of this chapter was published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5182). The Texas Behavioral Health Executive Council received public comments identifying rules §881.20 and §885.1 as needing amendments, including requests for updates to the Council's rulemaking process. Public comments also proposed a new rule prohibiting the use of AI technology in professional services and a rule guiding the transfer of clients when a license holder closes their practice. Commenters requested the Council repeal §882.28 stating it was an unnecessary rule. At this time, the Council declines to repeal this rule, but will evaluate its implementation and consider whether future repeal is warranted. Many commenters suggested changes to the Council's continuing education rules. The Council declines to make changes now, but will consider the suggested changes in later rule proposals.

The Texas Behavioral Health Executive Council has reviewed Chapters 881, 882, 883, 884, and 885 in accordance with Texas Government Code §2001.039, which requires state agencies, every four years, to assess whether the initial reasons for adopting a rule continue to exist.

The agency has determined that the original reasons for adopting rules in the chapter continue to exist and readopts all chapters.

The identified repeals and any amendments, if applicable, to Chapters 881, 882, 883, 884, and 885 identified by Texas Behavioral Health Executive Council in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes the Texas Behavioral Health Executive Council review of Title 22, Part 41 as required by the Texas Government Code §2001.039.

TRD-202405008
Darrel D. Spinks
Executive Director
Texas Behavioral Health Executive Council
Filed: October 25, 2024

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Department of State Health Services

Title 25, Part 1

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the review of the chapter below in Title 25, Part 1, of the Texas Administrative Code (TAC):

Chapter 218, Evaluation of Milk and Shellfish Laboratories

Notice of the review of this chapter was published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6757). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 218 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 218. Any amendments, if applicable, to Chapter 218 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 25 TAC Chapter 218 as required by Texas Government Code §2001.039.

TRD-202404964
Jessica Miller
Director, Rules Coordination Office
Department of State Health Services
Filed: October 23, 2024

♦ ♦ ♦

Texas Health and Human Services Commission

Title 26, Part 1

The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 214, National Senior Services Corps Program

Notice of the review of this chapter was published in the August 30, 2024, issue of the *Texas Register* (49 TexReg 6757). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 214 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

HHSC has determined that the original reasons for adopting Chapter 214 continue to exist and readopts Chapter 214. Any amendments, if applicable, to Chapter 214 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register.*

This concludes HHSC's review of 26 TAC Chapter 214 as required by Texas Government Code §2001.039.

TRD-202404963
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: October 23, 2024

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The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 277, Primary Home Care, Community Attendant Services, and Family Care Programs

Notice of the review of this chapter was published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5365). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 277 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 277. Any amendments, if applicable, to Chapter 277 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 277 as required by the Texas Government Code §2001.039.

TRD-202404965
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: October 23, 2024

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The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 278, Adult Foster Care (AFC) Program

Notice of the review of this chapter was published in the July 19, 2024, issue of the *Texas Register* (49 TexReg 5365). HHSC received no comments concerning this chapter.

HHSC has reviewed Chapter 278 in accordance with Texas Government Code §2001.039, which requires state agencies to assess, every four years, whether the initial reasons for adopting a rule continue to exist.

The agency determined that the original reasons for adopting rules in the chapter continue to exist and readopts Chapter 278 except for:

278.1, Definitions;

278.3, Eligibility Determination Process;

278.5, Income Eligibility;

278.7, Functional Eligibility;

278.9, Service Plan;

278.11, Allowable In Home and Family Support Program (IH/FSP) Services;

278.13, Program Restrictions;

278.15, Service Subsidy and Capital Expenditure;

278.17, Payments;

278.19, Right to Appeal;

278.21, Recertification;

278.23, Definitions for the Transition to Life in the community (TLC) program;

278.25, Transition to Life in the Community (TLC) Client Eligibility Criteria;

278.27, Application for Transition to Life in the Community (TLC) Benefits;

278.29, Transition to Life in the Community (TLC) Program Benefits; and

278.31, Transition to life in the Community (TLC) Client Rights.

The repeals identified by HHSC in the rule review and any amendments, if applicable, to Chapter 278 will be proposed in a future issue of the *Texas Register*.

This concludes HHSC's review of 26 TAC Chapter 278 as required by the Texas Government Code §2001.039.

TRD-202404966
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: October 23, 2024

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The Texas Health and Human Services Commission (HHSC) adopts the review of the chapter below in Title 26, Part 1, of the Texas Administrative Code (TAC):

Chapter 304, Diagnostic Assessment

Notice of the review of this chapter was published in the September 6, 2024, issue of the *Texas Register* (49 TexReg 7059). HHSC received no comments concerning this chapter.

The agency determined that the original reasons for adopting all rules in the chapter continue to exist and readopts Chapter 304. Any amendments, if applicable, to Chapter 304 identified by HHSC in the rule review will be proposed in a future issue of the *Texas Register.*

This concludes HHSC's review of 26 TAC Chapter 304 as required by Texas Government Code §2001.039.

TRD-202405148
Jessica Miller
Director, Rules Coordination Office
Texas Health and Human Services Commission
Filed: October 28, 2024

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Texas Department of Motor Vehicles

Title 43, Part 10

The Texas Department of Motor Vehicles (department) files this notice of readoption of Title 43 Texas Administrative Code (TAC), Part 10, Chapter 209, Finance; and 43 TAC Chapter 217, Vehicle Titles and Registration, Subchapter A; Subchapter B, §§217.21 - 217.26 and 217.28 - 217.64; Subchapter C; Subchapter D; Subchapter E; Subchapter F; Subchapter G; Subchapter H; Subchapter I; Subchapter J; Subchapter K; and Subchapter L that were published in the *Texas Register.* The review was conducted pursuant to Government Code, §2001.039. The department will review §217.27 separately in the future.

Notice of the department's intention to review was published in the July 12, 2024, issue of the *Texas Register* (49 TexReg 5183). The department did not receive any comments on the rule review for either Chapter 209 or the reviewed sections of Chapter 217.

As a result of the review, the department readopts Chapter 209 with amendments and a repeal in accordance with the requirements of Government Code, §2001.039. The department has determined that the reasons for initially adopting the readopted rules continue to exist. In this issue of the *Texas Register*, the department adopts amendments and a repeal in Chapter 209 resulting from the rule review.

As a result of the review, the department readopts Chapter 217 Subchapter A; Subchapter B, §§217.21 - 217.26 and 217.28 - 217.64; Subchapter C; Subchapter D; Subchapter E; Subchapter F; Subchapter G; Subchapter H; Subchapter I; Subchapter J; Subchapter K; and Subchapter L with amendments and repeals in accordance with the requirements of Government Code, §2001.039. The department has determined that the reasons for initially adopting the readopted rules continue to exist. In this issue of the *Texas Register,* the department adopts amendments and repeals in Chapter 217 resulting from the rule review.

This concludes the review of Chapter 209, Finance; and Chapter 217, Vehicle Titles and Registration, Subchapter A; Subchapter B, §§217.21 - 217.26 and 217.28 - 217.64; Subchapter C; Subchapter D; Subchapter E; Subchapter F; Subchapter G; Subchapter H; Subchapter I; Subchapter J; Subchapter K; and Subchapter L.

TRD-202404997
Laura Moriaty
General Counsel
Texas Department of Motor Vehicles
Filed: October 25, 2024

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 19 TAC §12.5(d)(4)

APPROVED ASSESSMENTS AND DOCUMENTATION FOR OPPORTUNITY HIGH SCHOOL DIPLOMA CORE PROGRAM COMPETENCIES

Assessment Documentation	Use	Quantitative Reasoning Core Competency	MS	Communication Skills Core Competency	MS	Civics Core Competency	MS	Scientific Reasoning Core Competency	MS	Workplace Success Core Competency	MS
Accuplacer	PLA	Arithmetic	230	Reading	233	–	–	–	–	–	–
	Final										
ACT	PLA	Math	19	English	17	–	–	Science	22	–	–
	Final										
ACT WorkKeys										National Career Readiness Certificate, Essential Skills	Applied Math 86 Workplace Documents 81 Graphic Literacy 75
	PLA			Workplace Documents	81	–	–	–	–		
	Final	Applied Math	86								
CASAS (assessments)	PLA	Math	226	Reading	239	–	–	–	–	–	–
	Final										
GED	PLA	Mathematical Reasoning	145	Reasoning through Language Arts	145	–	–	Science	145	–	–
	Final										
SAT	PLA	Math	530	Reading, Writing	480	–	–	–	–	–	–
STAAR EOC (high school)	PLA	Algebra 1	Approaches Grade Level	English I and II	Approaches Grade Level	U.S. History	Approaches Grade Level	Biology	Approaches Grade Level	–	–
Test of Adult Basic Education	PLA	Mathematics	596	Reading	576	–	–	–	–	–	–
	Final										
TSIA	PLA	Mathematics	350	Reading	351+4E	–	–	–	–	–	–
TSIA2	PLA	Mathematics	950	English Language Arts Reading	945+5E	–	–	–	–	–	–
	Final										

APPROVED ASSESSMENTS AND DOCUMENTATION FOR OPPORTUNITY HIGH SCHOOL DIPLOMA CORE PROGRAM COMPETENCIES											
Assessment Documentation	Use	Quantitative Reasoning Core Competency	MS	Communication Skills Core Competency	MS	Civics Core Competency	MS	Scientific Reasoning Core Competency	MS	Workplace Success Core Competency	MS
U.S. Citizenship Exam	PLA Final	–	–	–	–	Civics content (61 questions)	60% Pass	–	–	–	–
High School Transcript, including Dual Credit	PLA	Algebra I, Geometry, and higher	Pass	English I and II or CTE Communications	Pass	U.S. Government	Pass	Biology	Pass	–	–
Postsecondary Transcript, credit bearing class completion	PLA	Applied Math or Algebra	Pass	English or CTE Communications	Pass	U.S. Government	Pass	Science	Pass	–	–
Military Service Credit as recommended by the American Council on Education	PLA	Algebra I and higher	Pass	English or English Language Arts	Pass	U.S. Government	Pass	Science or Biology	Pass	–	–
HiSet (out-of-state high school diploma equivalent)	PLA	Mathematics	8	Reading	8	–	–	Science	8	–	–

Notes:

CTE – career and technical education
E – essay
Final – end of course assessment
MS – minimum score
PLA – prior learning assessment

Figure: 22 TAC §885.1(b)(2)

Fees	Total Fee	Base	Texas.gov	OPP	eStrategy
APPLICATION FEES (Effective for applications submitted after 8/31/23)					
Social Workers					
LBSW or LMSW Application	$ 109.00	$ 100.00	$ 4.00	$ 5.00	
LCSW Application (LMSW-AP applications no longer accepted)	$ 120.00	$ 111.00	$ 4.00	$ 5.00	
Upgrade from LBSW to LMSW	$ 24.00	$ 20.00	$ 4.00		
Upgrade from LMSW to LCSW	$ 24.00	$ 20.00	$ 4.00		
Independent Practice Recognition	$ 20.00	$ 20.00			
Supervisor Status Application	$ 54.00	$ 50.00	$ 4.00		
Temporary License Application	$ 30.00	$ 30.00			
Marriage and Family Therapists					
Initial LMFT Associate Application	$ 159.00	$ 150.00	$ 4.00	$ 5.00	
Upgrade from LMFT Associate to LMFT	$ 90.00	$ 86.00	$ 4.00		
Initial LMFT Application	$ 161.00	$ 150.00	$ 6.00	$ 5.00	
Supervisor Status Application	$ 54.00	$ 50.00	$ 4.00		
Temporary License Application	$ 103.00	$ 100.00	$ 3.00		
Professional Counselors					
LPC Associate/LPC/Provisional License Application	$ 165.00	$ 154.00	$ 6.00	$ 5.00	
Supervisor Status Application	$ 54.00	$ 50.00	$ 4.00		
Art Therapy Designation	$ 20.00	$ 20.00			
Psychologists/Psychological Associates/Specialists in School Psychology					
LPA Application	$ 144.00	$ 135.00	$ 4.00	$ 5.00	
LP Application (including reciprocity applications)	$ 425.00	$ 410.00	$ 10.00	$ 5.00	
LSSP Application	$ 252.00	$ 239.00	$ 8.00	$ 5.00	
Temporary License Application	$ 103.00	$ 100.00	$ 3.00		
RENEWAL FEES					

