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 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 63. PUBLIC INFORMATION
SUBCHAPTER C. ELECTRONIC SUBMISSION OF REQUEST FOR ATTORNEY GENERAL OPEN RECORDS DECISION

1 TAC §63.21, §63.22

The Office of the Attorney General (OAG) adopts amendments to 1 TAC §63.21 and §63.22 without changes to the proposed text as published in the February 9, 2024 issue of the *Texas Register* (49 TexReg 609). The adopted rules will not be republished. The amendments include new provisions to Subchapter C of Chapter 63, which pertains to electronic submission of requests for attorney general open records decision under the Public Information Act (the "Act"). First, the OAG adopts new subsections §63.21(6) and (7) to define the terms "impractical" and "impossible" for purposes of Texas Government Code §552.3031(a)(2). Second, the OAG adds subsection §63.22(g) to clarify that a governmental body is not permitted to include multiple decision requests in a single electronic submission. Third, the OAG adds subsection §63.22(h) to require a written explanation if a governmental body determines it is impossible or impractical to use the attorney general's designated electronic filing system. Fourth, the OAG adds subsection §63.22(i) to prescribe the standard that certain governmental bodies must use to determine if they fall under the population-based exception to mandatory electronic filing in Texas Government Code §552.3031(a)(1)(B).

EXPLANATION AND JUSTIFICATION OF RULES

The Legislature, in the 88th Regular Session (2023), added Texas Government Code §552.3031 (H.B. 3033), which requires certain Texas governmental bodies to electronically submit requests for OAG open records decisions under the Act. Additionally, subsection 552.3031(c) permits the OAG to adopt rules necessary to implement the new section, including rules that define the amount or type of formatting that would make use of the OAG's designated electronic filing system "impractical or impossible."

SECTION-BY-SECTION SUMMARY

New §63.21(6) defines the term "impractical" for purposes of Texas Government Code §552.3031(a)(2). The definition includes files that are in a format the attorney general's designated electronic filing system cannot accept at the time of filing and conversions of paper and physical material that would take more than one hour of labor. The definition also includes exclusions for circumstances where submission of a representative sample under Texas Government Code §552.301 would comply with the Act and avoid the issue that made submission impractical.

New §63.21(7) defines the term "impossible" for purposes of Texas Government Code §552.3031(a)(2). The definition includes provisions to address file-sizes beyond the OAG's designated electronic filing system capacity at time of submission, formats the OAG's designated electronic filing system does not support at time of submission, electronic filing system outages, and technical outages by the governmental body. The definition also includes exclusions for circumstances where submission of a representative sample under Texas Government Code §552.301 would comply with the Act and avoid the issue that made submission impossible.

New §63.22(g) specifies that each submission to the OAG's designated electronic filing system must pertain to a single matter and multiple unrelated decision requests cannot be combined into a single submission.

New §63.22(h) prescribes that a governmental body that does not use the OAG's designated electronic filing system because it is impractical or impossible shall provide a statement in its decision request that explains why it was impractical or impossible to use the system.

New §63.22(i) prescribes that if a governmental body extends into more than one county, then the governmental body shall use the population of the county in which its central administrative office is located to determine if the exception in Texas Government Code §552.3031(a)(1)(B) is applicable to the governmental body.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENTS

Tamara Smith, Division Chief for the Open Records Division, has determined that for the first five-year period the proposed rules are in effect, enforcing or administering the rules does not have foreseeable implications relating to cost or revenues of the state or local governments.

Texas Government Code §552.3031 mandates electronic submission for certain governmental bodies. Because there is a fee to electronically submit a record to the attorney general's designated electronic filing system, Texas Government Code §552.3031 will have a fiscal impact on governmental bodies that are required to electronically submit records. However, the proposed rules only clarify the requirements of Texas Government Code §552.3031 and do not expand or contract the applicability of the statute. Accordingly, the proposed rules do not have an impact beyond that of the statute.

PUBLIC BENEFIT AND COST NOTE

Ms. Tamara Smith has determined that for the first five-year period the adopted rules are in effect, the public will benefit through

clear procedures and standards for Texas governmental bodies that electronically submit records under the Act. The public can confirm compliance with these standards and use the procedures available in the Act to enforce them.

Ms. Tamara Smith has also determined that for each year of the first five-year period the adopted rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

Texas Government Code §552.3031 mandates electronic submission for certain governmental bodies. Because there is a fee to electronically submit a record to the OAG's designated electronic filing system, Texas Government Code §552.3031 will have a cost impact on governmental bodies that are required to electronically submit records. However, the adopted rules only clarify the requirements of Texas Government Code §552.3031 and do not expand or contract the applicability of the statute. Accordingly, the adopted rules do not have an impact beyond that of the statute.

IMPACT ON LOCAL EMPLOYMENT OR ECONOMY

The Open Records Division has determined that the adopted rules do not have an impact on local employment or economies because the adopted rules impact governmental bodies. Therefore, no local employment or economy impact statement is required under Texas Government Code §2001.022.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES

The Open Records Division has determined that for each year of the first five-year period the adopted rules are in effect, there will be no foreseeable adverse fiscal impact on small business, micro-businesses, or rural communities as a result of the proposed rules.

Since the adopted rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

TAKINGS IMPACT ASSESSMENT

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

GOVERNMENT GROWTH IMPACT STATEMENT

In compliance with Texas Government Code §2001.0221, the agency has prepared a government growth impact statement. During the first five years the adopted rules are in effect, the proposed rules:

- will not create a government program;

- will not require the creation or elimination of employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not lead to an increase or decrease in fees paid to a state agency;

- will create a new regulation;

- will not repeal an existing regulation;

- will not result in an increase or decrease in the number of individuals subject to the rule; and

- will not positively or adversely affect the state's economy.

SUMMARY OF PUBLIC COMMENT

The adopted rules were published in the February 9, 2024 issue of the *Texas Register* (49 TexReg 609). The deadline for public comment was March 11, 2024.

The OAG received comments from the City of Houston (City) and the North Texas Tollway Authority (NTTA).

The NTTA commented that the phrase "cannot be converted" in §63.21(7) is unclear in circumstances where a governmental body lacks the tools or expertise to convert information that may otherwise be converted.

The OAG reviewed the comment and declines to make changes. as conversion issues are addressed in the Public Information Act, Government Code Chapter 552, including §552.228 of the Government Code.

The NTTA commented that the meaning of "technical outage" is unclear and that it should apply to the individual responsible for electronic filing.

The OAG reviewed the comment and declines to make changes to the rule as the requirements for electronic filing rest with a governmental body and not a specific individual.

The City and NTTA commented that the requirement in §63.22(h) to provide the date and approximate time the governmental body attempted a submission should be amended or removed. The comments state the requirement is either not always applicable or necessary, especially in circumstances where a governmental body will know prior to an attempt that a submission will not be accepted.

The OAG reviewed the comments and amended subsection 63.22(h) to include "if applicable" to the end of the sentence. The OAG agrees that there are circumstances where a governmental body may know that it is impossible or impractical to use the electronic filing system prior to submitting its briefing and supporting documents.

STATUTORY AUTHORITY. New 1 TAC §63.21(6), §63.21(7), §63.22(f), §63.22(g), and §63.22(h) are proposed pursuant to Texas Government Code §552.3031(c), which permits the OAG to adopt rules necessary to implement Texas Government Code §552.3031.

New 1 TAC §63.22(g), §63.22(h) and §63.22(i) are proposed pursuant to Texas Government Code §552.3031(c), which permits the OAG to adopt rules necessary to implement Texas Government Code §552.3031.

CROSS-REFERENCE TO STATUTE. 1 TAC §63.21 clarifies Texas Government Code §552.3031 and affects §§552.301, .302.

1 TAC §63.22 clarifies Texas Government Code §552.301 and affects §552.3031.

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 July 24, 2024.

TRD-202403347
Justin Gordon
General Counsel
Office of the Attorney General
Effective date: August 13, 2024
Proposal publication date: February 9, 2024
For further information, please call: (512) 475-4291

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TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 59. GENERAL PRACTICES AND PROCEDURES

4 TAC §59.4

The Texas Animal Health Commission (Commission) in a duly noticed meeting on July 16, 2024, adopted amendments to §59.4, concerning Cooperation with the Texas Department of Public Safety Regarding Enforcement of Entry Requirements. Section 59.4 is adopted without changes to the proposed text published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3867) and will not be republished.

JUSTIFICATION FOR RULE ACTION

The Commission is tasked with the enforcement of livestock entry requirements. To carry out that mission, Commission staff routinely cooperate with Texas Department of Public Safety officers and local law enforcement. Recognizing the importance of this partnership, the Legislature enacted 161.051 and 161.052 of the Texas Agriculture Code which details the requirements of any memorandum of understanding entered into by the Commission with DPS or local authorities. Section 59.4 of the Commission's administrative rules sets forth the responsibilities of Commission staff when partnering with DPS. The amendments add similar language regarding the responsibilities of Commission staff when partnering with local law enforcement.

HOW THE RULES WILL FUNCTION

Section 59.4 sets forth the responsibilities of Commission staff when partnering with DPS to enforce entry requirements. The amendments add similar guidance on the responsibilities of Commission staff when working with local law enforcement authorities to enforce entry requirements.

SUMMARY OF COMMENTS RECEIVED AND COMMISSION RESONSE

The 30-day comment period ended June 30, 2024.

During this period, the commission received comments from a single individual. A summary of the comments relating to the rules and the Commission's response follows:

Comment: An individual commenter asked the Commission to postpone adoption of the proposed amendments to consider adding additional language concerning road kill sample collection protocols in line with the Chronic Wasting Disease Management Plan put forward by TPWD and TAHC.

Response: The Commission thanks the commenter for the feedback. The Commission declines to further amend the rule as requested by the commenter. No changes were made as a result of this comment.

STATUTORY AUTHORITY

The amendments are adopted under the Texas Agriculture Code, Chapter 161, §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code.

The amendments are adopted under §161.051 of the Texas Agriculture Code which provides that the Commission shall adopt a memorandum of understanding with the Texas Department of Public Safety for the cooperation on enforcement of Commission entry requirements.

The amendments are adopted under §161.052 of the Texas Agriculture Code which provides that the Commission shall adopt a memorandum of understanding with local county authorities for the cooperation on enforcement of Commission entry requirements.

No other statutes, articles, or codes are affected by this adoption.

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 July 26, 2024.

TRD-202403422
Jeanine Coggeshall
General Counsel
Texas Animal Health Commission
Effective date: August 15, 2024
Proposal publication date: May 31, 2024
For further information, please call: (512) 839-0511

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION
SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.21

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the text previously published in the May 24, 2024 issue of the *Texas Register* (49 TexReg 3682), the repeal of 10 TAC §1.21, Action by Department if Outstanding Balances Exist. The purpose of the repeal is to update the rule for consistency with other Department award review policies and to clarify its applicability in certain cases.

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

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

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

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

1. The repeal does not create or eliminate a government program but relates to changes to an existing activity: how to handle instances where an outstanding balance is owed to the Department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUMMARY OF PUBLIC COMMENT. The public comment period was held from May 24, 2024 to June 24, 2024, to receive input on the proposed action. No comment was received.

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

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

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 July 26, 2024.

TRD-202403375
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: August 15, 2024
Proposal publication date: May 24, 2024
For further information, please call: (512) 475-3959

10 TAC §1.21

The Texas Department of Housing and Community Affairs (the Department) adopts, without changes to the text previously published in the May 24, 2024 issue of the *Texas Register* (49 TexReg 3683), new Chapter 1, Administration, Subchapter A, General Policies and Procedures, 10 TAC §1.21, Action by Department if Outstanding Balances Exist. The rule will not be republished. The purpose of the new section is to bring this rule into consistency with other more recent revisions to Department processes including removal of the prior process for the Executive Award Review and Advisory Committee (EARAC) and clarification that this rule does not apply to specific multifamily processes nor to vendors.

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

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

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

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

1. The new section does not create or eliminate a government program but relates to changes to an existing activity, the handling of outstanding balances owed to the Department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUMMARY OF PUBLIC COMMENT. The public comment period was held from May 24, 2024 to June 24, 2024, to receive input on the proposed action. No comment was received.

STATUTORY AUTHORITY. The new section is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules. The rule has been reviewed by legal counsel and found to be a valid exercise of the Department's legal authority.

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

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 July 26, 2024.

TRD-202403376

Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Effective date: August 15, 2024
Proposal publication date: May 24, 2024
For further information, please call: (512) 475-3959

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 21. INTERCONNECTION AGREEMENTS FOR TELECOMMUNICATIONS SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts 13 amendments in Chapter 21 Substantive Rules, Applicable to Interconnection Agreements for Telecommunications Service Providers as part of the statutorily required four-year rule review under Texas Government Code §2001.039.

The commission adopts the following rules with no changes to the proposed text as published in the June 7, 2024 , issue of the *Texas Register* (49 TexReg 3982): 16 Texas Administrative Code (TAC) §21.5, relating to Representative Appearances; §21.31, relating to Filing of Pleadings, Documents, and Other Materials; §21.33, relating to Formal Requisites of Pleading and Documents to be Filed with the Commission; §21.35, relating to Service of Pleadings and Documents; §21.41, relating to Motions; §21.61, relating to Threshold Issues and Certification of Issues to the Commission, §21.75, relating to Motions for Clarification and Motions for Reconsideration; §21.95, relating to Compulsory Arbitration; §21.99, relating to Approval of Arbitrated Agreements; §21.101, relating to Approval of Amendments to Existing Interconnection Agreements; §21.103, relating to Approval of Agreements Adopting Terms and Conditions pursuant to Federal Telecommunications Act of 1996 (FTA) §252(i); §21.123, relating to Informal Settlement Conference; and §21.125, relating to Formal Dispute Resolution Proceeding.

The commission received no comments on the proposed rules.

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

16 TAC §21.5

The rules are adopted under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution; and the Federal Telecommunications Act of 1996, 47 U. S.C. §151, et. seq. which governs interconnection agreements entered into by telecommunications carriers and local exchange carriers.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, 14.052; and the Federal Telecommunications Act of 1996, 47 U. S.C. §151, et. seq.

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 July 25, 2024.

TRD-202403362
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: August 14, 2024
Proposal publication date: June 7, 2024
For further information, please call: (512) 936-7322

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SUBCHAPTER B. PLEADINGS, DOCUMENTS, AND OTHER MATERIALS

16 TAC §§21.31, 21.33, 21.35, 21.41

The rules are adopted under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution; and the Federal Telecommunications Act of 1996, 47 U. S.C. §151, et. seq. which governs interconnection agreements entered into by telecommunications carriers and local exchange carriers.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, 14.052; and the Federal Telecommunications Act of 1996, 47 U. S.C. §151, et. seq.

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 July 25, 2024.

TRD-202403363
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: August 14, 2024
Proposal publication date: June 7, 2024
For further information, please call: (512) 936-7322

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SUBCHAPTER C. PRELIMINARY ISSUES, ORDERS, AND PROCEEDINGS

16 TAC §21.61, §21.75

The rules are adopted under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution; and the Federal Telecommunications Act of 1996, 47 U. S.C. §151, et. seq. which governs interconnection agreements entered into by telecommunications carriers and local exchange carriers.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, 14.052; and the Federal Telecommunications Act of 1996, 47 U. S.C. §151, et. seq.

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 July 25, 2024.

TRD-202403364
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: August 14, 2024
Proposal publication date: June 7, 2024
For further information, please call: (512) 936-7322

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SUBCHAPTER D. DISPUTE RESOLUTION

16 TAC §§21.95, 21.99, 21.101, 21.103

The rules are adopted under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution; and the Federal Telecommunications Act of 1996, 47 U. S.C. §151, et. seq. which governs interconnection agreements entered into by telecommunications carriers and local exchange carriers.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, 14.052; and the Federal Telecommunications Act of 1996, 47 U. S.C. §151, et. seq.

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 July 25, 2024.

TRD-202403365

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: August 14, 2024
Proposal publication date: June 7, 2024
For further information, please call: (512) 936-7322

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SUBCHAPTER E. POST-INTERCONNECTION AGREEMENT DISPUTE RESOLUTION

16 TAC §21.123, §21.125

The rules are adopted under the following provisions of PURA: §14.001, which provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 and §14.052, which provides the commission with the authority to make adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and §14.0025, which requires the commission to develop and implement a policy to encourage the use of alternative dispute resolution; and the Federal Telecommunications Act of 1996, 47 U. S.C. §151, et. seq. which governs interconnection agreements entered into by telecommunications carriers and local exchange carriers.

Cross reference to statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.0025, 14.052; and the Federal Telecommunications Act of 1996, 47 U. S.C. §151, et. seq.

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 July 25, 2024.

TRD-202403366
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: August 14, 2024
Proposal publication date: June 7, 2024
For further information, please call: (512) 936-7322

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

SUBCHAPTER H. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §24.233, §24.245

The Public Utility Commission of Texas (commission) adopts amendments to 16 Texas Administrative Code (TAC) §24.233, relating to Contents of Certificate of Convenience and Necessity Applications with no changes to the proposed text as published in the May 10, 2024, issue of the *Texas Register* (49 TexReg 3071), which will not be republished, and §24.245, relating to Revocation of a Certificate of Convenience and Necessity (CCN) or Amendment of a Certificate of Convenience and Necessity by Decertification, Expedited Release, or Streamlined Expedited Release with changes to the proposed text as published in the May 10, 2024, issue of the *Texas Register* (49 TexReg 3071), which will be republished. These amendments are adopted under Project Number 56223. The adopted rules implement House Bill (HB) 4559 enacted by the 88th Texas Legislature (R.S.).

Adopted §24.233 changes the county population threshold ranges for retail public utility CCN applications within the boundaries of a municipality, within the extraterritorial jurisdiction of certain municipalities, and extensions of a municipality's certificated service area beyond the extraterritorial jurisdiction of the municipality. Adopted §24.245 changes the county population threshold ranges applicable to expedited release and streamlined expedited release proceedings. Adopted §24.245 further specifies a time period for a retail public utility to file a notice of intent to provide service after the commission has revoked, decertified or ordered expedited release.

The commission received comments on the proposed rule from Aqua Texas, INC. (Aqua), Texas Association of Water Companies, INC. (TAWC), Texas Rural Water Association, (TRWA), and Texas Water Utilities, L.P. (TWU).

Proposed §24.245(g)(3) and §24.245(i)(1)

Under proposed §24.245(g)(3), if a CCN holder and prospective purchasing retail public utility have agreed on the amount of compensation to be paid to the former CCN holder, they must make a joint filing within 60 days of the date the notice of intent to provide service is filed. Similarly, under proposed §24.245(i)(1), if a former CCN holder and landowner have agreed on the amount of compensation to be paid to the former CCN holder, they must make a joint filing with the commission within 70 days after the commission has granted streamlined expedited release. In both instances, the filing must include the amount of the compensation and provide sufficient details about how the compensation was calculated.

TRWA and TAWC argued that the parties should not be required to provide "sufficient details about how the compensation was calculated." TRWA argued that such a requirement would require the disclosure of inadmissible settlement information. TAWC argued that this requirement could discourage settlement negotiations and that the requirement to "provide sufficient details" is vague and burdensome for parties to comply with. TRWA also opposed the requirement that the parties provide the amount of compensation. Aqua and TWU filed in support with TAWC's comments.

Commission Response

The commission modifies proposed §24.245(g)(3) and proposed §24.245(i)(1) to remove the requirement that parties submit details on how the compensation was calculated, as requested by TRWA and TAWC. The commission agrees that the proposed requirement would be potentially burdensome and could discourage resolving these matters by mutual agreement. However, the commission declines to modify the rule to remove the requirement that the parties disclose the amount of compensation, because this is a requirement in the existing rule.

TRWA recommended that the commission remove the proposed requirements imposing deadlines for the parties to make a joint filing with an agreed-to compensation amount. TRWA argues that no such deadline exists in the statute. TRWA acknowledges that these are the deadlines for parties to file appraisals but ar-

gues that they should not also create a deadline to reach a settled agreement on compensation level. TRWA argues that opposing appraisals often create an impetus for settlement. TRWA argues that this language places an unnecessary time limit on the parties reaching an equitable settlement when continuances often lead to the compensation phase of decertification cases lasting over 90 days.

Commission Response

The commission declines to modify the rule to remove the deadlines for the parties to make a joint filing with an agreed-to amount of compensation, as requested by TRWA. The commission disagrees with TRWA that the commission should remove the deadline to enable parties to continue to negotiate after each party has submitted initial appraisals. In that instance, the Commission is required to appoint a third appraiser to determine the final compensation amount, resulting in additional expenses associated with the determination. If the parties wish to negotiate after the submission of initial appraisals, the parties may submit their appraisals prior to the deadline or seek a good cause exception to these requirements.

The amended rules are adopted under the following provisions of the Texas Water Code: Texas Water Code §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; §13.041(b), which provides the commission with the authority to adopt and enforce rules reasonably required in the exercise of its powers and jurisdiction; §13.245, which governs procedures for service extensions within the boundaries or extraterritorial jurisdiction of certain municipalities by a retail public utility; §13.2451 which governs procedures for extension of a municipalities extraterritorial jurisdiction into the service area of a retail public utility; §13.254 which authorizes the commission, after notice and hearing, to revoke or amend a CCN upon written consent of the certificate holder and governs procedures for the expedited release of an area from a CCN's service territory; §13.2541 which governs procedures for the streamlined expedited release of an area from a CCN's service territory as an alternative to decertification or expedited release under §13.254.

Cross reference to statutes: Texas Water Code §§13.041(a) and (b); 13.245; 13.2451, 13.254, 13.2541.

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

(a) Applicability. This section applies to proceedings for revocation or amendment by decertification, expedited release, or streamlined expedited release of a certificate of convenience and necessity (CCN).

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

(1) Alternate retail public utility--The retail public utility from which a landowner plans to receive service after the landowner obtains expedited release under subsection (f) of this section.

(2) Amendment--The change of a CCN to remove a portion of a service area by decertification amendment, expedited release, or streamlined expedited release.

(3) Current CCN holder--An entity that currently holds a CCN to provide service to an area for which revocation or amendment is sought.

(4) Decertification amendment--A process by which a portion of a certificated service area is removed from a CCN, other than expedited release or streamlined expedited release.

(5) Expedited Release--Removal of a tract of land from a CCN area under Texas Water Code (TWC) §13.254(a-1).

(6) Former CCN holder--An entity that formerly held a CCN to provide service to an area that was removed from the entity's service area by revocation or amendment.

(7) Landowner--The owner of a tract of land who files a petition for expedited release or streamlined expedited release.

(8) Prospective retail public utility--A retail public utility seeking to provide service to a removed area.

(9) Removed area--Area that will be or has been removed under this section from a CCN.

(10) Streamlined Expedited Release--Removal of a tract of land from a CCN area under TWC §13.2541.

(c) Provisions applicable to all proceedings for revocation, decertification amendment, expedited release, or streamlined expedited release.

(1) An order of the commission issued under this section does not transfer any property, except as provided under subsection (l) of this section.

(2) A former CCN holder is not required to provide service within a removed area.

(3) If the CCN of any retail public utility is revoked or amended by decertification, expedited release, or streamlined expedited release, the commission may by order require one or more other retail public utilities to provide service to the removed area, but only with the consent of each retail public utility that is to provide service.

(4) A retail public utility, including an alternate retail public utility, may not in any way render retail water or sewer service directly or indirectly to the public in a removed area unless any compensation due has been paid to the former CCN holder and a CCN to serve the area has been obtained, if one is required.

(d) Revocation or amendment by decertification.

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

(A) The current CCN holder has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in all or part of the certificated service area. If the current CCN holder opposes revocation or decertification amendment on one of these bases, it has the burden of proving that it is, or is capable of, providing continuous and adequate service.

(B) The current CCN holder is in an affected county as defined in TWC §16.341, and the cost of providing service by the current CCN holder is so prohibitively expensive as to constitute denial of service. Absent other relevant factors, for commercial developments or residential developments started after September 1, 1997, the fact that the cost of obtaining service from the current CCN holder makes the development economically unfeasible does not render such cost prohibitively expensive.

(C) The current CCN holder has agreed in writing to allow another retail public utility to provide service within its certificated service area or a portion of its service area, except for an interim period, without amending its CCN.

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

(E) The current CCN holder has consented in writing to the revocation or amendment.

(2) A retail public utility may file a written request with the commission to revoke its CCN or to amend its CCN by decertifying a portion of the service area.

(A) The retail public utility must provide, at the time its request is filed, notice of its request to each customer and landowner within the affected service area of the utility.

(B) The request must specify the area that is requested to be revoked or removed from the CCN area.

(C) The request must address the effect of the revocation or decertification amendment on the current CCN holder, any existing customers, and landowners in the affected service area.

(D) The request must include the mapping information required by §24.257 of this title (relating to Mapping Requirements for Certificate of Convenience and Necessity Applications).

(E) The commission may deny the request to revoke or amend a CCN if existing customers or landowners will be adversely affected.

(F) If a retail public utility's request for decertification amendment or revocation by consent under this paragraph is granted, the retail public utility is not entitled to compensation from a prospective retail public utility.

(3) The commission may initiate a proceeding to revoke a CCN or decertify a portion of a service area on its own motion or upon request of commission staff.

(4) The current CCN holder has the burden to establish that it is, or is capable of, providing continuous and adequate service and, if applicable, that there is good cause for failing to file a cease and desist action under TWC §13.252 and §24.255 of this title.

(e) Decertification amendment for a municipality's service area. After notice to a municipality and an opportunity for a hearing, the commission may decertify an area that is located outside the municipality's extraterritorial jurisdictional boundary if the municipality has not provided service to the area on or before the fifth anniversary of the date the CCN was granted for the area. This subsection does not apply to an area that was transferred to a municipality's certificated service area by the commission and for which the municipality has spent public funds.

(1) A proceeding to remove an area from a municipality's service area may be initiated by the commission with or without a petition.

(2) A petition filed under this subsection must allege that a CCN was granted for the area more than five years before the petition was filed and the municipality has not provided service in the area.

(3) A petition filed under this subsection must include the mapping information required by §24.257 of this title.

(4) Notice of the proceeding to remove an area must be given to the municipality, landowners within the area to be removed, and other retail public utilities as determined by the presiding officer.

(5) If the municipality asserts that it is providing service to the area, the municipality has the burden to prove that assertion.

(f) Expedited release.

(1) An owner of a tract of land may petition the commission for expedited release of all or a portion of the tract of land from a current CCN holder's certificated service area so that the area may receive service from an alternate retail public utility if all the following circumstances exist:

(A) the tract of land is at least 50 acres in size;

(B) the tract of land is not located in a platted subdivision actually receiving service;

(C) the landowner has submitted a request for service to the current CCN holder at least 90 calendar days before filing the petition;

(D) the alternate retail public utility possesses the financial, managerial, and technical capability to provide service as identified in the request for service provided under paragraph (5) of this subsection on a continuous and adequate basis; and

(E) the current CCN holder:

(i) has refused to provide service;

(ii) cannot provide service as identified in the request for service provided under paragraph (5) of this subsection on a continuous and adequate basis; or

(iii) conditions the provision of service on the payment of costs not properly allocable directly to the landowner's service request, as determined by the commission.

(2) An owner of a tract of land may not file a petition under paragraph (1) of this subsection if the landowner's property is located in the boundaries of any municipality or the extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or retail public utility owned by the municipality is the current CCN holder.

(3) The landowner's desired alternate retail public utility must be:

(A) an existing retail public utility; or

(B) a district proposed to be created under article 16, §59 or article 3, §52 of the Texas Constitution.

(4) The fact that a current CCN holder is a borrower under a federal loan program does not prohibit the filing of a petition under this subsection or authorizing an alternate retail public utility to provide service to the removed area.

(5) The landowner must submit to the current CCN holder a written request for service. The request must be sent by certified mail, return receipt requested, or by hand delivery with written acknowledgement of receipt. For a request other than for standard residential or commercial service, the written request must identify the following:

(A) the tract of land or portion of the tract of land for which service is sought;

(B) the time frame within which service is needed for current and projected service demands in the tract of land;

(C) the reasonable level and manner of service needed for current and projected service demands in the area;

(D) the approximate cost for the alternate retail public utility to provide service at the same level, and in the same manner, that is requested from the current CCN holder;

(E) the flow and pressure requirements and specific infrastructure needs, including line size and system capacity for the required level of fire protection requested, if any; and

(F) any additional information requested by the current CCN holder that is reasonably related to determining the capacity or cost of providing service at the level, in the manner, and in the time frame, requested.

(6) The landowner's petition for expedited release under this subsection must be verified by a notarized affidavit and demonstrate that the circumstances identified in paragraph (1) of this subsection exist. The petition must include the following:

(A) the name of the alternate retail public utility;

(B) a copy of the request for service submitted as required by paragraph (5) of this subsection;

(C) a copy of the current CCN holder's response to the request for service, if any;

(D) copies of deeds demonstrating ownership of the tract of land by the landowner; and

(E) the mapping information described in subsection (k) of this section.

(7) The landowner must mail a copy of the petition to the current CCN holder and the alternate retail public utility via certified mail on the day that the landowner files the petition with the commission.

(8) The presiding officer will determine whether the petition is administratively complete. If the petition is determined not to be administratively complete, the presiding officer will issue an order describing the deficiencies in the petition and setting a deadline for the petitioner to address the deficiencies. When the petition is determined to be administratively complete, the presiding officer will establish a procedural schedule that is consistent with paragraphs (9) and (10) of this subsection. The presiding officer may recommend dismissal of the petition under §22.181(d) of this title if the petitioner fails to supplement or amend the petition within the required timeframe after the presiding officer has determined that the petition is not administratively complete.

(9) The current CCN holder may file a response to the petition within a timeframe specified by the presiding officer, not to exceed 20 days from the date the petition is determined to be administratively complete. The response must be verified by a notarized affidavit.

(10) The commission will grant the petition within 60 calendar days from the date the petition was found to be administratively complete unless the commission makes an express finding that the landowner failed to satisfy all of the requirements of this subsection and makes separate findings of fact and conclusions of law for each requirement based solely on the information provided by the landowner and the current CCN holder. The commission may condition the granting or denial of a petition on terms and conditions specifically related to the landowner's service request and all relevant information submitted by the landowner, the current CCN holder, and commission staff.

(11) The commission will base its decision on the filings submitted by the current CCN holder, the landowner, and commission staff. Chapter 2001 of the Texas Government Code does not apply to any petition filed under this subsection. The current CCN holder or landowner may file a motion for rehearing of the commission's decision on the same timeline that applies to other final orders of the commission. The commission's order ruling on the petition may not be appealed.

(12) If the current CCN holder has never made service available through planning, design, construction of facilities, or contractual obligations to provide service to the tract of land, the commission is not required to find that the alternate retail public utility can provide better service than the current CCN holder, but only that the alternate retail public utility can provide the requested service. This paragraph does not apply to Cameron, Willacy, and Hidalgo Counties or to a county that meets any of the following criteria:

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

(B) the county has a population of more than 100,000 and less than 200,000 and borders a county described by subparagraph (A) of this paragraph;

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

(D) the county has a population of more than 40,000 and less than 50,000 and contains a portion of the San Antonio River.

(13) If the alternate retail public utility is a proposed district, then the commission will condition the release of the tract of land and required CCN amendment or revocation on the final and unappealable creation of the district. The district must file a written notice with the commission when the creation is complete and provide a copy of the final order, judgment, or other document creating the district.

(14) The commission may require an award of compensation to the former CCN holder under subsection (g) of this section. The determination of the amount of compensation, if any, will be made according to the procedures in subsection (g) of this section.

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

(1) After the commission has issued its order granting revocation, decertification, or expedited release, the prospective retail public utility must file a notice of intent to provide service. A notice of intent filed before the commission issues its order under subsection (d) or (f) of this section is deemed to be filed on the date the commission's order is signed.

(2) The notice of intent must include the following information:

(A) a statement that the filing is a notice of intent to provide service to an area that has been removed from a CCN under subsection (d) or (f) of this section;

(B) the name and CCN number of the former CCN holder; and

(C) whether the prospective retail public utility and former CCN holder have agreed on the amount of compensation to be paid to the former CCN holder.

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

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

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

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

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

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

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

(7) The commission will issue an order establishing the amount of compensation to be paid to the former CCN holder not later than 90 days after the date on which a retail public utility files its notice of intent to provide service to the decertified area.

(h) Streamlined expedited release.

(1) The owner of a tract of land may petition the commission for streamlined expedited release of all or a portion of the tract of land from the current CCN holder's certificated service area if all the following conditions are met:

(A) the tract of land is at least 25 acres in size;

(B) the tract of land is not receiving service of the type that the current CCN holder is authorized to provide under the applicable CCN; and

(C) at least part of the tract of land is located in the current CCN holder's certificated service area and at least some of that part is located in a qualifying county.

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

(A) has a population of at least 1.2 million;

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

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

(3) A landowner seeking streamlined expedited release under this subsection must file with the commission a petition and supporting documentation containing the following information and verified by a notarized affidavit:

(A) a statement that the petition is being submitted under TWC §13.2541 and this subsection;

(B) proof that the tract of land is at least 25 acres in size;

(C) proof that at least part of the tract of land is located in the current CCN holder's certificated service area and at least some of that part is located in a qualifying county;

(D) a statement of facts that demonstrates that the tract of land is not currently receiving service;

(E) copies of deeds demonstrating ownership of the tract of land by the landowner;

(F) proof that a copy of the petition was mailed to the current CCN holder via certified mail on the day that the landowner filed the petition with the commission; and

(G) the mapping information described in subsection (k) of this section.

(4) The presiding officer will determine whether the petition is administratively complete. If the petition is determined not to be administratively complete, the presiding officer will issue an order describing the deficiencies in the petition and setting a deadline for the petitioner to address the deficiencies. When the petition is determined to be administratively complete, the presiding officer will establish a procedural schedule that is consistent with paragraphs (5) and (6) of this subsection. The presiding officer may recommend dismissal of the petition if the petitioner fails to supplement or amend the petition within the required timeframe after the presiding officer has determined that the petition is not administratively complete.

(5) The current CCN holder may file a response to the petition within a timeframe specified by the presiding officer, not to exceed 20 days from the date the petition is determined to be administratively complete. The response must be verified by a notarized affidavit.

(6) The commission will issue a decision on a petition filed under this subsection no later than 60 calendar days after the presiding officer by order determines that the petition is administratively complete. The commission will base its decision on the information filed by the landowner, the current CCN holder, and commission staff. No hearing will be held.

(7) The fact that a current CCN holder is a borrower under a federal loan program is not a bar to the release of a tract of land under this subsection. The CCN holder must not initiate an application to borrow money under a federal loan program after the date the petition is filed until the commission issues a final decision on the petition.

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

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

(1) If the former CCN holder and landowner have agreed on the amount of compensation to be paid to the former CCN holder, they must make a joint filing with the commission within 70 days after the commission has granted streamlined expedited release. The filing must state the amount of the compensation to be paid.

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

(A) If the former CCN holder and landowner have agreed on an independent appraiser, the former CCN holder and landowner must make a joint filing with the commission identifying the individual or firm who will be the independent appraiser after the commission grants streamlined expedited release under subsection (h) of this section. The costs of the independent appraiser must be borne by the landowner. The appraiser must file its appraisal with the commission within 70 days after the commission grants streamlined expedited release.

(B) If the former CCN holder and landowner have not agreed on an independent appraiser within ten days after the commission grants streamlined expedited release under subsection (h) of this section, the former CCN holder and landowner must each engage its own appraiser at its own expense. Each appraiser must file its appraisal with the commission within 70 calendar days after the commission grants streamlined expedited release. After receiving the appraisals, the commission will appoint a third appraiser who must make a determination of compensation within 100 days after the date the commission grants streamlined expedited release. The determination by the commission-appointed appraiser may not be less than the lower appraisal or more than the higher appraisal made by the appraisers engaged by the former CCN holder and landowner. The former CCN holder and landowner must each pay half the cost of the commission-appointed appraisal directly to the commission-appointed appraiser.

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

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

(4) If the former CCN holder fails to make a filing with the commission about the amount of agreed compensation, or engage an appraiser, or file an appraisal within the timeframes required by this subsection, the amount of compensation to be paid will be deemed to be zero. If the landowner fails to make a filing with the commission about the amount of agreed compensation, or engage an appraiser, or file an appraisal within the timeframes required by this subsection, the commission will base the amount of compensation to be paid on the appraisal provided by the CCN holder.

(5) The commission will issue an order establishing the amount of compensation to be paid and directing the landowner to pay the compensation to the former CCN holder not later than 60 days after the commission receives the final appraisal.

(6) The landowner must pay the compensation to the former CCN holder not later than 90 days after the date the compensation amount is determined by the commission. The commission will not authorize a prospective retail public utility to serve the removed area until the landowner has paid to the former CCN holder any compensation that is required.

(j) Valuation of real and personal property of the former CCN holder.

(1) The value of real property must be determined according to the standards set forth in chapter 21 of the Texas Property Code governing actions in eminent domain.

(2) The value of personal property must be determined according to this paragraph. The following factors must be used in valuing personal property:

(A) the amount of the former CCN holder's debt allocable to service to the removed area;

(B) the value of the service facilities belonging to the former CCN holder that are located within the removed area;

(C) the amount of any expenditures for planning, design, or construction of the service facilities of the former CCN holder that are allocable to service to the removed area;

(D) the amount of the former CCN holder's contractual obligations allocable to the removed area;

(E) any demonstrated impairment of service or any increase of cost to consumers of the former CCN holder remaining after a CCN revocation or amendment under this section;

(F) the impact on future revenues lost from existing customers;

(G) necessary and reasonable legal expenses and professional fees, including costs incurred to comply with TWC §13.257(r); and

(H) any other relevant factors as determined by the commission.