Social Workers					
LBSW/LMSW Renewal	$ 108.00	$ 102.00	$ 4.00	$ 2.00	
LMSW-AP/LCSW Renewal	$ 108.00	$ 102.00	$ 4.00	$ 2.00	
Additional Renewal Fee for Independent Recognition	$ 20.00	$ 20.00			
Additional Renewal Fee for Supervisor Status	$ 50.00	$ 50.00			
Marriage and Family Therapists					
LMFT Renewal	$ 141.00	$ 135.00	$ 4.00	$ 2.00	
Additional Renewal Fee for Supervisor Status	$ 50.00	$ 50.00			
Professional Counselors					
LPC Renewal	$ 141.00	$ 135.00	$ 4.00	$ 2.00	
Additional Renewal Fee for Supervisor Status	$ 50.00	$ 50.00			
Psychologists/Psychological Associates/Specialists in School Psychology					
LPA Renewal	$ 238.00	$ 230.00	$ 6.00	$ 2.00	
LP Renewal	$ 295.00	$ 285.00	$ 8.00	$ 2.00	
LSSP Renewal	$ 141.00	$ 135.00	$ 4.00	$ 2.00	
Over 70 Renewal – Applicable only to licensees who turned 70 by 8/31/2020	$ 26.00	$ 20.00	$ 4.00	$ 2.00	
Additional Renewal Fee for HSP Designation	$ 40.00	$ 40.00			
EXAMINATION FEES					
Social Workers					
Jurisprudence Exam	$ 39.00				$ 39.00
Marriage and Family Therapists					
Jurisprudence Exam	$ 39.00				$ 39.00
Professional Counselor					
Jurisprudence Exam	$ 39.00				$ 39.00
Psychologists/Psychological Associates/Specialist in School Psychology					
Jurisprudence Exam	$ 39.00				$ 39.00

MISCELLANEOUS FEES					
Duplicate Renewal Permit or License	$ 10.00	$ 8.00	$ 2.00		
Written Verification of Licensure	$ 10.00				
Written State to State Verification of Licensure	$ 50.00	$ 48.00	$ 2.00		
Returned Check Fee	$ 25.00				
Criminal History Evaluation	$ 150.00	$ 150.00			
Reinstatement of License	$ 510.00	$ 500.00	$ 10.00		
Request for Inactive Status	$ 106.00	$ 100.00	$ 4.00	$ 2.00	
Inactive Status Renewal (biennial)	$ 106.00	$ 100.00	$ 4.00	$ 2.00	
Update Doctoral Degree on License	$ 54.00	$ 50.00	$ 4.00		
Request to Reactivate License from Inactive Status	equal to current renewal fee				
Late fee for license expired 90 days or less	equal to 1.5 times base renewal fee (plus applicable Texas.gov and OPP fees)				
Late fee for license expired more than 90 days, but less than one year	Equal to 2 times the base renewal fee (plus applicable Texas.gov and OPP fees)				

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Health and Safety Code and Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Health and Safety Code and the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *Harris County, Texas and The State of Texas Acting by and through the Texas Commission on Environmental Quality, a Necessary and Indispensable Party v. Rancho El Conquistador LLC, Eleazar Cortina, and Sandra K. Martinez*; Cause No. 2024-18265; in the 151st Judicial District Court of Harris County, Texas.

Background: This lawsuit concerns real property located at or near 0 Security Lane, Houston, Texas 77049 (the "Site"), where defendants are accused of dumping municipal solid waste and solid waste. The Site is also referred to as "Lot 22, Block 2, Sheldon Acres." Harris County, Texas ("Harris County") filed an environmental enforcement action against defendants, which was joined by the State of Texas (the "State") by and through the Texas Commission on Environmental Quality as a Necessary and Indispensable Party.

On June 14, 2016, Defendant Conquistador purchased the Site. On June 29, 2023, Defendant Conquistador sold the Site to Defendant Cortina (Defendant Conquistador's registered agent and sole director) and Defendant Martinez. On September 19, 2023, Defendant Martinez sold the Site back to Defendant Conquistador.

On February 21, 2022, Harris County Pollution Control Services ("HCPCS") received a complaint about solid waste dumping at the Site. HCPCS conducted an investigation on February 22, 2022, finding that the site contained used and broken railroad ties as well as concrete and asphalt waste. Seven subsequent investigations showed that: the concrete and asphalt waste was removed; 40 cubic yards of scrap metal were stored on the ground and then removed; the railroad ties were fully removed and legally disposed of by December 28, 2023.

Plaintiff, Harris County, filed suit on March 21, 2024, asserting claims that defendants caused, suffered, allowed and/or permitted the unauthorized storage and disposal of Industrial and Municipal Solid Waste at their property located on 0 Security Lane, in violation of the Texas Solid Waste Disposal Act, Texas Water Code, and Texas Commission on Environmental Quality ("TCEQ") rules. Plaintiff, the State, was joined to the suit as a Necessary and Indispensable Party. The Parties have reached an agreement to resolve the pending enforcement claims only.

Proposed Agreed Judgment: The Parties propose an Agreed Final Judgement which provides for a total monetary award of TWENTY-SEVEN THOUSAND AND NO CENTS ($27,000.00) in civil penalties and attorney's fees from the Defendants. An award of TWENTY-FOUR THOUSAND AND NO CENTS ($24,000.00) in civil penalties is to be divided evenly between Harris County and the State. The award of THREE THOUSAND AND NO CENTS ($3,000.00) in attorney's fees is to be divided evenly between Harris County and the State. In addition, Harris County also has a judgement against the Defendants for court costs in the amount of TWO-HUNDRED THIRTY-SEVEN DOLLARS AND NO CENTS ($237.00). Defendants are to make separate monthly payments to both Harris County and the State, until the judgment amount is paid in full to Harris County for THIRTEEN THOUSAND SEVEN HUNDRED THIRTY-SEVEN DOLLARS AND NO CENTS ($13,737.00) and to the State for THIRTEEN THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS ($13,500.00). Plaintiffs have the right to initiate collection proceedings on any overdue amounts if the payment is more than 30 days late.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed settlement, and written comments on the same, should be directed to Heather Coffee, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC-066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911; email: Heather.Coffee@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202404967
Justin Gordon
General Counsel
Office of the Attorney General
Filed: October 23, 2024

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Texas Health and Safety Code and Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code and the Texas Health and Safety Code. Before the State may enter into a voluntary settlement agreement, pursuant to Section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *Intercontinental Energy Corporation v. Texas Commission on Environmental Quality, CBS Corporation, Tim Smith, Betty Waldean Woelfel, Martha Hahn, Dorothy Lindholm, and Mary Alice Dunaway*; Cause No. D-1-GN-02-003257; in the 345th Judicial District Court, Travis County, Texas.

Background: The lawsuit in this case commenced in 2002 as an interpleader suit filed by the Trustee of the Lamprecht Mine Trust regarding the disbursement of funds to pay for the costs of environmental ra-

diation care activities, including decommissioning, decontaminating, restoring and reclaiming the Lamprecht and Zamzow *in situ* uranium mine and uranium recovery facilities in Live Oak County, Texas, previously operated by Intercontinental Energy Corporation, a party to the Trust. Over $1 million in trust fund was deposited into the Court's registry when the suit was filed. The Texas Commission on Environmental Quality (TCEQ) is the successor state agency to the Texas Department of Health, also a party to the Trust, that holds regulatory authority over uranium mines. CBS Corporation and several landowners intervened, claiming to be parties affected by the administration of the Trust. A 2010 settlement order authorized TCEQ to solicit bids to administer and conduct the environmental radiation care activities. No bids have been received and by 2023, TCEQ had expended over $1 million, appropriated from the State's Environmental Radiation Perpetual Care Account, on remediating the Lamprecht and Zamzow sites and releasing them for unrestricted use.

Proposed Settlement: The proposed Agreed Final Judgment is between TCEQ and CBS Corporation only. It authorizes the disbursement of all funds, including any accrued interests, held in the Court registry to TCEQ for deposit into the State's Environmental Radiation Perpetual Care Account. The parties also agree to release all claims and causes of action arising from this lawsuit against each other, and covenant not to sue or take administrative or civil action that may arise from this lawsuit against each other.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed in its entirety. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Clark Reeder, Assistant Attorney General, Office of the Attorney General of Texas, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911, email: Clark.Reeder@oag.texas.gov. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-202405150
Justin Gordon
General Counsel
Office of the Attorney General
Filed: October 28, 2024

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Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - September 2024

The Comptroller of Public Accounts, administering agency for the collection of the Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of oil for reporting period September 2024 is $48.45 per barrel for the three-month period beginning on June 1, 2024, and ending August 31, 2024. Therefore, pursuant to Tax Code, §202.058, oil produced during the month of September 2024, from a qualified low-producing oil lease, is not eligible for credit on the oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period September 2024 is $1.12 per mcf for the three-month period beginning on June 1, 2024, and ending August 31, 2024. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of September 2024, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of September 2024 is $69.37 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of September 2024, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of September 2024 is $2.41 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of September 2024, from a qualified low-producing gas well.

Inquiries should be submitted to Jenny Burleson, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-202405157
Jenny Burleson
Director, Tax Policy
Comptroller of Public Accounts
Filed: October 29, 2024

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/04/24-11/10/24 is 18.00% for consumer[1] credit.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/04/24-11/10/24 is 18.00% for commercial[2] credit.

[1] Credit for personal, family, or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

TRD-202405165
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: October 30, 2024

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Texas Education Agency

Correction of Error

The Texas Education Agency adopted amendments to 19 TAC §89.1196 and §89.1197 in the November 1, 2024, issue of the *Texas Register* (49 TexReg 8717). Due to an error by the Texas Register, the incorrect effective date was published for the adoption. The correct effective date for the adoption is November 5, 2024.

TRD-202405156

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code

(TWC), §7.075. TWC, §7.075, requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075, requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 10, 2024**. TWC, §7.075, also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on **December 10, 2024**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission's enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075, provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: City of Missouri City; DOCKET NUMBER: 2024-1268-MWD-E; IDENTIFIER: RN101528461; LOCATION: Missouri City, Fort Bend County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014100001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limitations; PENALTY: $34,500; ENFORCEMENT COORDINATOR: Taylor Williamson, (512) 239-2097; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(2) COMPANY: Civil Constructors, Incorporated; DOCKET NUMBER: 2024-1254-WQ-E; IDENTIFIER: RN112004114; LOCATION: Iola, Grimes County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: $6,750; ENFORCEMENT COORDINATOR: Monica Larina, (361) 881-6965; REGIONAL OFFICE: 500 North Shoreline Boulevard, Suite 500, Corpus Christi, Texas 78401, (361) 881-6900.