(k) Mapping information.

(1) For proceedings under subsections (f) or (h) of this section, the following mapping information must be filed with the petition:

(A) a general-location map identifying the tract of land in reference to the nearest county boundary, city, or town;

(B) a detailed map identifying the tract of land in reference to verifiable man-made and natural landmarks, such as roads, rivers, and railroads. If ownership of the tract of land is conveyed by multiple deeds, this map must also identify the location and acreage of land conveyed by each deed; and

(C) one of the following for the tract of land:

(i) a metes-and-bounds survey sealed or embossed by either a licensed state land surveyor or a registered professional land surveyor;

(ii) a recorded plat; or

(iii) digital mapping data in a shapefile (SHP) format georeferenced in either NAD 83 Texas State Plane Coordinate System (US feet) or in NAD 83 Texas Statewide Mapping System (meters). The digital mapping data must include a single, continuous polygon record.

(2) Commission staff may request additional mapping information.

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

(l) Additional conditions for decertification under subsection (d) of this section.

(1) If the current CCN holder did not agree in writing to a revocation or amendment by decertification under subsection (d) of this section, then an affected retail public utility may request that the revocation or amendment be conditioned on the following:

(A) ordering the prospective retail public utility to provide service to the entire service area of the current CCN holder; and

(B) transferring the entire CCN of the current CCN holder to the prospective retail public utility.

(2) If the commission finds that, as a result of revocation or amendment by decertification under subsection (d) of this section, the current CCN holder will be unable to provide continuous and adequate service at an affordable cost to the current CCN holder's remaining customers, then:

(A) the commission will order the prospective retail public utility to provide continuous and adequate service to the remaining customers at a cost comparable to the cost of that service to the prospective retail public utility's other customers and will establish the terms under which service must be provided; and

(B) the commission may order any of the following terms:

(i) transfer of debt and other contract obligations;

(ii) transfer of real and personal property;

(iii) establishment of interim rates for affected customers during specified times; and

(iv) other provisions necessary for the just and reasonable allocation of assets and liabilities.

(3) The prospective retail public utility must not charge the affected customers any transfer fee or other fee to obtain service, except for the following:

(A) the prospective retail public utility's usual and customary rates for monthly service, or

(B) interim rates set by the commission, if applicable.

(4) If the commission orders the prospective retail public utility to provide service to the entire service area of the current CCN holder, the commission will not order compensation to the current CCN holder, the commission will not make a determination of the amount of compensation to be paid to the current CCN holder, and the prospective retail public utility must not file a notice of intent under subsection (g) of this section.

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

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

TRD-202403367
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: August 14, 2024
Proposal publication date: May 10, 2024
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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 61. COMBATIVE SPORTS

16 TAC §61.10, §61.110

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 61, §61.10 and §61.110, regarding the Combative Sports program, without changes to the proposed text as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2603). These rules will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 61, implement Texas Occupations Code, Chapter 2052, Combative Sports.

Slap fighting is a novel combative sports discipline that is growing in popularity in the United States and internationally. The Department has determined that slap fighting meets the statutory definitions of a "combative sport" and "martial art" set out in Texas Occupations Code, Chapter 2052.

The adopted rules recognize slap fighting as a martial arts discipline. This formal recognition allows the Department to extend the licensure and bonding requirements in Texas Occupations Code, Chapter 2052, to promoters and contestants of slap fighting events.

The adopted rules add a definition in 16 TAC, Chapter 61, §61.10, to define the discipline of slap fighting. Additionally, the adopted rules add provisions to 16 TAC, Chapter 61, §61.110, to recognize that slap fighting is subject to the Department's regulatory authority. Lastly, the adopted rules allow contestants in slap fighting events to participate without gloves.

SECTION-BY-SECTION SUMMARY

The adopted rules add new §61.10(16) to add the definition of "slap fighting" and renumber the remaining definitions.

The adopted rules add new §61.110(c)(1) to recognize slap fighting as a martial arts discipline and allow slap fighting contestants to compete without gloves.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2603). The public comment period closed on May 28, 2024. The Department received a comment from one

interested party on the proposed rules. The public comment is summarized below.

Comment: One commenter objected to the proposed rules, stating that slap fighting "has no sporting qualities and is tragically dangerous." The commenter stated that slap fighting is not a sport because, unlike boxing or mixed martial arts, it does not require strategy or provide contestants with a way to mitigate blows from their opponent.

Department Response: The Department disagrees with the comment's suggestion that slap fighting should not be regulated by the Department. Despite the commenter's objections, the Department believes that slap fighting falls within the statutory definitions of a combative sport and martial art and must be regulated in order to protect the health and safety of contestants. The Department did not make any changes to the proposed rules in response to this comment.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Combative Sports Advisory Board met on June 20, 2024, to discuss the proposed rules and the public comment received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register.* At its meeting on July 23, 2024, the Commission adopted the proposed rules as recommended by the Advisory Board.

STATUTORY AUTHORITY

The adopted rules are adopted under Texas Occupations Code, Chapters 51 and 2052, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 2052. No other statutes, articles, or codes are affected by the adopted rules.

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

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

TRD-202403379
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 15, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 475-4879

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CHAPTER 114. ORTHOTISTS AND PROSTHETISTS

16 TAC §§114.1, 114.70, 114.90

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC), Chapter 114, §114.1 and §114.90, regarding the Orthotists and Prosthetists program, without changes to the proposed text as published in the March 29, 2024, issue of the *Texas Register* (49 TexReg 2035). These rules will not be republished.

The Commission also adopts amendments to existing rules at 16 TAC Chapter 114, §114.70, regarding the Orthotists and Prosthetists program, with changes to the proposed text as published in the March 29, 2024, issue of the *Texas Register* (49 TexReg 2035). This rule will be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 114, implement Texas Occupations Code, Chapter 605, Orthotists and Prosthetists.

The adopted rules are necessary to implement Senate Bill (SB) 490, 88th Legislature, Regular Session (2023), which requires certain health care providers to provide itemized bills. SB 490 added new Chapter 185 to the Health and Safety Code to address this issue. The term "health care provider" is generally defined under Health and Safety Code §185.001(2) to include a facility licensed, certified, or otherwise authorized to provide health care services or supplies in this state in the ordinary course of business. Section 185.003 requires appropriate licensing authorities to take disciplinary action against providers who violate the requirements of Chapter 185 as if the provider violated an applicable licensing law.

The Department regulates numerous health care professions. Because the definition of the term "health care provider" is restricted in the bill to regulated facilities, however, SB 490 appears to directly impact only those health care professions for which facilities are regulated. The Department regulates the professions of orthotics and prosthetics under Occupations Code, Chapter 605, the Orthotics and Prosthetics Act (the Act). Under §605.260 of the Act, orthotic and prosthetic facilities are required to be accredited by the Department. Because these accredited facilities constitute health care providers under Health and Safety Code §185.001(2), the Department is required to treat a violation by an accredited facility of the itemized billing requirements as a violation of the Department's licensing statutes. The adopted rules therefore provide that accredited facilities must comply with Health and Safety Code, Chapter 185, and that failure to do so is a basis for disciplinary action under both the Act and the enforcement provisions of Occupations Code, Chapter 51.

In addition to implementing SB 490, the adopted rules make non-substantive changes for purposes of clarity and consistency with the format of other rule chapters administered by the Department. These changes include the addition of clarifying language concerning the authority for and applicability of the rules, the addition and revision of headings, and the deletion of unnecessary language.

SECTION-BY-SECTION SUMMARY

The adopted rules amend §114.1, Authority. The heading is modified to "Authority and Applicability" and the rule is divided into two subsections to separately address each topic. The existing rule text is incorporated into new subsection (a) and language is inserted to clarify the statutory authority for the rule chapter and to include a reference to the new Health and Safety Code, Chapter 185. New subsection (b) is added to clarify that the rules in 16 TAC, Chapter 60, Procedural Rules of the Commission and the Department, and the rules in 16 TAC, Chapter 100, General Provisions for Health-Related Programs, apply to the Orthotists and Prosthetists program in addition to the rules in Chapter 114.

The adopted rules amend §114.70, Responsibilities of Licensees. The heading is modified to "Responsibilities of

Licensees and Accredited Facilities" to more accurately reflect the scope of the rule. New subsection (e) is inserted to set forth the requirement of accredited facilities to comply with Health and Safety Code, Chapter 185, and that failure to comply is a basis for enforcement action. Paragraphs (e)(1) through (e)(3) outline the required components of the bills. In response to a public comment received, language was added to subsection (e) to state a clear prohibition on engaging in debt collection without first complying with the itemized billing requirements and to (e)(3) to use the term "the amount the facility alleges is due," in place of "the amount due," to more closely track the language of the statute.

The adopted rules amend §114.90, Professional Standards and Basis for Disciplinary Action." A new subheading, "Enforcement Actions," is added to subsection (a) to improve readability. Redundant verbiage concerning the authority for the rule is removed. Clarifying changes are made to the syntax of subsections (a)(1) and (a)(2). Subsection (a)(2) is revised to reflect that the sources of the Department's enforcement authority under Chapter 114 may include a variety of statutes not specifically listed, as reflected in the revised §114.1. Lastly, a new subheading, "Fraud, misrepresentation, or concealment" is added to subsection (b) to improve readability.

PUBLIC COMMENTS

The Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the March 29, 2024, issue of the *Texas Register* (49 TexReg 2035). The public comment period closed on April 29, 2024. The Department received a comment from one interested party on the proposed rules. The public comment is summarized below.

Comment: The proposed rules should be adopted with changes to make them more clear, specific, and legally accurate. The phrase "the amount the provider alleges is due" should be substituted for "the amount due" to track the language of the statute and avoid confusion. The rules should state that the Department may update or revise a list of third-party guidelines to define what constitutes a "plain language description" of an item on a bill. The Department should maintain this list on a public website. Lastly, the proposed rules should be revised to add a clear prohibition on attempting bill collection for a service or supply provided, without first having fulfilled the itemized billing requirement.

Department Response: The Department agrees that the language concerning the amount alleged to be due should be modified for clarity and that a clear prohibition should be added to the rule to prevent a provider from attempting bill collection without having first complied with the itemized billing requirements of the statute and rule. The Department makes corresponding changes. Concerning the maintenance and publication of a list of approved third-party guidelines, the Department respectfully declines to make this change, as the addition of this language would impose an additional burden on the Department beyond that of the bill itself and does not appear necessary at this time.

ADVISORY BOARD RECOMMENDATIONS AND COMMISSION ACTION

The Orthotists and Prosthetists Advisory Board met on May 23, 2024, to discuss the proposed rules and the public comment received. The Advisory Board recommended that the Commission adopt the proposed rules as published in the *Texas Register* with changes to §114.70 made in response to the public comment as explained in the Section-by-Section Summary. At its meeting on July 23, 2024, the Commission adopted the proposed rules with changes as recommended by the Advisory Board.

STATUTORY AUTHORITY

The adopted rules are proposed under Texas Occupations Code, Chapters 51 and 605, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted rules are those set forth in Texas Occupations Code, Chapters 51 and 605. No other statutes, articles, or codes are affected by the adopted rules.

The legislation that enacted the statutory authority under which the adopted rules are to be adopted is Senate Bill 490, 88th Legislature, Regular Session (2023).

§114.70. Responsibilities of Licensees and Accredited Facilities.

(a) Persons to whom a license has been issued shall return the license to the department upon the surrender, revocation or suspension of the license.

(b) All applicants, licensees, registrants and accredited facilities shall notify the department of any change(s) of name or mailing address. Accredited facilities shall notify the department of any change(s) in the facility name, the name of the safety manager and the practitioner in charge, the mailing address and physical address. Written notification to the department and the appropriate fee shall be submitted to the department within thirty (30) days after a change is effective. Changes in a facility's physical location or ownership require a new application for accreditation.

(c) Name changes. Before the department will issue a new license certificate and identification card, notification of name changes must be received by the department. Notification shall include a copy of a marriage certificate, court decree evidencing the change, or a Social Security card reflecting the licensee's or registrant's new name.

(d) Consumer complaint information notices. All licensees, registrants and accredited facilities, excluding facilities that a licensee visits to treat patients, such as hospitals, nursing homes or patients' homes, shall prominently display a consumer complaint notice or sign in a waiting room or other area where it shall be visible to all patients. Lettering shall be at least one-fourth inch, or font size 30, in height, with contrasting background, containing the department's name, website, mailing address, and telephone number for the purpose of directing complaints to the department regarding a person or facility regulated or requiring regulation under the Act. Script or calligraphy prints are not allowed. The notice shall be worded as specified by the department.

(e) Itemized billing. A facility must provide itemized billing in accordance with Health and Safety Code, Chapter 185, and must not pursue debt collection against a patient for a provided health care service or supply, without having first done so. Failure of a facility to comply is a ground for enforcement action under Occupations Code, Chapters 51 and 605, and these rules. The itemized bill must, in addition to any other requirement of Health and Safety Code, Chapter 185, include:

(1) a plain language description of each distinct health care service or supply provided to the patient;

(2) if the facility sought or is seeking reimbursement from a third party, any billing code submitted to the third party and the amounts billed to and paid by that third party; and

(3) the amount the facility alleges is due from the patient for each service and supply provided to the patient.

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 July 26, 2024.

TRD-202403381
Doug Jennings
General Counsel
Texas Department of Licensing and Regulation
Effective date: August 15, 2024
Proposal publication date: March 29, 2024
For further information, please call: (512) 475-4879

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.8

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 1, Subchapter A, §1.8, Historically Underutilized Business (HUBs) Program, without changes to the proposed text as published in the May 10, 2024, issue of the *Texas Register* (49 TexReg 3074). The rule will not be republished.

The Coordinating Board adopts the amendment adopting the Comptroller's rules involving HUBs as required by Texas Government Code section 2161.003. Specifically, this amendment adopts the Comptroller's rules rather than the Texas Building and Procurement Division rules. Further, this amendment removes an outdated citation to the Administrative Code and replaces it with a citation to the Comptroller's current HUB rules.

No comments were received regarding the adoption of the amendment.

The Board adopts this rule under its general rulemaking authority granted by section Texas Education Code section 61.027.

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

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

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

TRD-202403382
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Texas Higher Education Coordinating Board
Effective date: August 15, 2024
Proposal publication date: May 10, 2024
For further information, please call: (512) 427-6271

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19 TAC §1.10

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of Title 19, Part 1, Chapter 1, Subchapter A, §1.10, Administration of the Open Records Act, without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2888). The rule will not be republished.

The adopted repeal removes a rule that is unnecessary because the process of handling such a request is governed by statute under Chapter 552 of the Texas Government Code.

This rule was outdated and largely restated the statute, and where there is additional direction, dealt with internal procedures, which is not the function of administrative rules.

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 the public information process.

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 July 26, 2024.

TRD-202403383
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 427-6271

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SUBCHAPTER T. WORKFORCE EDUCATION COURSE MANUAL ADVISORY COMMITTEE

19 TAC §§1.220 - 1.223, 1.225, 1.226

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 1, Subchapter T, §§1.220 - 1.223, 1.225 and 1.226, Workforce Education Course Manual Advisory Committee, without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2889). The rules will not be republished.

This amendment revises and clarifies the purpose and tasks assigned to the committee. The advisory committee was created to provide advice to the Coordinating Board regarding content, structure, currency and presentation of the Workforce Education Course Manual (WECM) and its courses; coordinate field engagement in processes, maintenance, and use of the WECM; and provide assistance in identifying new courses, new programs of study, developments within existing programs represented by courses in the manual, vertical and horizontal alignment of courses within programs, and obsolescence of programs of study and courses.

Rule 1.220, Authority and Specific Purposes, is amended to assign the Workforce Education Course Manual (WECM) Advisory Committee responsibilities to coordinate field engagement in maintaining the WECM, to identify new courses, and to identify new programs of study. This amendment removes the responsibility of the WECM Advisory Committee to make recommendations.

Rule 1.221, Definitions, is amended to provide clarity regarding the use of the term Board.

Rule 1.222, Committee Membership and Officers, is amended to provide the full title of Texas Education Code. The amendment also removes reference to workforce education and adds career and technical education, which includes workforce education and continuing education to align with the terminology in §§2.320 - 2.330 of this title (relating to Career and Technical Education Course Maintenance and Approval).

Rule 1.223, Duration, is amended to change the year that the WECM Advisory Committee will be abolished.

Rule 1.225, Tasks Assigned to the Committee, is amended to provide clarity regarding the specific tasks for which the WECM Advisory Committee is responsible. The amendment removes the responsibility to approve local need course requests and adds responsibilities related to the process of career and technical education course maintenance and approval as specified in §§2.320 - 2.330 of this title (relating to Career and Technical Education Course Maintenance and Approval).

Rule 1.226, Report to the Board; Evaluation of Committee Costs and Effectiveness, is amended to remove the requirement for the WECM Advisory Committee to report recommendations to the Board. This amendment aligns with the adopted amendment to §1.225 of this title (relating to Tasks Assigned to the Committee).

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, §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 amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter T.

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 July 26, 2024.

TRD-202403384

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Effective date: August 15, 2024
Proposal publication date: May 3, 2024
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CHAPTER 2. ACADEMIC AND WORKFORCE EDUCATION

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§2.3, 2.5, 2.7 - 2.9

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 2, Subchapter A, General Provision, §§2.5, 2.8, and 2.9, with changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2891). The rules will be republished. Section 2.3 and §2.7 are adopted without changes and will not be republished.

The amendments improve the administrability of chapter 2.

Rule 2.3, Definitions, list definitions broadly applicable to all subchapters in chapter 2. The amendments add definitions for career and technical education program and course approval and provide alignment with federal definitions for doctoral degree programs. These definitions are aligned to those that appear throughout Board rules, including in the chapter 13 funding rules and in other subchapters that apply to program approval. Rule 2.3(22) is added to specify the Higher Education Regions of the state are those adopted by the Comptroller of Public Accounts. This revision clarifies the regions by placing them in rule and make them uniform across agencies.

Rule 2.5, General Criteria for Program Approval, contains a list of general criteria broadly applicable to all new program requests. The revisions include adding a criterion for program approval that determines whether the program provides a credential of value based on the methodology for funding set out in Board rules. The amendments also clarify that a joint degree program may be approved as a substantive revision to an existing program if at least one of the programs is already approved.

Rule 2.7, Informal Notice and Comment on Proposed Local Programs, creates an opportunity for institutions of higher education to submit a comment related to program proposals submitted by nearby institutions. This notice and comment period provides a mechanism for the Board to collect information related to whether the program is needed by the state and local community and whether it unnecessarily duplicates existing offerings. The amendments provide clarity on the notification and opportunity to comment on new degree programs.

Rule 2.8, Time Limit on Implementing Approved New Programs or Administrative Changes, establishes a time limit on the effectiveness of Board approvals. This provision ensures that the information used to grant the approval, including program need, remains current before a program is implemented. Amendments allow institutions to request an extension on program implementation and authorize the Commissioner to grant the extension for good cause.

Rule 2.9, Revisions and Modifications to an Approved Program, describes the process institutions must follow to notify the Co-

ordinating Board about substantive and non-substantive revisions and modifications to approved programs and administrative structure.

The amendment changes the approval level for substantive revisions and modifications of approved degree programs. The amendments provide greater process and clarity for creation of a joint degree program and specificity as to which revisions require additional approval by the Board or Commissioner.

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

Section 2.5, General Criteria for Program Approval, paragraph (9) is amended to improve clarity by replacing workforce standards with skill standards recognized by the Texas Workforce Investment Council. The change brings this section of rule into alignment with new rules in chapter 2, subchapter L, concerning the Approval Process for a Career and Technical Education Certificate.

Section 2.8, Time Limit on Implementing Approved New Programs or Administrative Changes, is amended to clarify this section is applicable to revision and modification of existing degree programs. The amended language better aligns with other sections of this chapter and Coordinating Board processes and documentation regarding program approval.

Section 2.9, Revisions and Modifications to an Approved Program, is amended to clarify the approval level required for substantive revision and modification of an approved program. The amended rule makes clear Board approval is required for any substantive revision made to an approved doctoral or professional program. This section is further amended to explain board approval is required for substantive revision of a bachelor's or master's program initially approved by the Board after September 1, 2023. Substantive revisions to bachelor's and master's programs approved by the Board, Commissioner, or Assistant Commissioner before September 1, 2023 may be approved by the Assistant Commissioner.

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

Comment from South Texas College: The proposed revision to rule 2.5 General Criteria for Program Approval indicates that "the program provides a credential of value as defined in chapter 13, subchapter S, of Board Rules" as part of the criteria. Chapter 13 states that "The Coordinating Board shall calculate the expected return on investment for each program based on the most current data available to the agency for the funding year for each program or a comparable program." Is this information already available on the THECB site, and if not, is there an estimated time of when it will be available?

Response: The Coordinating Board thanks the institution for its comment. Information and data related to the Coordinating Board's analysis of credentials of value, including data dashboards, is available at https://databridge.highered.texas.gov/credentials-of-value/ for institutional reference. As the formulas used to calculate credentials of value are refined and improved, additional information will be made available to institutions. For questions related to specific funding criteria for community college credentials please contact ccfinance@highered.texas.gov.

Comments from San Jacinto College:

Comment one requested clarification of the summary of 2.3 in the *Texas Register* which read "community and technical education" instead of "career and technical education."

Response: The Coordinating Board thanks the institution for its comment. The textual error has been corrected in the adoption rule packet summary.

Comment two requested the addition of the word "program" to several sections of 2.3, as well as the addition of a definition of program. The primary concern is that without the term "program" integrated, it is unclear which types of credentials, sometimes referred to as "program," the rules may apply to in other sections.

Response: The Coordinating Board thanks the institution for its comment. Adding a general definition of "program" may have unintended consequences across the remaining subchapters of Texas Administrative code. Additionally, each subchapter typically includes a "Purpose" section which states which types of degrees and certificates the chapter is applicable if it is not applicable to all. Exceptions to applicability are noted in rule text, as needed. The Coordinating Board may include clarifications in FAQ documents for the field.

Comment three requests clarification of the reference to "academic or workforce standards" referenced in 2.5(9).

Response: The Coordinating Board thanks the institution for its comment and has amended section 2.5(9) to improve clarity by replacing workforce standards with skill standards recognized by the Texas Workforce Investment Council. This change brings this section of rule into alignment with new rules in chapter 2, subchapter L, concerning the Approval Process for a Career and Technical Education Certificate.

The amendments are adopted under Texas Education Code, Section 61.0512, which provides the Coordinating Board with the authority to authorize new academic programs; and Section 61.003 which contains several definitions for terms used throughout this chapter. Other relevant provisions of law include Texas Education Code, Section 130.001, which grants the Coordinating Board the responsibility to adopt policies and establish general rules necessary to carry out statutory duties with respect to public junior colleges; and Sections 130.001 - 130.312, which provides authority to authorize baccalaureate degrees at public junior colleges.

The amendments affect Texas Education Code Sections 61.003, 61.0512, 130.001, and 130.301-130.312.

§2.5. General Criteria for Program Approval.

(a) In addition to any criteria specified in statute or this chapter for a specific program approval, the Assistant Commissioner, Commissioner, or Board, as applicable, shall consider the following factors:

(1) Evidence that the program is needed by the state and the local community, as demonstrated by student demand for similar programs, labor market information, and value of the credential;

(2) Whether the program unnecessarily duplicates programs offered by other institutions of higher education or private or independent institutions of higher education, as demonstrated by capacity of existing programs and need for additional graduates in the field;

(3) Comments provided to the Board from institutions noticed under §2.7 of this subchapter;

(4) Whether the program has adequate financing from legislative appropriation, funds allocated by the Board, or funds from other sources;

(5) Whether the program's cost is reasonable and provides a value to students and the state when considering the cost of tuition, source(s) of funding, availability of other similar programs, and the earnings of students or graduates of similar credential programs in the state to ensure the efficient and effective use of higher education resources;

(6) Whether the program provides a credential of value as defined in chapter 13, subchapter S, of Board Rules;

(7) Whether and how the program aligns with the metrics and objectives of the Board's Long-Range Master Plan for Higher Education;

(8) Whether the program has necessary faculty and other resources including support staff to ensure student success;

(9) Whether the program meets academic standards specified by law or prescribed by Board rule or skill standards recognized by the Texas Workforce Investment Council, if they exist for the discipline; and

(10) Past compliance history and program quality of the same or similar programs, where applicable.

(b) In the event of conflict between this rule and a more specific rule regarding program approval, the more specific rule shall control.

(c) A request for approval of a joint degree program that does not include existing degree programs is considered a new degree program and is subject to new degree program approval requirements.

§2.8. Time Limit on Implementing Approved Programs or Program Revisions.

(a) Unless otherwise stipulated at the time of approval, if an approved new degree program does not enroll students within two years of approval, that approval is no longer valid.

(b) An institution may submit a request to the Assistant Commissioner for approval to lengthen that time limit by up to five years from the approval date. The request must include a description of the good cause or compelling academic reason for extending the program implementation timeline.

(c) The Commissioner has discretion to approve or deny the request if the Commissioner determines there is good cause for the extension, and it is in the best interest of the students to be served by the program.

(d) Unless otherwise stipulated at the time of approval, if the institution does not implement the approved program revision or modification within two years of approval, that approval is no longer valid.

(e) Provisions of this section apply to all approvals and changes under this chapter.

§2.9. Revisions and Modifications to an Approved Program.

(a) Substantive revisions and modifications that materially alter the nature of the program, physical location, or modality of delivery, as determined by the Commissioner, include, but are not limited to:

(1) Closing the program in one location and moving it to a second location;

(2) Changing the funding from self-supported, as defined in subchapter O of this chapter relating to self-supporting programs, to formula-funded or vice versa;

(3) Adding a new formula-funded or self-supported track to an existing program; and

(4) Creating a joint program that includes one or more existing approved degree programs.

(b) Board approval is required for any substantive revision or modification of an approved doctoral or professional program. Substantive revisions to bachelor's and master's programs approved by the Board on or after September 1, 2023 require Board approval. Substantive revisions to bachelor's and master's programs approved by the Board, Commissioner, or Assistant Commissioner before September 1, 2023 may be approved by the Assistant Commissioner.

(c) Non-substantive revisions and modifications that do not materially alter the nature of the program, location, or modality of delivery, as determined by the Assistant Commissioner, include, but are not limited to:

(1) Increasing the number of semester credit hours of a program for reasons other than a change in programmatic accreditation requirements;

(2) Consolidating a program with one or more existing programs;

(3) Offering a program in an off-campus face-to-face format;

(4) Altering any condition listed in the program approval notification;

(5) Changing the CIP Code of the program;

(6) Increasing the number of semester credit hours if the increase is due to a change in programmatic accreditation requirements;

(7) Reducing the number of semester credit hours, so long as the reduction does not reduce the number of required hours below the minimum requirements of the institutional accreditor, program accreditors, and licensing bodies, if applicable;

(8) Changing the Degree Title or Designation; and

(9) Other non-substantive revisions that do not materially alter the nature of the program, location, or modality of delivery, as determined by the Assistant Commissioner.

(d) The non-substantive revisions and modifications in subsection (c)(1) - (5) of this section are subject to Assistant Commissioner Approval Regular Review under §2.4 of this subchapter. All other non-substantive revisions and modifications are subject to Assistant Commissioner Approval Expedited Review under §2.4(a)(2)(B) of this subchapter.

(e) The following program revisions or modifications require Notification Only under §2.4(1) of this subchapter:

(1) A public university or public health-related institution shall notify the Coordinating Board of changes to administrative units, including creation, consolidation, or closure of an administrative unit. Coordinating Board Staff will update the institution's Program Inventory pursuant to this notification.

(2) All institutions shall notify the Coordinating Board of the intent to offer an approved program through distance education following the procedures in §2.206 of this chapter (relating to Distant Education Degree or Certificate Program 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 July 26, 2024.

TRD-202403385
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 427-6182

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SUBCHAPTER B. APPROVAL PROCESS FOR A CERTIFICATE

19 TAC §2.32

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 2, Subchapter B, §2.32. Notification, without changes to the proposed text as published in the May 10, 2024, issue of the *Texas Register* (49 TexReg 3075). The rules will not be republished.

The adopted amendments revise the requirements for notification of new certificate programs.

Texas Education Code, §61.0512(a), requires the Coordinating Board to approve all new certificate programs.

Rule 2.32, Notification, is amended to remove the provision requiring CIP codes for all courses in the certificate.

No comments were received regarding the adoption of the amendments.

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

The adopted amendment affects Texas Education Code Section 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 July 26, 2024.

TRD-202403386
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2024
Proposal publication date: May 10, 2024
For further information, please call: (512) 427-6182

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SUBCHAPTER C. PRELIMINARY PLANNING PROCESS FOR NEW DEGREE PROGRAMS

19 TAC §2.41

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 2, Subchapter C, §2.41, Planning Notification: Notice of Intent to Plan, without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2895). The rule will not be republished.

The adopted amendments include the addition of language to make clear this section applies to proposed degree programs. Texas Education Code §61.0512(b) requires institutions to notify the Board prior to beginning preliminary planning for a new degree program. An institution is planning for a new degree program if it takes any action that leads to the preparation of a proposal for a new degree program.

Section 2.41, Planning Notification: Notice of Intent to Plan, provides the information required for preliminary Planning Notifications for proposed degree programs. This rule also outlines Board requirements for providing labor market and other relevant information to institutions following submission of the Planning Notification.

No comments were received regarding the adoption of the amendments.

The amendment is adopted under Texas Education Code, §61.0512(b), which requires institutions to notify the Board prior to beginning preliminary planning for a new degree program.

The adopted amendments affect Texas Education Code, §61.0512(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.

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

TRD-202403387
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General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 427-6182

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SUBCHAPTER D. APPROVAL PROCESS FOR NEW ACADEMIC ASSOCIATE DEGREES

19 TAC §2.58

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 2, Subchapter D, §2.58, Embedded Credential: Academic Associate Degree, without changes to the proposed text as published in the May 10, 2024, issue of the *Texas Register* (49 TexReg 3075). The rules will not be republished.

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

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

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 or certificate program may be added to any public institution of higher education expect 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 July 26, 2024.

TRD-202403388
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2024
Proposal publication date: May 10, 2024
For further information, please call: (512) 427-6182

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

19 TAC §2.87

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 2, Subchapter E, §2.87, Criteria for New Baccalaureate Degree Programs, with changes to the proposed text as published in the May 10, 2024, issue of the *Texas Register* (49 TexReg 3076). The rules will be republished.

The amendment provides clarity on the number of baccalaureate degree programs each public junior college district is authorized to implement.

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

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

Section 2.87, Criteria for New Baccalaureate Degree Programs, contains additional amendments relating to articulation agreements. The amendments make clear the Coordinating Board requires public junior colleges satisfy §130.309 of statute by securing a teach-out agreement with a Texas public institution of higher education for the first five years following implementation of an approved baccalaureate program. The amendments further clarify the Coordinating Board does not expect a public junior college to have articulation agreements in place for supporting Associate of Applied Science degree programs.

No comments were received regarding the adoption of the amendments.

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

The adopted amendment affects Texas Education Code Sections 61.0512(h)(2), 130.302, and 130.312, and 19 Texas Administrative Code, chapter 2, subchapter E.

§2.87. Criteria for New Baccalaureate Degree Programs.

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

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

(c) Each public junior college seeking to offer a baccalaureate degree program must comply with the requirements and limitations specified in Tex. Educ. Code, chapter 130, subchapter L, except for §130.307(4). A public junior college is not required to establish articulation agreements for the supporting Associate of Applied Science degree program(s) but must secure a teach-out agreement with a Texas public institution of higher education that offers a similar baccalaureate program.

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

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

The agency certifies that legal counsel has reviewed the 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 July 26, 2024.

TRD-202403389

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General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2024
Proposal publication date: May 10, 2024
For further information, please call: (512) 427-6182

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

19 TAC §2.145, §2.151

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 2, Subchapter G, Approval Process for New Doctoral and Professional Degree Programs, §2.145 and §2.151, without changes to the proposed text as published in the May 10, 2024, issue of the *Texas Register* (49 TexReg 3077). The rules will not be republished.

The adopted amendments include removing language from 2.145(d) regarding costs associated with external review of proposed doctoral and professional degree programs and correcting a reference cited in §2.151. Texas Education Code, §61.0512, states that a public institution of higher education may not offer any new degree program, including doctoral and professional degrees, without Board approval.

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

Rule 2.151, Revisions to Approved Doctoral or Professional Programs, outlines how an institution requests a revision or modification of an approved doctoral or professional program. The amendment clarifies that an institution may request a revision or modification of the program in line with §2.9 regarding Revisions and Modifications to an Approved Program, not §2.7 regarding Informal Notice and Comment on Proposed Local Programs. This corrects a typographical error.

No comments were received regarding the adoption of the amendments.

The amendments are 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 July 26, 2024.

TRD-202403390

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General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2024
Proposal publication date: May 10, 2024
For further information, please call: (512) 427-6182

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SUBCHAPTER I. REVIEW OF EXISTING DEGREE PROGRAMS

19 TAC §2.181, §2.182

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 2, Subchapter I, §2.181 and §2.182, Review of Existing Degree Programs, without changes to the proposed text as published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3868). The rules will not be republished.

The amendments streamline graduate program review by eliminating duplicative reporting criteria. The amendments require Board Staff to deliver an annual update on all new doctoral programs that are within the five-year post-implementation reporting period and provides the Board with authority to extent the reporting period beyond five years. The amendments authorize the Commissioner to grant an extension to the reporting deadline for institutions that demonstrate good cause.

Rule 2.181, Academic Programs at Public Universities and Public Health-Related Institutions, amendments remove duplicative language regarding reporting deadlines and requirements for existing graduate degree programs. Revisions include removing (10) which requires an institution to submit a graduate program review to the Coordinating Board no later than 180 days after receiving an evaluative report from an external review team and (11) which allows institutions to satisfy Coordinating Board graduate program reporting requirements by submitting reviews conducted for programmatic accreditation. These requirements are included in (8) of this section.

Rule 2.182, Doctoral and Professional Degree Programs, amendments add language requiring Board Staff to submit annual reports to the Board on the progress of all new doctoral programs that are within the five-year post-implementation reporting period. The amendments give the Board authority to extend annual reporting requirements for new doctoral programs and provide the Commissioner with authority to extend an institution's reporting deadline.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Education Code, Section 61.002, which directs the Coordinating Board to coordinate higher education through efficient and effective use of resources and elimination of costly program duplication, and Section 61.0512(e), which requires the Coordinating Board to conduct reviews of programs at least every ten years after the program's establishment.

The adopted amendments affect Texas Education Code §§61.002 and 61.0512(e).

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 July 26, 2024.

TRD-202403391
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2024
Proposal publication date: May 31, 2024
For further information, please call: (512) 427-6182

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SUBCHAPTER K. APPROVAL PROCESS FOR AN APPLIED ASSOCIATE DEGREE

19 TAC §§2.230 - 2.241

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 2, Subchapter K, §§2.230 - 2.241, Approval Process for an Applied Associate Degree, without changes to the proposed text as published in the May 10, 2024, issue of the *Texas Register* (49 TexReg 3078). The rules will not be republished.

The new subchapter aligns the approval process for an applied associate degree with the approval process for other degree types required under chapter 2 of this title.

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

Rule 2.231, Authority, contains statutory provisions authorizing the Coordinating Board to approve new degree programs offered by public institutions of higher education. Texas Education Code (TEC), §61.0512, permits institutions to add new certificate and degree programs only with prior approval of the Coordinating Board. TEC, §130.001, grants the Coordinating Board the responsibility to adopt policies and establish general rules necessary to carry out statutory duties with respect to public junior colleges. TEC, §61.05151, requires that the number of semester credit hours required for the applied associate degree not exceed the minimum number required by the institution's accreditor, in the absence of a compelling academic reason provided by the institution.

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

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

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

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

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

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

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

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

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

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

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

The new sections are adopted under Texas Education Code, Sections 61.051, which provides the Coordinating Board with the authority to coordinate the efficient and effective use of higher education resources and avoid unnecessary duplication; 61.0512, which states that a public institution of higher education

may not offer any new degree program without Coordinating Board approval; and 130.001, which grants the Coordinating Board the responsibility to adopt policies and establish general rules necessary to carry out statutory duties with respect to public junior colleges.

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

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 July 26, 2024.

TRD-202403392
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2024
Proposal publication date: May 10, 2024
For further information, please call: (512) 427-6182

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

19 TAC §§2.260 - 2.268

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 2, Subchapter L, §§2.260 - 2.268, Approval Process for a Career and Technical Education Certificate, without changes to the proposed text as published in the May 10, 2024, issue of the *Texas Register* (49 TexReg 3081). The rules will not be republished.

This new section clarifies the categories of career and technical education certificates that may be developed by institutions and the process by which institutions may submit the certificates to receive approval. This new section also provides clarification on certificate titles, program length and content. Lastly, the adopted rule describes the process required for an institution to submit a proposed revision or phase-out and closure of a certificate program.

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

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

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

The adopted rule contains several categories of certificates already in longstanding use by institutions of higher education, some of which are defined in rule in detail for the first time. These categories include Level 1 Certificates, Level 2 Certificates, Advanced Technical Certificates, Continuing Education Certificates, Enhanced Skills Certificates, and Occupational Skills Awards. The adopted rule specifies the purpose of each certificate type, requirements, prerequisites, and thresholds for certificate lengths where relevant.

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

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

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

Rule 2.265, Presentation of Requests and Steps for Approval of Proposed New Career and Technical Education Certificates,

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

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

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

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

No comments were received regarding adoption of the new rule.

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

The adopted new section affects Texas Education Code, §130A.101.

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 July 26, 2024.