(3) COMPANY: D.R. Horton - Texas, Ltd.; DOCKET NUMBER: 2024-1190-WQ-E; IDENTIFIER: RN111381588; LOCATION: Magnolia, Montgomery County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System General Permit Number TXR1547HI, Part III, Section F.6(a), by failing to maintain best management practices in effective operating condition; PENALTY: $600; ENFORCEMENT COORDINATOR: Megan Crinklaw, (512) 239-1129; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(4) COMPANY: Five S Group, L.L.C.; DOCKET NUMBER: 2024-1196-WQ-E; IDENTIFIER: RN110914868; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with APO; PENALTY: $22,500; ENFORCEMENT COORDINATOR: Madison Stringer, (512) 239-1126; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(5) COMPANY: FORTEZZA LLC; DOCKET NUMBER: 2024-1429-WQ-E; IDENTIFIER: RN111458246; LOCATION: Sweetwater, Nolan County; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: $875; ENFORCEMENT COORDINATOR: Alejandra Basave, (512) 239-4168; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(6) COMPANY: GARY WATER SUPPLY CORPORATION; DOCKET NUMBER: 2024-0748-PWS-E; IDENTIFIER: RN101436004; LOCATION: Gary, Panola County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j)(2) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director (ED) in writing of the addition of treatment chemicals, including long-term treatment changes, that will impact the corrosivity of the water; 30 TAC §290.45(b)(1)(D)(i) and THSC, §341.0315(c), by failing to provide a minimum well capacity; 30 TAC §290.45(b)(1)(D)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of 2.0 gallons per minute (gpm) per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service, whichever is less, at each pump station or pressure plane; 30 TAC §290.46(d)(2)(B) and 290.110(b)(4) and THSC, §341.0315(c), by failing to maintain a disinfectant residual of at least 0.5 milligrams per liter of chloramine throughout the distribution system at all times; 30 TAC §290.46(e) and THSC, §341.033(a), by failing to use a water works operator who holds an applicable, valid license issued by the ED; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; PENALTY: $2,224; ENFORCEMENT COORDINATOR: Wyatt Throm, (512) 239-1120; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(7) COMPANY: HUSHAH LLC dba Jonathan's; DOCKET NUMBER: 2024-0509-PST-E; IDENTIFIER: RN101434637; LOCATION: Kaufman, Kaufman County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Faye Renfro, (512) 239-1833; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(8) COMPANY: Ingram Readymix, Incorporated; DOCKET NUMBER: 2022-1035-AIR-E; IDENTIFIER: RN102736857; LOCATION: Boerne, Kendall County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §116.110(a) and §116.116(b)(1) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain a permit amendment prior to constructing or modifying a source of air contaminants; and 30 TAC §116.115(b)(2)(F) and (c), New Source Review Permit Number 1781A, Special Conditions Number 1, and THSC, §382.085(b), by failing to comply with the permitted production limit; PENALTY: $6,563; ENFORCEMENT COORDINATOR: Desmond Martin, (512) 239-2814; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(9) COMPANY: Jarrell Development Group LLC; DOCKET NUMBER: 2024-1280-WQ-E; IDENTIFIER: RN111497525; LOCATION:

Jarrell, Williamson County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to maintain authorization to discharge stormwater associated with construction activities; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Madison Stringer, (512) 239-1126; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(10) COMPANY: JW Sands, LLC; DOCKET NUMBER: 2024-1252-WQ-E; IDENTIFIER: RN110059409; LOCATION: Von Ormy, Bexar County; TYPE OF FACILITY: sand processing plant; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities; PENALTY: $5,950; ENFORCEMENT COORDINATOR: Madison Stringer, (512) 239-1126; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(11) COMPANY: Loyalty Property Group, LLC; DOCKET NUMBER: 2024-0024-WQ-E; IDENTIFIER: RN111744736; LOCATION: Mansfield, Tarrant County; TYPE OF FACILITY: construction site; RULES VIOLATED: TWC, §26.121(a)(2), by failing to prevent an unauthorized discharge of pollutants into or adjacent to any water in the state; 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR1532MX, Part III, Section D.1, by failing to provide a copy of the Stormwater Pollution Prevention Plan upon request; and 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR1532MX, Part IV, Section A, by failing to design, install, and maintain effective sediment controls to minimize the discharge of pollutants from the site; PENALTY: $6,300; ENFORCEMENT COORDINATOR: Nancy M. Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(12) COMPANY: Manvel Utilities Limited Partnership; DOCKET NUMBER: 2024-1290-MWD-E; IDENTIFIER: RN102754504; LOCATION: Manvel, Brazoria County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0014188001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $16,875; ENFORCEMENT COORDINATOR: Sarah Castillo, (512) 239-1130; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(13) COMPANY: MOORE, ROBERT R; DOCKET NUMBER: 2024-1636-WR-E; IDENTIFIER: RN102883865; LOCATION: Medina, Kerr County; TYPE OF FACILITY: operator; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.081 and §11.121, by failing to obtain authorization prior to diverting, storing, impounding, taking, or using state water, or beginning construction of any work designed for the storage, taking, or diversion of water; PENALTY: $350; ENFORCEMENT COORDINATOR: Nancy M. Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: MOORE, WILLIAM H; DOCKET NUMBER: 2024-1635-WR-E; IDENTIFIER: RN102883865; LOCATION: Hunt, Kerr County; TYPE OF FACILITY: operator; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.081 and §11.121, by failing to obtain authorization prior to diverting, storing, impounding, taking, or using state water, or beginning construction of any work designed for the storage, taking, or diversion of water; PENALTY: $350; ENFORCEMENT COORDINATOR: Nancy M. Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: MOSCOW WATER SUPPLY Corporation; DOCKET NUMBER: 2024-0577-PWS-E; IDENTIFIER: RN101652576; LOCATION: Moscow, Polk County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(o)(3) and §290.45(h)(1), by failing to adopt and submit a complete emergency preparedness plan that demonstrates the facility's ability to provide emergency operations; PENALTY: $55; ENFORCEMENT COORDINATOR: Mason DeMasi, (210) 657-8425; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(16) COMPANY: PALASOTA CONTRACTING, LLC and JK Investment Partners, LLC; DOCKET NUMBER: 2024-1255-WQ-E; IDENTIFIER: RN111966362; LOCATION: Somerville, Burleson County; TYPE OF FACILITY: construction site; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Madison Stringer, (512) 239-1126; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(17) COMPANY: Permian Basin Materials, LLC; DOCKET NUMBER: 2024-1301-OSS-E; IDENTIFIER: RN108102419; LOCATION: Lockney, Floyd County; TYPE OF FACILITY: on-site sewage facility (OSSF); RULES VIOLATED: 30 TAC §285.3(a) and Texas Health and Safety Code, §366.004 and §366.051(a), by failing to obtain authorization to construct, alter, repair extend, or operate an OSSF; PENALTY: $900; ENFORCEMENT COORDINATOR: Kolby Farren, (512) 239-2098; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: RK Hall, LLC; DOCKET NUMBER: 2024-0269-WQ-E; IDENTIFIER: RN111775599; LOCATION: Ponder, Denton County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with construction activities; 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR05GD76 Part III, Section A.3(d)(2) and (4), by failing to identify all activities and significant materials that may potentially be pollutant sources in the Stormwater Pollution Prevention Plan; 30 TAC §281.25(a)(4), TWC, §26.121(a)(1), and TPDES General Permit Number TXR05GD76 Part III, Section A.4(f)(5), by failing to implement spill prevention, detection, and cleanup procedures and techniques; 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR05GD76 Part III, Section B.3, by failing to visually examine stormwater discharges from each outfall on a quarterly basis; and 30 TAC §281.25(a)(4), TWC, §26.121(a)(1) and TPDES General Permit Number TXR05GD76 Part V, Section E.2, by failing to prevent the unauthorized discharge of industrial wastewater into or adjacent to any water in the state; PENALTY: $16,707; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $6,683; ENFORCEMENT COORDINATOR: Nancy M. Sims, (512) 239-5053; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(19) COMPANY: Saddle and Surrey Acres Water Supply Corporation; DOCKET NUMBER: 2024-0317-MLM-E; IDENTIFIER: RN101241008; LOCATION: Montgomery, Montgomery County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code (THSC), §341.0351, by failing to notify the executive director (ED) prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; 30 TAC §290.46(f)(3)(A)(i)(III) and (iv), by failing to maintain water works operation and maintenance records and make them readily

available for review by the ED upon request; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(n)(1), by failing to maintain at the public water system accurate and up-to-date detailed as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank until the facility is decommissioned; 30 TAC §290.46(n)(3), by failing to keep on file copies of well completion data as defined in 30 TAC §290.41(c)(3)(A) for as long as the well remains in service; and 30 TAC §291.93(3)(A) and TWC, §13.139(d), by failing to provide a written planning report for a utility possessing a Certificate of Convenience and Necessity that has reached or exceeded 85% of all or part of its capacity; PENALTY: $2,100; ENFORCEMENT COORDINATOR: Mason DeMasi, (210) 657-8425; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(20) COMPANY: SONA ENTERPRISES INCORPORATED dba Platinum Food Mart; DOCKET NUMBER: 2024-1206-PST-E; IDENTIFIER: RN102712577; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks in a manner which will detect a release at a frequency of at least once every 30 days; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Rachel Murray, (903) 535-5149; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(21) COMPANY: South Garza Water Supply Corporation and CLIFFORD and CLYDE KITTEN, L.P.; DOCKET NUMBER: 2024-1198-PWS-E; IDENTIFIER: RN104192109; LOCATION: Justiceburg, Garza County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $1,437; ENFORCEMENT COORDINATOR: De'Shaune Blake, (210) 403-4033; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(22) COMPANY: Texas Concrete Enterprise, L.L.C.; DOCKET NUMBER: 2024-0507-WQ-E; IDENTIFIER: RN108298225; LOCATION: Cleveland, Liberty County; TYPE OF FACILITY: aggregate production operation; RULE VIOLATED: TWC, §26.121(a), by failing to prevent the unauthorized discharge of pollutants into or adjacent to water of the state; PENALTY: $4,388; ENFORCEMENT COORDINATOR: Madison Stringer, (512) 239-1126; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(23) COMPANY: TEXAS EASTERN TRANSMISSION LP; DOCKET NUMBER: 2024-1428-WR-E; IDENTIFIER: RN111964052; LOCATION: East Columbia, Brazoria County; TYPE OF FACILITY: operator; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.081 and §11.121, by failing to obtain authorization prior to diverting, storing, impounding, taking, or using state water, or beginning construction of any work designed for the storage, taking, or diversion of water; PENALTY: $350; ENFORCEMENT COORDINATOR: Alejandra Basave, (512) 239-4168; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 492-3096.

(24) COMPANY: Texas Parks and Wildlife Department; DOCKET NUMBER: 2023-0794-PWS-E; IDENTIFIER: RN101176048; LOCATION: Presidio, Presidio County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.39(j) and Texas Health and Safety Code, §341.0351, by failing to notify the Executive Director prior to making any significant change or addition to the system's production, treatment, storage, pressure maintenance, or distribution facilities; PENALTY: $1,000; SUPPLEMENTAL ENVIRONMENTAL PROJECT OFFSET AMOUNT: $800; ENFORCEMENT COORDINATOR: Ronica Rodriguez Scott, (512) 239-2510; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

(25) COMPANY: US Foods, Incorporated; DOCKET NUMBER: 2024-0216-PST-E; IDENTIFIER: RN101804557; LOCATION: Lubbock, Lubbock County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $3,250; ENFORCEMENT COORDINATOR: Stephanie McCurley, (512) 239-2607; REGIONAL OFFICE: P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2545.

TRD-202405158
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: October 29, 2024

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Combined Amended Notice of Public Meeting (To Change Date of the Public Meeting) and Notice of Receipt of Application and Intent to Obtain Water Quality Permit (NORI) and Notice of Application and Preliminary Decision (NAPD) for TPDES Permit for Municipal Wastewater Renewal Permit No. WQ0015000001

APPLICATION AND PRELIMINARY DECISION. City of Liberty Hill, 926 Loop 332, Liberty Hill, Texas 78642, has applied to the Texas Commission on Environmental Quality (TCEQ) for a **renewal** of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015000001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,400,000 gallons per day. TCEQ received this application on March 23, 2023.

This combined notice is being issued to replace "renewal with minor amendment" with "renewal" that was provided in the NORI and NAPD.

The facility will be located approximately 2.5 miles north of the intersection of Ronald Reagan Boulevard and State Highway 29, in Williamson County, Texas 78628. The treated effluent will be discharged to an unnamed tributary, thence to Sowes Branch, thence to North Fork San Gabriel River in Segment No. 1251 of the Brazos River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary, and limited aquatic life use for Sowes Branch. The designated uses for Segment No. 1251 are primary contact recreation, public water supply, aquifer protection, and high aquatic life use. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application.

https://gisweb.tceq.texas.gov/LocationMapper/?marker=-97.842222,30.672777&level=18

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if ap-

proved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at Liberty Hill Public Library, 355 Loop 332, Liberty Hill, Texas 78642.

PUBLIC COMMENT / PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held:

Tuesday, December 3, 2024 at 7:00 p.m.

Rock Pointe Event Center

170 CR 214 Liberty Hill, Texas 78642

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least five days prior to the meeting.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. **Unless the application is directly referred for a contested case hearing, the response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision.** A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn. **If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law relating to relevant and material water quality concerns submitted during the comment period.**

EXECUTIVE DIRECTOR ACTION. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and public meeting requests must be submitted to the Office of the Chief Clerk, MC 105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/goto/comment within 30 days from the date of newspaper publication of this notice or by the date of the public meeting, whichever is later.