TRD-202403393
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General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2024
Proposal publication date: May 10, 2024
For further information, please call: (512) 427-6182

SUBCHAPTER M. APPROVAL PROCESS FOR LOCAL NEEDS COURSES

19 TAC §§2.290 - 2.297

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 2, Subchapter M, §§2.290 - 2.297, Approval Process for Local Needs Courses, without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2896). The rules will not be republished.

This new section establishes the career and technical education local need course approval subchapter to better define the criteria for a local need course and the process for which an institution receives approval of the course for use in a career and technical education program at their institution. Approval of a local need course is how a new course is added to the Workforce Education Course Manual database when there is no course in the database to address a specific local workforce need. The Coordinating Board maintains a list of approved programs in a Program Inventory for each public junior, technical and state college, and the list of approved courses in the Workforce Education Course Manual for use by public junior, technical, and state colleges during program development. Establishing an approval procedure for courses ensures the accuracy of the inventories, which is necessary for the Board to carry out its duties.

Rule 2.290, Purpose, provides clarity to the institution on the process to receive local need course approval.

Rule 2.291, Authority, states the authority, which is based on Texas Education Code, §130.001(b)(3), and the purpose of maintaining a list of approved programs in a Program Inventory for each public junior, technical and state college, and the list of approved courses in the Workforce Education Course Manual (WECM) for use by public junior, technical, and state colleges during program development. Establishing this local need course approval rule will ensure that accurate inventories of courses will be maintained by the Coordinating Board for use by institutions.

Rule 2.292, Applicability, establishes that this subchapter will apply to all public two-year institutions seeking approval of a proposed local need course.

Rule 2.293, Definitions, paragraph (2) ("Career and Technical Education Course") provides the definition of a Career and Technical Education (CTE) course. Paragraph (4) ("Local Need

Course") defines a local need course and where the course will be inventoried for use by an institution. Paragraph (5) ("Special Topics Course") provides the definition of a special topics course and clarification on the difference between a career and technical education local need course in the WECM and a special topics course. Paragraph (6) ("Workforce Education Course Manual (WECM)") defines the Workforce Education Course Manual and the use of the courses in certificate and program development.

Rule 2.294, Local Need Course Approval Requirements, provides clarity to the institution on the requirements of local need course approval, as well as the location of the course in the WECM database once the course is approved. The proposed local need course approval process brings approval of new courses for inclusion in the WECM in line with standard approval processes for new programs in the Coordinating Board's Chapter 2 rules.

Rule 2.295, Administrative Completeness, defines the application, process, and timeline for the institution to submit a local need course for approval. This provision clearly sets out required elements of an application for a local need course approval and gives institutions notice as to anticipated timelines for the Coordinating Board to deem an application complete.

Rule 2.296, Criteria for Proposed Course Approval, defines the factors to submit an application and the elements needed in a local need course for approval. These criteria ensure that the Coordinating Board does not approve duplicative course entries in the WECM database and requires institutions to provide sufficient descriptive information about the proposed course for the Coordinating Board to maintain and administer courses in WECM.

Rule 2.297, Effective Date of Rules, defines the date of rule implementation. The delayed effective date of the rules gives institutions advance notice of the Coordinating Board's changing requirements and allows the agency time to align internal administrative processes with changing procedural requirements.

The following comment was received regarding adoption of the new rule.

Comment: South Texas College submitted a comment regarding renewal of a local need course. Because there is no renewal requirement for a local need course, South Texas College is inquiring if institutions will be required to renew approval for their local need courses every two years.

Response: The Texas Higher Education Coordinating Board appreciates this comment, and the point that previously a local need course was required to be renewed by the institution every two years. The formalization of the Workforce Education Course Manual (WECM) course maintenance process in rule and the review of local need courses on an annual basis has made the need for renewal obsolete.

The new sections are adopted under Texas Education Code, §130.001(b)(3), to support Texas Education Code, §61.0512, which gives the Coordinating Board authority to approve new degree or certificate programs. The rules are also adopted under the authority of Texas Education Code chapter 130A which provides funding to public junior colleges for approved courses and programs.

The adopted new section affects Texas Education Code, §§51.4034 and 130A.

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 July 26, 2024.

TRD-202403394
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 427-6344

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SUBCHAPTER N. CAREER AND TECHNICAL EDUCATION COURSE MAINTENANCE AND APPROVAL

19 TAC §§2.320 - 2.330

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 2, Subchapter N, §§2.320 - 2.330, Career and Technical Education Course Maintenance and Approval, without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2898). The rules will not be republished.

This new subchapter clarifies the career and technical education course maintenance and approval process, including but not limited to the review, revision, addition and archival of courses in the Workforce Education Course Manual (WECM). The subchapter also clarifies the role of the WECM Advisory Committee in maintenance and approval of a career and technical education course for the WECM. Ensuring that the WECM database contains an up-to-date listing of courses is critical, as this listing represents the courses public two-year institutions may use without prior approval from the Coordinating Board. The procedures were previously specified in the Coordinating Board's Guidelines for Instructional Programs in Workforce Education. The Coordinating Board is updating, streamlining, and clarifying these processes and procedure in rule to provide additional oversight and clarity for institutions of higher education.

This new subchapter clarifies the career and technical education course maintenance and approval process, including but not limited to the review, revision, addition and archival of courses in the Workforce Education Course Manual (WECM) and the role of the WECM Advisory Committee in maintenance and approval of a career and technical education course.

Rule 2.320, Purpose, provides clarity to the field on the process of career and technical education maintenance and approval.

Rule 2.321, Authority, establishes the authority for this subchapter under Texas Education Code, §§61.0512 and 130.001.

Rule 2.322, Definitions, establishes standard definitions for roles and career and technical and workforce education terms necessary for the subchapter. Several definitions relate to relevant entities or persons with decision-making capacity or expertise relevant for the career and technical education course approval process. For example, paragraph (1) ("Assistant Commissioner") defines the various leadership positions that may be designated by the Commissioner for approvals. Paragraph (4) ("Institution") provides the definition of the public two-year higher

education institutions the rule applies. Paragraph (8) ("Subject Matter Expert") defines the institution representative with expertise in the discipline and to be able to provide input on course content in a career and technical education course during course revision and development. Subject matter experts have business and industry experience in the discipline and can define the knowledge and skills needed to meet industry needs. Paragraph (9) ("Workforce Education Course Manual (WECM) Advisory Committee") defines the role of the advisory committee regarding the WECM database. The WECM advisory committee provides a feedback mechanism to the Coordinating Board on courses in the WECM database. The advisory committee provides a process to maintain courses in the database to stay current with industry-defined knowledge and skills.

Rule 2.322, Definitions, also contains definitions for concepts and terms specific for career and technical and workforce education. Paragraph (2) ("Career and Technical Education Course") provides the definition of a Career and Technical Education (CTE) course approved in the WECM. CTE courses are placed together in a sequence to develop a program at an institution.

Paragraph (3) ("End of Course Outcomes") defines what the student will be able to demonstrate they have learned during a course and are written by subject matter experts during course revision or development. End of course outcomes are developed by subject matter experts at different instructional skill levels of introduction, intermediate and advanced level to provide a progression of skills as a student completes a program. Paragraph (5) ("Local Need Course") defines where the course will be inventoried for use by an institution. Local Need courses are developed by an institution when a skillset is needed to meet local industry needs, and a course is not available in the WECM database with the end of course outcomes to meet that need. Paragraph (6) ("Rubric") defines what the rubric is and what a rubric is used to label in a WECM course. Rubrics are developed to provide a group of courses to define a discipline with introduction, intermediate and advanced end of course outcomes. The courses are typically selected from a single rubric by the institution to develop a logically sequenced program for a discipline. Paragraph (7) ("Special Topics Course") provides the definition of a special topics course and clarification on the difference between a career and technical education course, and special topics course in the WECM. Special Topics courses are used to incorporate transitional or emerging content into a program.

Paragraph (10) ("Workforce Education Course Manual (WECM) Database") defines the Workforce Education Course Manual database and the use of the career and technical education courses in certificate and program development. WECM database is the repository of approved career and technical education courses used during revision or development in programs at an institution.

Rule 2.323, Career and Technical Education Course Maintenance Process, gives an overview of the basic components of the course maintenance process as a whole. Paragraph (1) ("Career and Technical Education Course Maintenance Addition") defines how a course is developed for the WECM database. Courses are developed by subject matter experts to meet industry-defined skill and knowledge requirements. A local need course used by four or more institutions may be added to the WECM database so other colleges can access it to use in their programs. Paragraph (2) ("Career and Technical Education Course Maintenance Archival") relates to archival, which is the process to remove unused, obsolete, or duplicate courses in the WECM database. WECM database course frequency data is reviewed by the team of subject matter experts and decisions are made to archive a course if the course has had no institution use the course in the previous five years. Paragraph (3) ("Career and Technical Education Course Maintenance Review") is the starting point to the course maintenance process on whether a course in the WECM database needs to stay in the WECM database as presented, whether the course needs to be revised or whether the course needs to be archived. Several factors are considered by subject matter experts during the review process of a current career and technical education course. Based on the factors defined in the section the subject matter experts provide feedback on whether the course needs to continue to be included in the WECM database. Paragraph (4) ("Career and Technical Education Course Maintenance Revision") describes how the subject matter experts decide whether a course needs to be revised to stay current with industry-defined skills and knowledge. When a course is revised subject matter experts revise the career and technical education course to stay current with industry-defined skills and knowledge. Paragraph (5) ("Career and Technical Education Course Maintenance Workshop") is performed on a schedule cycle developed by the WECM advisory committee based on Classification of Instructional Program (CIP) code. Subject matter experts participate in the workshop to review career and technical education courses in their discipline. CTE courses are reviewed for currency with industry-defined skill and knowledge, then revised if necessary to meet industry-defined skill and knowledge. During a career and technical education course maintenance workshop a course may be added based on defined factors to meet industry-defined standards, or a course may be archived during a WECM maintenance workshop after review by subject matter experts and there is compelling evidence the course is no longer needed.

Rule 2.324, Career and Technical Education Course Maintenance Review, defines the review process cycle and factors to consider prior to scheduling a course maintenance review workshop. The schedule for course review is developed by the WECM Advisory Committee based on Classification of Instructional Program (CIP) code. The rule also lists additional factors that may elicit a course maintenance review workshop sooner than the scheduled cycle. The WECM Advisory Committee develops the schedule of career and technical education course maintenance review workshops based on the listed criteria. The rule also describes the participants for the course maintenance review workshop and defines the tasks the participants in the workshop must carry out.

Rule 2.325, Career and Technical Education Course Maintenance Revision, describes the process for revising a current course. Subject matter experts review each course in a discipline to see if the course meets current industry-defined skill and knowledge requirements. The rule describes which course elements the team of subject matter experts may recommend for revision and the process for adopting and presenting recommendations to the WECM Advisory Committee and Assistant Commissioner for final approval.

Rule 2.326, Career and Technical Education Course Maintenance Addition, describes the process for adding a course to the WECM database. After the review of all courses in a discipline subject matter experts may recommend the addition of a course based on factors/triggers listed in §2.324(b). The rule defines the required elements of a new course as listed in §2.329, as

well as the process for the subject matter experts to adopt a recommendation for course addition, present the recommendation to the WECM Advisory Committee, and transmit the recommendation to the Assistant Commissioner for approval.

Rule 2.327, Career and Technical Education Course Maintenance Archival, describes how a course may be archived in the WECM database, removing it from the list of courses an institution may use. After the review of all courses in a discipline subject matter experts may recommend archival of a course to remove an unused, obsolete, or duplicate course from the WECM database. The recommendation from subject matter experts is based on a course duplicated in the WECM database, lack of usage based on the Coordinating Board course frequency data shared with subject matter experts on the discipline during a course maintenance review workshop or a course no longer meeting current industry-defined skill and knowledge. The rule allows for a phase-out period, defining the length of time an archived course will remain active in the WECM database and allowing the institutions time to remove the course from their program.

Rule 2.328, Career and Technical Education Course Approval, defines the Coordinating Board individual designated by the Commissioner for approval of each career and technical education course to be included in the Workforce Education Course Manual (WECM) database. The rule states the process, criteria and timeline for course approval or denial. Final approval of the course will result in the addition of the course to the WECM database, permitting the institution to teach the course without prior approval from the Coordinating Board.

Rule 2.329, Criteria for Proposed Course Approval, describes the criteria used by the Coordinating Board for determining whether to approve a course for inclusion in the WECM database. These criteria include evaluating whether an equivalent WECM course already exists, whether the course is counted in semester credit hours or continuing education units, and whether the necessary course description elements are complete.

Rule 2.330, Effective Date of Rules, defines the date of rule implementation.

No comments were received regarding adoption of the new rule.

The new section is adopted under Texas Education Code, Sections 61.0512, 130.001(3) and 130A.

The adopted new section affects Texas Education Code, Section 51.4034.

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 July 26, 2024.

TRD-202403395
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 427-6344

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

SUBCHAPTER B. TRANSFER OF CREDIT, CORE CURRICULUM AND FIELD OF STUDY CURRICULA

19 TAC §§4.32, 4.33, 4.35

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 4, Subchapter B, §§4.32, 4.33, and 4.35, regarding Field of Study Curricula, without changes to the proposed text as published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3874). The rules will not be republished.

Section 4.32 amendments are designed to allow for two different framework structures for field of study curricula as approved by the Texas Transfer Advisory Committee (TTAC). Subsection (d) outlines semester credit hours for components of the standard field of study curriculum and subsection (e) outlines semester credit hour requirements for components of the alternative field of study curriculum approved by the TTAC.

Amendments to §§4.32(b)(2)(e), 4.33, and 4.35, are designed to change the name of what has previously been called the "alternative" Discipline Foundation Courses to "substitute" Discipline Foundation Courses as to not cause confusion by having an "alternative Field of Study" and "alternative Discipline Foundation Courses." The renamed substitute Discipline Foundation Courses apply only to each institution that requests approval for them. Institutional substitute discipline foundation courses must still be approved by the Commissioner of Higher Education as outlined in §4.35.

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

Comment: The following comments were received from The University of Texas at Austin:

1. Removing the hours limits for DFC and Directed Electives opens the door to compel receiving institutions to accept and apply >12 hours and >6 hours respectively.

Response: The Coordinating Board appreciates this comment but disagrees that the rule removes the hour limits. The hour limits have not been removed for the discipline foundation courses or the directed electives but rather have been moved to separate sections. Subsection 4.32(c) states the required credit hours for the standard field of study curriculum and 4.32(d) states the required credit hours for the alternative field of study curriculum.

2. There isn't any universally agreed upon mechanism to indicate FoS courses on transcripts so receiving institutions don't know that a course is a FoS course and don't necessarily know what to do with it. FoS changes appear to offer two options for FoS, and they seem wildly different, which is confusing. The standard option limits the number of hours in a FoS to 20 whereas the alternative option appears to allow up to 36 hours of DFC and Directed Electives. It's unclear why the standard option doesn't give an hour number for Core courses but the alternative option limits the Core hours to 30. Receiving institutions are required to accept Core courses if they were taken prior to the student enrolling so it seems odd that any hour number is mentioned at all.

Response: The Coordinating Board appreciates this comment regarding transcripting of field of study courses, in order to implement new Texas Education Code, §61.834, sending institutions are required to indicate on a transcript if a student is field of study complete, core curriculum complete, and/or whether the student has completed a Texas Direct degree which consists of either the standard or alternative field of study curriculum *and* the core curriculum. The Coordinating Board also acknowledges that there are inconsistencies in how sending institutions are transcripting field of study curriculum courses as required by 4.32(b)(B) and (e) and will continue to work with institutions to improve this.

Regarding the two options and required hours of the core curriculum in field of study curricula, the rules identify two separate structures - one for the standard field of study curriculum, and one for a new alternative structure that can accommodate fields with more complex curricula. Consistent feedback from faculty in several field of study subcommittees indicated that the standard structure is not compatible with some disciplines, such as biology or engineering that spread the discipline specific curriculum across four years, rather than other disciplines where students can complete the 42-credit hour core in the first two years. For the standard core curriculum, faculty subcommittees identify any required core curriculum courses that need to be completed as part of the field of study, which may vary by discipline. This is why there is not a single specified number of core semester credit hours for the standard field of study curriculum. The alternative field of study curriculum has a limit of 30 semester credit hours for the core to allow for more major-specific content to be taken in the first two years. The transfer student would then complete the core curriculum after transferring to the receiving institution.

The Coordinating Board recognizes that complexity and novelty of the revised Texas Transfer Framework and in the coming months will be providing additional guidance and communication materials on the Framework, fields of study, transcripting and other frequently asked questions related to transfer in the state of Texas.

The amendments are adopted under Texas Education Code, §61.823, which requires the Board to adopt Field of Study Curricula for certain fields of study or academic disciplines.

The adopted amendments affect Texas Education Code, §§61.821 and 61.823.

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 July 26, 2024.

TRD-202403396
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Effective date: August 15, 2024
Proposal publication date: May 31, 2024
For further information, please call: (512) 427-6182

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CHAPTER 10. GRANT PROGRAMS
SUBCHAPTER D. RURAL RESIDENT PHYSICAN GRANT PROGRAM

19 TAC §§10.90 - 10.98

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 10, Subchapter D, §§10.90 - 10.98, concerning the administration of the Rural Resident Physician Grant Program established by House Bill 1065, 86th Texas Legislature. Sections 10.90, 10.92 - 10.94 and 10.96 - 10.98 are adopted with changes to the proposed text as published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3877) and will be republished. Sections 10.91 and 10.95 are adopted without changes and will not be republished.

This new subchapter establishes rules related to administration of the Rural Residency Physician Grant Program. The Coordinating Board used negotiated rulemaking to develop these rules. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

Texas Education Code, Chapter 58A, Subchapter E, establishes the Rural Residency Physician Grant Program and authorizes the Coordinating Board to adopt rules for implementation. The rules outline the application and evaluation processes, reporting, and other requirements for eligible entities to receive funding under the grant program.

Rule 10.90, Purpose, establishes the purpose for the subchapter is to administer the Rural Resident Physician Grant Program which provides funding for the establishment or expansion of graduate medical education programs in rural Texas.

Rule 10.91, Authority, establishes authority for this subchapter is found in Texas Education Code, §58A.081, which grants the Coordinating Board with authority to adopt rules to administer the grant program.

Rule 10.92, Definitions, defines terms related to administration of the grant program.

Rule 10.93, Eligibility, establishes eligibility criteria to receive grant funding.

Rule 10.94, Application Process, describes main criteria that must be included in the grant application, including the number of residency positions created or maintained, budget, documentation on existing staffing and resources to support new residency positions, and evidence of support from the institution and community.

Rule 10.95, Evaluation of Applications, establishes selection criteria for awards.

Rule 10.96, Grant Awards, establishes how grant funding is awarded and defines allowable expenditures. Grantees may expend grant funds on resident physician salaries or other direct costs to create or maintain the residency position(s).

Rule 10.97, Reporting, establishes reporting requirements for grantees.

Rule 10.98, 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 10.90 is amended to remove the limitation of the grant program only applying to new graduate medical education programs, and language is amended to include "positions", in addition to programs, in rural areas. These amendments are made to reflect the consensus of the negotiated rulemaking committee more accurately.

Section 10.92 is amended in the following ways:

The definition of (1) Rural has been changed to "A location that is eligible for Federal Office of Rural Health Policy grant programs." This amendment is due to an error in the definition published during the proposal comment period and the new definition accurately reflects the decision of the negotiated rulemaking committee.

The definition of (2) Rural Training Tracks is amended to fix a typo.

Section 10.93 is amended to remove reference to the Accreditation Council for Graduate Medical Education (ACGME), and to clarify that the Coordinating Board will work with applicants to confirm eligible sites. The amendments also clarify that newly created resident physician sites are eligible.

Section 10.94 is amended to clarify that institutional support should be documented through the individual referenced in §10.94(b)(3).

Section 10.96 is amended based on stakeholder comment to award remaining funds to "other eligible applicants". The amendment aligns the use of funds with statutory language.

Section 10.97 is amended to replace incorrect reporting requirements published in the proposed rules. The amended section streamlines reporting requirements and more accurately reflects the consensus of the negotiated rulemaking committee.

Section 10.98 is amended to include a requirement that after notification to the Coordinating Board of a vacated residency position, an awardee has sixty days to fill the vacated position. Additional non-substantive amendments were also made to section language for consistency and clarity.

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

Comment regarding §10.92(1), Rural, received from the Texas Academy of Family Physicians (TAFP): "The program's enabling statute states that the THECB shall award competitive grants to "encourage the creation of new graduate medical education positions in rural and nonmetropolitan areas, with particular emphasis on the creation of rural training tracks." Moreover, the statute limits grant funding "until such time that a program becomes eligible for federal dollars. With these provisions in mind, we recommend aligning the definition of rural within the proposed rules with that used by the Center for Medicare and Medicaid Services (CMS) for purposes of rural training track federal funding. CMS defines rural as "any area outside an urban area," with urban being any area defined by the Office of Management and Budget (OMB) as a Metropolitan Statistical Area or a Metropolitan division (in the case where a Metropolitan Statistical Area is divided into Metropolitan Divisions). By aligning definitions, it will be easier for grantees to pursue the federal funds necessary to sustain programs longer term."

TAFP recommended adding "A non-metropolitan statistical area or non-metropolitan area as defined by the Office of Management and Budget" to the definition of "Rural."

Response: An incorrect version of the definition for rural was published in the proposed rules and based upon the consensus of the negotiated rule making committee the definition has been amended.

Comment regarding 10.92(1), Rural, received from the Texas Hospital Association (THA): "In proposed 10 TAC §10.92(1), the definition of the term "rural" is unclear and unnecessarily reliant on federal shortage designations that may limit the eligibility of many potential applicants. Health Professional Shortage Areas (HPSAs) and Medically Underserved Areas and Populations (MUA/Ps) are federal designations assigned by the Health Resources and Services Administration (HRSA) to implement a specific set of federal programs. Such designations are not limited to rural areas and, in fact, portions of Texas' largest cities have been designated as HPSAs and/or MUA/Ps. Moreover, these designations may be fleeting, as HRSA regularly updates the data on which designations are reliant and then may withdraw these designations. Finally, the Texas Primary Care Office at the Department of State Health Services, the office with responsibility for proposing new designations to HRSA, may not actively seek new HPSA or MUA/P designations, but rather rely on external requests to do so. This transient trait threatens rural residency program stability and sustainability under the proposed definition. Thus, THA suggests THECB adopt an alternate definition of rural that is longer-lasting and appropriate for the purposes of the program."

Response: An incorrect version of the definition for rural was published in the proposed rules and based upon the consensus of the negotiated rule making committee the definition has been amended.

Comment regarding §10.92(1), Rural, and §10.93, Eligibility, received from the Texas Medical Association (TMA): "TMA has significant concerns about the proposed definition of "rural" in proposed §10.92 and use of the term "non-metropolitan" in proposed Sections 10.92 and 10.93. While there are many definitions of rural in Texas law, the proposed definition of "rural" is novel, and is not expected to be readily understood. The references to Health Professional Shortage Area (HPSA) and Medically Underserved Area (MUA) designations in the definition of rural are unclear as to their purpose, origin, and application in administering the program.

Further:

1) As the national accrediting body for residency programs, the Accreditation Council for Graduate Medical Education (ACGME) is not recognized as the source for defining either rural or nonmetropolitan areas; HPSAs; or MUAs. At the time that an application for grant funding is submitted in response to the Board's request for application (RFA), rural residency positions may not (yet) have been accredited by ACGME.

2) The federal definition of rural as established by the Executive Office of Management and Budget is a commonly recognized and consistent source. As an example, this definition is what has been used by the Texas Department of State Health Services for decades in identifying rural areas.

3) The federal government adopted HPSA and MUA designations to meet different purposes, and to qualify specific areas for certain federal and state benefit programs.

Primary care HPSAs are intended to identify geographic areas with a recognized shortage of primary care physicians. In contrast, MUAs do not identify physician shortage areas but more broadly identify degrees of "medical underservice" for geographic areas. The ratio of physicians to population is but one of four parts of the composite MUA score. Three of the four parts are focused on demographic and health status factors that were determined to be predictive of the need for medical services: percentage of elderly persons, poverty level, and infant mortality rate. MUA designations are not used to determine eligibility for programs intended to build the physician workforce, such as the National Health Service Corps or the Board's State

Physician Education Loan Repayment Program. Notably, HPSA and MUA designations are not considerations for Medicare GME funding for rural training tracks. For the definition of rural, it is critically important that positions created in Texas through the Rural Resident Physician Grant Program are able to qualify for Medicare GME funding by meeting the federal criteria for rural training tracks. It is therefore critically important that the state definition aligns with the federal definition of rural."

TMA recommend addressing a typo in §10.92(2), adding a reference to the Executive Office of Management and Budget in place of the reference to the Accreditation Council for Graduation Medical Education in the definition of §10.92(1), and changing "physician site" to "training site" and removing reference to the Accreditation Council for Graduation Medical Education in §10.93.

Response: For §10.92(2), the typo has been corrected at adoption. For §10.92(1), an incorrect version of the definition for rural was published in the proposed rules and based upon the consensus of the negotiated rule making committee the definition has been amended. For §10.93, the Coordinating Board agrees with the recommended edit and has amended the rules upon adoption.

Comment regarding §10.93(b), Eligibility, received from the Texas Academy of Family Physicians (TAFP): TAFP recommended adding a reference to the definition of §10.92(1), "Rural," in §10.93(b).

Response: Because rural is already defined in §10.92 for the purpose of these rules, an additional reference to the definition is not needed.

Comment regarding §10.94(a), Application Process, received from the Texas Academy of Family Physicians (TAFP): "TAFP respectfully objects to establishing a limit of two applications per grantee within the rules. Statutorily, there is no basis for this requirement, though the Academy recognizes that state appropriations for the grants will determine how many applications THECB ultimately funds during any given biennium. We recommend removing this provision and allowing programs to submit as many applications as they believe their programs can support, which will vary year-to-year. In so doing, this change also will help THECB quantify the level of community need, which will be useful in developing future legislative appropriation requests. As specified within §10.96, Grant Awards, THECB will retain discretion to limit awards within available funds."

Response: Limiting a grantee to two applications allows the Coordinating Board to set the number of grants to be awarded each year, subject to available funds, and allows the Coordinating Board to more equitable distribute funds across programs and the state.

Comment regarding §10.94, Application Process, received from the Texas Medical Association (TMA): "TMA respectfully shares the following concerns and recommendations regarding subsections (a) and (c)(2) of proposed Section 10.94, relating to the application process.

First, TMA recommends that subsection (a) of proposed Section 10.94 be deleted, such that there is no cap on the number of applications that an eligible entity may submit. TMA strongly questions the arbitrary nature of setting any cap in rule and requests clarification on why the Board has proposed a limit of two applications.

Texas is a diverse state and each of the state's 16 medical schools has a distinct mission. Not all medical schools will have an interest or the required expertise to sponsor residency training in a rural setting. It is expected that the medical schools with a particular mission to prepare physicians for practice in rural Texas will have a greater interest in the grant opportunities. This is indicated by a review of the history of rural training tracks in the state. Only a few Texas medical schools have sponsored rural training tracks, to date.

Currently, one public Texas medical school sponsors four (80%) of the state's five rural training track programs. This is reflective of the heavy emphasis on training physicians for practice in rural Texas at that particular medical school. There are no indications that the mission of that school is likely to change and based on the history, it is reasonable to assume that school will continue to play a dominant role in sponsoring rural training tracks in the future. There is the potential for that school to have a greater need as well as greater resources for more than two rural residency positions per application cycle. The number of rural counties in Texas is not expected to change in the near future and at this time, a preponderance of rural areas is concentrated within the rural service areas of a few medical schools.

An arbitrary cap could have the effect of limiting the most qualified residency program sponsors from fully participating in residency training. This would diminish the potential impact on rural physician shortage areas, the ability of those schools to meet their specific rural missions, and the ability of the grant program to successfully meet its objectives.

Should more applications than available funds be submitted, it is important that reasonable prioritization criteria are in place to allow for the selection of the most qualified applicants.

Next, TMA requests that the Board clarify the reference to "type of residency position" in subsection (c)(2) of proposed Section 10.94. Particularly, TMA asks that the Board distinguish whether this refers to the medical training discipline for the residency program, such as family medicine, or the postgraduate year of training."

Response: For §10.94(a), limiting a grantee to two applications allows the Coordinating Board to set the number of grants to be awarded each year, subject to available funds, and allows the Coordinating Board to more equitable distribute funds across programs and the state. For §10.94(c)(2), the Coordinating Board thanks the organization for the comment and agrees to amend to provide clarity.

Comment regarding §10.94(a), Application Process, received from the Texas Hospital Association (THA): "The proposed 10 TAC C10.94(a) establishes a limit on the maximum number of applications an eligible entity can submit. While there may be value in ensuring that a diverse set of institutions receive grant funding, establishing such a limitation in rule unnecessarily limits THECB as it administers the program. Should, for example, there exist a dearth of eligible entities submitting qualifying applications in any given year, THECB would unnecessarily constrain the state's rural residency program growth by prohibiting potential additional applications due to this arbitrary limitation. Rather, THA recommends that the finalized rules indicate the Request for Applications (RFA) will be the vehicle through which the agency will establish selection criteria among qualifying applications, and the RFA might subsequently indicate that no eligible institution should exceed a certain number of awards if there exist other qualifying applicants that have not received an award.

(As an aside, the RFA abbreviation is used throughout this subchapter, but is not defined. THECB may wish to add the term to 10 TAC §10.92.)."

Response: Limiting a grantee to two applications allows the Coordinating Board to set the number of grants to be awarded each year, subject to available funds, and allows the Coordinating Board to more equitable distribute funds across programs and the state.

Comment regarding §10.94(c)(2), received from the Texas Hospital Association (THA): "In proposed rule 10 TAC §10.94(c)(2), there appears the term "type of residency position." In its use, the referenced typology is unnamed, resulting in confusion around the intent of the rule. If "type of residency position" is meant to signify the medical specialty of the position, the rule should say so."

Response: The Coordinating Board thanks the organization for the comment and agrees to amend to provide clarity.

Comment regarding §10.95(c), Evaluation, received from the Texas Academy of Family Physicians (TAFP): "TAFP respectfully objects to prioritizing funds for existing programs. House Bill 1 (2023), Rider 63, Article III, states that funds shall be used "to award grants for the creation of new (emphasis added) graduate medical education positions in rural and non-metropolitan areas..." While the statute authorizes funding for new or expanded locations, we believe the intent of the rider was to ensure funding for this biennium prioritized new programs, which will support geographically and culturally diverse training opportunities."

Response: The Coordinating Board's rulemaking authority is derived from the statute. The budgetary rider does not impart rulemaking authority.

Comment regarding §10.95(b), Evaluation, received from the Texas Medical Association (TMA): "Section 58A.081(b) of the Texas Education Code states: "The board shall establish criteria for the grant program in consultation with one or more physicians, including a physician who practices in a rural area of this state, teaching hospitals, medical schools, and independent physician residency programs, and with other persons considered appropriate by the board." There is no mention of this section in the rules. Importantly, this process affords representation of the state's leaders in rural residency training in the development of the grant program criteria.

TMA opposes the prioritization of existing rural residency programs or tracks in proposed Section 10.95(c) for several reasons.

First, Section 58A.081(a) of the Texas Education Code specifies that:

[T]he board shall administer the Rural Resident Physician Grant Program as a competitive grant program to encourage the creation of new graduate medical education positions in rural and nonmetropolitan areas, with particular emphasis on the creation of rural training tracks. The board shall award grants to new or expanded physician residency programs at teaching hospitals and other appropriate health care entities according to the program criteria established under this section. (Emphasis added.) Notably, this statute does not prioritize existing rural residency programs or tracks over new rural residency programs or tracks.

Additionally, proposed Section 10.95(c) does not take into account that rural training tracks are most often a single residency position per year. It is the nature of these training programs to be exceedingly small, largely due to the limited size of the patient population and the corresponding ability of the residency program to meet the accreditation standards for the size and mix of the patient population as established by the ACGME. Of the five existing rural training track programs in place in Texas today, four programs (80%) have a single resident per year.

And further, the special CMS rules that enable rural/urban hospitals that co-sponsor rural training tracks to qualify for additions to their existing Medicare GME funding caps limit this special provision to *new* rural training tracks. Once CMS sets the cap in Medicare GME funding under this special provision for rural training tracks, any addition of residency positions would generally be ineligible for Medicare GME funding.

For these reasons, it is not practical in many cases to expand existing programs beyond a single resident per year and placing a priority on expansions over new programs could prevent the latter from qualifying for Medicare GME payments."

Response: The rules were developed through the negotiated rulemaking process. The negotiated rulemaking committee included the stakeholders set forth in §58A.081(b). The committee discussed and agreed on the approach set forth. The rules do not limit eligibility to expansion. New programs are eligible to apply and receive funding. If it is not practical for an existing program to expand, then there is additional grant funding available for new programs.

Comment regarding §10.96, Grant Awards, received from the Texas Medical Association (TMA): "Proposed Section 10.96(f) provides that the Board will award any grant funds returned pursuant to proposed Section 10.98 "equitably to current awardees." TMA recommends that the Board instead establish a process for assessing the current grant funding needs of eligible applicants who previously applied for funding, as this would expand the pool of potential eligible recipients of the redistributed funds to include eligible applicants that potentially did not receive grant funding during the respective grant cycle. Rather than an "equitable" distribution, it is important for the recouped funds to be distributed based on current needs. Such process would be consistent with Section 58A.081(h) of the Texas Education Code, which requires the Board to "use money forfeited under Subsection (g) to award grants to other eligible applicants."

TMA recommended replacing "equitably to current awardees" in 10.98(f) with "other eligible applicants for the respective RFA."

Response: The Coordinating Board thanks the organization for the comment and agrees to amend.

Comment regarding 10.96, Grant Awards, received from the Texas Hospital Association (THA): "The word "equitably" is used in proposed rule 10 TAC 10.96(f), but its definition is similarly unclear. Equitably, here, could be read to mean that each current awardee would receive an equal share of any returned funds. Alternately, it might also indicate that the current awardees would receive a share of funds proportional to their original grant awards, or that THECB might rely on other factors in determining an equitable distribution. Once more, the agency should restate its actual intent in plain language."

Response: The Coordinating Board thanks the organization for the comment and agrees to amend.

Comments regarding compliance with statute received from the Texas Hospital Association (THA): "Texas Education Code §58A.081(h) specifies that THECB "shall use money forfeited

under [§58A.081(g)] to award grants to other eligible applicants [emphasis added]." However, the proposed rule would direct these funds to "current awardees." THA believes that statutory language indicates that forfeited funds should be awarded as grants - not supplemental funds - to eligible applicants who did not initially receive funding. This reading supports state both state and agency goals in that directing the money to current awardees does not serve to expand the number of rural residency programs in the state, nor does it ensure a diverse set of eligible applicants receive funding, as THECB presumably intends through the proposed limitation on applications addressed above. THA recommends that the proposed rule language is amended to align with statute, and that THECB award any forfeited funds to other eligible applicants who might then initiate an additional program."

Response: The Coordinating Board thanks the organization for the comment and agrees to amend.

Comments regarding compliance with statute received from the Texas Hospital Association (THA): "Finally, THA would stress its interest in THECB faithfully implementing Texas Education Code §58A.081(b), which requires the agency to consult with teaching hospitals and independent physician residency programs when establishing criteria for the grant program through the RFA process. As noted in the second paragraph of this letter, THA and Texas hospitals are strong supporters of the agency's many programs supporting the development of the health care workforce and shares THECB's goals of ensuring all of Texas has access to high-quality care. We believe our members' knowledge will only serve to maximize the impact of this important program."

Response: The rules were developed through the negotiated rulemaking process. The negotiated rulemaking committee included the stakeholders set forth in §58A.081(b). The committee discussed and agreed on the approach set forth. The rules do not limit eligibility to expansion. New programs are eligible to apply and receive funding. If it is not practical for an existing program to expand, then there is additional grant funding available for new programs.

The new subchapter is adopted under Texas Education Code, Section 58A.081, which provides the Coordinating Board with the authority to administer the Rural Resident Physician Grant Program and adopt program.

The adopted new sections affect Texas Education Code, Section 58A.081.

§10.90. Purpose.

The purpose of this subchapter is to administer the Rural Resident Physician Grant Program to provide and oversee grants for the establishment or expansion of graduate medical education programs or positions in rural and non-metropolitan areas to help meet the health-care needs of rural communities in Texas.

§10.92. Definitions.

Definitions set forth in Texas Education Code, chapter 58A (relating to Programs Supporting Graduate Medical Education) are hereby incorporated into this rule. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Rural--A location that is eligible for Federal Office of Rural Health Policy grant programs.

(2) Rural Training Tracks--As defined in rules and regulations of the Centers for Medicare and Medicaid Services (CMS) in 42 CFR §413.79(k), is an ACGME-accredited program in which all or some residents/fellows gain both urban and rural experience with more than half of the education and training for the applicable resident(s)/fellow(s) taking place in a rural area.

§10.93. Eligibility.

(a) To be eligible to apply for and receive grant funding an entity must:

(1) be a new or expanded physician residency program at teaching hospitals and other appropriate health care entities;

(2) meet any other eligibility criteria set forth in Texas Education Code, §58A.081; and

(3) have or create a resident physician site in a rural or non-metropolitan area.

(b) Eligible sites will be confirmed by Coordinating Board staff, in cooperation with the applicant.

§10.94. Application Process.

(a) Unless otherwise specified in the RFA, an eligible entity may submit a maximum of two (2) applications.

(b) To qualify for funding consideration, an eligible applicant must submit an application to the Coordinating Board. Each application shall:

(1) be submitted electronically in a format specified in the RFA;

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

(3) be submitted with approval of the President or Chief Executive Officer or designee on or before the day and time specified by the RFA.

(c) Submitted applications shall include:

(1) The number of residency positions that will be created or maintained if grant funds are awarded;

(2) A budget that includes the requested grant amount broken down by resident, resident year, and residency specialty;

(3) documentation that an applicant's existing staffing and infrastructure is sufficient to support new or maintained residency positions and satisfy applicable accreditation requirements;

(4) detailed plans on how the new or maintained residency positions will produce physicians who are prepared for and plan to practice in rural areas;

(5) Evidence of support for residency training by both the institution as documented by the designated institutional official as identified in subsection (b)(3) of this section and the community; and

(6) any other requirements as set forth in the RFA.

§10.96. Grant Awards.

(a) The amount of funding available for the rural resident physician grant program is dependent on the legislative appropriation for the program for each biennial state budget. The Coordinating Board will provide award levels and estimated number of awards in the RFA.

(b) Each grant award shall be subject to Coordinating Board approval pursuant to §1.16 of this title (relating to Contracts, Including Grants, for Materials and/or Services).

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

(d) The Coordinating Board may advance a grant award to a grantee.

(e) The Coordinating Board will first award grants for all residency positions awarded a grant under this subchapter in the preceding year before awarding a grant for a residency position that did not receive a grant in the preceding year, provided that the applicable grant recipient from the preceding year meets eligibility requirements for a new grant award and complied with all grant and application requirements set forth in this subchapter and the terms of the grant previously awarded. The Coordinating Board shall award all remaining funds pursuant to the evaluation criteria set forth in §10.95 of this subchapter (relating to Evaluation).

(f) The Coordinating Board will award any grant funds returned pursuant to §10.98 of this subchapter (relating to Additional Requirements) to other eligible applicants for the respective RFA.

(g) A grantee shall only expend grant funds on the salary of the resident physician and other direct costs that are necessary and reasonable to create or maintain the residency position as stated in grantee's budget.

§10.97. Reporting Requirements.

Grantees must file program, expenditure and resident reports in the format required by the Coordinating Board by the deadlines set forth in the RFA. Grantees shall provide information that includes, but is not limited to, the following:

(1) An overview of outcomes of residency positions and information on the characteristics of the program.

(2) Evidence of whether the residency positions funded by the grant were filled.

(3) Demonstration of addressing the needs of underserved rural communities or regions.

(4) Any current plans to continue the rural residency position(s) or program after the end of the grant term.

(5) An expenditures report detailing how funds were used over the course of the grant program pursuant to §10.96(h) of this subchapter (relating to Grant Awards).

§10.98. Additional Requirements.

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

(b) Forfeiture and Return of Funds.

(1) The 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 Award (NOGA) to the Coordinating Board within sixty (60) days.

(2) The grantee shall fill all funded residency positions no later than the first reporting deadline as set forth in the RFA. A grantee forfeits and must return, if grant funds were received, a proportionate share of the grant award for each unfilled residency position as determined by the Coordinating Board.

(3) A grantee shall notify the Coordinating Board within thirty (30) days of any funded residency positions becoming vacant.

(4) The grantee shall have sixty (60) days from notification to the Coordinating Board about the vacated position to refill the residency position.

(5) A grantee forfeits and shall return, if grant funds were received, a proportionate share of the grant award for each unfilled residency position as determined by the Coordinating Board.

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

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

TRD-202403397
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Texas Higher Education Coordinating Board
Effective date: August 15, 2024
Proposal publication date: May 31, 2024
For further information, please call: (512) 427-6182

SUBCHAPTER E. PROFESSIONAL NURSING SHORTAGE REDUCTION PROGRAM

19 TAC §§10.110 - 10.117

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 10, Subchapter E, Professional Nursing Shortage Reduction Program. Section 10.110 is adopted with changes to the proposed rule text as published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3879). The rule will be republished. Sections 10.111 - 10.117 are adopted without changes and will not be republished.

The adopted rules will replace the existing Professional Nursing Shortage Reduction Program rules currently in Chapter 22, Subchapter S, which will be repealed in future rulemaking. The adopted rules clarify grant award requirements based on statute and provide alignment with budgetary provisions included in rider. The Coordinating Board used negotiated rulemaking to develop these rules. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

Rule 10.110, Purpose, establishes the purpose for the subchapter is to administer the Professional Nursing Shortage Reduction Program.

Rule 10.111, Authority, establishes authority for this subchapter is found in Texas Education Code, §§61.9621 - 61.9628, which grants the Coordinating Board with authority to adopt rules to administer the Professional Nursing Shortage Reduction Program.

Rule 10.112, Definitions, defines terms related to administration of the grant program.

Rule 10.113, Eligibility, establishes eligibility criteria for grant funding. Language clarifies eligibility of existing and new professional nursing programs.

Rule 10.114, Application Process, contains requirements for application submission and funding increases.

Rule 10.115, Evaluation of Applications, establishes selection criteria for awards.

Rule 10.116, Grant Awards, establishes how grant funding is appropriated and distributed. This section clarifies allowable and reasonable costs associated with the award.

Rule 10.117, Reporting, establishes reporting requirements for grantees.

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

Section 10.110, Purpose, is amended to remove unclear language in the section in response to comment from the Texas Hospital Association.

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

Comment regarding §10.110, Purpose, received from the Texas Hospital Association: "THA seeks clarity on how THECB intends to define the word "type" as used in proposed rule 10 TAC §10.110. All nurses are registered nurses upon initial licensure. While some nurses may provide care in a specialized area of medicine (pediatrics, women's health, intensive care, etc.) for a majority of their careers, we are unaware of nursing education programs or degrees that allow registered nurses to specialize. As such, we simply would like to understand THECB's interpretation of the word "type" in hopes that this is not simply a rule which restates the statute."

Response: The Coordinating Board agrees with the comment and amends rule text by striking "both in number and type" from §10.110.

Comment regarding §10.114, Application Process, received from Texas Hospital Association: "THA recommends that the THECB revise proposed §10.114(c)(1) to include elements related to classroom space and clinical slots needed to properly accommodate the education of the additional enrollments or graduates using NSRP funds. [...]

Section 61.9623(a)(4), Education Code requires that grant funds awarded to increase enrollments must be contingent on the professional nursing program's ability to have the necessary classroom space and clinical slots available to properly educate these additional nursing students. According to the Teaching Hospitals of Texas, citing a 2021 report by the Texas Center for Nursing Workforce Studies, 'associate degree nursing students receive an average of 843 clinical hours of training while bachelor's level nursing students receive, on average 908 hours of clinical training. Acute care sites, including hospitals, are the primary sites for nursing students' clinical training,,,.' Since most clinical training takes place in hospitals, it is important that professional nursing programs ensure that the necessary clinical spots are secured and available to accommodate training these additional students at Texas hospitals and other health care facilities. 'Lack of clinical training capacity and clinical preceptors are identified by numerous sources as the primary obstacles to growing Texas' nurse workforce.' We urge the THECB to revise and improve the rule per our recommendation."

THA recommended adding language to include secured classroom space and clinical slot capacity in the grant application.

Response: The grant is contingent upon the professional nursing program's ability to have the necessary classroom space and clinical slots. The statute does not authorize the Coordinating Board to make a determination as to classroom space and clinical slots prior to the award of the grant. However, the Coordinating Board could request such information from the grantee in required reporting.

Comment regarding §10.116, Grant Awards, received from Texas Hospital Association: "THA recommends that the THECB revise proposed §10.116(g)(2) to include the specific statutory allowance to use NSRP funds on innovative mechanisms to recruit and retain Spanish-speaking and bilingual students. [...]

"The use of grant fund requirements listed in proposed §10.116(g) are restricted to those set forth in Section 61.9623, Education Code. Section 61.9623(a)(1)(c) requires that grant funds are expended exclusively on costs related to ... 'encouraging innovation in the recruitment and retention of students, including the recruitment and retention of Spanish-speaking and bilingual students[.]' The statute does not limit the use of funds solely on 'evidenced-based' practices, but 'evidenced-based practices' could be included under an 'innovation' umbrella. We note that the legislature was focused on innovation, because - as all stakeholders are aware - current practices of recruiting and retaining nursing students are not working. We also think it important to include criteria that specifically allow for the recruitment of students who speak one or more foreign languages. As the Texas population grows increasingly diverse, foreign language skills are greatly needed in our hospitals amongst our health care workforce. We encourage the THECB to incorporate these important skills in its proposed rule for use of fund allowances."

THA recommended the inclusion of the term "innovative" and specific language about the recruitment of Spanish speaking and bilingual students.

Response: The Coordinating Board thanks the organization for the comment but does not agree that this language is necessary to add to the rule.

Comment regarding implementation of General Appropriations Act budgetary rider, submitted by the Texas Hospital Association: "THA requests clarity and information from the THECB on how the proposed rules will implement the appropriations requirements set forth in Article III, Rider 26 for the NSRP. For example, it is unclear from the proposed rules how the THECB will a) ensure allocation of 'up to 50 percent in each fiscal year of the biennium and any unexpended amounts to community colleges,' b) ensure grant funds will be distributed in an equitable manner based on the total number of doctoral level and master's in nursing education students graduating from a program each year, c) ensure institutions that do spend funds on nonqualifying expenditures, or do not spend funds within the designated timeframes, will return those funds to the THECB, and d) ensure that nonresident students enrolled in online professional nursing programs while residing outside of Texas will be used to calculate program awards. THA notes the THECB acknowledged that the purpose of proposing these new rules (and repealing current rules at a later date) is to 'provide alignment with budgetary provisions included in rider.' THA looks forward to the THECB's explanations on how and which portions of the proposed rules will address the rider's requirements."

Response: The Coordinating Board's rulemaking authority is derived from the statute. The budgetary rider does not impart rulemaking authority. The Coordinating Board acknowledges that the reference to the rider was an error in the introductory language of the proposed rules.

The new sections are adopted under Texas Education Code, Sections 61.9621 - 61.9628, which provides the Coordinating Board with the authority to administer the Professional Nursing Shortage Reduction Program, supervise institutional reporting requirements, and adopt program rules.

The adopted new sections affect Texas Education Code, Sections 61.9621 - 61.9628.

§10.110. Purpose.

The purpose of this subchapter is to administer the Professional Nursing Shortage Reduction Program to provide and oversee grants to eligible entities to meet the needs of the state of Texas for initially registered nurses.

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 July 26, 2024.

TRD-202403398
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Texas Higher Education Coordinating Board
Effective date: August 15, 2024
Proposal publication date: May 31, 2024
For further information, please call: (512) 427-6182

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

19 TAC §§10.910 - 10.917

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 10, Subchapter TT, §§10.910 - 10.917, Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program, without changes to the proposed text as published in the May 10, 2024, issue of the *Texas Register* (49 TexReg 3088). The rules will not be republished.

The adopted new rules provide clarity of program processes and requirements. The new rules also provide closer alignment to the statutory language, support efficiencies in program implementation by the workforce, and help to increase program participation among employers and students.

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

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

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

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

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

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

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

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

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

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

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

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 July 26, 2024.

TRD-202403400
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Texas Higher Education Coordinating Board
Effective date: August 15, 2024
Proposal publication date: May 10, 2024
For further information, please call: (512) 427-6267

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CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER Q. FINANCIAL AID FOR SWIFT TRANSFER (FAST) PROGRAM

19 TAC §§13.501 - 13.503

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 13, Subchapter Q, §§13.501 - 13.503, Financial Aid for Swift Transfer (FAST) Program, without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2902). The rules will not be republished.

The amendments align definitions in the FAST program with those used in Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter D, concerning Dual Credit Partnerships Between Secondary Schools and Texas Public Colleges.

Rule 13.501 is amended to align the definitions of "career and technical education course," "credit," "dual credit course," "equivalent of a semester credit hour," and "semester credit hour." The definition of "school district" is added. These changes are adopted to ensure greater alignment between the definitions regarding dual credit enrollment occurring through the FAST program and the definitions regarding the requirements of dual credit partnerships. The definition of "charter school" is removed because the new definition of "school district" includes charter schools. This alignment of definitions does not change the underlying structure of the FAST Program.

Rules 13.502 and §13.503 are amended to align terminology in these sections with the above definitions. These amendments are adopted based on Texas Education Code, Section 28.0095(j), which directs the Coordinating Board to adopt rules as necessary to implement the FAST Program.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Education Code, Section 28.0095, which provides the Coordinating Board with the authority to adopt rules as necessary to implement the FAST Program.

The adopted amendments affect Texas Education Code, Sections 28.0095 and 48.308.

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 July 26, 2024.

TRD-202403401
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General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 427-6365

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SUBCHAPTER R. STATE PUBLIC JUNIOR COLLEGE FINANCE PROGRAM REPORTING, AUDIT, AND OVERALLOCATION

19 TAC §§13.522 - 13.525, 13.528, 13.529

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 13, Subchapter R, §§13.522 - 13.525, 13.528, and 13.529, State Public Junior College Finance Program Reporting, Audit, and Overallocation, without changes to the proposed text as published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3882). The rules will not be republished.

The amendments clarify timelines related to ameliorating errors in data reporting and will align subchapter R with forthcoming rules the Coordinating Board intends to adopt.

Section 13.522, Definitions, amends an existing definition for "Data Reporting Error" and adds a new definition for "Fundable Certified Data." These two definition changes will clarify elements of the timeline for making determinations of data reporting errors and ameliorating those errors: the window for determining a data reporting error has occurred will start on May 1 of the preceding fiscal year, which is the date fundable certified data will be considered finalized in the forthcoming subchapter U rules. This clarification of timeline allows the Coordinating Board flexibility to work with institutions in conducting the standard data collection process, while also setting in place a point at which any remaining errors need to be corrected through the formal data reporting error process outlined in §13.525. Additionally, a new definition is added for public junior colleges to clarify the reference to affected institutions.

Section 13.523, Certification of Compliance, updates the email address where institutions may submit their attestations of certification of compliance and adds compliance monitoring findings under the list of disclosures. Statute grants the Coordinating Board authority to conduct compliance monitoring of institutions, including for accuracy of data reported for formula funding (Texas Education Code, §61.035). Adding a requirement for compliance monitoring findings under this provision ensures the Coordinating Board will have a full picture of potentially relevant findings.

Sections 13.523 and 13.524 are amended to make conforming changes regarding how public junior colleges are referenced.

Section 13.525, Commissioner Review of Required Reporting; Data Reporting Errors, makes two key changes: the rule opens the window to make a data reporting error determination starting from finalization of fundable certified data, which is set at May 1; and the Chief Executive Officer of an institution potentially affected by a data reporting error may initially notify the Commissioner of Higher Education of the data reporting error. The rule thus grants an affected college an avenue to notify the Coordi-

nating Board of any significant discrepancies in data potentially affecting funding, requiring that a single official have responsibility for official data error notifications to ensure clarity of communication.

Section 13.528, Recovery of Overallocated Funds, and 13.529, Payment of Under-allocated Funds, are amended to refer to subchapter U instead of S due to the movement of relevant rules. Section 13.528 is also amended to provide a clarifying statement that recoveries of overallocated funds can be made in relation to the settle up process in addition to the close out process.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Education Code, Section 130A.005, which provides the Coordinating Board with the authority to adopt rules and require reporting to implement the Public Junior College State Finance Program.

The adopted amendments affects Texas Education Code, Section 130A.006.

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 July 26, 2024.

TRD-202403402
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Effective date: August 15, 2024
Proposal publication date: May 31, 2024
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SUBCHAPTER S. COMMUNITY COLLEGE FINANCE PROGRAM: BASE AND PERFORMANCE TIER METHODOLOGY

19 TAC §§13.553 - 13.555, 13.559

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments and new rules in Title 19, Part 1, Chapter 13, Subchapter S, Community College Finance Program: Base and Performance Tier Methodology, §13.553 - 13.555, with changes to the proposed text as published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3886). The rules will be republished. Section 13.559 is adopted without changes and will not be republished.

The amendments concern the base tier, performance tier, and the rates for the community college finance program. Specifically, this amendment will set the amount of money allocated in a fiscal year for the base tier at 5 percent and for the performance tier at 95 percent. In addition, this amendment adopts monetary rates for each fundable outcome achieved by a community college.

Rules 13.553, Definitions, and §13.554, Base Tier Allotment, contain amendments that would establish a 95 to 5 percent split between total allocations in a fiscal year for performance tier and base tier respectively. The performance tier component of the community college finance system is designed to give community colleges financial incentive for successful completion of certain fundable outcomes, like student transfer, dual credit provision, and attainment of credentials of value. The base tier component of the system provides baseline state support for community colleges depending on ability to raise local funds to support operations. These amendments would carry out legislative intent in implementing the new community college finance program, ensuring that state funding is primarily focused on rewarding outcomes serving state, regional, and workforce needs (Texas Education Code, §130A.001).

Rule 13.555, Performance Tier Funding, sets out the major components of the performance tier: to receive funding, institutions must achieve certain types of fundable outcomes, weighted according to certain characteristics, multiplied by the monetary rate for each fundable outcome set in rule. The proposed amendments clarify that the Coordinating Board will determine institutions' weighted fundable outcome completions based on the better of the average of three fiscal years or the current fiscal year. This feature ensures that community colleges may expect predictability in the expected data projections the Coordinating Board will use to determine funding amounts, while still incentivizing exceptional current performance.

Rule 13.559, Performance Tier: Rates, sets the monetary rates for each type of fundable outcome achieved by an institution. These fundable outcomes include the conferring of fundable credentials (including associate degrees, bachelor's degrees, and many types of workforce credentials), the credential of value premium, student completion of 15 dual credit hours, and successful student transfer to a public four-year institution. Rates are generally maintained for consistency with those set for fiscal year 2024 formula funding, with the exception of dual credit attainment and occupational skills awards (OSAs). The dual credit outcome rate is increased to match the transfer outcome rate to reflect the efficacy of dual credit at preparing high school students to enter postsecondary education and avoid penalizing colleges when dual credit students enroll at other institutions after high school. The OSA rate is increased to match the rate for the institutional credential leading to licensure and certification (ICLC) to equally fund the conferral of these two short-term workforce credential types.

The rate for third-party credentials, a new fundable outcome, is set at the same rate as the other short-term workforce credentials. The rate for the Opportunity High School Diploma, another new fundable outcome, is set to match the transfer fundable outcome rate. Rates for the new credential of value premiums are set at 25 percent of the rate for each credential of value baseline to which they apply to reflect the added expenditures for financial aid and other student support that may be associated with helping students complete credentials more quickly and with lower costs.

A full layout of the weights and rates for the FY 2025 formula funding cycle can be seen in the supporting figure.

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

Comment: Hill College submitted a comment suggesting that the count used for dynamic funding calculations be the better of the projected FY 25 count (as it is currently) or the 3-year average of FY 22, FY 23, and projected FY 24 (instead of FY 23, projected FY 24, and projected FY 25).

Response: The Coordinating Board thanks Hill College for the comment and respectfully disagrees. Given the Coordinating Board's priority of reducing the lag time between outcome oc-

currences and their reflection in performance funding, the Board has determined to use the projected count for the fiscal year in question consistently as the most recent year both in itself and within the three-year average both initially and in our dynamic payments process to minimize the potential for disruptive funding changes. The Coordinating Board also notes that when fiscal year (FY) 2025 funding becomes a college's operating source, all of its outcomes for FY 2024 will have already occurred, such that its ability to improve its three-year average count with a second year of actual data (the substitute of actual FY 24 for projected FY 24) is not hindered by changes in FY 25 funding. Furthermore, a college that produces higher-than-projected FY 24 outcomes can anticipate additional funding in February of 2025. The Coordinating Board appreciates the concern that projecting further into the future will extend an existing downward trajectory and are taking possible action at this time on a policy to limit by rule the allowable extent of such changes in the forecasting model.

Subsequent to the posting of the rules in the *Texas Register,* the Coordinating Board has corrected typographical and grammatical errors in §13.554, Base Tier Allotment.

The amendments and new section are adopted under Texas Education Code, Section 130A.005, which provides the Coordinating Board with the authority to adopt rules as necessary to implement and administer the community college finance system.

The adopted amendments and new section affect Texas Education Code, Section 130A.101.

§13.553. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Academically Disadvantaged--A designation that applies to postsecondary students who have not met the college-readiness standard in one or more Texas Success Initiative (TSI) assessments as provided by §4.57 of this title (relating to Texas Success Initiative Assessment College Readiness Standards), and who were not classified as either waived or exempt pursuant to §4.54 of this title (relating to Exemption).

(2) Adult Learner--A student aged 25 or older on September 1 of the fiscal year for which the applicable data are reported, in accordance with Coordinating Board data reporting requirements.

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

(4) Associate Degree--An academic associate degree as defined under Texas Education Code, §61.003(11), or an applied associate degree as defined under Texas Education Code, §61.003(12)(B).

(5) Baccalaureate Degree--A degree program that includes any grouping of subject matter courses consisting of at least 120 SCH which, when satisfactorily completed by a student, will entitle that student to an undergraduate degree from a public junior college.

(6) Base Tier Funding--The amount of state and local funding determined by the Board for each public junior college that ensures the college has access to a defined level of funding for instruction and operations.

(7) Base Year--The time period comprising the year of contact hours used for calculating the contact hour funding to public junior colleges. The Base Year for a funded fiscal year consists of the reported Summer I and II academic term from the fiscal year two years prior to the funded fiscal year; the Fall academic term one fiscal year prior to the funded fiscal year; and the Spring academic term one fiscal year prior to the funded fiscal year.

(8) Basic Allotment--A calculation of the dollar value per Weighted FTSE, based on appropriations made in that biennium's General Appropriations Act pursuant to §13.554(c) of this subchapter (relating to Base Tier Allotment).

(9) Census Date--The date upon which a college may report a student in attendance for the purposes of formula funding, as specified in the Coordinating Board Management (CBM) manual for the year in which the funding is reported.

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

(11) Credential of Value Baseline--A credential earned by a student that would be expected to provide a positive return on investment. Credential of Value Baseline methodology is described in §13.556 of this subchapter (relating to Performance Tier: Fundable Outcomes).

(12) Credential of Value Premium Fundable Outcome--A fundable outcome earned by an institution for a credential earned by a student that would be expected to provide a wage premium. Credential of Value Premium methodology is described in §13.556 of this subchapter.

(13) Credentialing Examination--A licensure or registration exam required by a state or national regulatory entity or a certification exam required by an authorized professional organization. An authorized professional organization is a national, industry-recognized organization that sets occupational proficiency standards, conducts examinations to determine candidate proficiency, and confers an industry-based certification.

(14) Dual Credit or Dual Enrollment Fundable Outcome--An outcome achieved when a student earns at least 15 SCH or the equivalent of fundable dual credit or dual enrollment courses, defined as follows:

(A) Courses that qualify as dual credit courses as defined in §4.83(10) of this title (relating to Definitions); and:

(i) In fiscal year 2025 or later, apply toward an academic or career and technical education program requirement at the postsecondary level; or

(ii) In fiscal Year 2025 or later are completed by a student who graduates with a Texas First Diploma, as codified in chapter 21, subchapter D of this title (relating to Texas First Early High School Completion Program).

(B) All dual credit courses taken by a student enrolled in an approved Early College High School program, as provided by Texas Education Code, §28.009, except a physical education course taken by a high school student for high school physical education credit.

(15) Economically Disadvantaged--A designation that applies to postsecondary students who received the federal Pell Grant under 20 U.S.C. §1070a.

(16) Equivalent of a Semester Credit Hour--A unit of measurement for a continuing education course, determined as a ratio of one continuing education unit to 10 contact hours of instruction, which may be expressed as a decimal. One semester credit hour of instruction equals 1.6 continuing education units of instruction. In a continuing education course, not fewer than 16 contact hours are equivalent to one semester credit hour.

(17) Formula Funding--The funding allocated by the Coordinating Board among all public junior colleges by applying provisions of the Texas Education Code, agency rule, and the General Appropriations Act to a sector-wide appropriation from the General Appropriations Act.

(18) Full-Time Student Equivalent (FTSE)--A synthetic measure of enrollment based on the number of instructional hours delivered by an institution of higher education divided by the number of hours associated with full-time enrollment for the time period in question.

(19) Fundable Credential--As defined in §13.556(b) of this subchapter.

(20) Fundable Outcome Weights--A multiplier applied to eligible fundable outcomes to generate a Weighted Outcome Completion for use in determining the Performance Tier allocation. The methodology for each Fundable Outcome Weight is defined in §13.557 of this subchapter (relating to Performance Tier: Fundable Outcome Weights).

(21) High-Demand Fields--A field in which an institution awards a credential that provides a graduate with specific skills and knowledge required for the graduate to be successful in a high-demand occupation, based on the list of high-demand fields as defined in subchapter T of this chapter (relating to Community College Finance Program: High-Demand Fields).

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

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

(24) Level 2 Certificate--A certificate consisting of at least 30 semester credit hours and no more than 51 semester credit hours. Students enrolled in Level 2 Certificates must demonstrate meeting college readiness standards set forth in §4.57 of this title and other eligibility requirements determined by the institution.

(25) Local Share--The amount determined to be the institution's contribution of local funds to the Instruction and Operations (I&O) amount for each public junior college. The amount consists of estimated ad valorem maintenance and operations tax revenue and tuition and fees revenue, as determined by the Board.

(26) Non-Formula Support Item--An amount appropriated by line item in the General Appropriations Act to a single public junior college or limited group of colleges for a specific, named purpose.

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

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

(B) In most cases, the credential should be composed of Workforce Education Course Manual (WECM) courses only. However, non-stratified academic courses may be used if recommended by the external committee and if appropriate for the content of the credential;

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

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

(28) Opportunity High School Diploma Fundable Outcome--An alternative means by which adult students enrolled in a workforce program at a public junior college may earn a high school diploma at a college through concurrent enrollment in a competency-based program, as codified in Texas Education Code, chapter 130, subchapter O, and Texas Administrative Code, Title 19, Part 1, Chapter 12.

(29) Semester Credit Hour (SCH)--A unit of measure of instruction, represented in intended learning outcomes and verified by evidence of student achievement, that reasonably approximates one hour of classroom instruction or direct faculty instruction and a minimum of two hours out of class student work for each week over a 15-week period in a semester system or the equivalent amount of work over a different amount of time. An institution is responsible for determining the appropriate number of semester credit hours awarded for its programs in accordance with Federal definitions, requirements of the institution's accreditor, and commonly accepted practices in higher education.

(30) Structured Co-Enrollment Fundable Outcome--A student who earns at least 15 semester credit hours at the junior college district in a program structured through a binding written agreement between a general academic teaching institution and a community college. Under such a program, students will be admitted to both institutions and recognized as having matriculated to both institutions concurrently. The Structured Co-enrollment Fundable Outcome does not include courses fundable under the Dual Credit or Dual Enrollment Fundable Outcome.

(31) Third-Party Credential--A certificate as defined in Texas Education Code, §61.003(12)(C), that is conferred by a third-party provider. The third-party provider of the certificate develops the instructional program content, develops assessments to evaluate student mastery of the instructional content, and confers the third-party credential. A third-party credential that meets the

requirements of §13.556 of this subchapter is fundable in accordance with that section.

(32) Transfer Fundable Outcome--An institution earns a fundable outcome in the Performance Tier under §13.555 of this subchapter (relating to Performance Tier Funding) when a student enrolls in a general academic teaching institution, as defined in Texas Education Code, §61.003, after earning at least 15 semester credit hours from a single public junior college district as established under §13.556(e) of this subchapter. For the purpose of this definition, semester credit hours (SCH) shall refer to semester credit hours or the equivalent of semester credit hours.

(33) Weighted Full-Time Student Equivalent (Weighted FTSE or WFTSE)--A synthetic measure of enrollment equal to the number of instructional hours delivered by an institution of higher education divided by the number of hours associated with full-time enrollment for the fiscal year two years prior to the one for which formula funding is being calculated, where the hours delivered to students with certain characteristics carry a value other than one.

(34) Weighted Outcomes Completion--A synthetic count of completions of designated student success outcomes where outcomes achieved by students with certain characteristics carry a value other than one. The synthetic count may also represent a calculation, such as an average or maximizing function, other than a simple sum.

§13.554. Base Tier Allotment.

(a) Coordinating Board staff will calculate Base Tier funding for each public junior college district (district) as the greater of the Instruction and Operations (I&O) amount minus Local Share and zero.

(b) A district's I&O amount is the sum of the number of Weighted Full-Time Student Equivalents (Weighted FTSE) enrolled at the district multiplied by the Basic Allotment amount calculated by the Commissioner of Higher Education as provided in subsection (c) of this section and the district's total Contact Hour Funding as determined by the Coordinating Board.

(1) Weighted FTSE for each district is the sum of the district's full-time student equivalents weighted for the student characteristics under subparagraph (B) of this paragraph and the scale adjustment as provided in Texas Education Code, §130A.054.

(A) For purposes of determining annual Weighted FTSE as a component of formula funding for the fiscal year under this section, a district's full-time student equivalents (FTSE) is equal to the sum of:

(i) the total semester credit hours in which for-credit students were enrolled at the district as of the census dates of all academic semesters or other academic terms that were reported for the fiscal year two years prior, divided by 30; and

(ii) the total contact hours in which continuing education students were enrolled at the district as of the census dates of all academic semesters or other academic terms that were reported for the fiscal year two years prior, divided by 900.

(B) The Coordinating Board shall apply a weight to the calculation of Weighted FTSE as follows:

(i) if a student is classified as economically disadvantaged during the fiscal year two years prior, FTSE generated by that student shall have an additional value of 25%;

(ii) if a student is classified as academically disadvantaged during the fiscal year two years prior, FTSE generated by that student shall have an additional value of 25%; and

(iii) if a student is classified as an adult learner on September 1 of the fiscal year two years prior, FTSE generated by that student shall have an additional value of 50%.

(C) The Coordinating Board calculates a district's scale adjustment weight as the greater of the difference between 5,000 and the number of FTSE as defined in subparagraph (A) of this paragraph multiplied by .40, and zero.

(2) For the purpose of calculating formula funding amounts for the fiscal year, Coordinating Board staff will calculate Contact Hour Funding for a public junior college district by first multiplying the number of reported certified fundable contact hours generated by the district in each discipline during the Base Year of the fiscal year by the average cost of delivery per contact hour for each discipline respectively as described in the Report of Fundable Operating Expenses in accordance with §13.524(c) of this chapter (relating to Required Reporting) and summing across all disciplines. Contact hours attributable to students enrolled in a junior-level or senior-level course are weighed in the same manner as a lower division course in a corresponding field. That sum will then be multiplied by a rate calculated by the Commissioner of Higher Education as provided in subsection (c) of this section in accordance with the General Appropriations Act to calculate the district's Contact Hour Funding.

(c) The Commissioner shall calculate the Basic Allotment and the rate to be used for calculating districts' Contact Hour Funding such that:

(1) Contact Hour Funding is equivalent to Basic Allotment Funding for the fiscal year; and

(2) The sum of base tier funding to all districts for the fiscal year equals one-nineteenth of the sum of performance tier foundation payments calculated using funding certified data as described in subchapter U of this chapter (relating to Community College Finance Program: Forecasting Methodology and Finance Policy) by June 1 prior to the fiscal year.

(3) The Commissioner may modify the base tier funding on a pro rata basis in accordance with this subsection to account for any changes to performance tier totals arising from any amendments to rule adopted by the Board between June 1 and the beginning of the fiscal year.

(d) For the purpose of calculating formula funding amounts for the fiscal year, the Local Share for each public junior college district equals the sum of:

(1) the estimated amount of revenue that would have been generated by the district if it had assessed a $0.05 maintenance and operations ad valorem tax on each $100 of taxable property value in its taxing district, as reported under §13.524 of this chapter, which the Coordinating Board will calculate as the district's current tax collection for fiscal year two years prior multiplied by the ratio of the maintenance and operations tax rate to the total tax rate, divided by the product of the maintenance and operations tax rate and 100 and multiplied by five; and

(2) the amount of tuition and fee revenue calculated as the sum of:

(A) the district's FTSE two fiscal years prior as defined in subsection (b)(1)(A) of this section, except for semester credit hours derived from students enrolled in dual credit or dual enrollment courses, multiplied by a rate calculated by the Commissioner of Higher Education, which is the enrollment-weighted statewide average of tuition and fees charges to full-time equivalent students residing within the district of the public junior college they attend, as reported by the

public junior colleges in the Integrated Fiscal Reporting System for the fiscal year two fiscal years prior; and

(B) the total semester credit hours of dual credit courses in which students were enrolled as of the census dates of all academic semesters or other academic terms that were reported in the fiscal year two years prior, multiplied by the Financial Aid for Swift Transfer (FAST) tuition rate as codified in §13.504 of this chapter (relating to Financial Aid for Swift Transfer (FAST) Tuition Rate) in the fiscal year two years prior. For fiscal year 2023, the FAST tuition rate is equal to the rate for fiscal year 2024.

§13.555. Performance Tier Funding.

(a) Each public junior college district shall receive Performance Tier funding under Texas Education Code, chapter 130A, subchapter C. A district increases its Performance Tier funding amount by producing Fundable Outcomes, with Fundable Outcomes achieved in certain categories eligible for an additional multiplier (Fundable Outcome Weights), as calculated by the Coordinating Board. A Fundable Outcome multiplied by the Fundable Outcome Weight constitutes a Weighted Outcome Completion. A district's Performance Tier funding amount equals the total of each Weighted Outcome Completion multiplied by the funding rates for that completion, as identified in §13.559 of this subchapter (relating to Performance Tier: Rates). Funding rates include an additional weight for fundable credentials delivered in a high-demand field.

(b) Fundable Outcomes. Section 13.556 of this subchapter (relating to Performance Tier: Fundable Outcomes) defines each Fundable Outcome type, including the methodology used to calculate each outcome.

(c) Fundable Outcome Weight. Section 13.557 of this subchapter (relating to Performance Tier: Fundable Outcome Weights) and subchapter T of this chapter (relating to Community College Finance Program: High-Demand Fields) define each Fundable Outcome Weight type, including the methodology used to calculate each outcome. Fundable Outcome Weights consist of the following categories:

(1) Fundable Outcomes achieved by economically disadvantaged students;

(2) Fundable Outcomes achieved by academically disadvantaged students; and

(3) Fundable Outcomes achieved by adult learners.

(d) For the purposes of calculating Weighted Outcome Completions for formula funding amounts for a fiscal year, the Coordinating Board shall calculate the funded number of Weighted Outcome Completions as the greater of the average of the district's Weighted Outcome Completion counts for the fiscal year being funded and two fiscal years prior, as calculated by subchapter U of this chapter (relating to Community College Finance Program: Forecasting Methodology and Finance Policy), and the count for the fiscal year being funded, as calculated according to subchapter U.

(e) Fundable Outcome Rates. Section 13.558 of this subchapter (relating to Performance Tier: High-Demand Fields) and §13.559 of this subchapter defines fundable outcomes awarded in a high-demand field and the rates for each fundable outcome, including the higher rate for fundable credentials awarded in a high demand field.

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 July 26, 2024.

TRD-202403403
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2024
Proposal publication date: May 31, 2024
For further information, please call: (512) 427-6548

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SUBCHAPTER S. COMMUNITY COLLEGE FINANCE PROGRAM

19 TAC §§13.560 - 13.562

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of Title 19, Part 1, Chapter 13, Subchapter S, §§13.560 - 13.562, Community College Finance Program, without changes to the proposed text as published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3890). The rules will not be republished.

The adopted repeal reorganizes rules relating to public junior college finance in order to group rules by thematic content. The Coordinating Board intends to adopt a separate forthcoming subchapter relating to financial allocations for public junior colleges; this forthcoming chapter will contain the content of the rules proposed for repeal instead.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Education Code, Section 130A.005, which provides the Coordinating Board with the authority to adopt rules and take other actions consistent with Texas Education Code, Chapter 61, Chapter 130, and Chapter 130A to implement Tex. H.B. 8, 88th Leg., R.S. (2023).

The adopted repeal affects Texas Education Code, Sections 130.0031 and 130A.007.

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

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

TRD-202403404
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Effective date: August 15, 2024
Proposal publication date: May 31, 2024
For further information, please call: (512) 427-6548

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SUBCHAPTER U. COMMUNITY COLLEGE FINANCE PROGRAM: FORECASTING METHODOLOGY AND FINANCE POLICY

19 TAC §§13.620 - 13.630

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 13, Subchapter U, Community College Finance Program: Forecasting Methodology and Finance Policy, §13.624, with changes to the

proposed text as published in the May 31, 2024, issue of the *Texas Register* (49 TexReg 3891). The rule will be republished. Sections 13.620 - 13.623 and 13.625 - 13.630 are adopted without changes and will not be republished.

Specifically, these new sections establish the structure necessary for a dynamic payment system, including parameters for forecasting and payment schedules for the coming fiscal years. The new dynamic payment system will minimize both the lag time between when colleges achieve fundable outcomes and when they receive performance funding and the impact from the changes to state funding that may result.

Rule 13.620, Purpose, states the purpose of the subchapter, which is to establish definitions, timeline of payments, methodologies, and other processes necessary to calculate and distribute formula funding to community colleges.

Rule 13.621, Authority, states the authority for the subchapter, contained in Texas Education Code, §130A.005. This provision allows the Coordinating Board to adopt rules to implement the State Public Junior College Finance Program, with relevant provisions in Texas Education Code, Chapters 61, 130, and 130A.

Rule 13.622, Applicability, establishes that, unless otherwise provided, the version of Subchapter U that was applicable to a fiscal year's formula funding is applicable to any adjustments to that funding that may be made during the subsequent fiscal year. This provides a reliable basis for colleges to estimate the future funding implications of strategic investments and programming decisions.