INFORMATION AVAILABLE ONLINE. For details about the status of the application, visit the Commissioners' Integrated Database at www.tceq.texas.gov/goto/cid. Search the database using the permit number for this application, which is provided at the top of this notice.

AGENCY CONTACTS AND INFORMATION. Public comments and requests must be submitted either electronically at www.tceq.texas.gov/goto/comment, or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, Texas 78711-3087. Any personal information you submit to the TCEQ will become part of the agency's record; this includes email addresses. For more information about this permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040 or visit their website at www.tceq.texas.gov/goto/pep. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from City of Liberty Hill at the address stated above or by calling Mr. David Thomison, Wastewater Superintendent, at (512) 778-5449.

Issuance Date: October 24, 2024

TRD-202405172

Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 30, 2024

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Enforcement Orders

An agreed order was adopted regarding City of Austin, Docket No. 2022-0673-MWD-E on October 25, 2024 assessing $25,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Megan Crinklaw, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Zavalla, Docket No. 2022-1525-PWS-E on October 25, 2024 assessing $3,767 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding DEANVILLE WATER SUPPLY CORPORATION, Docket No. 2022-1593-MLM-E on October 25, 2024 assessing $25,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Cynthia Sirois, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding GAFFORD'S CHAPEL WATER SUPPLY CORPORATION, Docket No. 2023-0333-PWS-E on October 25, 2024 assessing $4,150 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Miles Wehner, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding WORLD FUEL SERVICES, INC. dba World Kinect Energy Services, Docket No. 2023-0591-PST-E on October 25, 2024 assessing $7,520 in administrative penalties with $1,504 deferred. Information concerning any aspect of this order may be obtained by contacting Faye Renfro, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding A-Affordable Boat & RV Storage - Liberty Hill, LLC, Docket No. 2023-1098-EAQ-E on October 25, 2024 assessing $10,000 in administrative penalties with $2,000 deferred. Information concerning any aspect of this order may be obtained by contacting Megan Crinklaw, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Killeen, Docket No. 2023-1221-WQ-E on October 25, 2024 assessing $9,375 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Samantha Smith, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BOBCAT TRUCKING, INC., Docket No. 2023-1428-MLM-E on October 25, 2024 assessing $13,500 in administrative penalties with $2,700 deferred. Information concerning any aspect of this order may be obtained by contacting Mistie Gonzales, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Dunadan Properties, LLC, Docket No. 2024-0008-PWS-E on October 25, 2024 assessing $6,955 in administrative penalties with $2,675 deferred. Information concerning any aspect of this order may be obtained by contacting Taner Hengst, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding MEREGRASS, INC., Docket No. 2024-0233-MLM-E on October 25, 2024 assessing $26,338 in administrative penalties with $5,267 deferred. Information concerning any aspect of this order may be obtained by contacting Eresha DeSilva, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Northside Independent School District, Docket No. 2024-0534-EAQ-E on October 25, 2024 assessing $9,750 in administrative penalties with $1,950 deferred. Information concerning any aspect of this order may be obtained by contacting Megan Crinklaw, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Enterprise Products Operating LLC, Docket No. 2024-0811-AIR-E on October 25, 2024 assessing $10,875 in administrative penalties with $2,175 deferred. Information concerning any aspect of this order may be obtained by contacting Christina Ferrara, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding The Overlook NB LLC, Docket No. 2024-0964-EAQ-E on October 25, 2024 assessing $9,000 in administrative penalties with $1,800 deferred. Information concerning any aspect of this order may be obtained by contacting Megan Crinklaw, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kinder Morgan Production Company LLC, Docket No. 2024-0979-AIR-E on October 25, 2024 assessing $25,000 in administrative penalties. Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding OLD PAL CORPORATION, Docket No. 2024-1004-WQ-E on October 25, 2024 assessing $10,000 in administrative penalties with $2,000 deferred. Information concerning any aspect of this order may be obtained by contacting Madison Stringer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202405173
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 30, 2024

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Enforcement Orders

An agreed order was adopted regarding Solo Cup Operating Corporation, Docket No. 2022-0338-AIR-E on October 29, 2024 assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Mackenzie Mehlmann, Enforcement Coordinator at (512) 239-2545,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Valley View, Docket No. 2022-1060-MWD-E on October 29, 2024 assessing $4,087 in administrative penalties with $817 deferred. Information concerning any aspect of this order may be obtained by contacting Monica Larina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Addie Marlin dba Marlin Marina Water System, Docket No. 2022-1549-PWS-E on October 29, 2024 assessing $230 in administrative penalties with $46 deferred. Information concerning any aspect of this order may be obtained by contacting Daphne Greene, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Grant McElwee III and Lajuana McElwee, Docket No. 2023-0673-OSS-E on October 29, 2024 assessing $810 in administrative penalties with $162 deferred. Information concerning any aspect of this order may be obtained by contacting Kolby Farren, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Mill Creek Community, LLC, Docket No. 2023-0718-PWS-E on October 29, 2024 assessing $3,900 in administrative penalties with $780 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Bartley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Parker County, Docket No. 2023-1105-PST-E on October 29, 2024 assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Ramyia Wendt, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Lemur Island Holdings LLC, Docket No. 2023-1135-AIR-E on October 29, 2024 assessing $3,375 in administrative penalties with $675 deferred. Information concerning any aspect of this order may be obtained by contacting Amanda Diaz, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Burnett Ranches, LLC, Docket No. 2023-1234-PST-E on October 29, 2024 assessing $3,440 in administrative penalties with $688 deferred. Information concerning any aspect of this order may be obtained by contacting Faye Renfro, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Battle Cry Ministries, Inc., Docket No. 2023-1360-PWS-E on October 29, 2024 assessing $1,535 in administrative penalties with $307 deferred. Information concerning any aspect of this order may be obtained by contacting Claudia Bartley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Oak Creek RV, L.L.C., Docket No. 2023-1647-MWD-E on October 29, 2024 assessing $5,812 in administrative penalties with $1,162 deferred. Information concerning any aspect of this order may be obtained by contacting Taylor Williamson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding QuanaCo. LLC, Docket No. 2024-0115-PST-E on October 29, 2024 assessing $6,128 in administrative penalties with $1,225 deferred. Information concerning any aspect of this order may be obtained by contacting Eresha DeSilva, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Walnut Creek Special Utility District, Docket No. 2024-0142-PWS-E on October 29, 2024 assessing $3,204 in administrative penalties with $640 deferred. Information concerning any aspect of this order may be obtained by contacting Taner Hengst, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Texan Concrete Enterprise Ready Mix, Inc., Docket No. 2024-0195-WQ-E on October 29, 2024 assessing $1,500 in administrative penalties with $300 deferred. Information concerning any aspect of this order may be obtained by contacting Harley Hobson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Nortex RediMix, LLC, Docket No. 2024-0421-WQ-E on October 29, 2024 assessing $2,362 in administrative penalties with $472 deferred. Information concerning any aspect of this order may be obtained by contacting Monica Larina, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding G J PETRO LLC dba 365 Food & Fuel 9, Docket No. 2024-0687-PST-E on October 29, 2024 assessing $4,750 in administrative penalties with $950 deferred. Information concerning any aspect of this order may be obtained by contacting Faye Renfro, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding BUSINESS CONSULTANT, INC, Docket No. 2024-0867-PST-E on October 29, 2024 assessing $6,750 in administrative penalties with $1,350 deferred. Information concerning any aspect of this order may be obtained by contacting Eunice Adegelu, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-202405174
Laurie Gharis
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 30, 2024

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Notice of a Public Meeting and a Proposed Renewal of General Permit TXG670000 Authorizing the Discharge of Wastewater

The Texas Commission on Environmental Quality (TCEQ or commission) is proposing to renew Texas Pollutant Discharge Elimination System General Permit No. TXG670000. This general permit authorizes the discharge of hydrostatic test water from new vessels; vessels which contained raw water, potable water, or elemental gases; or vessels which contained petroleum substances or waste related to petroleum substances. The draft general permit applies to the entire state of Texas. General permits are authorized by Texas Water Code, §26.040.

DRAFT GENERAL PERMIT. The executive director has prepared a draft general permit renewal with amendments of an existing general permit that authorizes the discharge of hydrostatic test water from new

vessels; vessels which contained raw water, potable water, or elemental gases; or vessels which contained petroleum substances or waste related to petroleum substances. No significant degradation of high-quality waters is expected and existing uses will be maintained and protected. The executive director proposes to require regulated entities to submit a Notice of Intent to obtain authorization under the general permit.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to General Land Office regulations and has determined that the action is consistent with applicable CMP goals and policies.

On the date that this notice is published, a copy of the draft general permit and fact sheet will be available for a minimum of 30 days for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ Austin office, at 12100 Park 35 Circle, Building F. These documents will also be available at the TCEQ's 16 regional offices and on the TCEQ website at *https://www.tceq.texas.gov/permitting/wastewater/general/index.html.*

PUBLIC COMMENT AND PUBLIC MEETING. You may submit public comments on this proposed general permit in writing or orally at the public meeting to be held by the TCEQ. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the proposed general permit. A public meeting is not a contested case hearing.

The hybrid in-person and virtual public meeting will be held at 9:30 a.m., December 9, 2024, in TCEQ's complex at 12100 Park 35 Circle, Building B, Room 201A, Austin, Texas 78753.

Information for registering and attending the public meeting virtually is available at *https://www.tceq.texas.gov/permitting/wastewater/general/index.html.*

Written public comments must be received by the Office of the Chief Clerk, MC 105, TCEQ, PO Box 13087, Austin, Texas 78711-3087 or electronically at *https://www14.tceq.texas.gov/epic/eComment/* within 30 days from the date this notice is published.

ALTERNATIVE LANGUAGE NOTICE. Alternative language notice in Spanish is available at *https://www.tceq.texas.gov/permitting/wastewater/general/index.html.* El aviso de idioma alternativo en español está disponible en *https://www.tceq.texas.gov/permitting/wastewater/general/index.html.*

APPROVAL PROCESS. After the comment period, the executive director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least 10 days before the scheduled commission meeting when the commission will consider approval of the general permit. The commission will consider all public comment in making its decision and will either adopt the executive director's response or prepare its own response. The commission will issue its written response on the general permit at the same time the commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin office. A notice of the commissioners' action on the draft general permit and information on how to access the response to comments will be mailed to each person who submitted a comment. Also, a notice of the commission's action on the draft general permit and the text of its response to comments will be published in the *Texas Register.*

MAILING LISTS. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the TCEQ Office of the Chief Clerk. You may request to be added to: 1) the mailing list for this specific general permit; 2) the permanent mailing list for a specific county; or 3) both. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address previously mentioned. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

INFORMATION. If you need more information about this general permit or the permitting process, please call the TCEQ Public Education Program, toll free, at 1 (800) 687-4040. General information about the TCEQ can be found at our website at: *https://www.tceq.texas.gov.*

Persons with disabilities who need special accommodations at the public meeting should call the Office of the Chief Clerk at (512) 239-3300 or 1-800-RELAY-TX (TDD) at least one week prior to the meeting.

Further information may also be obtained by calling Shannon Gibson, TCEQ Water Quality Division, at (512) 239-4284.

Si desea información en español, puede llamar 1-800-687-4040.

TRD-202405155
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 29, 2024

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Notice of Opportunity to Comment on a Default Order of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Order (DO). The commission staff proposes a DO when the staff has sent the Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 10, 2024.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on December 10, 2024.** The commission's attorney is available to discuss the DO and/or the comment procedure at the listed phone number; however, TWC, §7.075, provides that comments on the DO shall be submitted to the commission in **writing.**

(1) COMPANY: Lonnie Wooten; DOCKET NUMBER: 2021-0786-MLM-E; TCEQ ID NUMBER: RN111189536; LOCATION: 8274

West Old Sterling City Highway near San Angelo, Tom Green County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULES VIOLATED: 30 TAC §330.15(a) and (c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; and Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201, by causing, suffering, allowing, or permitting outdoor burning within the State of Texas; PENALTY: $11,629; STAFF ATTORNEY: Cynthia Sirois, Litigation, MC 175, (512) 239-3392; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

TRD-202405160
Gitanjali Yadav
Deputy Director, Litigation
Texas Commission on Environmental Quality
Filed: October 29, 2024

♦ ♦ ♦

Rescheduled Location for Public Hearing on Proposed Revisions to 30 TAC Chapter 210 and 321

In the October 11, 2024, issue of the *Texas Register* (49 TexReg 8323, 49 TexReg 8330, and 49 TexReg 8420), the Texas Commission on Environmental Quality (commission) published notice of a public hearing on the proposed revisions to 30 Texas Administrative Code Chapters 210 and 321 on November 12, 2024, at 10:00 a.m. in Building D, Room 191 located at the commission's central office located at 12100 Park 35 Circle, Austin, Texas.