Rule 13.623, Definitions, lists the definitions pertinent to the timeline of payments, forecasting outcomes, and the calculation of payments. The definitions include:

Certified Outcomes are the number of times a fundable outcome, as defined by Subchapter S, has occurred for a given year according to certified data.

Close-Out Adjustment is defined as the amount of change between forecasting-based formula funding, inclusive of adjustments, and formula funding recalculated using entirely actual outcomes data instead of forecasted outcomes. This adjustment is applied to the first formula payment of the subsequent fiscal year.

Dynamic Adjustment is the update to the forecast-based formula funding for the current fiscal year that, if positive, is applied to the second of three payments in a fiscal year using more recent actual outcomes data to replace some forecasted outcomes and reforecast others.

Fundable Certified Data is data after May 1 of a fiscal year used to calculate formula funding for the next fiscal year. This is distinct from Certified Outcomes because institutions may correct their certified data after they submit it to the Coordinating Board. May 1 is a reasonable, operationally necessary deadline for these corrections to end, enabling official formula funding calculations to begin.

Foundation Payment is the term used to describe the sum of Base Tier and Performance Tier funding for a community college district in a fiscal year.

Error Adjustment is a correction to formula funding that takes place after the Close Out Adjustment.

Institution and Public Junior College are terms used to refer to the public community colleges.

Preliminary Outcomes are those outcomes used to calculate the dynamic adjustment, which is a mid-year correction to formula funding using less forecasted data and more actual data.

Settle Up Adjustment is the update to forecasting-based formula funding for the prior fiscal year that, if positive, is applied to the second of three payments in a fiscal year using more recent actual outcomes data to replace some forecasted outcomes and reforecast others.

Rule 13.624, Forecasting Fundable Outcomes, establishes the methodology by which fundable outcomes are forecasted. The methodology is time series projection with additive exponential triple smoothing towards the regression line where the independent variable is the year and the dependent variable is the performance for a given outcome. This method puts additional weight on more recent outcomes and accounts for seasonal patterns. The forecasted outcomes are bounded such that they cannot increase by more than 10 percent or decrease by 5 percent relative to the previous year, with an exception to provide an estimate when the value for the previous year is zero. Forecasts for the outcomes subtypes Academic Disadvantage, Economic Disadvantage, Adult Learner, and High-Demand Field assume that the ratio of total outcomes to each subtype outcome in the historical data is the same for the forecasted years.

Rule 13.625, Schedule and Composition of Payments for Fiscal Year 2025, establishes the specific structure of payments for FY 2025. For FY 2025 all non-formula funding would be distributed by September 25. Formula funding would be distributed in three payments: 50 percent of total formula funding in October (inclusive of any FY 2024 Close Out Adjustment amounts), 25 percent in February (inclusive of the FY 2025 Dynamic Adjustment), and 25 percent in June. The June payment may be prorated to bring total formula funding within legislative appropriation for community college formula funding. The addition of the Dynamic Adjustment in the spring payment creates a financial feedback mechanism at the earliest opportunity under the data collection timeline while avoiding undue disruption to college operations.

Rule 13.626, Schedule and Composition of Payments for Fiscal Year 2026, establishes the specific structure of payments for the indicated fiscal years. For FY 2026 all non-formula funding would be distributed by September 25. Formula funding would be distributed in three payments; 50 percent of total formula funding in October (inclusive of any FY 2025 Projected Settle Up Adjustment amounts), 25 percent in February (inclusive of the Dynamic Adjustment and FY 2025 Settle Up Adjustment amounts), and 25 percent in June. The rule establishes that the Commissioner of Higher Education may adjust any payment under this schedule to ensure that a college receives the amount it is entitled to. The addition of the Projected Settle Up Adjustment in the fall payment creates the first instance when formula funding can be reduced in response to performance that fails to meet projections. It includes two key safeguard features: it uses only fundable certified outcomes, whereas mid-year, positive-only adjustments can be made with preliminary outcomes; and it is applied to the first payment of a fiscal year, providing colleges with adequate notice of their upcoming funding for budget and planning purposes.

Rule 13.627, Schedule and Composition of Payments Beginning Fiscal Year 2027, establishes the specific structure of payments for all fiscal years beginning in FY 2027. All non-formula funding would be distributed by September 25. Formula funding would be distributed in three payments; 50 percent of total formula

funding in October (inclusive of any prior-year Projected Settle Up Adjustment amounts and Close Out Adjustments from two years prior), 25 percent in February (inclusive of the Dynamic Adjustment and prior-year Settle Up Adjustment amounts), and 25 percent in June. The June payment may be prorated to bring total formula funding within the amount appropriated by the legislature for community college formula funding. The Close Out Adjustment in the first payment provides the final alignment between the sum of performance payments and adjustments for the fiscal year two years prior and performance funding based entirely on fundable certified outcomes data from that year.

Rule 13.628, Substantial Negative Impacts, establishes that the Commissioner of Higher Education may apply required reductions in performance funding over a longer period of time as governed by the data error policy should the Commissioner of Higher Education determine that the standard settle-up or close-out process would have a substantial negative impact on an institution's operations or students.

Rule 13.629, Formula Transition Funding, establishes that after calculating the base tier and performance tier funding for each community college, the Coordinating Board shall ensure that a community college district does not receive less in formula funding in FY 2025 than it received in FY 2023 appropriations for formula funding (contact hours, success points, core operations, and bachelor's of applied technology funding) and need-based supplements. The new rule moves an existing formula transition funding provision from Subchapter S to Subchapter U, as the subject matter more closely pertains to payment provisions. This provision smooths the transition from the prior system of formula funding predominantly based on contact hour generation to the new system of performance-based funding. It ensures that no institution will experience a significant detrimental impact on its operations as the new system adjusts funding and moves to outcome-driven performance.

Rule 13.630, Limitations on Spending, describes the restrictions on how community college districts may expend state-appropriated funds, in alignment with state statute (Texas Education Code, §130.003(c); General Appropriations Act, 88th Leg. R.S., H.B. 1, art. III-231, ch. 1170, Rider 14). The Coordinating Board adopts this provision in response to requests from stakeholders for greater clarification of permissible expenditures. The new rule moves existing limitations on spending provision from Subchapter S to Subchapter U, as the subject matter more closely pertains to payment-related provisions.

Subsequent to the posting of the rules in the *Texas Register*, Coordinating Board staff recommend the following amendments:

Rule 13.624(c) amends the forecasting methodology for Institutional Credentials Leading to Licensure or Certification to be in line with the definition. The historical years for the FY 2025 ICLC calculation includes the former FY 2024 licensure/certification no credential outcome data to be used for forecasting purposes.

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

The new sections are adopted under Texas Education Code, Section 130A.005, which provides the Coordinating Board with the authority to adopt rules to carry out the Public Junior College State Finance Program.

The adopted new sections affect Texas Education Code, Chapter 130A, and Sections 61.059 and 130.0031.

§13.624. Forecasting Fundable Outcomes.

(a) Purpose. The purpose of this section is to establish the methodology for forecasting fundable performance outcomes to calculate performance tier funding amounts covering a time period for which performance data are not yet available. The Coordinating Board shall forecast each fundable performance outcome as defined under §13.556 of this chapter (relating to Performance Tier: Fundable Outcomes), except those set out under §13.553(28) and (31) of this chapter (relating to Definitions) for each public junior college using historical performance data. The Coordinating Board shall use these figures to calculate each performance tier payment for the funded fiscal year as established under §13.555 of this chapter (relating to Performance Tier Funding).

(b) Methodology. The Coordinating Board shall forecast the total annual count of a fundable performance outcome for a public junior college using the exponential triple smoothing method of trend analysis with additive error, trend, and seasonality parameters applied to time series data. This time series data shall use fundable certified data with the counts of fundable outcomes achieved annually by the public junior college during no fewer than the six most recent years for which data are available except as otherwise provided by subsection (c) of this section.

(c) Other time series data. The time series data for forecasting Occupational Skills Awards and Institutional Credentials Leading to Licensure or Certification shall use fundable certified data with the counts of each fundable outcome achieved annually by a public junior college during no fewer than the four most recent fiscal years for which data are available. For Institutional Credentials Leading to Licensure or Certification, the Coordinating Board shall use the definition for the credential in effect during the fiscal year for which the credential was counted.

(d) Bounded projections. The forecasted total annual count of a fundable performance outcome for a fiscal year shall not exceed 110 percent nor be less than 95 percent of the count for the prior year. If the count for the prior year is also a forecasted value, then the maximum allowable change for the current year shall be calculated against the prior year's forecasted value as adjusted pursuant to this rule. If the value for a fundable performance outcome for the most recent actual, not forecasted data is zero, the forecast shall not be bounded in the next fiscal year. In no circumstances may an estimated fundable performance outcome be negative.

(e) As provided by §13.556 of this chapter, the Coordinating Board shall forecast the number of each fundable credential in a high-demand field, as defined under subchapter T of this chapter (relating to Community College Finance Program: High-Demand Fields), for a fiscal year by multiplying the average annual percentage of the credential conferred in a high-demand field in the credential's time series data by the total count of the credential forecast to be conferred in that year.

(f) As provided by §13.556 of this chapter, the Coordinating Board shall forecast the number of each fundable credential conferred to students who are academically disadvantaged, economically disadvantaged, and adult learners, as provided by §13.557 of this chapter (relating to Performance Tier: Fundable Outcome Weights), for a fiscal year by multiplying the average percentage of the credential conferred by the institution to students in each respective subgroup in the credential's time series data by the total count of the credential forecast to be conferred by the institution in that 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.

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

TRD-202403409
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Effective date: August 15, 2024
Proposal publication date: May 31, 2024
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CHAPTER 15. RESEARCH FUNDS
SUBCHAPTER A. GENERAL PROVISIONS
19 TAC §15.10

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 15, Subchapter A, §15.10, Texas Research Incentive Program, with changes to the proposed text as published in the May 10, 2024, issue of the *Texas Register* (49 TexReg 3091). The rules will be republished.

Amendments clarify the program administration and newly establish the processes for application review in administrative law. The Coordinating Board used negotiated rulemaking to develop these rules. The Coordinating Board will make reports of negotiated rulemaking committees available upon request. The Coordinating Board revised the amendment after publication in the *Texas Register* to clarify that the Coordinating Board staff may seek administrative corrections during the review of applications.

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

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

Paragraph (1) defines administrative correction as the act of submitting additional supporting documentation to verify that a gift is an eligible gift. This provision allows an institution to addressing question from the internal review committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

New §15.10(h) establishes how the Coordinating Board reviews applications for eligibility, when institutions engage in peer review of applications, when appeals may be submitted, and when the Commissioner shall make recommendations on appeals. The new subsection provides for the Coordinating Board to facilitate the peer review process no less than twice in a fiscal year, anticipated to occur in the first and third quarter of

a fiscal year. The rule provides discretion for the Commissioner to delay a peer review if necessary for business needs, provides clarity that the internal review committee may recommend that only a portion of a gift be found as an eligible gift for matching grants, and provides for the institution to submit administrative corrections in their appeal. This subsection codifies current procedures related to the TRIP.

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

No comments were received regarding the adoption of the amendments.

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

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

§15.10. Texas Research Incentive Program (TRIP).

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

(b) Authority.

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

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

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

(c) Definitions.

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

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

(3) Bundled Gifts--Gifts from the same private source that are combined to determine eligibility for matching grants. All component gifts of a bundled gift must have deposit dates within ten (10) calendar days of the first deposit.

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

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

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

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

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

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

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

(11) Eligible Gifts --Cash or an endowment to an eligible public institution from private sources in a state fiscal year for the purpose of enhancing research activities at the institution, including for endowed chairs, professorships, research facilities, research equipment, program costs, graduate research stipends or fellowships, or undergraduate research. Gifts or endowments that are not cash, including those listed in Texas Education Code, §62.121(2), must be converted to cash before they can be submitted as an eligible gift. These include gifts that are bundled from a private source.

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

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

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

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

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

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

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

(F) In-kind gifts or discounts;

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

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

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

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

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

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

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

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

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

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

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

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

(e) Distribution of Matching Grants.

(1) The Coordinating Board will distribute matching grants in order of the date of certification.

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

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

(1) The application must contain the following information:

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

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

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

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

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

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

(4) The Coordinating Board may request administrative corrections to facilitate review of applications.

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

(g) Returned Gifts. If an eligible institution returns any portion of an eligible gift to the donor or the gift is no longer eligible for matching grants, the institution shall take the following actions within thirty (30) days of the change:

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

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

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

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

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

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

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

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

The agency certifies that legal counsel has reviewed the 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 July 26, 2024.

TRD-202403411

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Effective date: August 15, 2024
Proposal publication date: May 10, 2024
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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER W. TEXAS WORKING OFF-CAMPUS: REINFORCING KNOWLEDGE AND SKILLS (WORKS) INTERNSHIP PROGRAM

19 TAC §§21.700 - 21.707

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of Title 19, Part 1, Chapter 21, Subchapter W, §§21.700 - 21.707, Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program, without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2904). The rules will not be republished.

The adopted repeal relocates these rules to another chapter, allowing the Coordinating Board to administer the Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship Program. Texas Education Code, Chapter 56, Subchapter E-1, Section 56.0856, gives the Coordinating Board the authority to adopt rules to enforce, the requirements, conditions, and limitations provided by the subchapter.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Education Code, Chapter 56, Subchapter E-1, Section 56.0856, which provides the Coordinating Board with the authority to adopt rules to enforce, the requirements, conditions, and limitations provided by the subchapter.

The adopted repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 21, Subchapter W, Sections 21.700 - 21.707, relating to the Texas Working Off-Campus: Reinforcing Knowledge and Skills (WORKS) Internship 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 July 26, 2024.

TRD-202403412
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Effective date: August 15, 2024
Proposal publication date: May 3, 2024
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CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS
SUBCHAPTER N. TEXAS LEADERSHIP SCHOLARS PROGRAM

19 TAC §22.288

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to Title 19, Part 1, Chapter 22, Subchapter N, §22.288, Eligible Students, without changes to the proposed text as published in the May 10, 2024, issue of the *Texas Register* (49 TexReg 3094). The rule will not be republished.

The adopted amendment clarifies a student's eligibility requirements and the requirements of the participating institution if a student no longer meets the financial need criteria.

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

Rule 22.288 outlines the eligibility requirements students must meet to allow an institution to select a student as a scholar under the Texas Leadership Scholars Program. The requirements of this section establish a minimum criteria for a student to be eligible to receive a scholarship. Specifically, the amended section clarifies that a student must apply for financial aid every eligible year. If a student no longer meets the financial need criteria, a student may remain in the program. In addition, the institution shall make efforts to cover the student's tuition and fees, but is not required to do so. The amendment does not change the number or amount of scholarships available for award.

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 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.

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

TRD-202403413
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Effective date: August 15, 2024
Proposal publication date: May 10, 2024
For further information, please call: (512) 427-6537

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SUBCHAPTER R. NURSING STUDENTS SCHOLARSHIP PROGRAM

19 TAC §§22.360 - 22.369

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 22, Subchapter R, §§22.360 - 22.369, Nursing Students Scholarship Program, with changes to the proposed text as published in the May 10, 2024, issue of the *Texas Register* (49 TexReg 3096). The rules will be republished.

This new subchapter outlines the authority and purpose, definitions, institutional eligibility requirements, student eligibility requirements, conditions for continued or discontinued eligibility, hardship provisions, scholarship amounts, allocation methodology, and disbursement procedures for a scholarship program to support vocational and professional nursing students. The Coordinating Board used negotiated rulemaking to develop these rules. The Coordinating Board will make reports of the negotiated rulemaking committee available upon request.

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

Rule 22.361 establishes definitions for relevant words or terms throughout the subchapter. The definition of "professional nursing program" in paragraph (1) includes both undergraduate and graduate degrees in professional nursing, including both associate and bachelor's degree programs. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

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

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

Rule 22.364 establishes prioritization criteria for eligible institutions when appropriated funds are insufficient to offer scholarships to all eligible students. Subsections (a) and (b) provide that priority shall be given to students who received a scholarship in the prior academic year and to students who demonstrate the greatest financial need, respectively. Subsection (c) provides that priority shall be given to eligible students who are not yet licensed as a registered nurse in Texas or any other state, which will prioritize funds for new nurses to address the state's large deficit of registered nurses. Given the current and anticipated workforce shortages of vocational and registered nurses and the surplus of advanced practice nurses (those with graduate degrees), the Coordinating Board determined prioritizing students who are not yet licensed as a registered nurse would best serve the health care needs of the state at this time. This determination is in line with the agency's authority in Texas Education Code, Section 61.655(c), to establish categories of persons to receive scholarships, including by considering the type of academic degree pursued. Subsection (d) authorizes institutions to set additional prioritization criteria, provided they comply with Coordinating Board rules and Texas Education Code, Section 61.655, to allow institutions greater flexibility in determining how scholarships can be disbursed for maximum positive effects. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

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

Rule 22.366 provides for hardship provisions that allow institutions to consider otherwise eligible students to receive a scholarship even after failing to meet one of the program's eligibility criteria. The rule lists a non-exhaustive list of potential hardship conditions and requires institutions to document each approved hardship and maintain a publicly available hardship policy. This section is implemented to align with other state financial aid programs and to potentially avert dramatic changes in a student's financial aid emanating from difficult circumstances that may have affected the student's academic performance. The Coordinating Board is given authority to establish rules as necessary to administer the Nursing Students Scholarship Program under Texas Education Code, Section 61.656.

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

Equalization Grant (TEG) for private and independent universities and institutions described by Texas Education Code, Section 61.651(1)(C).

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

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

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

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

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

Rule 22.369 outlines the Coordinating Board's standard practices related to disbursement of funds to institutions and unexpected reductions in funding. These provisions are common throughout the agency's financial aid programs and are included to ensure programs are administered efficiently and transparently.

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

Comment: St. Edward's University commented regarding its concern that, because its nursing degree programs are new and have not been reported previously in its Financial Aid Database submissions, that the university may not be considered for funding.

Response: The Coordinating Board agrees that because the nursing degree programs at St. Edward's University will not be reflected in its most recent Financial Aid Database (FAD) submissions, the university likely would be excluded from the allocation of funds during the program's first year (Fiscal Year 2025).

The provisions within §22.368 (relating to Allocation of Funds) agreed upon during negotiated rulemaking process were designed to ensure that appropriated funds were distributed equitably among institutions based on their respective populations of nursing students with financial need, weighted by cost using the award maximums from the TEXAS Grant, Texas Educational Opportunity Grant, and Tuition Equalization Grant programs. To accomplish this, as with other scholarship and grant programs, the Coordinating Board relies on FAD submissions to conduct its allocation calculations accurately and efficiently.

St. Edward's University is not uniquely disadvantaged; the interaction between FAD submission and allocation calculation would affect any institution with a nursing degree program in its first year of operation. Accordingly, no change is being made in response to this comment.

Comment: The Texas Nurses Association (TNA) commented that while generally they agree and support the proposed rules, they recommend changing the limitation of scholarships from only being offered to undergraduate students to including graduate students. TNA's understanding is that this limitation targets the funding where the need is greatest, the Registered Nurse (RN) pipeline. However, the comment notes that part of the deficit of RNs is due to the lack of qualified faculty serving in Texas. Since nursing school faculty typically must obtain a graduate degree to be able to teach so to incentivize the production of faculty, TNA recommends expanding eligibility to include graduate students.

Response: The Coordinating Board acknowledges the limitation, and the definition of Professional Nursing Program has been updated to include graduate students.

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

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

§22.360. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Chapter 61, Subchapter L, Financial Aid for Professional Nursing Students and Vocational Nursing Students. This subchapter establishes procedures to administer Texas Education Code §§61.651, 61.652, and 61.655 - 61.659.

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

§22.361. Definitions.

In addition to the words and terms defined in §22.1 of this chapter (relating to Definitions), the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Professional Nursing Program--A course of study at an eligible institution leading to an undergraduate or graduate degree in professional nursing.

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

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

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

§22.362. Eligible Institutions.

(a) Eligibility.

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

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

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

(b) Approval.

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

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

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

§22.363. Eligible Students.

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

(1) be a resident of Texas;

(2) show financial need;

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

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

§22.364. Priority in Scholarships to Students.

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

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

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

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

§22.365. Discontinuation of Eligibility or Non-Eligibility.

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

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

(1) meets all other eligibility criteria; and

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

§22.366. Hardship Provisions.

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

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

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

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

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

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

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

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

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

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

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

§22.367. Scholarship Amount.

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

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

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

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

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

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

§22.368. Allocation of Funds.

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

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

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

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

(i) were classified as Texas residents;

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

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

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

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

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

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

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

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

§22.369. Disbursement of Funds.

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

(b) Reductions in Funding.

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

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

The agency certifies that legal counsel has reviewed the 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 July 26, 2024.

TRD-202403415
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Effective date: August 15, 2024
Proposal publication date: May 10, 2024
For further information, please call: (512) 427-6365

CHAPTER 23. EDUCATION LOAN REPAYMENT PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§23.1 - 23.3

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 23, Subchapter A, §§23.1 - 23.3, General Provisions, without changes to the proposed text as published in the May 3, 2024, issue of

the *Texas Register* (49 TexReg 2905). The rules will not be republished.

This new section creates general provisions that apply to all education loan repayment programs administered by the Coordinating Board under Texas Administrative Code, Title 19, Part 1, Chapter 23.

Rule 23.1, Definitions, provides definitions for terminology that is common across all subchapters in Chapter 23. The definition for "Board," "Coordinating Board" and "Commissioner" are included to ensure consistency throughout the rules for education loan repayment programs. Texas Education Code, §§56.3575, 61.537, 61.608, 61.656, 61.9828, 61.9840, and 61.9959, provide the Coordinating Board with the authority to establish rules for the administration of the education loan repayment programs.

Rule 23.2, Eligible Lender and Eligible Education Loan, outlines the requirements that must be met for a loan to be considered eligible for repayment through any education loan repayment program in Chapter 23. This includes the requirements by which both the lender and the loan are assessed to determine eligibility. The requirements represent the consolidation of requirements outlined in the subchapters in Chapter 23 to ensure consistency across all programs. Additional details have been provided regarding the allowance for loans to be eligible for two different loan repayment programs if the other program is a federal program that requires a state matching requirement. Texas Education Code, §§56.3575, 61.537, 61.608, 61.656, 61.9828, 61.9840, and 61.9959, provide the Coordinating Board with the authority to establish rules for the administration of the education loan repayment programs.

Rule 23.3, Method of Disbursement, indicates that all education loan repayment program disbursements are made directly to the lender and that the Coordinating Board adheres to appropriate IRS reporting regulations. The Coordinating Board elects to disburse directly to the lender for all education loan repayment programs, rather than co-payable to the lender and borrower, to create greater assurance that all disbursements will be appropriately applied to the eligible loans. The Coordinating Board's adherence to appropriate IRS regulations is placed in the general provisions to create greater transparency of this requirement across all education loan repayment programs. Texas Education Code, §§56.3575, 61.537, 61.608, 61.656, 61.9828, 61.9840, and 61.9959, provide the Coordinating Board with the authority to establish rules for the administration of the education loan repayment programs.

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

The new sections are adopted under Texas Education Code, Sections 56.3575, 61.537, 61.608, 61.656, 61.9828, 61.9840, and 61.9959, which provide the Coordinating Board with the authority to establish rules for the administration of the education loan repayment programs.

The adopted new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 23.

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

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

TRD-202403417

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Effective date: August 15, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 427-6365

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SUBCHAPTER G. NURSING FACULTY LOAN REPAYMENT ASSISTANCE PROGRAM

19 TAC §§23.187 - 23.190, 23.193

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments and new rules in Title 19, Part 1, Chapter 23, Subchapter G, §23.190, Nursing Faculty Loan Repayment Assistance Program, with changes to the proposed text as published in the May 10, 2024, issue of the *Texas Register* (49 TexReg 3100). The rule will be republished. Sections 23.187 - 23.189 and 23.193 are adopted without changes and will not be republished.

The amendments and new rule redefine Coordinating Board terminology used throughout the subchapter, expand program eligibility to nursing faculty members employed less than full-time, clarify eligibility provisions related to prior employment as nursing faculty, allow the Coordinating Board to set the maximum annual loan repayment assistance amount for the program based on available funds and the number of eligible applicants, and to prorate the maximum award for part-time nursing faculty based on hours worked in relation to their full-time counterparts, and eliminate the previous annual award limit to align with statute.

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

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

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

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

based on current and immediately recent employment as nursing faculty.

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

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

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

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

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

Section 23.190, Amount of Repayment Assistance, was updated to provide greater clarity as to how the determination is made regarding the annual maximum assistance for the program, as well as how determinations are made regarding the maximum annual assistance for an individual participant and the maximum annual assistance for part-time nurses. The proposed rule was amended to provide better specification of the roles of the Commissioner and agency staff in determining maximum and individual award amounts.

The following comment was received regarding the adoption of the amendments.

Comment: The Texas Nurses Association (TNA) commented to communicate its support for the proposed rules.

Response: The Coordinating Board appreciates this comment.

The amendments and new rule are adopted under Texas Education Code, Section 61.9828, which provides the Coordinating Board with the authority to establish rules as necessary to administer the Nursing Faculty Loan Repayment Assistance Program.

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

§23.190. Amount of Repayment Assistance.

(a) The Commissioner shall determine the maximum annual loan repayment assistance amount offered under this subchapter to nursing faculty members working full-time, as defined in §23.187 of this subchapter (relating to Definitions). In any given year, the maximum amount of assistance is a function of the total amount of available funding and the number of eligible applicants.

(b) In any given year, a participant in the program may not receive assistance greater than 20 percent of the participant's loan balance as was demonstrated when the participant was first approved for assistance under this subchapter.

(c) The amount of loan repayment assistance calculated for an individual participant based on subsections (a) and (b) of this section shall be pro-rated for a nursing faculty member working part-time. The pro-ration shall be based on the proportion of hours worked by the nursing faculty member in comparison to the hours worked by nursing faculty members working full-time.

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 July 26, 2024.

TRD-202403418
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Texas Higher Education Coordinating Board
Effective date: August 15, 2024
Proposal publication date: May 10, 2024
For further information, please call: (512) 427-6365

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19 TAC §§23.190 - 23.192, 23.194

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of Title 19, Part 1, Chapter 23, Subchapter G, §§23.190 - 23.192 and 23.194, Nursing Faculty Loan Repayment Assistance Program, without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2907). The rules will not be republished.

The adopted repeal removes sections that were either moved to other sections within the program or are redundant with the creation of the new Subchapter A in Chapter 23.

Texas Education Code, Section 61.9828, provides the Coordinating Board with the authority to adopt rules for the administration of the Nursing Faculty Loan Repayment Assistance Program.

The repeal of these sections was necessary to reduce redundancy with new rules under the General Provisions, Subchapter A in Chapter 23, that apply to the entire chapter.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Education Code, Section 61.9828, which provides the Coordinating Board with the authority to adopt rules for the administration of the Nursing Faculty Loan Repayment Assistance Program.

The adopted repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 23, Subchapter G.

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 July 26, 2024.

TRD-202403419
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General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 427-6365

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SUBCHAPTER K. NURSE LOAN REPAYMENT ASSISTANCE PROGRAM

19 TAC §§23.300 - 23.305

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new rules in Title 19, Part 1, Chapter 23, Subchapter K, §23.304, Nurse Loan Repayment Assistance Program, with changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2907). The rule will be republished. Sections 23.300 - 23.303 and 23.305 are adopted without changes and will not be republished.

This subchapter establishes the program's authority and purpose, outlines definitions for necessary words and terms, and creates applicant eligibility criteria, ranking priorities, repayment assistance amounts, and limitations for the program. The Coordinating Board is given authority to establish rules as necessary to administer the Nurse Loan Repayment Assistance Program under Texas Education Code, §61.656.

Rule 23.300, Authority and Purpose, establishes the authority and purpose of the program, which is to promote the health care needs of this state by encouraging qualified nurses to continue to practice in Texas. This addition is adopted to clearly state the Coordinating Board's intentions in administering the program to conform with subchapters related to the agency's other financial aid programs.

Rule 23.301, Definitions, establishes necessary definitions for words and terms used in subsequent rules. This includes outlining various classifications of nurses based on state licensure standards, designating the number of hours needed to be full-time to conform to many employers' minimum standards, using Primary Care Health Professional Shortage Area scores as a proxy for nursing shortage in a given geography, and defining "rural county" based on a common definition in Texas law that is easily operationalized. This addition is implemented to avoid ambiguity in the rules and to ensure the subchapter is administered consistently.

Rule 23.302, Applicant Eligibility, establishes eligibility criteria for applicants to the program, including employer verification of the applicant's employment as a nurse, documentation of licensure, information related to the applicant's eligible education loans, and any other documentation that may be required. This addition is implemented to ensure state funds appropriated to this program are disbursed to persons currently employed as nurses in this state and that the Coordinating Board has the information needed to administer the program consistently and efficiently.

Rule 23.303, Applicant Ranking Priorities, establishes the prioritization criteria the Coordinating Board will use in the event that insufficient funds are available in a year to offer loan repayment assistance to all eligible applicants. Priority will be given based on a priority deadline set by the agency, to renewal applications versus initial-year applications, applications from nurses employed in rural counties, applications from nurses employed by or in Primary Care Health Professional Shortage Areas with higher scores, to different licensure classifications of nurses (prioritizing areas of greatest shortage statewide), and date of application submission. This addition is implemented to ensure that limited state funds are being employed to have the greatest impact in promoting the health care needs of the state.

Rule 23.304, Amount of Repayment Assistance, is adopted to allow the Commissioner to establish the maximum annual loan repayment assistance amounts for nurses of different licensure classifications and outlines how these amounts can be prorated for eligible nurses working part-time. Establishing the annual maximum has been structured in a way that supports the Coordinating Board's efforts to allocate all money available to the board for the purpose of providing loan repayment assistance under this subchapter. This addition is implemented to allow the greatest flexibility to the agency in administering the program, depending on the amount of available funds and number of eligible applicants each year.

Rule 23.305, Limitations, outlines limitations to the program. Subsection (a) relates to statutory requirements limiting the amount of assistance that can be offered to eligible persons for repayment for education loans for education received at an institution described by Texas Education Code, §61.651(1)(C). This addition aligns with statutory changes made to Texas Education Code, §61.656, in Senate Bill 25 during the 88th legislative session. Subsection (c) establishes the number of years an individual may receive loan repayment assistance under this program. Three years was selected to align with other Loan Repayment Assistance Programs and to ensure consistent availability to the program for new applicants, reinforcing the program's ability to retain qualified nurses statewide.

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

Section 23.304, Amount of Repayment Assistance, was updated to provide greater clarity as to how the determination is made regarding the annual maximum assistance for the program, as well as how the determinations are made regarding the maximum annual assistance for an individual participant and the maximum annual assistance for part-time nurses. The proposed rule was amended to provide better specification of the roles of the Commissioner and agency staff in determining maximum and individual award amounts.

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

Comment: Texas Nurse Practitioners (TNP) commented regarding the prioritization criteria within §23.303 (relating to Applicant Ranking Priorities). Specifically, TNP requested the removal of §23.303(a)(5), which states that, "Applications from registered nurses shall be given priority over applications from licensed vocational nurses, who shall be given priority over applications from advanced practice nurses." The comment notes the multiple functions advanced practice nurses serve in the health care workforce, including as nursing faculty and mental health care providers, as justification for "putting all nurses on an even level."

Response: The Coordinating Board appreciates this comment and provides this clarification. Regarding the prioritization criteria in §23.303, paragraphs (a)(1) - (6) are not independent of each other. In other words, all registered nurses (RN) and licensed vocational nurses (LVN) will not be prioritized over advanced practice nurses (APN). Rather, within a group of applicants whose employers have the same Health Professional Shortage Area score, the group will be prioritized, RNs > LVNs > APNs. The Coordinating Board intends and expects many advanced practice nurses to receive loan repayment assistance through this program, especially those serving in rural counties and parts of the state with the most severe shortages of health professionals. As such, no change is being made in response to this comment.

The Coordinating Board also appreciates the many and varied functions advanced practice nurses serve. Regarding their functions as nursing faculty and mental health care providers, specifically, the Coordinating Board notes that separate loan repayment programs exist to assist eligible nursing faculty and mental health professionals. Rules for these programs can be found in the Texas Administrative Code, Title 19, Part 1, Chapter 23, Subchapters G and D, respectively. Qualified advanced practice nurses are eligible to participate in either of these programs.

Comment: The Texas Nurses Association (TNA) commented to communicate its support for the proposed rules.

Response: The Coordinating Board appreciates this comment.

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

The adopted new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 23, Subchapter K.

§23.304. Amount of Repayment Assistance.

(a) The Commissioner shall determine the maximum annual loan repayment assistance amounts offered under this subchapter to nurses working full-time, as defined in §23.301 of this subchapter (relating to Definitions). In any given year, the maximum amounts of assistance are a function of the total amount of available funding, the number of eligible applicants, and the average loan balances of program participants. Maximum amounts shall be established for the following categories of nurses:

(1) Licensed Vocational Nurses;

(2) Registered Nurses; and

(3) Advanced Practice Nurses.

(b) In any given year, a participant in the program may not receive assistance greater than one-third of the participant's loan balance as was demonstrated when the participant was first approved for assistance under this subchapter.

(c) The amount of loan repayment assistance calculated for an individual participant based on subsections (a) and (b) of this section shall be pro-rated for a nurse working part-time. The pro-ration shall be based on the proportion of hours worked by the nursing faculty member in comparison to the hours worked by a nurse working full-time.

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 July 26, 2024.

TRD-202403420
Nichole Bunker-Henderson
General Counsel
Texas Higher Education Coordinating Board
Effective date: August 15, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 427-6365

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER A. BOARD OF TRUSTEES RELATIONSHIP

19 TAC §61.2

The State Board of Education (SBOE) adopts an amendment to §61.2, concerning nominations of trustees for military reservation school districts and Boys Ranch Independent School District. The amendment is adopted without changes to the proposed text as published in the May 17, 2024 issue of the *Texas Register* (49 TexReg 3462) and the correction of error published in the August 2, 2024 issue of the *Texas Register* (49 TexReg 5800). The section will not be republished. The adopted amendment reflects changes made by House Bill (HB) 4210, 88th Texas Legislature, Regular Session, 2023, to the SBOE's process for appointing trustees for military reservation districts and add a definition for the term "commanding officer."

REASONED JUSTIFICATION: Texas Education Code (TEC), §11.352, requires the SBOE to appoint a board of three or five trustees for each military reservation district established under TEC, §11.351. Enlisted personnel and officers may be appointed to the school board, but a majority of the trustees must be civilians. To be eligible to serve, one must either live or be employed on the military reservation. The trustees are selected from a list of people provided by the commanding officer of the military reservation.

HB 4210, 88th Texas Legislature, Regular Session, 2023, amended TEC, §11.352(b) and (c), to establish that a person who retires from active duty or civilian service while serving as a member of the board of trustees of a military reservation district may continue to serve for the remainder of his or her term. The bill also changed the SBOE's responsibility to adopt rules for the governance of special-purpose districts from permissive to required.

To implement HB 4210, the adopted amendment adds new §61.2(e) to specify that a trustee of a military reservation school district who retires from active duty or civilian service while serving as a member of the board of trustees may continue to serve for the remainder of his or her term.

In addition, the amendment defines "commanding officer" for the purposes of this section.

The SBOE approved the amendment for first reading and filing authorization at its April 12, 2024 meeting and for second reading and final adoption at its June 28, 2024 meeting.

In accordance with TEC, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2025-2026 school year. The earlier effective date would provide

clarity on who is eligible to serve on a board of trustees of a military reservation school district before the beginning of the 2024-2025 school year. The effective date is 20 days after filing as adopted with the Texas Register.

SUMMARY OF COMMENTS AND RESPONSES: The public comment period on the proposal began May 17, 2024, and ended at 5:00 p.m. on June 17, 2024. The SBOE also provided an opportunity for registered oral and written comments at its June 2024 meeting in accordance with the SBOE board operating policies and procedures. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under Texas Education Code, §11.352, as amended by House Bill 4210, 88th Texas Legislature, Regular Session, 2023, which requires the State Board of Education to appoint a board of three or five trustees for each military reservation district.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §11.352, as amended by House Bill 4210, 88th Texas Legislature, Regular Session, 2023.

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

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

TRD-202403374
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 15, 2024
Proposal publication date: May 17, 2024
For further information, please call: (512) 475-1497

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 3. MEMORANDUMS OF UNDERSTANDING WITH OTHER STATE AGENCIES

25 TAC §3.31, §3.41

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (DSHS), adopts the repeal of §3.31, concerning Memorandum of Understanding between the Texas Department of Criminal Justice, Texas Commission for the Blind, Texas Commission for the Deaf and Hard of Hearing, Texas Rehabilitation Commission, Texas Department of Human Services, and the Texas Department of Health; and §3.41, concerning Memorandum of Understanding Concerning Special Education Services to Students with Disabilities in Residential Facilities. The repeal of §3.31 and §3.41 is adopted without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2925), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the repeal is to remove unnecessary rules, §3.31 and §3.41, from the Texas Administrative Code pursuant to Senate Bill 219, 84th Legislature, Regular Session, 2015.

COMMENTS

The 31-day comment period ended June 3, 2024.

During this period, DSHS received one comment regarding the proposed repeal of §3.31 from one individual commenter. A summary of the comment relating to §3.31 and DSHS' response follows.

Comment:

One commenter objected to the repeal of 25 TAC §3.31 and disagreed that the rule is no longer necessary. The commenter stated that a memorandum of understanding (MOU) is needed between HHSC, Texas Department of Criminal Justice (TDCJ), and other state agencies to provide protections for inmates who are either deaf or hard of hearing.