Due to ongoing construction in Building D, this public hearing is being relocated to Building F, Room 4118 located at the commission's central office located at 12100 Park 35 Circle, Austin, Texas. The hearing will remain on the date of November 12, 2024, at 10:00 a.m. and commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 9:30 a.m..

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by November 8, 2024. To register for the hearing, please email *Rules@tceq.texas.gov* and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on November 8, 2024, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_MzdkZD-BiNGItNzhhOS00ZDNkLTgzNTEtNGIwZTgwNjRjMWEx%40th-read.v2/0?context=%7b%22Tid%22%3a%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2c%22Oid%22%3a%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%7d

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

A Spanish translation of this notice is available at:

https://www.tceq.texas.gov/rules/hearings.html. If you need additional translation services, please contact TCEQ at (800) 687-4040. Si desea información general en español, puede llamar al (800) 687-4040.

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov*. Electronic comments may be submitted at: *https://tceq.commentinput.com/*. File size restrictions may apply to comments being submitted via the TCEQ Public Comment system. All comments should reference **Rule Project Number 2023-137-321-OW**. The comment period closes November 12, 2024. Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Erika Crespo, Water Quality Division, (512) 239-1827.

TRD-202404971
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 24, 2024

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Update to the Water Quality Management Plan (WQMP)

The Texas Commission on Environmental Quality (TCEQ or commission) requests comments from the public on the draft October 2024 Update to the WQMP for the State of Texas.

Download the draft October 2024 WQMP Update at *https://www.tceq.texas.gov/permitting/wqmp/WQmanagement_updates.html* or view a printed copy at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

The WQMP is developed and promulgated in accordance with the requirements of the federal Clean Water Act, Section 208. The draft update includes projected effluent limits of specific domestic dischargers, which may be useful for planning in future permit actions. The draft update may also contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) revisions.

Once the commission certifies a WQMP update, it is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission.

Deadline

All comments must be received at the TCEQ no later than **5:00 p.m. on December 10, 2024.**

How to Submit Comments

Comments must be submitted in writing to:

Maria Benitez

Texas Commission on Environmental Quality

Water Quality Division, MC 148

P.O. Box 13087

Austin, Texas 78711-3087

Comments may also be faxed to (512) 239-4420 ***or*** emailed to Maria Benitez at *Maria.Benitez@tceq.texas.gov* but must be followed up with written comments by mail within five working days of the fax or email date or by the comment deadline, whichever is sooner.

For further information, or questions, please contact Ms. Benitez at (512) 239-6705 or by email at *Maria.Benitez@tceq.texas.gov.*

TRD-202405161

Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 29, 2024

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Texas Ethics Commission

List of Delinquent Filers

LIST OF LATE FILERS

Below is a list from the Texas Ethics Commission naming the filers who failed to pay the penalty fine for failure to file the report, or filing a late report, in reference to the specified filing deadline. If you have any questions, you may contact Dave Guilianelli at (512) 463-5800.

Deadline: Semiannual Report due July 15, 2024 for Committees

#00016594 - Dianne Morphew, Taylor County Democratic PAC (CEC), 2526 Bennett Drive, Abilene, Texas 79605

#00080185 - Latonya Rudolph, Northeast Houston AFT Committee on Political Education, 5310 E. Sam Houston Pkwy N., Suite M, Houston, Texas 77015

#00083026 - Lizeth Chacon, Workers Defense Action Fund PAC, 5604 Manor Road, Austin, Texas 78723

#00053429 - Mark E. Maher, Jr., Operator's Political Educational and Recruitment Awareness Towards Elections, P.O. Box 1410, Mont Belvieu, Texas 77580

#00055002 - Joseph C McCullough, IAFF 399 Beaumont Political Action Committee, 900 Bryan Ln, Lumberton, Texas 77657

#00081138 - James Esquenazi, Killeen Firefighters for Responsible Government, 519 Lonesome Oak Dr, Copperas Cove, Texas 76522

#00082740 - Lyndsey Stang, Citizens for Excellent Education in Dripping Springs, P.O. Box 1752, Dripping Springs, Texas 78620

#00085302 - Leland Bickers, Save Austin Now PAC, 807 Brazos Street. #304, Austin, Texas 78701

#00088454 - Anthony Reed, Texans for Law & Order PAC, 4425 Knowledge Dr, Haltom City, Texas 76117

#00017166 - Richard Gonzalez, Hidalgo County Democratic Party (P), P.O. Box 3903, Edinburg, Texas 78540

#00084963 - Ricky McNeal, Vote Yes Garland ISD, P.O. Box 460353, Garland, Texas 75046

#00088632 - Terence Henricks, Vote Yes Kaufman ISD, 2151 Kandy Ln, Kaufman, Texas 75142

#00082777 - Coymelle K. Murchison, Vote For Her, 4624 Weehaven Dr, Dallas, Texas 75232

#00087032 - Michael Sabouni, Alliance PAC, 6200 Savoy Dr, Suite 100, Houston, Texas 77036

#00039023 - Leland Bickers, Travis County Republican Party (CEC), 1212 Guadalupe #303, Austin, Texas 78701

#00023943 - Amber A. Avis, Webb County Democratic Party (CEC), 1802 Houston St., Laredo, Texas 78040

#00086823 - Allison Melnar, Conservatives of Greater Spring Branch, 2611 Hollow Hook, Houston, Texas 77080

#00085288 - Carol Adams, Star Patriots, 6125 Luther Ln, Suite 245, Dallas, Texas 75225

#00087185 - Theodore LeBlanc, Conservatives of Lake Houston Area PAC, 1414 Stonehollow Dr, Suite 3, Kingwood, Texas 77345

#00084224 - Sam Barbee, North Texas Physicians PAC of the Collin-Fannin County Medical Society, 2701 West 15th Street, Suite 501, Plano, Texas 75075

#00088707 - Barbara Frazier, Moving Morgan Mill Forward, 380 West FM 1188, Stephenville, Texas 76401

#00088619 - Alicia Lopez, Support Bovina ISD Bond, 408 West 15th Street, Friona, Texas 79035

#00085912 - Chenoa Magott, The Future is Now ECISD, 8114 S. Foster Road #1, San Antonio, Texas 78222

#00088758 - Daniel Hux, It's OK to Vote NO, Mabank, 12290 CR 2139, Aley, Texas 75143

#00040697 - Jason Timothy, Republican Party of Bell County (CEC), 8307 Wellcrest Dr, Killeen, Texas 76542

#00028484 - Stephanie Phillips, Justice For All PAC, 7615 Burning Hills Dr, Houston, Texas 77071

#00080961 - Jacob P. Limon, Revolution Texas, 2022 Ford St., Austin, Texas 78704

#00017097 - Diana Lin Riley, Highland Lakes Republican Women, 871 Fir Lane, Cottonwood Shores, Texas 78657

#00086580 - Christine Vorderbruggen, Keep Collin Red, 813 Fairlawn St., Allen, Texas 75002

#00086930 - Carter Keating, Texas Agriculture Connection PAC, 51 Rainey Street., Apt. 1109, Austin, Texas 78701

#00016772 - Amy J. Ables, Foundation Appraisers Coalition Of Texas PAC (FACT), 3209 Blue Ridge Dr, Cedar Park, Texas 78613

#00081032 - Scott Sanford, Texas Legislative Prayer Caucus, c/o Debbie Terry P.O. Box 147, Argyle, Texas 76226

#00087773 - Larry Hicks, Stand with Paxton PAC, 10500 Northwest Freeway, Suite 212, Houston, Texas 77092

#00088405 - Steven Hotze, Woodfill For Texas PAC, 20214 Braidwood Dr, Katy, Texas 77450

#00088609 - Devan Stoglin, Vote for Our Kids - 2024 Connally ISD Bond, 628 Powers Street, Waco, Texas 76705

#00088747 - Aaron Quarles, Friends of Grayson College, 150 White Dove Trail, Denison, Texas 75020

#00088632 - Terence Henricks, Vote Yes Kaufman ISD, 2151 Kandy Lane, Kaufman, Texas 75142

#00017147 - Janet Ahmad, Homeowner-Taxpayer Association of Bexar County, Inc. Political Action Committee, 18 Silverhorn Drive, San Antonio, Texas 78216

#00016112 - Juan G. Arellano, Brownsville Police Officers Association PAC, 5460 Paredes Line Rd., Suite 197-B, Brownsville, Texas 78521

#00024965 - Karen Y. Kirkpatrick, GMP Local Union #259, 2505 Ethel Ave., Waco, Texas 76707

#00039020 - Sherri T. Statler, Abilene PAC, P.O. Box 2482, Abilene, Texas 79604

#00068179 - Kristen D. Johnson Eklund, A Better Grapevine, 1214 Bellaire Dr, Grapevine, Texas 76051

#00068739 - Joshua Williams, Business Leaders for Growth Political Action Committee, 6102 Mapleton Meadow Ln, Richmond, Texas 77407

#00058143 - Jo Ann Baker, Texas Alliance Oil and Gas PAC, 705 8th St., Ste. 705, Wichita Falls, Texas 76301

#00063437 - Susan R. Fowler, Texas Motion Picture Alliance PAC, c/o Susan Fowler, 4809 Comal St., Pearland, Texas 77581

#00065031 - Christopher V. Tyrone, Haltom City Firefighters Committee for Responsible Government, P.O. Box 37045, Haltom City, Texas 76117

#00065928 - Adrian Patterson, Houston Business-Education Coalition PAC, 609 Main St., 40th Floor, Houston, Texas 77002

#00080766 - George Castillo, Jr., South San Community PAC, P.O. Box 242221, San Antonio, Texas 78224

#00082766 - Irasema Gonzalez, Six Pac, 426 W. Caffery, Pharr, Texas 78577

#00082537 - Maureen Ball, Freedom and Liberty Conservatives PAC, 15899 Hwy 105 West Suite A, Montgomery, Texas 77356

#00083796 - Anthony Carpenter, United Patriots PAC, P.O. Box 1386, Sugar Land, Texas 77487

#00082815 - Coymelle K. Murchison, Texas Truth In Politics (TXTIP), 4624 Weehaven Drive, Dallas, Texas 75232

#00083407 - Syed F. Hassan, Coalition for a Better Arlington, 601 Engleside Dr., Arlington, Texas 76018

#00085831 - Steve Klein, Friends of Good Government, 404 Ball Airport Rd., Victoria, Texas 77904

#00085310 - Adrian Flores, Jr., Texas Pole PAC, 425 W. Craig, San Antonio, Texas 78212

#00084062 - Brian Dungan, Carrollton Democrats Club, 2121 Marsh Ln., Apt. 209, Carrollton, Texas 75006

#00083564 - Travis Q. Parmer, Good Government Fort Worth, 3000 South Hulen St., Ste. 124306, Fort Worth, Texas 76107

#00086875 - Taylor J. Major, Lone Star Improvement Fund, P.O. Box 871, Austin, Texas 78767

#00086906 - John B. Austin, Texans for Justice, P.O. Box 461021, San Antonio, Texas 78217

#00086988 - Oscar Saenz, Jr., Judson Advancement for Children Committee, 1110 Passion Flower Way, Richmond, Texas 77406

#00087069 - Michael A. Kolenc, Harris Forward, 655 Yale Street, Apt. 461, Houston, Texas 77007

#00087075 - Brian M. Talbot, Jr., 2023 Solidarity Convention PAC, 306 McCarthur Dr., Leander, Texas 78641

#00087651 - Chereen Fisher, Texas Professional Vacation Rental Coalition PAC, 3606 Arrowhead Dr, Austin, Texas 78731

#00087350 - Nicole J. Donatelli, Northwest Family First, 5 Llano Dr, Roanoke, Texas 76262

#00085749 - Aaron R. Armijo, Sugar Land Professional Fire Fighters - PAC, 29014 Hauter Way, Fulshear, Texas 77441

#00087431 - Yvette B. Martinez, Christians for a Better Bexar County, 1230 Duke Rd., San Antonio, Texas 78264

#00087313 - Nicole J. Donatelli, NWISD Family First PAC, 5 Llano Dr., Trophy Club, Texas 76262

#00087590 - Nathan Gower Schwarz, Greenpoint Urban Living Political Association & Resident's Rights Group (GULP-ARRG), 4604 S. Sugar Road #928, Edinburg, Texas 78539

#00088215 - Miguel Escoto, El Paso Community Power, 1708 Montana Ave., Suite A, El Paso, Texas 79902

#00087855 - Nancy Morales, Law Enforcement Community Partnership, 522 San Francisco, El Paso, Texas 79901

#00085671 - Maria D. Betancourt, Proyecto Azul Advocacy & Engagement, 4516 Laurel Ave., McAllen, Texas 78501

#00015553 - Lorna L. Mayles, Texas Society Of Professional Surveyors PAC, 2525 Wallingwood Dr., Suite. 300, Austin, Texas 78746

#00051074 - Lyle Larson, Texas Legislative Sportsman's Caucus, Inc., P.O. Box 171148, San Antonio, Texas 78217

#00080083 - Art Fierro, Texas House Border Caucus, Rm E2.412, P.O. Box 2910, Austin, Texas 78768

#00083324 - Trent Ashby, Aggie Legislative Caucus, Rm E2.810, P.O. Box 2910, Austin, Texas 78768

#00087701 - Amy Hedtke, VOTE NO MAYPEARL ISD, 106 Vanderbilt, Waxahachie, Texas 75165

#00087702 - Amy Hedtke, Vote No, Midlothian ISD, 106 Vanderbilt, Waxahachie, Texas 75165

#00087703 - Amy Hedtke, Vote No, Red Oak ISD, 106 Vanderbilt, Waxahachie, Texas 75165

#00087704 - Amy Hedtke, Vote No, Waxahachie ISD, 106 Vanderbilt, Waxahachie, Texas 75165

#00087391 - Rodney Foster, Forward Sweetwater, Together, 11 Vista Court, Sweetwater, Texas 79556

#00087989 - Kimberly Snelgrooes, Panhandle First, P.O. Box 1652, Panhandle, Texas 79068

#00088022 - Michael Zweschper, Vote Yes For the SISD Bond, 3217 Piano Bridge Road, Schulenburg, Texas 78956

#00088001 - Dana Burkett, Concerned Citizens Against Proposition A, 303 Commerce Street, Ladonia, Texas 75449

#00088139 - Aubree Campbell, Taking Back TX, 2300 Summer Oaks Ct, Arlington, Texas 76011

#00088154 - Amy Hedtke, Vote NO, Aquilla ISD, 106 Vanderbilt, Waxahachie, Texas 75165

#00067173 - Daniel R. Goyen, Victoria County Republican Party (CEC), 211 Fenway, Victoria, Texas 77904

#00016966 - Sydney C. Leonard, Fort Worth Republican Women PAC, c/o Law Office of Bob Leonard Jr., 101 Summit Ave., Suite 300, Fort Worth, Texas 76102

#00030450 - Kerin Pelfrey-Hedgcoxe, Harris County GOP-PAC, 3800 Southwest Freeway, Suite 304, Houston, Texas 77027

#00043441 - Kerin Pelfrey-Hedgcoxe, Texas GOP PAC, 3800 Southwest Freeway, Suite 304, Houston, Texas 77027

#00052956 - Suzanne Biggs-Diecks, West U Area Democrats, 4119 Cason, Houston, Texas 77005

#00066511 - Aaron S. Harrell, Port Neches Police Officers Association PAC (DISSOLVED), 2530 12th St., Port Neches, Texas 77651

#00068343 - Benjamin D. McPhaul, Harris County Republicans, 1729 Althea Dr., Houston, Texas 77018

#00057770 - Tim Jugmans, EZCORP, Inc. Political Action Committee, 2500 Bee Cave Rd., Bldg. 1, Ste. 200, Rollingwood, Texas 78746

#00069379 - Lee O. Henderson, Texas Democratic Action Fund, P.O. Box 892, Fort Worth, Texas 76101

#00069522 - Kent A. Kallmeyer, Project Excellence Texas, PAC, 1925 Berrybrook Dr., Fort Worth, Texas 76134

#00064575 - Holly Bullington, Circle C Area Democrats, 10517 Walpole Lane, Austin, Texas 78739

#00065616 - Fred T. Blanton, Texas Tea Party Committee, 3011 E. Richey Rd., Humble, Texas 77338

#00069221 - Lucas P. Robinson, Texas College Democrats, 3136 Forest Park Blvd, Fort Worth, Texas 76110

#00016568 - John Esparza, Southwest Movers Assn. MOVEPAC, 700 E. 11th St., Austin, Texas 78701

#00016829 - Scott Lynch, El Paso Apartment Assn. Better Government Fund, 5730 E. Paisano Dr., El Paso, Texas 79925

#00081060 - Calvin E. Jorden, Triangle Caucus, 2368 US HWY 69 N, Silsbee, Texas 77656

#00082812 - Michael Oakley, Grapevine Republican Club, 2121 Lakeridge Dr., Grapevine, Texas 76051

#00083794 - Sara Michelle DeMus, Young Dems BCS, 2920 Kent Street, Apt. 154, Bryan, Texas 77845

#00082608 - James R. Hall, II, Barrett Citizens for Progress, P.O. BOX 491, Crosby, Texas 77532

#00054640 - Cara Smith, Wichita County Republican Women, 1000 Mary Dr., Apt. 106, Iowa Park, Texas 76367

#00084195 - Trey J. Blocker, Texas Craft Spirits PAC, 1406 E. Main St. #200274, Fredericksburg, Texas 78624

#00084407 - William A. Lumpkin, Texas Blue Chip PAC, 2033 Southgate Blvd., Houston, Texas 77030

#00084593 - Kendyll Locke, Tarrant Texas Black Democrats PAC, 2712 Ridge Road North, Fort Worth, Texas 76133

#00084803 - Amanda Elise Salas, New Blue Texas, 512 E. Upas Ave. Apt. 3, McAllen, Texas 78501

#00085775 - Lance Cargill, Save Texas Now, P.O. Box 505, Newalla, Oklahoma 74857

#00087106 - Brittney D. Leveston, Texas Freedmen Affairs Political Action Committee, 3045 N FM 1486 Rd., Montgomery, Texas 77356

#00086735 - Christopher Koob, Hidalgo County Democrats, 1150 N Loop 1604 W, Suite 108-230, San Antonio, Texas 78248

#00086547 - Lidia Peraza, Texas Conservative Movement PAC, 435 Murphy Rd. B1 #184, Stafford, Texas 77477

#00086541 - Kiara Garcia, Rio Grande Valley Republican Women, 4900 N. 23rd St., McAllen, Texas 78504

#00087698 - Wilfred S. Foehner, Blessings of Liberty, 1148 King George Ln, Savannah, Texas 76227

#00087440 - Witman Forke, Montgomery County Young Democrats, 82 North Deerfoot Circle, Spring, Texas 77380

#00087793 - Susan Bohannon, Heartland Republican Women's Club, 901 N. Fisk Avenue #112, Brownwood, Texas 76801

#00088304 - Ryan Benjamin Diamond Davis, Red River Patriots PAC, 864 Trail Rd., Denison, Texas 75021

#00088483 - Chelsey Kemp, Diversified Ladies PAC, 9818 Fry Road #150 Unit 64, Cypress, Texas 77433

#00088637 - Peter Salas, Grand Prairie Strong, 5706 E. Mockingbird Lane #115-382, Dallas, Texas 75206

#00088763 - Dana Burkett, Residents Advancing In Ladonia, 303 Commerce Street, Ladonia, Texas 75449

#00088732 - Ron Reynolds, Texas HBCU Caucus, Room 4N.7, P.O. Box 2910, Austin, Texas 78768

#00088048 - Jud Beall, Wylie Bulldogs United for Growth Bond 2023, 6841 Windmill Grass Lane, Abilene, Texas 79606

#00087882 - Jason T. Walker, Friends For Katy Schools, 9550 Spring Green Blvd, Suite 408-17, Katy, Texas 77494

#00088658 - Joshua Sims, Vote YES for New Diana Kids PAC, 3381 Zinnia Road, Diana, Texas 75640

#00088713 - Joe Carter, Parents, Business Owners & Community Members for Responsible Spending, 4657 Business 181 North, Suite C-1, Beeville, Texas 78102

#00088760 - Kem Ford, Citizens For The Students of Boling ISD, 10141 FM 1301, Boling, Texas 77420

#00088758 - Daniel Hux, It's OK to Vote NO, Mabank, 12290 CR 2139, Aley, Texas 75143

TRD-202405084
J.R. Johnson
Executive Director
Texas Ethics Commission
Filed: October 25, 2024

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 26. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of, October 21, 2024 to October 25, 2024. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§30.20(f), 30.30(h), and 30.40(e), the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on Friday, November 1, 2024. The public comment period for this project will close at 5:00 p.m. on Sunday, December 1, 2024.

Federal License and Permit Activities:

Applicant: Harris County Flood Control District (HCFCD)

Location: The proposed Regional General Permit would be valid in all waters of the United States, including wetlands and tidal areas, maintained as stormwater facilities under the jurisdiction of the Harris County Flood Control District, in Harris County, Texas.

Project Description: HCFCD proposes reissuance of their RGP for maintenance and emergency repair of stormwater management facili-

ties, in Harris County, Texas. This public notice is being issued based on information furnished by the applicant.

Type of Application: U.S. Army Corps of Engineers permit application # SWG-2009-00123 Re-Issuance. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 25-1035-F1

Applicant: International Bank Shares Corporation (IBC Bank)

Location: The project sites are located on North Padre Island at (1) Commodores Drive between Compass Street and E Cabana Street between the ends of two residential canals, (2) Crown Royal Drive at a location approximately 180 feet southeast of its intersection with Dasmarinas Drive, and (3) along Aquarius Street approximately 1,175 feet west of its intersection with Commodores Drive (south terminus), and 380 feet southwest of the intersection of Primavera Drive and A La Entrada Calle (north terminus) in Corpus Christi, Nueces County, Texas.

Latitude and Longitude:

Commodores Drive Bridge: Latitude: 27.61818, -97.22426

Crown Royal Drive Culvert: Latitude: 27.61123, -97.22915

Aquarius Aqueduct N End: Latitude: 27.62282, -97.23319

Aquarius Aqueduct S End: Latitude: 27.61728, -97.22931

Project Description: The applicant proposes to construct a bridge and culverts in three locations, and an open water ditch in order to connect waters within several residential canal systems in order to increase water circulation within the current residential developments and alleviate water quality issues within the residential canals.

1. Commodores Bridge: The applicant proposes to construct a bridge "in the dry" along Commodores Drive and then excavate a canal extension below the bridge to link two residential canals. A bypass road would be constructed around the bridge construction area in dry land, and utilities moved out from under the current roadway and re-routed. The area would be excavated, and sheet pile driven for the proposed roadway and abutment. The abutments would then be armored with concrete. The bridge (standard Texas Department of Transportation design) will be constructed, and the area under the bridge will be armored for future scour protection. After construction of the bridge and abutments to the adjacent existing canal systems, double silt curtains would be placed on either side and adequately anchored. The material under the bridge and between the two existing canal ends (consisting primarily of sand) would be excavated and the connection would be made between the north canal system and the applicant's canals. The canal section below the bridge would be 44.5 feet wide with a -6 foot depth. The total length of the proposed canal segment is approximately 350 feet. A total of approximately 5,819 cubic yards of material will be excavated from 63,462 square feet of uplands to connect the canal system. Once construction activity has ceased, the silt curtains would be removed.