Response:

DSHS declines to withdraw the repeal of §3.31. Texas Health and Safety Code §614.015(a) establishes the MOU between TDCJ and the Executive Commissioner with other state agencies. The Executive Commissioner may sign a MOU on behalf of DSHS. The statute does not require the other agencies to adopt rules.

STATUTORY AUTHORITY

The repeals are adopted under 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 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 July 29, 2024.

TRD-202403424
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: August 18, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 776-6683

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CHAPTER 4. DSHS CONTRACTING RULES

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the repeal of §4.1, concerning Contract Protests; §4.11, concerning Purpose; §4.12, concerning Applicability; §4.13, concerning Definitions; §4.14, concerning Prerequisites to Suit; §4.15, concerning Notice of Claim of Breach of Contract; §4.16, concerning Agency Counterclaim; §4.17, concerning Request for Voluntary Disclosure of Additional Information; §4.18, concerning Timetable for Negotiation and Mediation; §4.19, concerning Conduct of Negotiation; §4.20, concerning Settlement Approval Procedures for Negotiation; §4.21, concerning Negotiated Settlement

Agreement; §4.22, concerning Costs of Negotiation; §4.23, concerning Request for Contested Case Hearing; and §4.24, concerning Mediation. The repeal of §4.1 and §§4.11 - 4.24 is adopted without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2926), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the repeal is to remove unnecessary rules, §4.1 and §§4.11 - 4.24, from the Texas Administrative Code pursuant to Senate Bill 200, 84th Legislature, Regular Session, 2015.

COMMENTS

The 31-day comment period ended June 3, 2024.

During this period, DSHS did not receive any comments regarding the proposed repeal of §4.1 and §§4.11 - 4.24.

SUBCHAPTER A. PROTEST PROCEDURES FOR CERTAIN DSHS PURCHASES

25 TAC §4.1

STATUTORY AUTHORITY

The repeal is adopted under 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 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 July 29, 2024.

TRD-202403425
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: August 18, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 776-6683

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SUBCHAPTER B. CERTAIN CONTRACT CLAIMS AGAINST THE DEPARTMENT

25 TAC §§4.11 - 4.24

STATUTORY AUTHORITY

The repeals are adopted under 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 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 July 29, 2024.

TRD-202403426
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: August 18, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 776-6683

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CHAPTER 61. CHRONIC DISEASES
SUBCHAPTER B. DIABETIC EYE DISEASE DETECTION INITIATIVE

25 TAC §§61.21 - 61.24

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the repeal of §61.21, concerning General Information; §61.22, concerning Client Eligibility; §61.23, concerning Program Benefits; and §61.24, concerning Payment for Services. The repeal of §§61.21 - 61.24 is adopted without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2927), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the repeal is to remove unnecessary rules, §§61.21 - 61.24, from the Texas Administrative Code. The Diabetic Eye Disease Detection Initiative has been inactive since 2011 and DSHS does not intend to reactivate the initiative.

COMMENTS

The 31-day comment period ended June 3, 2024.

During this period, DSHS did not receive any comments regarding the proposed repeal of §§61.21 - 61.24.

STATUTORY AUTHORITY

The repeals are adopted under 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 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 July 29, 2024.

TRD-202403427
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: August 18, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 776-6683

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CHAPTER 111. SPECIAL HEALTH SERVICES

25 TAC §111.2, §111.3

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the repeal of §111.2, concerning Memorandum of Understanding Concerning Hospitals and Long-Term Care Facilities and §111.3, concerning Reporting Obligation by the Department of Agency Regulatory Survey Information. The repeal of §111.2 and §111.3 is adopted without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2928), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the repeal is to remove unnecessary rules, §111.2 and §111.3, from the Texas Administrative Code pursuant to Senate Bill 200, 84th Legislature, Regular Session, 2015.

COMMENTS

The 31-day comment period ended June 3, 2024.

During this period, DSHS did not receive any comments regarding the proposed repeal of §111.2 and §111.3.

STATUTORY AUTHORITY

The repeals are adopted under 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 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 July 29, 2024.

TRD-202403428
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: August 18, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 776-6683

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CHAPTER 113. SPECIAL HEALTH SERVICES PERMITS

25 TAC §113.1, §113.2

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the repeal of §113.1, concerning Processing Permits for Special Health Services Professionals and §113.2, concerning Time Periods for Processing and Issuing Licenses for Health Care Providers. The repeal of §113.1 and §113.2 is adopted without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2929), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the repeal is to remove unnecessary rules, §113.1 and §113.2, from the Texas Administrative Code pursuant to Senate Bill 202, 84th Legislature, Regular Session, 2015, which transferred this program to HHSC.

COMMENTS

The 31-day comment period ended June 3, 2024.

During this period, DSHS did not receive any comments regarding the proposed repeal of §113.1 and §113.2.

STATUTORY AUTHORITY

The repeals are adopted under 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 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 July 29, 2024.

TRD-202403429
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: August 18, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 776-6683

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CHAPTER 127. REGISTRY FOR PROVIDERS OF HEALTH-RELATED SERVICES

25 TAC §§127.1 - 127.4

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the repeal of §127.1, concerning Request for Placement of an Occupation on the Registry; §127.2, concerning Approved Occupations; §127.3, concerning Application and Approval of an Individual's Placement on a Registry; and §127.4, concerning Fees. The repeal of §§127.1 - 127.4 is adopted without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2930), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the repeal is to remove unnecessary rules, §§127.1 - 127.4, from the Texas Administrative Code pursuant to Senate Bill 970, 87th Legislature, Regular Session, 2021.

COMMENTS

The 31-day comment period ended June 3, 2024.

During this period, DSHS did not receive any comments regarding the proposed repeal of §§127.1 - 127.4.

STATUTORY AUTHORITY

The repeals are adopted under 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 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 July 29, 2024.

TRD-202403431
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: August 18, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 776-6683

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CHAPTER 140. HEALTH PROFESSIONS REGULATION

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the repeal of §140.30, concerning Introduction; §140.31, concerning Definitions; §140.32, concerning Fees; §140.33, concerning Petition for Rulemaking; §140.34, concerning Application Requirements and Procedures; §140.35, concerning Requirement for Insurance; §140.36, concerning Application Processing; §140.37, concerning Categories of Licensure and Registration; §140.38, concerning Renewal of License or Registration; §140.39, concerning Changes of Name or Address; §140.40, concerning Standards of Conduct for PERS Providers; §140.41, concerning Consumer Information; §140.42, concerning Filing Complaints and Complaint Investigations; §140.43, concerning Grounds for Disciplinary Action; §140.44, concerning Informal Disposition; §140.45, concerning Formal Hearings; §140.46, concerning Guidelines for Issuing Licenses and Registrations to Persons with Criminal Convictions; §140.47, concerning Immediate Suspension for Failure to Maintain Insurance Coverage; §140.48, concerning Registration of Military Service Members, Military Veterans, and Military Spouses; §140.250, concerning Introduction; §140.251, concerning Definitions; §140.252, concerning Fees; §140.253, concerning Petition for Rulemaking; §140.254, concerning Sale or Delivery of Contact Lenses and Prescription Verification; §140.255, concerning Display of Permit; §140.256, concerning Application Requirements and Procedures; §140.257, concerning Application Processing; §140.258, concerning Renewal of Permit; §140.259, concerning Changes of Name or Address; §140.260, concerning Filing Complaints and Complaint Investigations; §140.261, concerning Grounds for Disciplinary Actions; §140.262, concerning Informal Disposition; §140.263, concerning Formal Hearings; §140.264, concerning Guidelines for Issuing Permits to Persons with Criminal Convictions; §140.265, concerning Permitting of Military Service Members, Military Veterans, and Military Spouses; §140.275, concerning Purpose and Construction; §140.276, concerning Definitions; §140.277, concerning Fees; §140.278, concerning Application Procedures and Requirements for Registration; §140.279, concerning Issuance of Certificate of Registration; §140.280, concerning Renewal of Registration; §140.281, concerning Requirements for Continuing Education; §140.282, concerning Change of Name or Address; §140.283, concerning Violations, Complaints, Investigation of Complaints, and Disciplinary Actions; §140.284, concerning Registration of Applicants with Criminal Backgrounds; §140.285, concerning Professional and Ethical Standards; §140.286, concerning Request for Criminal History Evaluation Letter; and, §140.287, concerning Registration of Military Service Members, Military Veterans, and Military Spouses. The repeal of §§140.30 - 140.48, 140.250 - 140.265, and 140.275 - 140.287 is adopted without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2935), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the repeal is to remove unnecessary rules, §§140.30 - 140.48, §§140.250 - 140.265, and §§140.275 - 140.287, from the Texas Administrative Code. Senate Bill (S.B.) 202, 84th Legislature, Regular Session, 2015, repealed the regulation of these health professions.

COMMENTS

The 31-day comment period ended June 3, 2024.

During this period, DSHS did not receive any comments regarding the proposed repeal of §§140.30 - 140.48, 140.250 - 140.265, and 140.275 - 140.287.

SUBCHAPTER B. PERSONAL EMERGENCY RESPONSE SYSTEM PROVIDERS PROGRAM

25 TAC §§140.30 - 140.48

STATUTORY AUTHORITY

The repeals are adopted under 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 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 July 29, 2024.

TRD-202403433
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: August 18, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 776-6683

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SUBCHAPTER F. CONTACT LENS DISPENSERS

25 TAC §§140.250 - 140.265

STATUTORY AUTHORITY

The repeals are adopted under 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 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 July 29, 2024.

TRD-202403434
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: August 18, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 776-6683

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SUBCHAPTER G. OPTICIANS

25 TAC §§140.275 - 140.287

STATUTORY AUTHORITY

The repeals are adopted under 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 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 July 29, 2024.

TRD-202403435
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: August 18, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 776-6683

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CHAPTER 205. PRODUCT SAFETY

SUBCHAPTER A. BEDDING RULES

25 TAC §§205.1 - 205.17

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the repeal of §205.1, concerning Purpose and Scope; §205.2, concerning Definitions; §205.3, concerning General Requirements; §205.4, concerning Labeling Requirements; §205.5, concerning Definitions and Designations of Filling Materials; §205.6, concerning Adjunctive Terms; §205.7, concerning Suggested Terminology for Various Fiber By-Products; §205.8, concerning Germicidal Treatment Requirements; Methods; §205.9, concerning Sanitary Premises; §205.10, concerning Adjustments to the Minimum Requirements; §205.11, concerning Permit Requirements; Types; Application; Conditions; Suspension; §205.12, concerning Administrative Penalty; §205.13, concerning Detained or Embargoed Bedding; §205.14, concerning Removal Order for Detained or Embargoed Bedding; §205.15, concerning Condemnation; §205.16, concerning Recall Orders; and §205.17, concerning Inspection. The repeal of §§205.1 - 205.17 is adopted without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2938), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the repeal is to remove unnecessary rules, §§205.1 - 205.17, from the Texas Administrative Code pursuant to Senate Bill 202, 84th Legislature, Regular Session, 2015.

COMMENTS

The 31-day comment period ended June 3, 2024.

During this period, DSHS did not receive any comments regarding the proposed repeal of §§205.1 - 205.17.

STATUTORY AUTHORITY

The repeals are adopted under 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 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 July 29, 2024.

TRD-202403436
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: August 18, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 776-6683

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CHAPTER 297. INDOOR AIR QUALITY

SUBCHAPTER A. GOVERNMENT BUILDINGS

25 TAC §§297.1 - 297.10

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of State Health Services (DSHS), adopts the repeal of §297.1, concerning General Provisions; §297.2, concerning Definitions; §297.3, concerning Recommendations for Implementing a Governmental Building IAQ Program; §297.4, concerning Design/Construction/Renovation; §297.5, concerning Building Operation and Maintenance Guidelines; §297.6, concerning Recommended Building Occupant Responsibilities; §297.7, concerning Assessing and Resolving IAQ Problems; §297.8, concerning Guidelines for Comfort and Minimum Risk Levels; §297.9, concerning Lease Agreements; and §297.10, concerning Special Considerations. The repeal of §§297.1 - 297.10 is adopted without changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2939), and therefore will not be republished.

BACKGROUND AND JUSTIFICATION

The purpose of the repeal is to remove unnecessary rules, §§297.1 - 297.10, from the Texas Administrative Code pursuant to Senate Bill 202, 84th Legislature, Regular Session, 2015.

COMMENTS

The 31-day comment period ended June 3, 2024.

During this period, DSHS did not receive any comments regarding the proposed repeal of §§297.1 - 297.10.

STATUTORY AUTHORITY

The repeals are adopted under 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 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 July 29, 2024.

TRD-202403437
Cynthia Hernandez
General Counsel
Department of State Health Services
Effective date: August 18, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 776-6683

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 930. ADDITIONAL RIGHTS OF INDIVIDUALS RECEIVING SERVICES AT STATE FACILITIES

SUBCHAPTER A. STATE HOSPITAL ESSENTIAL CAREGIVER

26 TAC §§930.1, 930.3, 930.5, 930.7, 930.9, 930.11

The Texas Health and Human Services Commission (HHSC) adopts new §930.1, concerning Purpose; §930.3, concerning Application; §930.5, concerning Definitions; §930.7, concerning Essential Caregiver In-Person Visitation; §930.9, concerning Revocation; and §930.11, concerning Temporary Suspension of Essential Caregiver Visits.

Sections 930.1, 930.3, 930.5, 930.7, 930.9 and 930.11 are adopted with changes to the proposed text as published in the May 3, 2024, issue of the *Texas Register* (49 TexReg 2966). These rules will be republished.

BACKGROUND AND JUSTIFICATION

The new sections are necessary to comply with Texas Health and Safety Code Chapter 552, Subchapter F, Right to Essential Caregiver Visits, enacted by Senate Bill 52, 88th Legislation, Regular Session, 2023, which requires HHSC to develop guidelines to assist state hospitals in establishing essential caregiver visitation policies and procedures. Specifically, §552.202 establishes the right for a patient in a state hospital, or their legally authorized representative, to designate an essential caregiver with whom a state hospital cannot prohibit in-person visitation. Section 552.203 further requires the HHSC Executive Commissioner to develop guidelines for the state hospitals regarding the patient's, or their LAR's, right to designate an essential caregiver, visitation schedules, physical contact, and safety protocols. Section 552.204 addresses when an essential caregiver designation can be revoked, and the related right to an appeal. Section 552.205 addresses when a state hospital may seek a temporary suspension of visits.

COMMENTS

The 31-day comment period ended June 3, 2024.

During this period, HHSC received comments regarding the proposed rules from two commenters, Disability Rights Texas and Texas Medical Association. A summary of comments relating to the rules and HHSC's responses follow.

Comment: One commenter suggests that the application of §930.3(a) be broadened to include state hospital contracted beds and private psychiatric hospitals.

Response: HHSC declines to revise the rule in response to this comment. The definition of state hospital under §930.5(14) includes contracted state hospital beds and Texas Health and Safety Code Section 552.002 only provides authority for HHSC to implement these rules for state hospital patients. Rules for private psychiatric hospitals are outside the scope of this rule project.

Comment: The commenter suggests that an appeal in §930.9(c)(2) be submitted to the HHSC Behavioral Health Ombudsman as an objective, external third party instead of the state hospital associate commissioner.

Response: HHSC declines to revise the rule as suggested. The HHSC Behavioral Health Ombudsman does not conduct appeals; however, HHSC amends §930.9(c)(3) regarding the revocation letter to include how the patient or their LAR, or the essential caregiver, may contact the Ombudsman for information or assistance.

Comment: The commenter suggests that §930.11(a)(3) and §930.11(b)(3), regarding when an essential caregiver designation may be suspended, be amended to align with Section 552.205(a) of the Texas Health and Safety Code by adding the phrase "if HHSC determines that in-person visitation does not pose a serious community health risk."

Response: HHSC agrees and revises the rule as suggested.

Minor editorial changes are made to rename the chapter title and to add a subchapter to improve the rule organizational structure. Corresponding edits are made to replace references to "this chapter" with "this subchapter" for consistency and accuracy. Additional editorial changes are made to add a statutory cross reference in §930.1; update references in §930.3 and §930.5; add definitions for the terms "HHSC," "In person," and "Ombudsman" in §930.5 and renumber subsequent definitions for clarity; update the definitions of "Adult," "LAR," "Patient," and "State hospital;" abbreviate "the Texas Health and Human Services Commission" to "HHSC" and change the term "individual" to "patient" in §930.7 for consistency; and delete references to "individual" and replace "shall" with "must" in §930.9.

STATUTORY AUTHORITY

The new sections are adopted under Texas Government Code §531.0055, which provides that the Executive Commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies, and Texas Health and Safety Code §552.203(a) which requires the Executive Commissioner of HHSC to, by rule, develop guidelines to assist state hospitals in establishing essential caregiver visitation policies and procedures; and §552.204(c) which requires HHSC to, by rule, establish an appeals process to evaluate the revocation of an individual's designation as an essential caregiver.

§930.1. Purpose.

The purpose of this subchapter is to provide guidance and information on the right of state hospital patients, or the patient's legally authorized representative or representatives, to designate an essential caregiver and essential caregiver visitation policies in state hospitals in accordance with Texas Health and Safety Code Chapter 552, Subchapter F.

§930.3. Application.

(a) This subchapter applies to the Texas state hospitals listed under Texas Health and Safety Code Section 552.002, any facilities that the Texas Health and Human Services Commission (HHSC) operates as a state hospital, and any contracted state hospital beds funded by HHSC.

(b) The entities listed under subsection (a) of this section must adhere to the procedures outlined in this subchapter and monitor compliance with the implementation of the essential caregiver designation.

§930.5. Definitions.

The following words and terms, when used in this subchapter, have the following meanings.

(1) Adult--An individual who is 18 years of age or older or who is emancipated under the Texas Family Code.

(2) Community Health Risk--Any action or event that places the individuals served by the facility, staff, visitors, or the general public at the chance for or exposure to injury, sickness, or loss. This includes a public safety risk or disaster declaration by government officials.

(3) Day--A calendar day.

(4) Essential Caregiver--A family member, friend, guardian, or other individual a patient or patient's legally authorized representative selects for in-person visits.

(5) HHSC--Texas Health and Human Services Commission, or its designee.

(6) In person--Within the physical presence of another person. In person does not include audiovisual or audio-only communication.

(7) LAR--Legally authorized representative. A person authorized by state law to act on behalf of an individual or patient regarding a matter described by this subchapter, including the parent of a minor child.

(8) Manifestly Dangerous--An individual who, despite receiving appropriate treatment, including treatment targeted to the individual's dangerousness, remains likely to endanger others and requires a maximum-security environment to continue treatment and protect public safety.

(9) Minor--An individual younger than 18 years of age and who has not been emancipated under Chapter 31 of the Texas Family Code.

(10) Ombudsman--The Ombudsman for Behavioral Health Access to Care established by HHSC in accordance with Texas Government Code §547.0002.

(11) Parent--The biological or adoptive parent, managing conservator, or guardian of a minor.

(12) Patient--An individual receiving services in a state hospital under this subchapter.

(13) Revocation--Action taken to terminate an essential caregiver designation.

(14) State hospital--Texas state hospitals listed under Texas Health and Safety Code Section 552.002, any facilities that HHSC operates as a state hospital, and any contracted state hospital beds funded by HHSC.

(15) Suspension--Temporary prevention of in-person essential caregiver visitation.

§930.7. Essential Caregiver In-Person Visitation.

Guidelines for state hospital policies and procedures.

(1) Each patient or the patient's legally authorized representative (LAR) has the right to designate an essential caregiver with whom in-person state hospital visitation may not be prohibited except as prescribed in §930.9 of this subchapter (relating to Revocation) and §930.11 of this subchapter (relating to Temporary Suspension of Essential Caregiver Visits).

(2) If a patient is a minor, the patient's LAR may designate up to two parents as essential caregivers.

(3) An essential caregiver may visit the patient for at least two hours each day except when HHSC identifies a serious community health risk under §930.9 or §930.11 of this subchapter.

(4) Physical contact between the patient and the essential caregiver during in-person visitation may occur except in circumstances where physical contact is, as a matter of safety and in the exercise of reasonable medical judgment of a member of the medical staff, determined to present a significant risk of harm to the patient, essential caregiver, or others in light of the patient's current medical or psychiatric condition; including if a patient has been determined to be manifestly dangerous pursuant to 25 TAC Chapter 415, Subchapter G (relating to Determination of Manifest Dangerousness). The determination must be documented in the patient's medical record.

(5) The state hospital must provide a copy of visitation policies to the designated essential caregiver within 48 hours after the designated essential caregiver's agreement to become the essential caregiver and obtain a signed agreement form certifying that the essential caregiver agrees to follow the state hospital safety protocols for essential caregiver visits. This signed agreement must be placed in the patient's medical record.

(6) The state hospital may not establish safety protocols more restrictive for essential caregivers than those established for state hospital staff.

§930.9. Revocation.

(a) Each patient or the patient's LAR has the right to revoke an essential caregiver designation. The patient, the patient's guardian, or the patient's LAR may then designate another person as the essential caregiver.

(b) The state hospital may revoke an essential caregiver designation if the essential caregiver violates state hospital policies, procedures, or safety protocols. At the time of revocation, the essential

caregiver and the patient or the patient's LAR will be provided a copy of the violated policy, procedure, or safety protocol.

(c) If a state hospital revokes an essential caregiver designation under this section:

(1) the patient, or the patient's LAR, has the right to designate another essential caregiver immediately;

(A) within 24 hours, the state hospital must notify the patient or the patient's LAR of the revocation in person or by phone and the notification must be documented in the patient's record; and

(B) within two business days, the state hospital must send a revocation notification letter to the patient or the patient's LAR via certified mail to include the state hospital appeal process;

(2) the patient or the patient's LAR may petition the state hospital associate commissioner to appeal the revocation of an essential caregiver's designation;

(A) not later than the 14th calendar day after the date of revocation, the patient or the patient's LAR, may request an appeal by submitting a written request to the state hospital associate commissioner's office;

(B) the state hospital associate commissioner or designee will make a determination on the essential caregiver appeal not later than the 14th calendar day after receiving the request; and

(C) the outcome will be documented in the patient's record and a decision letter will be sent to the requestor within two business days after the determination, if the patient or the patient's LAR files an appeal; and

(3) if the revocation is upheld, within two business days, the state hospital will send a revocation letter to the essential caregiver and the patient or the patient's LAR via certified mail, including how to contact the Ombudsman in a language the essential caregiver and the patient or their LAR understands for information or assistance at 1-800-252-8154 or the HHSC website.

§930.11. Temporary Suspension of Essential Caregiver Visits.

(a) Each state hospital may petition the state hospital associate commissioner or the state hospital associate commissioner's designee to suspend in-person essential caregiver visitation if in-person visitation poses a serious community health risk.

(1) The state hospital associate commissioner or designee may only approve a suspension for up to seven calendar days.

(2) State hospitals must request each suspension separately.

(3) The state hospital associate commissioner may deny the state hospital request if HHSC determines that in-person visitation does not pose a serious community health risk.

(b) Each state hospital may petition the state hospital associate commissioner or the state hospital associate commissioner's designee to extend a suspension of in-person essential caregiver visitation for more than seven calendar days if in-person visitation continues to pose a serious community health risk.

(1) The state hospital associate commissioner or designee may only approve an extension for up to seven calendar days.

(2) State hospitals must request each extension separately.

(3) The state hospital associate commissioner may deny the state hospital request if HHSC determines that in-person visitation does not pose a serious community health risk.

(c) A state hospital may not suspend in-person essential caregiver visitation in the 12 months from the date of the initial suspension for a period that:

(1) is more than 14 consecutive calendar days; or

(2) is more than a total of 45 calendar days.

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 July 24, 2024.

TRD-202403358
Karen Ray
Chief Counsel
Health and Human Services Commission
Effective date: August 13, 2024
Proposal publication date: May 3, 2024
For further information, please call: (512) 438-3049

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 28, 2024, adopted amendments to §§65.10, 65.11, 65.24, 65.29, 65.33, 65.40, 65.42, 65.46, 65.48, and 65.64, concerning the Statewide Hunting Proclamation. The amendment to §65.64 is adopted with changes to the proposed text as published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 973). The amendments to §§65.10, 65.11, 65.24, 65.29, 65.33, 65.40, 65.42, 65.46, and 65.48 are adopted without change and will not be republished.

The change to §65.64, concerning Turkey, alters subsection (b)(3)(D) to designate the counties listed in that subsection as the East Zone for turkey, which is intended to facilitate ease of reference. The change also re-orders the counties listed in subsection (b)(1)(C) to preserve alphabetical order, alters subsection (b)(3)(A) and (B) to reflect that Guadalupe County is in the Spring North Zone, and removes a reference to Wiliamson County in subsection (b)(3)(C) to reflect the fact that the season is being closed.

The amendment to §65.10, concerning Possession of Wildlife Resources, implements conforming changes to terminology with respect to references to pronghorn. In 2022, the department amended to §65.3, concerning Definitions, to define "pronghorn" as "pronghorn antelope (*Antilocapra americana*)." Although Parks and Wildlife Code, Chapter 63, designates the "pronghorn antelope" as a game species, the animal is not in fact a true antelope. Additionally, it is less cumbersome to simply refer to the animal as a pronghorn. Therefore, the definition was changed and the rules over time are being modified as the opportunity arises to eliminate the word "antelope" throughout the subchapter. The amendments to §65.11, 65.24, 65.33, and 65.40 also implement the change.

The amendment to §65.29, concerning Managed Lands Deer Program (MLDP), allows youth hunters on properties enrolled in

the Harvest Option to harvest buck deer by firearm during the time period corresponding to the early youth-only hunting season established in the county regulations under §65.42, concerning Deer. During the current early youth-only hunting season, licensed hunters 16 years old and younger are allowed to take buck deer by firearm during the weekend preceding the first Saturday in November (under harvest rules in §65.42 for the county where the hunting takes place). On MLDP properties enrolled in the Conservation Option, MLDP permits are valid for the take of any deer by any lawful means (by any licensed hunter) from the Saturday closest to September 30 to the last day in February; however, on properties enrolled in the MLDP Harvest Option, only antlerless deer and unbranched antlered bucks can be taken by firearm between the Saturday closest to September 30 and the first Saturday in November. Therefore, during the weekend preceding the first Saturday in November, the harvest of buck deer by youth by firearm is lawful on all properties except those enrolled in the Harvest Option of the MLDP. The department has determined that because the upper limit of the harvest of deer on MLDP is set by the department, there is no reason for a hunting opportunity available on all other properties to be unavailable on MLDP Harvest Option properties during that same time period. The department has also determined that because the total harvest on MLDP properties is established and controlled by the department, there will be no negative biological consequences of allowing buck harvest by firearm by youth hunters, as it is simply a matter of redistributing utilization of a fixed number of tags on any given property. The department also notes that because the amendment to §65.42 adds a day to the early youth-only hunting season for deer, the amendment reflects that expanded harvest period length. The amendment also modifies subsection (f) to eliminate a provision regarding the effective date of a prior amendment. The provision was promulgated to provide for a transition period while the department implemented web-based and application-based administrative and reporting functions and is no longer necessary.

The amendment to 65.42, concerning Deer, consists of several components. The phrase "North Zone" is inserted at the beginning of paragraph (b)(2) to make clear the suite of counties and portions of counties to which the phrase refers.

The amendment to §65.42 also increases the number of "doe days" in 43 counties in the eastern half of the state. The department manages deer populations by the deer management unit (DMU) concept, which organizes the state into specific areas that share similar soil types, vegetative communities, wildlife ecology, and land-use practices. In this way, deer seasons, bag limits, and special provisions can be more effectively analyzed to monitor the efficacy of management strategies on deer populations within each DMU (although the familiar system of county boundaries and major highways to delineate various regulatory regimes continues to be employed). In some DMUs characterized by fragmented habitat, high hunting pressure, and large numbers of small acreages, the department protects the reproductive potential of the population by restricting the time during which antlerless deer may be taken, known colloquially as "doe days." Under current rule, there are five levels of doe harvest in Texas. In some counties, the harvest of does is restricted to harvest under MLDP tag only during the general season. In other counties (except on properties enrolled in the MLDP), doe harvest is allowed for either four, 16, or 23-plus days (a variable structure that allows antlerless harvest from the opening day of the general season until the Sunday following Thanksgiving). The most liberal doe harvest allows doe to be taken at any time during an open season. The department has determined that the 23-plus doe days structure can be implemented in 43 counties that currently have 16 doe days. Department population and harvest data indicate that deer densities are increasing within the affected DMUs and that antlerless harvest is less than half of the total harvest, which is resulting in a skewed sex ratio that is undesirable. The amendment is intended to provide additional hunting opportunity where possible within the tenets of sound biological management, address resource concerns such as increasing deer densities and habitat degradation, and to simplify regulations.

Finally, the amendment to §65.42 adds one day to the current early youth-only weekend season for deer. Based on harvest and population data, the department has determined that because the hunting pressure represented by persons 16 years of age and younger is slight, even at high rates of hunter success, the change will result in an insignificant biological impact. In addition, the amendment makes nonsubstantive grammatical corrections to improve readability.

The amendment to §65.46, concerning Squirrel: Open Season, Bag, and Possession Limits, adds one day to the current early youth-only weekend season for squirrel. Based on harvest and population data, the department has determined that because the hunting pressure represented by persons 16 years of age and younger is slight, even at high rates of hunter success, the change will result in an insignificant biological impact.

The amendment to §65.48, concerning Desert Bighorn Sheep: Open Season and Annual Bag Limit, modifies the open season. Under current rule, the season runs from September 1 through July 31. The season is closed in August as a precautionary measure because department biologists historically have conducted aerial surveys of bighorn populations at that time. However, the department has revised its aerial survey protocol for safety reasons, shifting the survey period to October 1 through November 14 when flight conditions are more favorable due to cooler temperatures. The amendment establishes an open season to run November 15 - September 30.

The amendment to §65.64, concerning Turkey, consists of several actions. First, the amendment eliminates regulatory distinctions regarding identification of subspecies of turkeys, which the department has determined is unnecessary, as the distribution of the various subspecies on the landscape is conducive to the aggregate bag limits currently in effect. Therefore, current subsection (c), which is specific to Eastern turkey (for which there is no fall season), is no longer necessary and the appropriate components can be relocated into the portion of subsection (b) addressing spring turkey seasons. The amendment will simplify regulations, enhance administration and enforcement, and will not result in depletion or waste.

The amendment to §65.64 also closes the fall season, shortens the spring season, and reduces the bag limit east of Interstate Highway 35 in Comal, Hays, Hill, McLennan, and Travis counties, and north of Interstate Highway 10 in Guadalupe County. The current spring season runs from the Saturday closest to April 1 for 44 days and the bag limit is four turkeys, gobblers or bearded hens. The amendment replaces that with a season to run from April 1 - 30 and implements a bag limit of one turkey, gobblers only. Urban and suburban development, along with agricultural practices common along and east of Interstate 35 and north of Interstate 10, have resulted in habit loss and fragmentation to the extent that the turkey populations in those areas are no longer capable of sustaining potential harvest at the lev-

els allowed under current rule. Moreover, hen harvest should be eliminated to maximize reproductive potential for the populations that do remain, which will allow for viable turkey populations in those remaining areas of suitable habitat. Similarly, the amendment closes the fall season in Pecos and Terrell counties, and alters the spring season dates in Brewster, Jeff Davis, Pecos, and Terrell counties by implementing a shorter season, reducing the bag limit, and restricting the bag composition to gobblers only. The current spring season in those counties runs from the Saturday closest to April 1 for 44 days and the bag limit is four turkeys, gobblers or bearded hens. Department monitoring efforts continue to indicate significant population declines in those counties and the department has determined that populations in those areas are no longer capable of sustaining potential harvest at the levels allowed under current rule. Moreover, hen harvest should be eliminated to maximize reproductive potential for the populations that do remain, which will allow for viable turkey populations in those remaining areas of suitable habitat.

The amendment to §65.64 also closes the spring season south of U.S. Highway 82 in Bowie, Fannin, Lamar, and Red River counties to protect turkeys being stocked in neighboring counties while viable populations are being established. Similarly, the amendment would close the spring season in Milam County and east of Interstate Highway 35 in Bell and Williamson counties to protect stocked turkeys as part of a restoration effort, which is expected to take up to five years to complete.

The amendment to §65.64 also implements a statewide mandatory harvest reporting requirement for all harvested wild turkeys. The department has historically utilized data obtained from mail-in surveys of turkey hunters to inform management decisions; however, response rates to the surveys have declined to a level that severely reduces the statistical reliability and usefulness of that data. Harvest data is an important component of turkey population management and recent research in Texas has recommended the implementation of mandatory harvest reporting to better monitor wild turkey populations. The department currently requires the electronic reporting of all turkey harvest in counties with a one-gobbler bag limit, and that data is invaluable to the long-term monitoring and management of wild turkey populations in Texas. Additionally, the amendment adds nonsubstantive language where necessary to clarify that the rules apply to counties and portions of counties.

Finally, the amendment to §65.64 adds one day to the current early youth-only weekend season for turkey. Based on harvest and population data, the department has determined that because the hunting pressure represented by persons 16 years of age and younger is slight, even at high rates of hunter success, the change will result in an insignificant biological impact.

The department received seven comments opposing adoption of the proposed amendment to §65.29 that allows youth on certain MLDP properties to take bucks with a firearm during the early youth-only season. Of those comments, three provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the rule will create a disadvantage for archery hunters on properties neighboring affected MLDP properties and will likely lead to adults using MLDP tags to harvest bucks with a rifle during archery only seasons. The department disagrees with the comment and responds that under current rule, MLDP properties enrolled in the Harvest Option are the only properties in the state where youth cannot legally take buck deer by firearm during the early youth season, which means that all archery hunting is already taking place on and adjacent to properties where youth can already take buck deer by firearm. The rule as adopted is intended to eliminate that unintended exclusion and the department is confident that anyone committing the offense of hunting under the license of another will be detected and prosecuted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that youth hunting seasons are the perfect time for the adults to cheat the system. The department disagrees with the comment and responds that there is no evidence to suggest that youth seasons are being abused and urges anyone with knowledge of wildlife offenses to report those offenses to the department via the Operation Game Thief Program, which offers cash rewards and anonymity to any person reporting wildlife violations. No changes were made as a result of the comment.

The department received nine comments opposing adoption of the portion of the proposed amendment to §65.42 that expanded "doe days" in 43 East Texas counties. Of those comments, five provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Two commenters opposed adoption and stated in various ways that overharvest is occurring in the affected counties because the number of small properties continues to increase and instead of paying to be a member of a hunting cooperative, people just wait for "doe days" and then harvest an excessive amount of antlerless deer in addition to overharvesting bucks during the general season. The department disagrees with the comment and responds that not only is overharvest of antlerless deer not occurring in the affected counties, the harvest of antlerless deer is significantly suboptimal, which negatively affects sex ratios and habitat quality. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the harvest of antlerless deer should only be allowed by permit on acreages larger than 100 acres. The department disagrees with the comment and responds that the department's rules governing the harvest of antlerless deer at any given location reflect population, habitat, and land use indices at landscape DMU scale. Individual tracts may or may not reflect these generalized parameters, but deer populations and harvest in general is managed at the DMU level. No changes were made as a result of the comment.

One commenter opposed adoption and stated that it is impossible to manage for trophy bucks on tracts of 25 acres or less. The department agrees with the comment and responds that the reality of wildlife behavior is independent of human conventions such as real estate ownership; the simple fact is that 25 acres is not enough to sustain a resident population for trophy management purposes. The department recommends that owners of smaller acreages band together to form wildlife management cooperatives that can produce desirable bucks on aggregate continuous acreages and distribute harvest opportunity by common agreement. No changes were made as a result of the comment.

One commenter opposed adoption and stated that because of land fragmentation the department should shorten the season, lower the bag limit on antlerless deer, and "make east TX one buck, period." The department disagrees with the comment and responds that land fragmentation is not exerting any effects that would warrant reducing the season length or bag limits in the affected counties; in fact, population indices strongly support in-

crease harvest of antlerless deer and there is no biological reason to restrict buck harvest. No changes were made as a result of the comment.

One commenter opposed adoption and stated that rule changes should be based on deer survey and harvest data and the sex ratio (antlerless to buck) on the commenter's property is 11:1, not the 1:1 ratio cited by the department. The department disagrees with the comment and responds that all harvest regulations are based on long-term, systematically collected biological data in addition to harvest reporting data and data-driven estimates of hunting pressure within a DMU and do not necessarily reflect the conditions on individual properties within a DMU. In any case, the department's justification for change was to expand hunting opportunities for antlerless harvest in a portion of the state where a skewed sex ratio of excess antlerless deer has led to increasing deer densities. The department also responds that neither a 1:1 or 11:1 sex ratio would be desirable in these DMUs. No changes were made as a result of the comment.

The department received 80 comments supporting adoption of the portion of the proposed amendment to §65.42 that increased the number of "doe days."

The department received two comments opposing adoption of the proposed amendment to §65.48 that altered season dates for desert bighorn sheep. Neither commenter offered a reason or rationale for opposing adoption.

The department received 42 comments supporting adoption of the proposed amendment to §65.48 that affects season dates for desert bighorn sheep.