2. Crown Royal Drive Culvert: Crown Royal Drive would be excavated one lane at a time to install 120 feet of 9-foot by 9-foot reinforced concrete box (RCB) culvert to connect two ditches extending from two sections of residential canal to allow for water circulation. An 80-foot-wide concrete headwall would be installed on either side of Crown Royal Drive, and the culvert tied into each headwall. The ditch would then be excavated in both directions from Crown Royal Drive, following the path of the existing ditch to a point where the ditch ties into the residential canals. Each section of ditch would have parallel bulkheading installed "in the dry" approximately 64 feet apart at +5 ft elevation as measured from Mean Lower Low Water (MLLW), then the ditch would be excavated out at a 3:1 slope to a depth of -6 feet MLLW, effectively creating a 64-foot-wide residential canal extending either direction from Crown Royal Drive. Excavated material (primarily sand) would be placed in upland areas. After construction of the culvert and bulkheads, double silt curtains would be placed on either side and adequately anchored to minimize turbidity into the canal system caused by construction activities. Once construction activity has ceased, the silt curtains would be removed.

3. Aquarius Aqueduct: Aquarius Drive would be excavated one lane at a time to install approximately 120 feet of 10- by 7-foot RCB box culvert, and approximately 2,200 linear feet of 60-foot-wide open ditch would be mechanically excavated through uplands, palustrine wetlands currently authorized for fill or excavation (Permit SWG-2018-00965), and an unspecified amount of fringe estuarine wetlands adjacent to the Laguna Madre to a point along its shoreline 380 feet southwest of the intersection of Primavera Drive and A La Entrada Calle, to a bottom depth of -6 feet MLLW to allow for water circulation within the residential canals. The excavated material would be placed in a disposal area as shown on sheets 8 and 9 of the plan drawings. Double silt curtains would be placed at either side of the RCB box culvert ends and the open ditch, and adequately anchored to minimize turbidity caused by construction activities. Once construction activity has ceased, the silt curtains would be removed.

No mitigation is proposed for this project.

Type of Application: U.S. Army Corps of Engineers permit application # SWG- 2024-00119. This application will be reviewed pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality as part of its certification under §401 of the Clean Water Act.

CMP Project No: 25-1042-F1

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection, may be obtained from the Texas General Land Office Public Information Officer at 1700 N. Congress Avenue, Austin, Texas 78701, or via email at pialegal@glo.texas.gov. Comments should be sent to the Texas General Land Office Coastal Management Program Coordinator at the above address or via email at federal.consistency@glo.texas.gov.

TRD-202405149
Jennifer Jones
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: October 28, 2024

♦ ♦ ♦

Texas Lottery Commission

Scratch Ticket Game Number 2578 "BINGO MANIA"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 2578 is "BINGO MANIA". The play style is "bingo".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 2578 shall be $10.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 2578.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15 , I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75 and FREE SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. Crossword and Bingo style games do not typically have Play Symbol captions. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 2578 - 1.2D

PLAY SYMBOL	CAPTION
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
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B10	
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B12	
B13	
B14	
B15	
I16	
I17	
I18	
I19	
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I21	
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FREE SYMBOL	
$10.00	TEN$
$15.00	FFN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$200	TOHN

E. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Bar Code - A twenty-four (24) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

G. Game-Pack-Ticket Number - A fourteen (14) digit number consisting of the four (4) digit game number (2578), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 050 within each Pack. The format will be: 2578-0000001-001.

H. Pack - A Pack of the "BINGO MANIA" Scratch Ticket Game contains 050 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The back of Ticket 001 will be shown on the front of the Pack; the back of Ticket 050 will be revealed on the back of the Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

I. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

J. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "BINGO MANIA" Scratch Ticket Game No. 2578.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule 401.302, Scratch Ticket Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "BINGO MANIA" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose the Play Symbols as indicated per the game instructions from the total four hundred fifty-two (452) Play Symbols. BINGO CARDS 1 -16 PLAY INSTRUCTIONS: The player completely scratches the "CALLER'S CARD FOR BINGO CARDS 1 - 8" and the "CALLER'S CARD FOR BINGO CARDS 9 -16" to reveal twenty-four (24) Bingo Numbers on each CALLER'S CARD. On BINGO CARD 1 - BINGO CARD 8, the player scratches only those Bingo Numbers that match the "CALLER'S CARD FOR BINGO CARDS 1 - 8" Bingo Numbers. On BINGO CARD 9 - BINGO CARD 16, the player scratches only those Bingo Numbers that match the "CALLER'S CARD FOR BINGO CARDS 9 - 16" Bingo Numbers. The player also scratches the "FREE" spaces on the sixteen (16) "BINGO CARDS". If a player matches all Bingo Numbers in a complete vertical, horizontal or diagonal line (five (5) Bingo Numbers or four (4) Bingo Numbers + "FREE" space), the player wins the prize in the corresponding prize legend for that "BINGO CARD". If the player matches all Bingo Numbers in all four (4) corners, the player wins the prize in the corresponding prize legend for that "BINGO CARD". If the player matches all Bingo Numbers to complete an "X" Pattern (eight (8) Bingo Numbers + "FREE" space), the player wins the prize in the corresponding prize legend for that "BINGO CARD". Note: Only the highest prize per "BINGO CARD" will be paid. BONUS PLAY INSTRUCTIONS: If a player reveals two (2) matching prize amounts in the same BONUS, the player wins that amount. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly four hundred fifty-two (452) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption. Crossword and Bingo style games do not typically have Play Symbol captions;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number and Game-Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number and Game-Pack-Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut, and have exactly four hundred fifty-two (452) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number and exactly one Game-Pack-Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the four hundred fifty-two (452) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the four hundred fifty-two (452) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Game-Pack-Ticket Number must be printed in the Game-Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. GENERAL: Consecutive Non-Winning Tickets within a Pack will not have matching patterns, in the same order, of either Play Symbols or Prize Symbols.

B. GENERAL: A Ticket can win as indicated by the prize structure.

C. GENERAL: A Ticket can win up to eighteen (18) times.

D. GENERAL: A single BINGO CARD from the "BINGO CARDS 1 - 8" play areas will not match a BINGO CARD from the "BINGO CARDS 9 - 16" play areas. Two (2) BINGO CARDS match if they have all the same Play Symbols in the same spots.

E. GENERAL: The Play Symbols on "CALLER'S CARD FOR BINGO CARDS 1 - 8" will not match the Play Symbols on "CALLER'S CARD FOR BINGO CARDS 9 - 16". Two (2) CALLER'S CARDS match if they have all the same Play Symbols or if a Play Symbol on "CALLER'S CARD FOR BINGO CARDS 1 - 8" is in the corresponding spot on "CALLER'S CARD FOR BINGO CARDS 9 - 16".

F. BINGO CARDS 1 - 8: The number range used for each letter (B,I,N,G,O) will be as follows: B (1-15), I (16-30), N (31-45), G (46-60) and O (61-75).

G. BINGO CARDS 1 - 8: Each "BINGO CARD 1 - 8" will contain twenty-four (24) numbers and one (1) "FREE" Play Symbol fixed in the center of the CARD.

H. BINGO CARDS 1 - 8: Each "BINGO CARD 1 - 8" on a Ticket will be different. Two (2) cards match if they have all the same Play Symbols in the same spots.

I. BINGO CARDS 1 - 8: Non-winning "BINGO CARDS 1 - 8" will match a minimum of three (3) number Play Symbols.

J. BINGO CARDS 1 - 8: There can only be one (1) winning pattern on each "BINGO CARD".

K. BINGO CARDS 1 - 8: There will be no matching Play Symbols on each "BINGO CARD" play area.

L. BINGO CARDS 1 - 8: On winning and Non-Winning Tickets, there will be no matching "CALLER'S CARD FOR BINGO CARDS 1 - 8" Play Symbols.

M. BINGO CARDS 1 - 8: Each of the "CALLER'S CARD FOR BINGO CARDS 1 - 8" Play Symbols will appear on at least one (1) of the eight (8) "BINGO CARDS 1 - 8".

N. BINGO CARDS 1 - 8: Prizes for "BINGO CARDS 1 - 8" are as follows:

CARD 1: LINE = $10. 4 CORNERS = $20. "X" PATTERN= $50.

CARD 2: LINE = $15. 4 CORNERS = $25. "X" PATTERN = $100.

CARD 3: LINE = $20. 4 CORNERS = $50. "X" PATTERN = $200.

CARD 4: LINE = $25. 4 CORNERS = $100. "X" PATTERN = $300.

CARD 5: LINE = $30. 4 CORNERS = $200. "X" PATTERN = $500.

CARD 6: LINE = $50. 4 CORNERS = $300. "X" PATTERN = $1,000.

CARD 7: LINE = $100. 4 CORNERS = $500. "X" PATTERN = $10,000.

CARD 8: LINE = $200. 4 CORNERS = $1,000. "X" PATTERN = $250,000.

O. BINGO CARDS 9 - 16: The number range used for each letter (B,I,N,G,O) will be as follows: B (1-15), I (16-30), N (31-45), G (46-60) and O (61-75).

P. BINGO CARDS 9 - 16: Each "BINGO CARD 9 - 16" will contain twenty-four (24) numbers and one (1) "FREE" Play Symbol fixed in the center of the CARD.

Q. BINGO CARDS 9 - 16: Each "BINGO CARD 9 - 16" on a Ticket will be different. Two (2) cards match if they have all the same Play Symbols in the same spots.

R. BINGO CARDS 9 - 16: Non-winning "BINGO CARDS 9 - 16" will match a minimum of three (3) number Play Symbols.

S. BINGO CARDS 9 - 16: There can only be one (1) winning pattern on each "BINGO CARD".

T. BINGO CARDS 9 - 16: There will be no matching Play Symbols on each "BINGO CARD" play area.

U. BINGO CARDS 9 - 16: On winning and Non-Winning Tickets, there will be no matching "CALLER'S CARD FOR BINGO CARDS 9 - 16" Play Symbols.

V. BINGO CARDS 9 - 16: Each of the "CALLER'S CARD FOR BINGO CARDS 9 - 16" Play Symbols will appear on at least one (1) of the eight (8) "BINGO CARDS 9 - 16".

W. Prizes for "BINGO CARDS 9 - 16" are as follows:

CARD 9: LINE = $10. 4 CORNERS = $20. "X" PATTERN= $50.

CARD 10: LINE = $15. 4 CORNERS = $25. "X" PATTERN = $100.

CARD 11: LINE = $20. 4 CORNERS = $50. "X" PATTERN = $200.

CARD 12: LINE = $25. 4 CORNERS = $100. "X" PATTERN = $300.

CARD 13: LINE = $30. 4 CORNERS = $200. "X" PATTERN = $500.

CARD 14: LINE = $50. 4 CORNERS = $300. "X" PATTERN = $1,000.

CARD 15: LINE = $100. 4 CORNERS = $500. "X" PATTERN = $10,000.

CARD 16: LINE = $200. 4 CORNERS = $1,000. "X" PATTERN = $250,000.

X. BONUS: A Ticket can win up to one (1) time in each of the two (2) BONUS play areas.

Y. BONUS: A Ticket will not have matching, non-winning Prize Symbols across the two (2) BONUS play areas.

Z. BONUS: Non-winning Prize Symbols in a BONUS play area will not be the same as winning Prize Symbols from another BONUS play area.