The department received 18 comments opposing adoption of the portion of the proposed amendment to §65.64 that requires harvest reporting for wild turkey. Of those comments, 11 provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Four commenters opposed adoption and stated the provision was government overreach, with one commenter adding that it was "without a stated need or desired result." The department disagrees with the comment and responds that under Parks and Wildlife Code, Chapter 62, the department is required to conduct scientific studies and investigations of all species of game animals, game birds, and aquatic animal life to determine supply, economic value, environments, breeding habits, sex ratios, and effects of any factors or conditions causing increases or decreases in supply. Chapter 62 also authorizes the Texas Parks and Wildlife Commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state and the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state. As noted in the preamble to the proposed rule, the department is concerned about turkey populations in a variety of contexts, from steady population declines in certain areas to restoration efforts to population status in general. The traditional and historical method of obtaining harvest data (voluntary mail-in surveys of licensed hunters), which the department uses in conjunction with population and other data to guide management decisions, is no longer efficacious due to very low response rates that undermine their statistical validity and utility. The department believes that mandatory harvest reporting is the best way to obtain that data and that hunters should support that effort as it serves one and only one purpose: to aid the department in fulfilling its obligation to manage and conserve wildlife for enjoyment by the public. Therefore, the department believes, having articulated both the need and the expected result in the context of clear statutory authority, that the rule does not constitute government overreach. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rule is not needed. The department disagrees with the comment and responds that the need for the rule was clearly stated in the preamble to the proposed rule as well as in numerous commission meetings and press releases. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "Rio Grande Turkeys are in abundance. This should be limited to Easterns." The department disagrees with the comment and responds that, in general, the population status of the Rio Grande subspecies of turkey can be described as healthy; however, there are more than a few areas of the state where there are indications of population decline. Those trends require investigation, a critical component of which is accurate harvest data, which the department, as noted, no longer is able to obtain via mail-in surveys. Thus, mandatory harvest reporting is required, as it already is in certain counties. No changes were made as a result of the comment.

One commenter opposed adoption and stated that in counties "without known population issues this isn't necessary" and that "even when there are localized population drops it most likely isn't a county wide issue." The department disagrees with the comment and responds that, as stated in the preamble to the proposed rule, the department is concerned about specific turkey populations and turkey populations in general, particularly in light of the declining relevance of current harvest survey methodologies. The lack of reliable data frustrates efficacious management because without reliable data the department is unable to detect indicators of worsening population trends before they increase in severity. The department also notes the assumption that meta-population status is unrelated to local population status is erroneous, because a host of factors may be at work, many of them at landscape/regional scale. In any case, the department manages turkey populations at ecosystem scale; the regulations governing turkey harvest are implemented in the form of county regulations in order to facilitate compliance and enforcement. No changes were made as a result of the comment.

One commenter opposed adoption and stated that another "mandatory regulation" is not needed and the number of hunters is dwindling because the department is destroying the pleasure of hunting with regulations. The department disagrees with the comment and responds that the need for and positive effects of the scientific regulation of recreational hunting has been definitively demonstrated for over a century, and there is no valid evidence to suggest that interest in hunting is measurably affected by hunting regulations, although it must be noted that the department believes it is important to impose regulations only when necessary and in the least troublesome way possible. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department is crazy if it believes it can "manage the wildlife on private lands better than the landowner, who is more vested and caring than the state government (TPWD)." The department disagrees that stewardship is a contest or competition indicative of care and concern and responds that the rule is intended to generate better data that enables more effective management, which in turn benefits those who provide and utilize hunting opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated "Making it mandatory rather than incentivizing the reporting." The department infers that the commenter believes that some sort of reward or benefit system for reporting turkey harvest would be as or more effective than mandatory reporting. The department disagrees with the comment on that basis and responds that creating a material incentive for reporting turkey harvest would result in skewed or biased data, because it would generate data related to actions in expectation of benefit, rather than creating a randomized dataset, which is a critical qualification for usefulness in scientific inquiries. No changes were made as a result of the comment.

One commenter opposed adoption and stated "The harvest of turkeys has no bearing on quotas without a population survey of an area. If TPWD is issuing 4 Turkey tags they should have data already to back up the tags allotted to hunters and should be safe based on the population data." The department infers that the commenter is opposed to adoption on the basis that the department is not basing turkey seasons and bag limits on population data. The department disagrees with the comment on that basis and responds that all turkey seasons and bag limits are established on the best available population, harvest, and habitat survey data. The rule as adopted is in fact necessary to improve harvest data used by the department to inform management decisions. No changes were made as a result of the comment.

The department received 59 comments supporting adoption of the portion of the proposed amendment to §65.64 that requires reporting of all turkey harvest.

The department received 19 comments opposing adoption of the portion of the proposed amendment to §65.64 that eliminates regulatory distinctions with respect to turkey subspecies. Of those comments, nine provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that "[T]here should be a distinction between the harvesting of sub-species." The department disagrees with the comment and responds that the rule as adopted would have no measurable negative effects on turkey subspecies because there is only one county in the state where more than one subspecies of turkey is known to exist. No changes were made as a result of the comment.

One commenter opposed adoption and stated, "Two different turkeys Two different populations." The department infers that the commenter believes the rule will result in department management of turkey populations without regard to subspecies. The department disagrees with the comment on that basis and responds that because there is very little overlap between ranges of turkey subspecies, turkey management is by default management of subspecies. No changes were made as a result of the comment.

Six commenters opposed adoption and stated that hunters should know the difference between subspecies. The department disagrees that it is necessary to know the differences between turkey subspecies, as hunters are extremely unlikely to encounter more than one subspecies anywhere in the state other than Grayson County, which is the only place that has occurred. No changes were made as a result of the comments.

One commenter opposed adoption and stated the rule could result in overharvest of Eastern turkey. The department disagrees with the comment and responds, as noted earlier, that it is extremely unlikely to find more than one turkey subspecies in any given location in the state. The East Zone consists of counties where Eastern turkeys have been stocked and Rio Grande turkey do not occur. The bag limit is one bird per hunter per year, all counties combined, for which there will be one tag on the hunting license, which makes overharvest of Eastern turkey highly unlikely. No changes were made as a result of the comment.

The department received 55 comments supporting adoption of the portion of the proposed amendment to §65.64 that eliminated regulatory distinctions for turkey subspecies.

The department received 14 comments opposing adoption of the portion of the proposed amendment to §65.64 that closes the season south of U.S. Hwy 82 in Fannin, Lamar, Red River, and Bowie counties for restoration purposes. Of those comments, five provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the fall season should be closed. The department disagrees with the comment and responds that there is no fall season in the affected counties. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "[P]rivate land should be excluded from government regulations regulating Natural resources on the private land." The department disagrees with the comment and responds that under the Parks and Wildlife Code, the wildlife resources of the state are the property of the people, and under Article 1, Section 34 of the Texas Constitution, the taking of those resources is subject to laws and regulations governing the conservation of those resources. No changes were made as a result of the comment.

One commenter opposed adoption and stated, "Public land owners need to also not have the ability to harvest a turkey for this to work." The department infers that the commenter believes that the closures should affect public lands, which they do. No changes were made as a result of the comment.

One commenter opposed adoption and stated that instead of taking hunting opportunity away, the department should "[D]o something that Will actually make an impact in turkey numbers. Loss of habitat and the increase in nest predators have killed the turkey population in that area. Do some habitat improvements or start a bounty for predators." The department disagrees with the comment and responds that the department does not have the ability to dictate to private landowners how they use their land and instead provides technical information and guidance on habitat management to private landowners upon request. The department also responds that predators play a valuable role in healthy ecosystems and are not believed to be a significant contributor to the extirpation of turkeys in East Texas. No changes were made as a result of the comment.

One commenter opposed adoption and stated, "Reduce harvest numbers versus eliminate harvest." The department infers that the commenter believes a reduction in harvest would eliminate the need for season closure. On that basis the department disagrees with the comment and responds that reducing the bag limit, besides being impossible (since the bag limit is one turkey) will have no impact, since there are so few turkeys in the affected area and the point of the rule is to prevent them from being killed while they repopulate. No changes were made as a result of the comment.

The department received 43 comments supporting adoption of the portion of the proposed amendment to §65.64 that closes the season south of U.S. Hwy 82 in Fannin, Lamar, Red River, and Bowie counties for restoration purposes.

The department received 13 comments opposing adoption of the portion of the proposed amendment to §65.64 that closes all seasons in Milam County and portions of Bell and Williamson counties for purposes of restoration efforts. Of those comments, five provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated the need for data in support of "the restriction of anyone's hunting rights." The department disagrees that the rule affects anyone's right to hunt and that the closure is necessary to optimize the chances of success for efforts to restore turkeys in areas that the department has determined that suitable habitat exists. No changes were made as a result of the comment.

One commenter opposed adoption and stated that restoration efforts should take place but private landowners should be educated and asked to avoid the taking of turkeys during either specific season(s), not legally barred from it. The department disagrees with the comment and responds that restoration is the process of establishing viable populations in locations of suitable habitat. For that to be successful, transplanted birds must have a minimum of three to five years of undisturbed opportunity to acclimate to the environment and establish the feeding, nesting, and breeding behaviors necessary for population increase and establishment. For that reason, the department will not stock on private lands unless participating landowners agree not to expose stocked populations to hunting pressure. Because expanding populations by definition must colonize the adjoining landscape for restoration to succeed, the department also temporarily closes the season until surveys indicate that a viable population exists. No changes were made as a result of the comment.

One commenter opposed adoption and stated, "make it a drawn tag, and allocate accordingly." The department disagrees with the comment and responds that restoration efforts are optimized by the temporary abatement of all hunting pressure in order to allow stocked populations to become established as quickly as possible. No changes were made as a result of the comment.

One commenter opposed adoption and stated, "[S]top taking away from the hunters and actually do something to re build [sic] the population. Habitat improvements and predator control. Control burns anything." The department disagrees with the comment and responds, as noted earlier, that the department's stocking efforts are conducted with the ultimate goal of providing hunting opportunity where none presently exists but conditions are potentially conducive to establishment of huntable populations; therefore, no hunting opportunity is being taken away from anyone. The department also responds that it does not have the statutory authority to dictate habitat management practices on private property and instead provides technical information and guidance on habitat management to private landowners upon request. No changes were made as a result of the comment.

One commenter opposed adoption and stated, "Reduce harvest numbers versus eliminate harvest." The department infers that the commenter believes a reduction in harvest would eliminate the need for season closure. On that basis the department disagrees with the comment and responds that reducing the bag limit, besides being impossible (since the bag limit is one turkey) will have no impact, since there are so few turkeys in the affected area and the point of the rule is to prevent them from being killed while they repopulate. No changes were made as a result of the comment.

The department received 44 comments supporting adoption of the portion of the proposed amendment to §65.64 that closes all seasons in Milam County and portions of Bell and Williamson counties for purposes of restoration efforts.

The department received 15 comments opposing adoption of the portion of the proposed amendment to §65.64 that reduces the season length and annual bag limit for turkeys in all counties with an open season west of the Pecos River and east of I-35/north of I-10. Of those comments, two provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that in counties "without known population issues this isn't necessary" and that "even when there are localized population drops it most likely isn't a county wide issue." The department disagrees with the comment and responds that, as stated in the preamble to the proposed rule, the department is concerned about specific turkey populations and turkey populations in general, particularly in light of the declining relevance of current harvest survey methodologies. The lack of reliable data frustrates efficacious management because without it the department is unable to detect indicators of worsening population trends before they increase in severity. The department also notes the assumption that meta-population status is unrelated to local population status is erroneous, because a host of factors may be at work, many of them at landscape/regional scale. In any case, the department manages turkey populations at ecosystem scale; the regulations governing turkey harvest are implemented in the form of county regulations in order to facilitate compliance and enforcement. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "more information about county specific numbers should be reviewed and studied before making such a MASSIVE change in the regs. This is a poor reaction without much data backing it up." The department disagrees with the comment and responds that the rule as adopted is supported by significant systematic, scientifically valid, data collected by the department over many years and is necessary to manage and conserve the resource. No changes were made as a result of the comment.

The department received 41 comments supporting adoption of the portion of the proposed amendment to §65.64 that reduces the season length and annual bag limit for turkeys in all counties with an open season west of the Pecos River and east of I-35/north of I-10.

The department received nine comments opposing adoption of the portion of the proposed amendment to §65.42 and amendments to §65.46 and 65.64 that expand the current youth-only seasons by one day. Of those comments, three provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that "[T]he kids can wait one extra day" and in light of concerns with turkey populations, additional opportunity should not be provided to persons other than "the people actually footing the bill." The department disagrees with the comment and responds that the purpose of youth hunting seasons in to provide a special mentoring

and fostering opportunity for adults and young hunters. The department also responds that because of the comparatively light resource impacts associated with youth-only seasons, there is no resource concern with respect to adding an extra day to the current youth-only seasons. No changes were made as a result of the comment.

One commenter opposed adoption and stated that providing an extra day of youth-only hunting opportunity could result in "conflicts with school requirements." The department disagrees with the comment and responds that participation in youth-only hunting seasons is voluntary. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the additional day of youth hunting opportunity "[w]ill only allow the outlaws to get a jump on the people that follow the law." The department disagrees with the comment and responds that there is no evidence to suggest that youth seasons are being abused, and urges anyone with knowledge of wildlife offenses to report those offenses to the department via the Operation Game Thief Program, which offers cash rewards and anonymity to any person reporting wildlife violations. No changes were made as a result of the comment.

One person opposed adoption and stated that there should be no fall turkey seasons. The department disagrees with the comment and responds that the department required by statute to preserve and conserve the resources of the state while preventing depletion and waste of those resources. No changes were made as a result of the comment.

The department received 78 comments opposing adoption of the portion of the proposed amendment to §65.42 and amendments to §65.46 and 65.64 that expand the current youth-only seasons by one day.

The department received four comments opposing adoption of the proposed amendments to various sections containing nomenclature for pronghorns. Of those comments, two articulated a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated, "it is a pronghorn antelope." The department disagrees with the comment and responds that the organism in question is not a true antelope. No changes were made as a result of the comment.

One commenter opposed adoption and stated that if people are confused, they shouldn't be allowed to hunt. The department disagrees that there is confusion as to what organism is being referred to and the amendment is simply intended to eliminate inaccurate nomenclature and facilitate ease of reference.

The department received 44 comments supporting adoption of the proposed amendments to various sections containing nomenclature for pronghorns.

One commenter opposed adoption of the entirety of the rulemaking and stated that government regulations should not exist on privately owned land. The department disagrees with the comment and responds that under the Parks and Wildlife Code, the commission is required to manage and conserve the wildlife resources of the state for the enjoyment of the citizens and is authorized to promulgate rules governing the pursuit, take, and possession of wildlife resources in any location necessary to accomplish that purpose. No changes were made as a result of the comment.

SUBCHAPTER A. STATEWIDE HUNTING PROCLAMATION

DIVISION 1. GENERAL PROVISIONS

31 TAC §§65.10, 65.11, 65.24, 65.29, 65.33

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

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 July 22, 2024.

TRD-202403255
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General Counsel
Texas Parks and Wildlife Department
Effective date: August 11, 2024
Proposal publication date: February 23, 2024
For further information, please call: (512) 389-4775

DIVISION 2. OPEN SEASONS AND BAG LIMITS

31 TAC §§65.40, 65.42, 65.46, 65.48, 65.64

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

§65.64. Turkey.

(a) The annual bag limit for turkey (all subspecies), in the aggregate, is four, only one of which may be from a county listed in subsection (b)(3)(D) of this section.

(b) The open seasons and bag limits for turkey shall be as follows.

(1) Fall seasons and bag limits:

(A) The counties listed in this subparagraph are in the Fall South Zone. In Aransas, Atascosa, Bee, Calhoun, Cameron, Dimmit, Duval, Frio, Goliad, Gonzales, Hidalgo, Jim Hogg, Jim Wells, Karnes, Kinney (south of U.S. Highway 90), LaSalle, Live Oak, Mav-

erick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (south of a line beginning at the International Bridge and proceeding along Spur 239 to U.S. Hwy. 90 and thence to the Kinney County line), Webb, Wilson, Zapata, and Zavala counties, there is a fall general open season.

(i) Open season: first Saturday in November through the third Sunday in January.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(B) In Brooks, Kenedy, Kleberg, and Willacy counties, there is a fall general open season.

(i) Open season: first Saturday in November through the last Sunday in February.

(ii) Bag limit: four turkeys, either sex.

(C) The counties and portions of counties listed in this subparagraph are in the Fall North Zone. In Archer, Armstrong, Bandera, Baylor, Bell (west of Interstate Highway 35), Bexar, Blanco, Borden, Bosque, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal (west of Interstate Highway 35), Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays (west of Interstate Highway 35), Hemphill, Hill (west of Interstate Highway 35), Hood, Howard, Hutchinson, Irion, Jack, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Kinney (north of U.S. Highway 90), Knox, Lampasas, Lipscomb, Llano, Lynn, Martin, Mason, McCulloch, McLennan (west of Interstate Highway 35), Medina (north of U.S. Highway 90), Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Potter, Randall, Reagan, Real, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Throckmorton, Tom Green, Travis (west of Interstate Highway 35), Upton, Uvalde (north of U.S. Highway 90), Val Verde (north of a line beginning at the International Bridge and proceeding along Spur 239 to U.S. Hwy. 90 and thence to the Kinney County line), Ward, Wheeler, Wichita, Wilbarger, Williamson (west of Interstate Highway 35), Wise, and Young counties, there is a fall general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: four turkeys, either sex.

(2) Archery-only season and bag limits. In all counties where there is a general fall season for turkey there is an open season during which turkey may be taken only as provided for in §65.11(2) and (3) of this title (relating to Lawful Means).

(A) Open season: from the Saturday closest to September 30 for 35 consecutive days.

(B) Bag limit: in any given county, the annual bag limit is as provided by this section for the fall general season in that county.

(3) Spring season and bag limits.

(A) The counties and portions of counties listed in this subparagraph are in the Spring North Zone. In Archer, Armstrong, Bandera, Baylor, Bell (west of Interstate Highway 35), Bexar, Blanco, Borden, Bosque, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal (west of Interstate Highway 35), Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Ellis (west of Interstate Hwy. 35), Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Gray, Guadalupe (south of Interstate Highway 10), Hall, Hamilton, Hardeman, Hartley, Haskell, Hays (west of Interstate Highway 35), Hemphill, Hill (west of Interstate Highway 35), Hood, Howard, Hutchinson, Irion, Jack, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Kinney (north of U.S. Hwy. 90), Knox, Lampasas, Lipscomb, Llano, Lynn, Martin, Mason, McCulloch, McLennan (west of Interstate Highway 35), Medina (north of U.S. Hwy. 90), Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Potter, Randall, Reagan, Real, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Throckmorton, Tom Green, Travis (west of Interstate Highway 35), Upton, Uvalde (north of U.S. Hwy. 90), Val Verde (north of a line beginning at the International Bridge and proceeding along Spur 239 to U.S. Hwy. 90 and thence to the Kinney County line), Ward, Wheeler, Wichita, Wilbarger, Williamson (west of Interstate Highway 35), Wise, and Young counties, there is a spring general open season.

(i) Open season: Saturday closest to April 1 for 44 consecutive days.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(B) The counties and portions of counties listed in this subparagraph are in the Spring South Zone. In Aransas, Atascosa, Bee, Brooks, Calhoun, Cameron, DeWitt, Dimmit, Duval, Frio, Goliad, Gonzales, Hidalgo, Jim Hogg, Jim Wells, Karnes, Kenedy, Kinney (south of U.S. Hwy. 90), Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Hwy. 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Hwy. 90), Val Verde (south of a line beginning at the International Bridge and proceeding along Spur 239 to U.S. Hwy. 90 and thence to the Kinney County line), Victoria, Webb, Willacy, Wilson, Zapata, and Zavala counties, there is a spring general open season.

(i) Open season: Saturday closest to March 18 for 44 consecutive days.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(C) In Bastrop, Brewster, Caldwell, Colorado, Comal (east of Interstate Highway 35), Fayette, Guadalupe (north of I-10), Hays (east of Interstate Highway 35), Hill (east of Interstate Highway 35), Jackson, Jeff Davis, Lavaca, Lee, Matagorda, McLennan (east of Interstate Highway 35), Pecos, Terrell, Travis (east of Interstate Highway 35), and Wharton counties, there is a spring general open season.

(ii) Bag limit: one turkey, gobblers only.

(D) The counties and portions of counties listed in this subparagraph are in the East Zone. In Bowie (north of U.S. 82), Cass, Fannin (north of U.S. 82), Grayson, Jasper (other than the Angelina National Forest), Lamar (north of U.S. 82), Marion, Nacogdoches, Newton, Polk, Red River (north of U.S. 82), and Sabine counties, there is a spring general open season.

(i) Open season: from April 22 through May 14.

(ii) Bag limit: one turkey, gobbler only.

(iii) In the counties listed in this subsection:

(I) it is unlawful to hunt turkey by any means other than a shotgun or lawful archery equipment; and

(II) it is unlawful for any person to take or attempt to take turkeys by the aid of baiting, or on or over a baited area.

(4) Special Youth-Only Seasons. Only licensed hunters 16 years of age or younger may hunt during the seasons established by this subsection.

(A) There shall be a special youth-only fall general hunting season in all counties where there is a fall general open season.

(i) open season: the Friday, Saturday, and Sunday immediately preceding the first Saturday in November and from the Monday immediately following the close of the general open season for 14 consecutive days.

(ii) bag limit: as specified for individual counties in paragraph (1) of this subsection.

(B) There shall be special youth-only spring general open hunting seasons for turkey in the counties listed in paragraph (3)(A) and (B) of this subsection.

(i) open seasons:

(I) the weekend (Saturday and Sunday) immediately preceding the first day of the general open spring season; and

(II) the weekend (Saturday and Sunday) immediately following the last day of the general open spring season.

(ii) bag limit: as specified for individual counties in paragraph (3) of this subsection.

(c) Except as provided by §65.10 of this title for turkeys harvested under a digital license issued pursuant to §53.3(a)(12) of this title, a valid license with digital tags under §53.4 of this title, or a valid digital license under §53.5(a)(3) of this title, all harvested turkeys must be registered via the department's internet or mobile application within 24 hours of the time of kill.

(d) In all counties or portions of counties for which an open season is not provided under subsection (b) of this section, the season is closed for hunting turkey.

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 July 22, 2024.

TRD-202403256
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: August 11, 2024
Proposal publication date: February 23, 2024
For further information, please call: (512) 389-4775

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SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 2. CHRONIC WASTING DISEASE - COMPREHENSIVE RULES

31 TAC §§65.90, 65.92, 65.98, 65.99

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 23, 2024 adopted amendments to 31 TAC §§65.90, 65.92, 65.98, and 65.99, concerning Disease Detection and Response, without changes to the proposed text as published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2430). The text of the rules will not be republished.

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (referred to collectively as susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle and commonly known as "Mad Cow Disease"), and variant Creutzfeldt-Jakob Disease (vCJD) in humans.

Much remains unknown about CWD, although robust efforts to increase knowledge are underway in many states and countries. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. Currently, scientific evidence suggests that CWD has zoonotic potential; however, no confirmed cases of CWD have been found in humans. Consequently, both the Centers for Disease Control and Prevention and the World Health Organization strongly recommend testing animals taken in areas where CWD exists, and if positive, recommend not consuming the meat. What is known is that CWD is invariably fatal to certain species of cervids and is transmitted both directly (through animal-to-animal contact) and indirectly (through environmental contamination). If CWD is not contained and controlled, the implications of the disease for Texas and its multi-billion-dollar ranching, hunting, wildlife management, and real estate economies could be significant.

The department has engaged in several rulemakings over the years to address the threat posed by CWD, including rules to designate a system of zones in areas where CWD has been confirmed. The purpose of those CWD zones is to determine the geographic extent and prevalence of the disease while containing it by limiting the unnatural movement of live CWD-susceptible species as well as the movement of carcass parts.

The department's response to the emergence of CWD in captive and free-ranging populations is guided by the department's CWD Management Plan (Plan) https://tpwd.texas.gov/huntwild/wild/diseases/cwd/plan.phtml. Developed in 2012 in consultation with the Texas Animal Health Commission (TAHC), other governmental entities and conservation organizations, and various advisory groups consisting of landowners, hunters, deer managers, veterinarians, and epidemiologists, the Plan sets forth the department's CWD management strategies and informs regulatory responses to the detection of the disease in captive and free-ranging cervid populations in the State of Texas. The Plan is intended to be dynamic; in fact, it must be so in order to accommodate the growing understanding of the etiology, pathology, and epidemiology of the disease and the potential management pathways that emerge as it becomes better understood through time. The Plan proceeds from the premise that disease surveillance and active management of CWD once it is detected are critical to containing it on the landscape.

As noted previously in this preamble, the department has been engaged in a long-term effort to stem the spread of CWD; however, by 2021 it was apparent that more robust measures were warranted because CWD was still being detected in additional deer breeding facilities, as well as on multiple release sites associated with CWD-positive deer breeding facilities. The com-

mission adopted those rules, which require higher rates of testing, ante-mortem (live-animal) testing of breeder deer prior to release, and enhanced recordkeeping and reporting measures, in December of 2021 (46 TexReg 8724).

Following the implementation of more efficacious testing requirements, an unprecedented increase in CWD detections occurred. Since 2021, CWD has been detected in 27 deer breeding facilities, two release sites associated with CWD-positive deer breeding facilities, and two free-ranging deer in areas where CWD had not been previously detected. Department records indicate that within the last five years those breeding facilities transferred over 7,000 deer to other breeding facilities, release sites, and Deer Management Permit (DMP) sites. All those locations are therefore directly connected to the CWD-positive facilities and are subsequently of epidemiological concern. Additionally, approximately 287 deer breeding facilities received deer from one or more of the directly connected breeding facilities, which means those facilities (referred to as "Tier 1" facilities) are indirectly connected to the positive facilities and are also of epidemiological concern because they have received exposed deer that were in a trace-out breeding facility.

Because of this rapid explosion in epidemiological linkages between deer breeding facilities and associated release sites, the department became concerned about the excessive numbers of deer breeders continuing to be affected by inter-facility transfers, and subsequently determined that additional testing measures could increase the probability of detecting CWD in breeding facilities where it exists before it could be spread to additional breeding facilities and associated release sites. In addition to enhancing the department's ability to contain CWD where it is discovered, the additional testing measures also advanced the agency's desire to identify methods to provide relief to the regulated community without compromising the agency's statutory duty to protect and conserve public wildlife resources. Continuing along that trajectory, the rules as adopted implement a number of changes to the current rules that would provide relief to the regulated community, in addition to other changes intended to streamline, simplify, and reduce regulatory requirements for hunters.

The amendment to §65.90, concerning Definitions, eliminates the definition for and references to "Tier 1" facilities, for reasons more thoroughly covered elsewhere in this preamble in the discussion of the amendment to §65.99, concerning Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Deer Breeding Facilities.

The amendment to §65.92, concerning CWD Testing, requires the euthanization and post-mortem testing of any breeder deer confirmed positive for CWD via ante-mortem testing. Under current rule, only deer that die in a deer breeding facility or deer that test positive via ante-mortem testing in a deer breeding facility that is epidemiologically connected to a positive deer breeding facility are required to be post-mortem tested for CWD. The immediate post-mortem testing of any deer confirmed positive via ante-mortem testing results in the immediate removal of a possible infectious animals and a method for continuing evaluation of the efficacy of ante-mortem testing (which is not as reliable as post-mortem for definitive disease diagnosis).

The amendment to §65.98, concerning Transition Provisions, makes changes necessary to comport the rules with a rulemaking that took effect earlier this year (49 TexReg 267). In that rulemaking, the department amended §65.98 to implement a 60-day deadline for the submission of tissue samples from breeding facilities epidemiologically connected to deer infected with CWD, as well as to eliminate provisions allowing external nursing facilities for breeder deer. Those changes could not be made in the sections where they properly belong (§65.99, concerning Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Deer Breeding Facilities) because that section was itself the subject of a rulemaking that had not yet taken effect, rendering it unavailable for amendment at the time. Now that the amendment to §65.99 has taken effect, the changes to §65.98 can be removed and placed in §65.99 where they belong, which is accomplished in this rulemaking.

The amendment to §65.99, concerning Breeding Facilities Epidemiologically Connected to Deer Infected with CWD; Positive Deer Breeding Facilities, eliminates the "Tier 1" category of deer breeding facilities and the testing requirements for such facilities. As mentioned previously in this preamble, the department is committed to minimizing, when it is possible to do so without compromising the integrity of the rules, regulatory burdens associated with the department's response to the spread of CWD by the regulated community of persons who are authorized to possess, breed, and transfer live deer. As part of this effort, the department considers that rules adopted in December, 2021 (46 TexReg 8724) without question improved the efficacy of the department's surveillance efforts for captive deer populations, in concert with recently adopted rules (48 TexReg 5146) requiring the ante-mortem testing of breeder deer prior to transfer to another deer breeder appear to have introduced a level of confidence sufficient for the department to eliminate the need for the "Tier 1" category of facilities for purposes of CWD management. "Tier 1" breeding facilities are facilities that received an exposed deer that was in a "trace-out" breeding facility (a breeding facility that received an exposed deer from a CWD-positive breeding facility). The precepts of epidemiological investigation dictate the creation of a record of the movements of individual animals that may have come into contact with an infected animal or environment, as well as the tracing of the movement of animals that may have come into contact with animals that may have come into contact with an infected animal or environment. By creating a movement history for deer entering and leaving a facility where a positive deer has been found, the department is able to employ surveillance and testing regimes that can exclude animals and facilities from the suspicion of harboring CWD. Eliminating the "Tier 1" designation will not only result in MQ designation for some breeding facilities currently designated NMQ, it will also allow the department to redirect limited resources to other avenues of CWD response. The amendment also incorporates provisions from §65.98, concerning Transition Provisions, for the reasons set forth in the discussion of the amendment to that section elsewhere in this preamble. As mentioned previously in this preamble in the discussion of the amendment to §65.98, the department in a previous rulemaking placed provisions regarding nursing facilities and tissue sample submission deadlines in that section because the section where they more properly and intuitively belonged (§65.99) was unavailable for the amendment. The amendment as adopted accomplishes the transfer of those provisions to §65.99.

The department received 20 comments opposing adoption of the rules as proposed. Of those comments, ten offered a reason or rationale for opposition. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that deer breeding should be illegal. The department disagrees with the comment and responds that under Parks and Wildlife Code, Chapter

43, Subchapter L, the department is required to issue a deer breeder permit to any qualified individual. The commission does not have the authority to modify or eliminate that requirement. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the transport of live deer should be prohibited. The department disagrees with the comment and responds that although the cessation of deer movement via human agency would certainly result in an immediate and drastic reduction in the spread of CWD, the department believes that effective surveillance measures and cooperation from the regulated community can accomplish the same thing or close to it. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department cannot succeed if all efforts are focused on deer breeders. The department disagrees with the comment and responds that because deer breeding facilities have been the source of the overwhelming majority of CWD detections in the state, regulations affecting deer breeders are unavoidable. The department further responds that because captive populations and free-ranging populations present completely different realities with respect to disease management, the measures associated with surveillance in deer breeding facilities are epidemiologically appropriate and necessary. The department also notes that deer breeders who exercise care and perform due diligence when purchasing deer are far less likely to encounter regulatory ramifications associated with epidemiological connectivity to positive or exposed herds. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should be developing genetically resistant deer. The department disagrees with the comment and responds that although it has actively funded research into the genetic dimensions of CWD resistance and believes there could be some utility with respect to farmed cervids, there is little evidence to suggest that such resistance, if possible, could be achieved at landscape scale in free-ranging populations; thus, the issue is primarily of interest as an animal husbandry practice in commercial scenarios as opposed to genuine wildlife management. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department has not proven that CWD is a threat to humans. The department disagrees with the comment and responds that the zoonotic potential of CWD is still unknown at present and in any case the department's actions with respect to CWD are predicated on threats to a public resource. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the current rules should be retained until ante-mortem testing protocols become as reliable as post-mortem testing protocols. The department disagrees with the comment and responds that although retention of the current rules would certainly provide increased confidence that CWD outbreaks are being monitored effectively, the effectiveness of recent rulemakings to improve routine surveillance measures within deer breeding facilities has made it possible to eliminate the "Tier 1" category of epidemiological connectivity as a component of the department's CWD response. The department certainly urges deer breeders and landowners to investigate the provenance of breeder deer prior to purchase. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that visible identification should be required to accompany all breeder deer upon release. The department disagrees in part with the comments and responds that visible identification of released breeder deer is unquestionably of significant value with respect to enhancing epidemiological investigations and is currently regulated by statute. No changes were made as a result of the comments.

One commenter opposed adoption and stated, "Nothing wrong with deer on private fenced in ranches." The department agrees with the comment. No changes were made as a result of the comment.

One comment opposing adoption was determined to be incoherent and as such, not germane. No changes were made as a result of the comment.

The department received 207 comments supporting adoption of the rules as proposed.

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

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

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

TRD-202403259
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Effective date: August 11, 2024
Proposal publication date: April 19, 2024
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SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.314 - 65.320

The Texas Parks and Wildlife Commission in a duly noticed meeting on March 28, 2024, adopted amendments to 31 TAC §§65.314 - 65.320, concerning the Migratory Game Bird Proclamation. The amendment to §65.315 is adopted with changes to the proposed text as published in the February 23, 2024, issue of the *Texas Register* (49 TexReg 979) and will be republished. The amendments to §65.314 and §§65.316 - 65.320 are adopted without change and will not be republished.

The change to §65.315, concerning Ducks, Coots, Mergansers, and Teal, adds a date reference to subsection (b)(3)(A) to clarify that the provision applies to the 2024-25 hunting season.

The United States Fish and Wildlife Service (Service) issues annual frameworks for the hunting of migratory game birds in the United States. Regulations adopted by individual states may be more restrictive than the federal frameworks but may not be less restrictive. Responsibility for establishing seasons, bag limits, means, methods, and devices for harvesting migratory game birds within Service frameworks is delegated to the Texas Parks

and Wildlife Commission (Commission) under Parks and Wildlife Code, Chapter 64, Subchapter C.

With exceptions as noted, the amendments specify the season dates for hunting the various species of migratory game birds for 2024-2025 seasons. The rules (except as noted in the discussion of the proposal for season dates in the Special White-winged Dove Area, the daily bag limits for greater white-fronted geese, and the elimination of the Light Goose Conservation Order) retain the season structure and daily bag limits for all species of migratory game birds from last year while adjusting the season dates to allow for calendar shift (i.e., to ensure that seasons open on the desired day of the week), since dates from a previous year do not fall on the same days in following years.

The amendment to §65.314, concerning Doves (Mourning, White-Winged, White-Tipped, White-Fronted Doves), implements a slightly different structure for the Special White-winged Dove Area (SWWDA) season than in years past. Under the federal frameworks, Texas is allowed 90 total days of dove hunting opportunity in the South Zone (which is also designated as a special management area for white-winged doves). Under the frameworks, the earliest possible date for full-day dove hunting in the South Dove Zone is September 14; however, Texas is also authorized to have up to six half-days of hunting opportunity between September 1 and September 19. Department survey data have consistently indicated strong hunter and landowner preference for the earliest possible hunting opportunity available under the federal frameworks, as well as for maximal weekend hunting opportunity during the SWWDA season. In a typical year, this would take the form of two three-day weekends of half-day special white-winged opportunity beginning on the earliest day possible under the frameworks. The 2024-25 calendar, however, presents a challenge because September 1, 2024 (the earliest possible day for SWWDA hunting) falls on a Sunday. The department has determined that in keeping with hunter and landowner preference, this year's SWWDA dates would be best employed by implementing a season structure of September 1-2 (Sunday and Monday, which is also Labor Day), September 6-8 (a traditional three-day weekend), and September 13, which is a Friday and the last day before the earliest possible date that full-day dove hunting can be provided under the federal frameworks (September 14).

The amendment to §65.314 also moves the winter segment in North Zone to occur one week later, compared to last year. The department believes that additional hunting opportunity can be generated by encompassing the period when schools are on holiday break and hunters have more time to be in the field. The department does not expect the shift to result in negative impacts to dove populations.

Finally, the amendment to §65.314 nonsubstantively restructures subsection (b)(3) to more clearly establish the bag composition differential in the South Zone during the season in the Special White-winged Dove Area.

The amendment to §65.315, concerning Ducks, Coots, Mergansers, and Teal, alters subsection (c) to reflect recent taxonomic changes to species composition. The daily bag limits currently refer to "Mexican-like" ducks. The Service recently recognized "Mexican ducks" as a protected species. The department therefore must alter regulatory provisions consistent with that determination.

The amendment to §65.316, concerning Geese, alters the current daily bag composition for dark geese in the Western Zone by removing the two-bird daily bag limit for white-fronted geese, thus creating a five-bird aggregate bag limit for all species of dark geese. The new mid-continent management plan for greater white-fronted geese (approved by the Service, the Canadian Wildlife Service, and the Central and Mississippi Flyway Councils in March of 2023) allows for the elimination of the differential bag limit, which the department believes will reduce potential confusion associated with species identification.