AA. BONUS: A non-winning BONUS play area will have two (2) different Prize Symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "BINGO MANIA" Scratch Ticket Game prize of $10.00, $15.00, $20.00, $25.00, $30.00, $50.00, $100, $200, $300 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and may present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $30.00, $50.00, $100, $200, $300 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BINGO MANIA" Scratch Ticket Game prize of $1,000, $10,000 or $250,000, the claimant must sign the winning Scratch Ticket and may present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BINGO MANIA" Scratch Ticket Game prize the claimant may submit the signed winning Scratch Ticket and a thoroughly completed claim form via mail. If a prize value is $1,000,000 or more, the claimant must also provide proof of Social Security number or Tax Payer Identification (for U.S. Citizens or Resident Aliens). Mail all to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct the amount of a delinquent tax or other money from the winnings of a prize winner who has been finally determined to be:

1. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

2. in default on a loan made under Chapter 52, Education Code;

3. in default on a loan guaranteed under Chapter 57, Education Code; or

4. delinquent in child support payments in the amount determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "BINGO MANIA" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "BINGO MANIA" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 6,000,000 Scratch Tickets in Scratch Ticket Game No. 2578. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 2578 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10.00	630,000	9.52
$15.00	60,000	100.00
$20.00	180,000	33.33
$25.00	210,000	28.57
$30.00	180,000	33.33
$50.00	300,000	20.00
$100	9,500	631.58
$200	6,500	923.08
$300	3,200	1,875.00
$500	2,000	3,000.00
$1,000	50	120,000.00
$10,000	4	1,500,000.00
$250,000	5	1,200,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.79. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 2578 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Scratch Ticket Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 2578, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-202405118

Bob Biard
General Counsel
Texas Lottery Commission
Filed: October 28, 2024

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Public Utility Commission of Texas

Notice of Application to Amend Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on October 24, 2024, to amend a designation as an eligible telecommunications carrier designation in the State of Texas under 47 U.S.C. § 214(e) and 16 Texas Administrative Code §26.418.

Docket Title and Number: Application of Air Voice Wireless, LLC to Amend Eligible Telecommunications Carrier Designation, Docket Number 57237.

The Application: Air Voice Wireless, LLC requests that its eligible telecommunications carrier designation be amended to expand its service area by adding additional wire centers and to reflect a name change to Air Voice Wireless, LLC dba AirTalk Wireless.

Persons who wish to file a motion to intervene or comments on the application should contact the commission no later than November 13, 2024, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 57237.

TRD-202405147
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: October 28, 2024

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Notice of Request for a Certificate of Convenience and Necessity Name Change

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on August 23, 2024, for a name change, and amendment to certificates of convenience and necessity.

Docket Style and Number: Application of Corix Utilities (Texas) Inc. for a Name Change, Minor Tariff Change, and Amendment to Certificates, Docket Number 56979.

The Application: Corix Utilities (Texas) Inc. filed an application for a minor change to its tariffs and to amend certificates of convenience and necessity numbers 13227 and 21081, in order to reflect a name change to Utilities, Inc. of Texas dba Corix Utilities (Texas) Inc.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding is November 5, 2024. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 56979.

TRD-202405163
Andrea Gonzalez
Rules Coordinator
Public Utility Commission of Texas
Filed: October 30, 2024

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Texas Racing Commission

Notice of Deadline to Request Recognition as Horsemen's Representative

Pursuant to the Texas Racing Act, Tex. Occ. Code §2023.051 and 16 Texas Administrative Code §309.299, the Executive Director for the Texas Racing Commission provides notice that Friday, January 31, 2025, is the deadline to request Commission recognition as the horsemen's representative organization. The Texas Racing Act authorizes the Commission to recognize an organization to represent members of a segment of the racing industry, including owners, breeders, trainers, and other persons involved in the racing industry. In the Texas Rules of Racing §309.299. Horsemen's Representative, it states:

Findings. The Commission finds a need for horse owners and trainers to negotiate and covenant with associations as to the conditions of live race meetings, the distribution of purses not governed by Statute, simulcast transmission and reception, and other matters relating to the welfare of the owners and trainers participating in live racing at an association. To ensure the uninterrupted, orderly conduct of racing in this state, the Commission shall recognize one organization to represent horse owners and trainers on matters relating to the conduct of live racing and simulcasting at Texas racetracks.

Recognition Process.

To request Commission recognition as a horsemen's representative organization, the organization must file a written request for recognition on a form prescribed by the executive secretary. The executive secretary shall establish a deadline for filing a request under this paragraph and publish that deadline in the *Texas Register* at least 20 days before the deadline.

To be eligible for recognition as a horsemen's representative organization, each officer and director of the organization during the term of the recognition must be licensed by the Commission as an owner or trainer.

If only one organization requests recognition, the executive secretary shall issue a letter of recognition to the organization, subject to the approval of the Commission. If more than one organization requests recognition, the Commission shall recognize the organization that is best qualified to represent the horse owners and trainers for the various breeds participating in racing at all the racetracks in this state. The executive secretary may require each organization to requesting recognition to supply additional information regarding its structure, membership, and programs. The Commission shall consider the following when determining which organization to recognize under this section:

the experience and qualifications of the directors, executive officers, and other management personnel of the organization;

the organization's benevolence programs for its membership and others participating in racing in this state; and

the degree to which the organization's membership represents a fair and equitable cross-section of the horse owners and trainers participating at each of the racetracks in this state.

Recognition given under this section is valid for two years.

Authority and Responsibilities.

An organization recognized under this section shall negotiate with each association regarding the association's live racing program, including but not limited to the allocation of purse money to various live races, exporting of simulcast signals, and the importing of simulcast signals during live race meetings.

An organization recognized under this section may inspect and audit an association's horsemen's purse accounts.

An organization recognized under this section shall provide to the Commission on request a copy of the organization's most recent financial statements, minutes of board meetings, literature provided to its members, and any other records or information relating to the functions of the organization at Texas racetracks.

An organization recognized under this section may not counsel or encourage its member to strike, embargo, boycott, or employ similar tactics in dealing with an association.

Not later than June 15 of each year, an organization recognized under this section shall submit to the Commission audited financial state-

ments regarding its operations. The executive secretary may prescribe the form for the financial statement.

The Commission may require or conduct an audit of the records of an organization recognized under this section to ensure the organization is complying with applicable law.

To obtain a copy of the form, interested persons should go to:

https://www.txrc.texas.gov/home/racetracks. Once form is completed, please send to Amy F. Cook, Executive Director, Texas Racing Commission, 1801 N. Congress Ave., Ste. 7.600, Austin, Texas 78701 or by email at info@txrc.texas.gov. For additional information or questions, please contact Amy F. Cook, Executive Director at (512) 833-6699 or by email at info@txrc.texas.gov.

TRD-202404962
Amy F. Cook
Executive Director
Texas Racing Commission
Filed: October 23, 2024

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Texas Department of Transportation

Notice of Proposed Waiver

The Texas Department of Transportation (TxDOT) is currently undertaking the Interstate 35 improvement project through the City of Austin. This project requires a pump station to ensure proper drainage of the depressed sections of the improved roadway. Details of this pump station can be found on TxDOT's project page at *https://www.txdot.gov/mymobility35/projects/capex-central/drainage-tunnel-and-pump-station.html.* The pump station project, identified as CSJ 14-0914-04-362, is a stand-alone project that is funded using only state funds. A market analysis was conducted on behalf of TxDOT to determine the availability of components for a pump station that can adequately address the drainage needs of the project. The market analysis concluded that the iron and steel pump components were not readily available in the United States.

Texas Transportation Code, §223.045, requires a contract awarded for the improvement of the state highway system without federal aid to contain the same preference provisions for iron and steel products that are required under federal law for an improvement made with federal aid. Under federal law, the Federal Highway Administration may issue a waiver of preference provisions for iron and steel products on a project using federal aid if it is shown that suitable domestic products are not readily available. Similarly, when only state funding is used, TxDOT may issue a waiver on such a showing. Based on the conclusion of the market analysis, TxDOT intends to issue a waiver of the domestic iron and steel requirements for the pump station project because iron and steel pump components of a satisfactory quality are not produced in the United States in sufficient and reasonably available quantities for the project.

Written comments on the proposed waiver of the domestic iron and steel requirements for the pump station contract may be submitted to General Counsel Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to TxDOTGeneralCounsel@txdot.gov with the subject line "Pump station preference waiver." The deadline for receipt of comments is 5:00 p.m. on Monday, November 25th, 2024. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

TRD-202405162
Angie Parker
Senior General Counsel
Texas Department of Transportation
Filed: October 29, 2024

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Request for Proposals - Traffic Safety Program

In accordance with 43 TAC §25.901 et seq., the Texas Department of Transportation (TxDOT) is requesting project proposals to support the targets and strategies of its traffic safety program to reduce the number of motor vehicle related crashes, injuries, and fatalities in Texas. These targets and strategies form the basis for the Federal Fiscal Year 2026 (FY 2026) Texas Highway Safety Plan (HSP).

Authority and responsibility for funding of the traffic safety grant program derives from the National Highway Safety Act of 1966 (23 USC §401 et seq.), and the Texas Traffic Safety Act of 1967 (Transportation Code, Chapter 723). The Behavioral Traffic Safety Section (TRF-BTS) is an integral part of TxDOT and works through 25 districts for local projects. The program is administered at the state level by TxDOT's Traffic Safety Division (TRF). The Executive Director of TxDOT is the designated Governor's Highway Safety Representative.

The following is information related to the FY 2026 General Traffic Safety Grants - Request for Proposals (RFP). Please review the full FY 2026 RFP located online at: *https://egrants.bts.txdot.gov/eGrantsHelp/RFP/2026/RFP2026.pdf*

This request for proposals does not include solicitations for Selective Traffic Enforcement Program (STEP) proposals. Information regarding STEP proposals for FY 2026 can be found at: *https://egrants.bts.txdot.gov/eGrantsHelp/RFP.html*. FY 2026 STEP proposals will be submitted under a separate process.

General Proposals for highway safety funding are due to the TRF-BTS no later than 5:00 p.m. CST, January 9, 2025.

All questions regarding the development of proposals must be submitted by sending an email to: TRF_RFP@txdot.gov by 12:00 p.m. (Noon) CST, on November 27, 2024. A list of the questions with answers (Q&A document) will be posted at: *https://egrants.bts.txdot.gov/eGrants/eGrantsHelp/rfp.html* by 5:00 p.m. CST, on December 02, 2024.

A webinar on general proposal submissions via the Traffic Safety eGrants system will be hosted by the TRF-BTS staff. The webinar will be conducted on Wednesday, November 13, 2024, from 9:00 a.m. CST to 12:00 p.m. CST for General Traffic Safety Grant Proposals. More information is forthcoming for FY26 STEP Proposals. For access information please go to *https://egrants.bts.txdot.gov/eGrantsHelp/rfp.html*

The Program Needs Section of the RFP includes Performance Measures tables which outline the targets, strategies, and performance measures for each of the Traffic Safety Program Areas. TRF-BTS is seeking proposals in all program areas but is particularly interested in proposals which address the specific program needs listed in the High Priority Program Needs subsection of the Program Needs Section of the RFP.

The proposals must be completed and submitted using eGrants, which can be found by going to *https://egrants.bts.txdot.gov/*

TRD-202404972

Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: October 24, 2024

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Request for Proposals - Traffic Safety Program: Driver Education Training Initiative

In accordance with 43 TAC §25.901, et seq., the Texas Department of Transportation (TxDOT) is requesting proposals in which the strategy is to train teens aged 15-18 in instructor-led driver education training courses that are consistent with the latest advances in methodology, subject matter, and technology. The goal is to increase public knowledge, perception and understanding of driver education and traffic safety for all road users.

Authority and responsibility for funding of the traffic safety grant program derives from the National Highway Safety Act of 1966 (23 USC §401 *et seq.*), and the Texas Traffic Safety Act of 1967 (Transportation Code, Chapter 723). The Behavioral Traffic Safety Section (TRF-BTS) is an integral part of TxDOT and works through 25 districts for local projects. The program is administered at the state level by TxDOT's Traffic Safety Division (TRF). The Executive Director of TxDOT is the designated Governor's Highway Safety Representative.

The following is information related to the FY 2026 Traffic Safety Program Request for Proposals (RFP): Driver Education Training Initiative. Please review the full FY 2026 Driver Education Training Initiative RFP located online at: *https://egrants.bts.txdot.gov/eGrantsHelp/RFP/2026/RFP2026.pdf*

Driver Education Training Initiative proposals are due to the TRF-BTS no later than 5:00 p.m. CST, February 28, 2025.

The proposals must be completed and submitted using eGrants, which can be found by going to *https://egrants.bts.txdot.gov/*

TRD-202404973
Becky Blewett
Deputy General Counsel
Texas Department of Transportation
Filed: October 24, 2024

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How to Use the Texas Register

Information Available: The sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 24 of Volume 49 (2024) is cited as follows: 49 TexReg 24.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "49 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 49 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
26. Health and Human Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to Update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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