The proposed amendment to §65.316 also eliminates the Light Goose Conservation Order (LGCO) in Texas. Historically, Texas coastal prairies and marshes were home to one of North America's largest wintering population of light geese (snow geese, Ross's geese). Due to a variety of reasons, including habitat loss, changes in agricultural practices, and increases in hunting pressure, the Texas Gulf Coast no longer winters a significant number of light geese. The most recent data available indicate an all-time low population estimate and an 86 percent decline in abundance since the implementation of the LGCO. Department data indicate that participation levels and harvest associated with the LGCO (statewide) have steadily and significantly declined since its inception. The LGCO was implemented in 1999 as a management tool intended to reduce habitat degradation and destruction of light goose breeding grounds in Canada. The department noted and emphasized *at the time the LGCO was implemented and continuously thereafter* that it was not intended to function as a traditional hunting season or to increase hunting opportunity (although it did provide the latter as an ancillary benefit). The department has determined that continued participation in the LGCO is now incompatible with light goose management priorities in Texas, as Texas populations continue to exhibit troubling downward trends. Elimination of the LGCO is expected to contribute to department efforts to stabilize and possibly reverse those trends in coastal populations of light geese in Texas. The elimination of the LGCO does, however, now make it possible for the commission to provide the full 107 days of hunting opportunity for light geese afforded the department under the federal frameworks; therefore, the elimination of the LGCO will result in a light goose season to run from November 2, 2024 to February 14, 2025, with a five-bird daily bag limit and a possession limit of three times the daily bag limit, which is necessary to address concerns over the previously discussed declining light geese populations. The amendment to 65.316 also reduces the current statewide daily bag limit for light geese, from ten geese to five geese, and implements a possession limit of three times the daily bag limit. There is currently no possession limit; however, the department has determined that the lower bag limit and standard possession limit, which are consistent with current standards in effect for dark geese, should be implemented in order to determine the impacts of the new season structure on geese populations.

The department received 24 comments opposing adoption of the portion of the proposed amendment to §65.314, concerning Doves (Mourning, White-Winged, White-Tipped, White-Fronted Doves) that established the season structure for the Special White-Winged Dove Area (SWWDA). Of those comments, eight provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the season should begin on a Friday. The department disagrees with the comment and responds that hunter and landowner surveys con-

sistently indicate a strong preference for the SWWDA season to open on the earliest day possible under the federal frameworks, which is Monday, September 1. No changes were made as a result of the comment.

Five commenters opposed adoption and stated that the season should open on a Saturday and run until Monday or open on a Friday and run until Sunday. The department disagrees with the comments and responds that hunter surveys consistently indicate a strong preference for the SWWDA season to open on the earliest day possible under the federal frameworks, which is Monday, September 1. Since the federal frameworks allow six half-days of hunting opportunity in the SWWDA between September 1 and September 19, it is not possible to provide both the earliest opportunity possible and two full weekends of hunting. The commission has determined that providing the earliest opportunity possible is preferred by the majority of hunters. No changes were made as a result of the comments.

One commenter opposed adoption and stated that hunters in the South Zone are being penalized because hunting is allowed in all zones on September 1, but hunters in the South Zone have a different bag composition. The department disagrees with the comment and responds that the federal frameworks allow 90 days of dove hunting with identical bag composition in all three zones in Texas, but set September 14 as the earliest opening day possible in the South Zone; however, the federal frameworks also specifically authorize six half-days of dove hunting in the SWWDA between September 1 and September 19 with a special bag composition established by the Service. No changes were made as a result of the comment.

One commenter opposed adoption and stated that all dove zones should be opened on September 1. The department disagrees with the comments and responds that under the federal frameworks, the South Zone cannot open before the Saturday closest to September 14, except for the six half-days of hunting allowed for the SWWDA beginning September 1. No changes were made as a result of the comment.

The department received 145 comments supporting adoption of the proposed amendment regarding the season structure of the SWWDA.

The department received 36 comments opposing the portion of the proposed amendment to §65.314 that altered the timing of the dove season in the North Zone compared to last year. Of those comments, six offered a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that because most hunters do not pursue doves once deer season opens, if a week of hunting opportunity is to be moved, it should be added to the end of the first segment. The department disagrees with the comment and responds that the rule as adopted is intended to provide greater opportunity by adding a week during the holiday season, when students are out of school and most adults have additional time to be in the field. The department also notes that the rule would result in concurrent hunting opportunity for dove and deer during the holidays, which the department believes is a better allocation of hunting opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated, "[n]obody hunts during the winter segment anyway, so it makes no sense to eliminate the opportunity that people actually do utilize." The department disagrees with the comment and responds that the rule as adopted is intended to provide greater opportunity by adding a week during the holiday season, when students are out of school and most adults have additional time to be in the field. The department also notes that the rule would result in concurrent hunting opportunity for dove and deer during the holidays, which the department believes is a better allocation of hunting opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule will result in a net loss of hunting days because "[t]he last week will overlap with other species. The first week of dove season gives Texas hunters another week that we can be in the field and legally hunt." The department disagrees with the comment and responds that the rule as adopted provides the full 90 days of hunting opportunity for dove available under the federal frameworks, and that concurrency with other seasons is not equivalent to fewer days of hunting opportunity, since there are different seasons for different species. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that moving the season later will result in reduced participation. The department disagrees with the comments and responds that participation rates in the winter segment are historically lower than those for the first segment, but making more time available during the holidays is intended to provide opportunity when students are out of school and many people have additional time to be in the field. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season should extend into February. The department disagrees with the comment and responds that under the federal frameworks, dove seasons in the Central and North zones must close by January 25. No changes were made as a result of the comment.

The department received 121 comments supporting adoption of the proposed amendment to alter the timing of the winter segment in the North Zone.

The department received 37 comments opposing adoption of the portion of the proposed amendment to §65.314 that established season lengths and daily bag limits for dove based on last year's season structure. Of those comments, 17 offered a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated, "Open it Sept 1 South of IH 10 and East of 45." The department disagrees with the comment and responds that zone boundaries cannot be changed without the prior approval of the Service, and in any case the federal frameworks do not allow dove hunting before September 14 in the South Zone, other than the six half-days of opportunity in the SWWDA. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the first segment of the dove season should be longer and the winter segment should be reduced because there are more dove available earlier in the year. The department disagrees with the comments and responds that prolonged exposure to hunting pressure tends to result in increased spatial dispersal of doves, and the purpose of the split is to allow doves to congregate and reform into flocks, which enhances hunting opportunity. No changes were made as a result of the comments.

Eleven commenters opposed adoption and stated that the first segment in the South Zone season should start a week later and run until the Sunday after Thanksgiving. The department

disagrees with the comment and responds that hunter surveys indicate a strong preference for the season in the South Zone to begin on the earliest day possible under the federal frameworks, which is the Saturday closest to September 14. The department also notes that beginning the first segment on September 21 and ending it on the Sunday after Thanksgiving would make the first segment 72 days long, leaving only 18 days available for the winter segment, which is undesirable. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season should open at least one week later to prevent dogs and hunters from heat stroke. The department disagrees with the comment and responds that no regulation can compensate for the failure of any person to improperly prepare for or respond to hot weather. No changes were made as a result of the comment.

One commenter opposed adoption and stated that dove season should be closed for one or two years to replenish the populations. The department disagrees with the comment and responds that the seasons and daily bag limits as adopted will not result in negative population impacts because federal frameworks are quite conservative and overharvest under the seasons and bag limits as adopted is unlikely. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the Central Zone season structure should be identical to the North Zone season structure from last year. The department disagrees with the comment and responds that the first segment in the North Zone is longer than the first segment in the Central Zone in order to provide hunters in the North Zone greater ability to take advantage of variable weather patterns during dove migration. No changes were made as a result of the comment.

The department received 35 comments opposing adoption of the portion of the proposed amendment to §65.315, concerning Ducks, that creates a distinct taxonomic identification for Mexican ducks in the aggregate daily bag limit. Two commenters provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that Mexican ducks are an invasive species and should be treated as such. The department disagrees with the comment and responds that Mexican ducks are indigenous to Texas and North America. No changes were made as a result of the comment.

One commenter opposed adoption and stated that hunters should be allowed to take six "Mexican whistling" ducks per day. The department disagrees with the comment and responds that the federal frameworks do not allow the take of more than one "dusky" (mottled duck, Mexican duck, black duck and their hybrids) duck per day. No changes were made as a result of the comment.

The department received 151 comments supporting adoption of the portion of the portion of the proposed amendment to §65.315, concerning Ducks, that altered taxonomic references.

The department received 50 comments opposing adoption of the portion of the proposed amendment to §65.315, concerning Ducks, that adjusted season dates to account for calendar shift. Of those comments, 38 provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's responds to each, follow.

Fourteen commenters opposed adoption and stated that the season should be extended into February. The department disagrees with the comment, and all other similar comments, and responds that the last day of duck hunting allowed under the federal frameworks in Texas is January 31. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be a statewide duck season running December 1 - January 31 with a bag limit of three ducks of any kind. The department disagrees with the comment and responds that a season running from December 1 to January 31 would present several disadvantages, chiefly in the form of providing 12 fewer hunting days than the federal frameworks allow (74), but mostly in the form of failing to provide the maximum daily bag limit allowed under the federal frameworks (6), the allocation of hunting opportunity chronologically to account for the tremendous geographical size of Texas, and not providing for a time period for ducks to rally and rest, which enhances hunter opportunity. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the season should begin later. The department disagrees with the comment and responds that without a reference to one of the three zones, an explanation for the season structures as adopted is unnecessarily time-consuming; however, in general, the timing of season segments is intended to maximize hunting opportunity when the migration is at its height while providing concurrent opportunity for other species if practicable. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season run to the end of the federal framework while still providing the maximum days allowed under the federal frameworks. The department disagrees with the comment and responds that a season of 74 consecutive days would not provide for optimal hunting in the sizeable portion of the state where ducks begin to arrive in huntable numbers in late October and early November, and would not provide for a split season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the daily bag limit for redhead ducks should be increased. The department disagrees with the comment and responds that the maximum daily bag limit for redhead ducks under the federal frameworks is two, which is the current daily bag limit. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should begin later.

The department disagrees with the comment and responds that without a specific reference to a particular zone, an explanation of season structures would be unnecessarily time-consuming; however, a later opener in any zone other than the South Zone would deprive a sizeable portion of the state where ducks begin to arrive in huntable numbers in late October and early November. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the aggregate daily bag limit should be reduced because there are fewer ducks. The department disagrees with the comment and responds that there is no evidence to suggest the current aggregate daily bag limit is causing negative impacts to the populations of any species of duck. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the daily bag limits could be devastating to waterfowl with the dry conditions in the Pothole Prairie regions. The department disagrees with the comment and responds that there is no evidence to suggest that current bag limits are resulting in negative impacts to the populations of any species of duck in the Pothole Prairie region. No changes were made as a result of the comment.

One commenter opposed adoption and stated the department will sell more licenses if the season is established to "match the actual migration patterns" and not the federal frameworks. The department disagrees with the comment and responds, first, that seasons cannot by federal law be set in violation of the federal frameworks, and second, that migratory game species are cooperatively managed by American states, Canadian provinces, and their respective national governments by means of the "flyway" system, which attempts to fairly allocate hunting opportunity without creating adverse impacts to populations. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that bag limits and/or season length should be reduced to protect populations. The department disagrees with the comment and responds that the federal frameworks are quite conservative and overharvest under the seasons and bag limits as adopted is unlikely. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the hiatus between season segments in the North Zone should be 12 days instead of five. The department disagrees with the comment and responds that the purpose of the "split" season is twofold: it allows for harvest during peak migration of different species and allows ducks to rally and recuperate without being subjected to hunting pressure. The department believes that a five-day split allows for sufficient rest while maximizing opportunity at the height of migration. No changes were made as a result of the comments.

Six commenters opposed adoption, stated dissatisfaction with bag limits, and articulated a desire for bag limits to be increased for specific species. The department disagrees with the comments and responds that the rules as adopted implement the maximum bag limits allowed under the federal frameworks. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season should begin after Thanksgiving and should not contain a "split." The department disagrees with the comment and responds that delaying the season until after Thanksgiving and eliminating the "split" would result in a loss of hunting opportunity because under the federal frameworks Texas is allowed a total of 74 days of hunting between September 21 and January 31. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should begin the second weekend in November and the "split" should be eliminated. The department disagrees with the comment and responds that a "split" allows duck populations to rest and recuperate without hunting pressure, which optimizes successful migration and eventual reproduction, as well as hunter success. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the season should be shifted to occur one week later because of climate change. The department disagrees with the comments and responds that shifting the season to run one week later would result in a season the last week of which would occur mid-week, creating an overall loss of hunting opportunity because the federal frameworks do not allow duck hunting in Texas beyond January 31, and in any case would not compensate for the impacts of climate change on duck habitat or populations. No changes were made as a result of the comments.

The department received 192 comments supporting adoption of the portion of the proposed amendment to §65.315, concerning Ducks, that adopts season dates to account for calendar shift.

The department received 223 comments opposing adoption of the portion of the proposed amendment to §65.316, concerning Geese, that eliminates the Light Goose Conservation Order (LGCO). Of those comments, 45 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Several commenters opposed adoption and stated that elimination of the LGCO would be a reduction in hunting opportunity (8 comments), a disservice to hunters (1), a deprivation of rights (1), a punitive action (1) and other similar comments. As noted previously in this preamble, the preamble to the proposed rules, and frequently since the inception of the LGCO, the LGCO is strictly a management mechanism (hence the title) and was never intended to function as a traditional hunting season or to provide or increase hunting opportunity, although it did provide that additional benefit. No changes were made as a result of the comment.

One commenter opposed adoption and stated that because of the COVID-19 pandemic, population data for light goose populations is incomplete or inaccurate. The commenter also stated that the department is lying about breeding numbers and recruitment, stating that flocks number in the tens of thousands in numerous locations, hundreds of thousands in other states, and contain 10-15 percent juvenile geese. The department disagrees with the comment and responds that despite temporary interruptions in survey efforts caused by the pandemic, there is agreement that population trends remain the same, which indicates survey accuracy. The department further notes that recruitment surveys are conducted by trained Canadian Wildlife Service biologists and represent the best overall tool to evaluate recruitment to these populations. The department also responds that the data used in management decisions is factual, collected systematically, and interpreted without bias. Juvenile geese demonstrate strong vulnerability to decoys and calls and the data cited by the commenter are harvest-related (i.e., do not include other causes of mortality). In any case, a minimum of 18% productivity is necessary to even maintain a population, let alone result in population growth. No changes were made as a result of the comment.

One commenter opposed adoption and stated that contrary to the department's fiscal note accompanying the proposed rule, elimination of the LGCO will devastate small businesses. The department disagrees with the comment and responds that the rule as adopted regulates recreational activities of licensed hunters and does not regulate any business or commercial activity or interest. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that the LGCO should not be eliminated in Texas unless it is being eliminated in other states. The department disagrees with the comments and responds that participation in the LGCO is optional and not conditioned on the participation of any other state, that the department has a statutory duty to protect, manage, and conserve the wildlife resources of the state, and given the severe declines

of light geese populations on the Texas Gulf Coast, the prudent course of action is to eliminate the LGCO in order to facilitate more effective management activities in Texas. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that the LGCO should be retained, but with daily bag limits and other restrictions. The department disagrees with the comments and responds that, as noted earlier, the LGCO was intended to function as a population reduction mechanism, not a traditional hunting season. This is why there are no bag limits or restrictions on means and methods during the LGCO and all other seasons for migratory game birds must be closed while it occurs. Bag limits and other restrictions are components of a traditional hunting season, which the department notes are why the elimination of the LGCO allows for the entire 107 days of light goose hunting opportunity provided under the federal frameworks. No changes were made as a result of the comments.

Two commenters opposed adoption and made statements alleging hidden agendas by groups and individuals. The department disagrees with the comments and responds that the rules as adopted were not influenced by anything other than the precepts of sound biological management in the context of valid biological data. No changes were made as a result of the comments.

Four commenters opposed adoption and stated, variously, that there is no data to support elimination of the LGCO, that what hunters see in real time should take precedence over "skewed data that's taken subjectively," that goose populations haven't declined but simply "shifted to other locations," and other, similar statements questioning or repudiating the validity of the scientific basis for the department's actions. The department disagrees with the comments and responds that there is ample data to support elimination of the LGCO, that anecdotal experience has been repeatedly and conclusively shown to be a far less reliable and less efficacious basis for landscape-scale management decisions than systematic data collection and interpretation by scientifically accepted methods, and that therefore, because the department employs such scientific rigor, the data is neither skewed nor interpreted subjectively. No changes were made as a result of the comments.

Five commenters opposed adopted and stated that hunting is not the cause of the population declines in light geese on the Texas Gulf Coast. Three of the commenters also stated that the department should be doing more to create habitat/address habitat loss. The department disagrees with the comments and responds that although hunting mortality is not believed to be the primary contributor to population declines, hunting pressure is a significant population disruptor as available habitat dwindles due to steady urbanization and development. One of the goals of the rule is to reduce hunting pressure while various management activities take place. The department also notes that habitat loss on the Texas Gulf Coast is driven by economic factors completely beyond the department's ability to manage, control, or influence and that those economic realities make the expense of acquiring and managing goose habitat at the magnitude needed to restore historic population levels under the department's current budgetary realities extremely problematic. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that it makes no sense to eliminate the LGCO because an overpopulation problem continues to exist. The department disagrees with the comments and responds that, as stated in the preamble to the proposed rule, the participation of Texas in the LGCO is no longer necessary for the purposes of population control, but eliminating it will allow Texas to more effectively manage light goose populations that are in severe decline on the Texas Gulf Coast. No changes were made as a result of the comments.

One commenter opposed adoption and stated that if other states "are still pressuring geese, the state of Texas should have the right to hunt the geese." The department disagrees that the state of Texas is being denied "the right to hunt geese," as the federal frameworks establish hunting opportunity within each state in each flyway and provide each state with the option of participating in the LGCO or not. The rules as adopted eliminates the LGCO but also will provide hunters in Texas with the maximum 107 days of light goose hunting opportunity allowed under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "the demand is there." The department disagrees that demand is or should be the sole determinant in agency management decisions. No changes were made as a result of the comment.

One commenter opposed adoption and stated that eliminating the LGCO will actually hurt snow goose populations because allowing birds to rest in Texas will allow more birds to be harvested outside of Texas. The department disagrees with the comment and responds that the location of eventual harvest, if it occurs, is irrelevant in the greater context of population management, but in any case, harvest mortality is not the driving rationale for the elimination of the LGCO in Texas. Rather, the department is attempting to retain what remains of coastal snow goose populations and believes that relieving hunting pressure will stabilize residency behavior. No changes were made as a result of the comment.

One commenter opposed adoption and stated that outfitters provide the habitat for light geese and that without the LGCO there will be no incentive to continue providing habitat. The department disagrees with the comment and responds that in the final analysis, habitat management practices are up to individual landowners irrespective of the presence or absence of the LGCO; however, the department believes a 107-day open season should be sufficient motivation to continue to manage habitat. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the actions of one state are not enough to change migration patterns. The department disagrees with the comment and responds that migratory birds, including geese, are very sensitive to unfavorable conditions in wintering environments, such as are currently found on the Texas Gulf Coast. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that light geese depredate on crops in other states and need to be controlled. The department disagrees with the comment and responds that the LGCO was never intended to function as a mechanism to control crop depredation, which is a specific condition that cannot be addressed in this rulemaking. No changes were made as a result of the comments.

One commenter opposed adoption and stated that removal of the LGCO will hurt persons whose only goose-hunting opportunity occurs on public lands. The department disagrees with the comment and responds that although the LGCO is being eliminated, there will now be the full 107 days of goose hunting allowable under the federal frameworks. No changes were made as a result of the comment.

The department received 77 comments supporting elimination of the LGCO.

The department received 201 comments opposing adoption of the portion of the proposed amendment to §65.316, concerning Geese, that reduces the daily bag limit for light geese from 10 geese to five geese. Of those comments, 22 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that every other state in the Central Flyway has a daily bag limit of 50 geese and that because the number of hunters in Texas is so low and the number of hunters actually harvesting 10 geese is so low, harvest will be negligible. The department disagrees with the comment and responds that daily bag limits in other states are irrelevant in the context of management challenges in Texas, and in particular, because the department is trying to relieve overall hunting pressure on light geese by reducing the daily bag limit, which is intended to decrease the time afield by hunters and thus increase wintering residency time in Texas.

One commenter opposed adoption and stated that dedicated roost ponds are needed and the department should provide funding to landowners and outfitters to create them. The department agrees that more high-quality habitat is desirable, but the cost of large-scale habitat acquisition and development is far beyond the fiscal capabilities of the department under current budget constraints. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the daily bag limit should remain at 10 because very few people manage to harvest five as it is and hunters should be allowed to get 10 on the few days when the opportunity presents itself. The department disagrees with the comment and responds that the precipitous decline of light goose populations makes it prudent to err on the side of caution while determining the best path forward with respect to addressing documented population declines. No changes were made as a result of the comment.

One commenter opposed adoption and stated that personal observation refutes department claims of population decline. The department disagrees that anecdotal observations are either more accurate or more useful than the scientifically standardized methodologies employed by the department and other agencies to determine population status. No changes were made as a result of the comment.

One commenter opposed adoption and stated that duck hunters outnumber goose hunters and therefore the daily bag limit for light geese should remain at ten. The department disagrees that the number of duck hunters relative to the number of goose hunters is a useful index for determining daily bag limits for either species. No changes were made as a result of the comment.

One commenter opposed adoption and stated, "Plenty of geese to hunt they are still going to hunt geese in the northern states." The department infers from the comment that the commenter believes that the bag limit should not be reduced because light geese are abundant and geese will still be hunted elsewhere. The department disagrees with the comment in the context that harvest in other states is related or contributing to documented population declines in Texas; however, to the extent that Texas can influence the population status of local populations, a daily bag limit reduction is expected to stabilize and possibly reverse documented population declines. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the number of snow geese continues to grow and will soon be detrimental to other migratory species. The department disagrees with the comment and responds that there is no indication that snow goose populations in Texas are or are likely to negatively impact other migratory species. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is no reason to reduce the daily bag limit during the regular season if a conservation season is still in place because the conservation season is there for a reason. The department disagrees with the comment and responds that the LGCO is not and never was a hunting season, but a management mechanism; it is being eliminated as part of an effort to protect wintering populations of mid-continent snow geese, and the daily bag limit reduction is additive to that effort. No changes were made as a result of the comment.

Two commenters opposed adoption and stated the five-bird daily bag limit isn't worth the effort and the cost. The department disagrees with the comment and responds that department survey data indicate very few hunters harvest more than five light geese per day during the regular season under the current bag limit; thus, the department believes that the rule as adopted will not be a disincentive to participation. No changes were made as a result of the comments.

One commenter opposed adoption and stated that "[t]here is no use in restricting the ability for people to hunt when the opportunity is there." The department disagrees, first, that the rules restrict any person's ability to hunt, and second, that unregulated hunting of populations known to be in decline is prudent. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "[t]hey are extremely overpopulated and destructive to farmland and food sources." The department disagrees with the comment and responds that the mid-continent population of snow geese in Texas has declined by over 80 percent and snow goose populations are not known to be a significant cause or revenue loss for agricultural producers in Texas nor are they believed to be degrading habitat for other species. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that by the department's own admission, harvest mortality is not driving population declines; therefore, a bag limit reduction will not be effective. The department disagrees with the comment and responds that although harvest mortality is not the major driver of population declines, harvest pressure significantly affects behavior and population indices. Reducing the bag limit will allow the department to more effectively manage mid-continent goose populations in Texas. No changes were made as a result of the comments.

One commenter opposed adoption and stated that light geese are severely overpopulated and are destroying their breeding grounds. The department disagrees with the comment and responds that while that was once believed to be the case, the species has exhibited significant resiliency in the last thirty years and there is no longer a crisis with respect to catastrophic population decline. No changes were made as a result of the comment.

One commenter opposed adoption and stated that snow geese decimate winter wheat crops and are detrimental to the farming communities in Texas, and that "if not controlled legally, they will

likely be dealt with illegally in these same communities in much less environmentally/ecologically friendly methods." The department disagrees with the comment and responds that landowners can seek relief from crop damage caused by wildlife by contacting the United States Department of Agriculture, Wildlife Services and the implementation of authorized non-lethal hazing techniques. The department further responds that it is illegal to kill migratory birds by any means or method other than those approved by the federal government and the State of Texas, and violators are subject to legal penalties, including incarceration, upon conviction. No changes were made as a result of the comment.

One commenter opposed adoption and stated that "[t]here is no scientific data that would back this proposal up from an overall numbers standpoint." The department disagrees that the rule as adopted must be based on completely conclusive data; however, department population data reveals an alarming decline in snow goose populations on the Texas Gulf Coast and the department believes that reducing hunting pressure, which is accomplished by lowering the daily bag limit, will enhance the effectiveness of other management activities in stabilizing and perhaps reversing recent population trends. No changes were made as a result of the comment.

One commenter opposed adoption and stated that hunters will not go hunting for fear of killing more than five light geese with a single shell. The department disagrees with the comment and responds that harvest surveys indicate that most hunters do not harvest more than five light geese per day as it is, but in any case, conscientious and responsible hunters should have no issues avoiding violation of daily bag limits. No changes were made as a result of the comment.

One commenter opposed adoption and stated, "[m]ost hunters will never shoot 10 snows per person on a given day. Lowering to 5 really isn't changing anything." The department disagrees with the comment and responds that lowering the daily bag limit will contribute additively to department efforts to stabilize and restore populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that goose population declines are the result of government failure to provide subsidies to private landowners, which will eventually lead to fewer and fewer hunters and the fiscal collapse of the department. The department disagrees with the comment and responds that the department cannot condition or dictate land use priorities to private landowners and the expense of subsidizing private landowners at the magnitude needed to restore historic population levels is beyond the fiscal capabilities of the department under current budget constraints. No changes were made as a result of the comment.

One commenter opposed adoption and stated that halving the daily bag limit will cause populations to increase. The department agrees with the comment. No changes were made as a result of the comment.

One commenter opposed adoption and stated that if the LGCO is removed, the current bag limit should be retained in order to evaluate the impact of LGCO removal before making alterations to the general season. The department disagrees with the comment and responds that the elimination of the LGCO, in concert with daily bag limit reduction, is expected to result in more timely population recovery as opposed to a piecemeal approach. No changes were made as a result of the comment.

The department received 95 comments supporting the portion of the proposed amendment to §65.316 that reduced the bag limit for light geese.

The department received 74 comments opposing adoption of the portion of the proposed amendment to §65.316, concerning Geese, that increases the possession for light geese to three times the daily bag limit. Of those comments, two articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that there should be no possession limit. The department disagrees with the comment and responds that the possession limit as adopted is intended to conform light geese possession limits with the possession limits for all other migratory birds. No changes were made as a result of the comment.

One commenter opposed adoption and stated, "[s]hould be able document legality with dates photos and keep as many as the cooler can hold." The department responds that it is unclear to what the commenter is referring, as the possession limit is the maximum number of birds that may be possessed at one time by any person and is a matter of physical possession, not documentation, which can be proven or refuted by counting. In any case, creating an arbitrary volumetric possession limit is equivalent to having no possession limit, which is not allowed under the federal frameworks. No changes were made as a result of the comment.

The department received 170 comments supporting adoption of the proposed amendment to §65.316 that increased the possession limit for light geese to three times the daily bag limit.

The department received 121 comments opposing adoption of the portion of the proposed amendment to §65.316, concerning Geese, that increases the season length for light geese in the Eastern Zone to the full 107 days of hunting opportunity allowed under the federal frameworks. Of those comments, 15 articulated a specific reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

Two commenters opposed adoption and stated that the season should start the week before Thanksgiving. Another commenter stated the season should begin after Thanksgiving. The department disagrees with the comments and responds that the season dates selected correspond to the time span when the greatest numbers of geese are present in the Eastern Zone, which department surveys indicate is consistent with hunter preference. The season also represents the optimization of hunting opportunity for popular species of waterfowl in addition to geese. No changes were made as a result of the comments.

One person opposed adoption and stated that it makes no sense to eliminate the LGCO in order to gain more days of hunting for dark geese. The department agrees with the comment and responds that the LGCO was not eliminated with the intent of gaining additional days of dark goose hunting. No changes were made as a result of the comment.

Six commenters opposed adoption and stated that goose season should close on the same day duck season closes. The department disagrees with the comments and responds that ducks and geese are separate biological organisms with different migration and abundance chronologies; therefore, the department selects season dates that correspond to providing the greatest

opportunity to the greatest number of hunters to hunt both. No changes were made as a result of the comment.

One commenter opposed adoption and stated the season should be shortened in order to prevent population collapse. The department disagrees with the comment and responds that although light geese populations are in significant decline in Texas, harvest mortality is not the prime driver of or a major contributor to the trend. In any case, the daily bag limit reduction from ten to five geese will act to buffer population impacts from harvest mortality. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season for light geese should run to the end of February if the LGCO is eliminated. The department disagrees with the comment and responds that typically, most light geese have left the state by mid-February; therefore, the department's season structure is set to occur when the greatest amount of opportunity can be made available to the greatest number of hunters, and to some extent to provide additional hunting opportunity with respect to other species. No changes were made as a result of the comment.

One commenter opposed adoption and stated that adoption of a 107-day season will cause "jump shooters" to begin killing other species unlawfully. The department disagrees with the comment and responds that a decision to violate the law is not predicated on season length. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that a 107-day season should start on November 16 because very few light geese are in the coastal area in November and there are more opportunities to hunt them in February. The department disagrees with the comment and responds that light geese typically begin arriving on the coast in late October and the season is structured to provide the greatest amount of hunting opportunity (including for other species of waterfowl) for the greatest number of hunters. The department also notes that duck season and goose season open on the same day in the Eastern Goose Zone. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season should run to the last weekend in February. The department disagrees with the comment and responds that the season is structured to provide the greatest opportunity to the greatest number of hunters, including hunting opportunity for species of waterfowl other than geese; as such, the timing of the season structure is intended to take advantage of the height of migration of multiple species to the extent that the overlap can be exploited. No changes were made as a result of the comment.

The department received 143 comments supporting adoption of the portion of the proposed amendment to §65.316, concerning Geese, that increases the season length for light geese in the Eastern Zone to the full 107 days of hunting opportunity allowed under the federal frameworks.

The department received 106 comments opposing adoption of the portion of the proposed amendment to §65.316, concerning Geese, that removes the bag composition restriction for dark geese in the Western Zone. Of those comments, 39 provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's responds to each, follow.

One commenter opposed adoption and stated that the change will "destroy the area in rolling plains that is MAINLY the area affected in west Texas." The department infers that the comment is intended to express anticipation of negative population consequences of the rule as adopted. The department disagrees with the comment and responds that the department seeks to provide the most liberal hunting opportunity possible under the federal frameworks without jeopardizing the resource. The department has determined, based on population and hunter survey data, that elimination of the differential bag limit for dark geese will not result in adverse impacts to that resource. No changes were made as a result of the comment.

One commenter opposed adoption and stated that allowing hunters to take five speckled geese per day will harm the overall population and that people who hunt on a daily basis know this. The department disagrees with the comment and responds although there is some limited management value in anecdotal observation, there is no comparison to the value of long-term datasets collected under scientifically valid sampling methodologies. The department further responds that there is no scientific reason to believe that removal of the differential bag limit will result in negative population impacts. No changes were made as a result of the comment.

Several commenters opposed adoption and stated concerns in various ways about the increased harvest of white-fronted geese as a result of the rule. One commenter stated that removal of the differential bag limit will "create more pressure on birds day in and day out as people shoot into more birds to try to achieve Whitefront limits in areas where Canada geese are less prevalent." One commenter stated, "[W]ill ruin the long term goal if you up the speck limit to 5. Baby steps, make the limit 3 per person. Don't want to ruin the resources." One commenter stated that "[T]he number of birds has decreased with the droughts over the years and increasing the limit will simply decimate the population we still have." Another commenter stated that wounding loss will increase and hunters will stay out longer, putting more pressure on the birds. Twenty-nine additional comments in the same vein were received. The department disagrees with the comments and responds that there is no evidence that major population fluctuations attributable to drought conditions have occurred in the Western Goose Zone over the last 10-year period and population impacts resulting from elimination of the differential bag limit are expected to be negligible. The long-term population goals for various populations of dark geese are established based on long-term data trends by consensus of the flyway members and the Service and those populations are closely monitored to detect abnormalities or perturbations that could warrant attention. The department also responds that even if the harvest were to consist entirely of white-fronted geese, at current levels of hunting effort the impact would not be injurious to white-fronted goose populations. Finally, the department notes that because there is no differential daily bag limit, hunters who choose to do so will be able to harvest five geese at any pace they find convenient. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that the differential daily bag limit should be eliminated in the Eastern Zone as well. The department disagrees with the comment and responds under the federal frameworks, the bag limit in the Eastern Zone cannot exceed two white-fronted geese. No changes were made as a result of the comments.

The department received 160 comments supporting adoption of the portion of the proposed amendment to §65.316, concern-

ing Geese, that removes the bag composition restriction for dark geese in the Western Zone.

The department received 39 comments opposing adoption of the portion of the proposed amendment to §65.316, concerning Geese, that establishes season dates and bag limits to accommodate calendar shift. Of those comments, five provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's responds to each, follow.

Two commenters opposed adoption and stated that "[g]oose season should run into the first 2 weeks of February." The department disagrees with the comments and responds that the season structures reflect the department's goal of providing the greatest opportunity to the greatest number of hunters, including hunting opportunity for species of waterfowl other than geese; as such, the timing of the season structure is intended to take advantage of the height of migration of multiple species to the extent that the overlap can be exploited. No changes were made as a result of the comment.

One commenter opposed adoption and stated, "Matching federal bag limits. The population in certain location may not support that and bag limits should be able to be set in specific locations based on populations in those areas." The department interprets the comment to articulate opposition to the application of a single bag composition regulation across the entirety of the Western Goose Zone and a preference for daily bag limits to be localized based on population indices. The department disagrees with the comment and responds that it is both impractical and counterproductive to impose localized differential bag limits, mainly because goose populations are overwhelmingly migratory and thus are cooperatively managed by American states, Canadian provinces, and their respective national governments on a flyway basis, which implicates a variety of parameters and inputs across the landscape between wintering and breeding grounds, but also because such a structure would create regulatory confusion. No changes were made as a result of the comment.

One commenter opposed adoption and stated that all seasons for migratory birds should be "shifted forward" by at least one week. The department disagrees with the comment and responds that the season dates as adopted represent the optimization of migration chronologies to provide the greatest migratory game bird hunting opportunity to the greatest number of hunters. No changes were made as a result of the comment.

One commenter opposed adoption and stated, "Align the season with migration patterns." The department agrees with the comment and responds that the rules as adopted are intended to take the greatest advantage of migration chronologies. No changes were made as a result of the comment.

The department received 195 comments supporting adoption of the portion of the proposed amendment to §65.316, concerning Geese, that establishes season dates and bag limits to accommodate calendar shift.

The department received 23 comments opposing the proposed amendments to §65.318, concerning Sandhill Crane, and §65.319, concerning Gallinules, Rails, Snipe, and Woodcock. Of those comments, 10 provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that the season for gallinules should begin in August. The department disagrees with the comment and responds that under the federal frameworks, the season for gallinules in Texas cannot begin before September 1. No changes were made as a result of the comment.

One commenter opposed adoption and stated that sandhill cranes seasons should begin earlier. The department disagrees with the comment and responds that the seasons as adopted are intended to provide the greatest amount of hunting opportunity for the greatest number of hunters during the peak of migration, and notes that the season in Zone C is designed to prevent, to the greatest extent possible, accidental harvest of migrating endangered whooping cranes. No changes were made as a result of the comment.

One commenter opposed adoption and stated that bag limits and season lengths for sandhill crane should be increased because of crop depredation. The department disagrees with the comment and responds that the current season lengths and bag limits are the maximum allowed under the federal frameworks, except in Zone B, where the season is truncated (from 93 days to 66 days) to protect endangered whooping cranes during migration. No changes were made as a result of the comment.

One commenter opposed adoption and stated that if the LGCO is eliminated, the season for sandhill crane should begin later and run to the end of the framework. The department disagrees with the comment and responds that the seasons as adopted are intended to provide the greatest amount of hunting opportunity for the greatest number of hunters during the peak of migration. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit in Sandhill Zone C should be increased to three. The department disagrees with the comment and responds that under the federal frameworks, the bag limit in Zone C cannot be more than two. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the sandhill crane season in Zone C should be lengthened by two weeks. The department disagrees with the comment and responds that the federal frameworks provided for a maximum of 37 days for sandhill crane hunting in Zone C. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season for sandhill cranes should be increased because of population increase. The department disagrees with the comment and responds that the current season lengths and bag limits are the maximum allowed under the federal frameworks, except in Zone B, where the season is truncated (from 93 days to 66 days) to protect endangered whooping cranes during migration. No changes were made as a result of the comment.

One commenter opposed adoption and stated that sandhill crane seasons should be concurrent with duck seasons. The department disagrees with the comment and responds that making sandhill crane seasons concurrent with duck seasons would result in a loss of hunting opportunity because the federal frameworks allow no more than 74 days of duck hunting. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the sandhill crane season in Zone C should open the first week in December and run until the last Sunday in January and the bag limit should be increased to three. The department disagrees with the comment and responds that the federal frameworks permit a maximum of 37 days of hunting opportunity for sandhill cranes

in Zone C, with a maximum bag limit of two. No changes were made as a result of the comment.

One commenter opposed adoption and stated that woodcock season should begin earlier. The department disagrees with the comment and responds that the season dates as adopted are intended to optimally distribute hunting opportunity for hunters in various parts of the state within the 45 days of hunting allowed under the federal frameworks. No changes were made as a result of the comment.

The department received 160 comments supporting adoption of the proposed amendments to §65.318, concerning Sandhill Crane, and §65.319, concerning Gallinules, Rails, Snipe, and Woodcock.

The amendments are adopted under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

§65.315. Ducks, Coots, Mergansers, and Teal.

(a) Zone Boundaries.

(1) High Plains Mallard Management Unit (HPMMU): that portion of Texas lying west of a line from the international toll bridge at Del Rio, thence northward following U.S. Highway 277 to Abilene, State Highway 351 and State Highway 6 to Albany, and U.S. Highway 283 from Albany to Vernon, thence eastward along U.S. Highway 183 to the Texas-Oklahoma state line.

(2) North Zone: that portion of Texas not in the High Plains Mallard Management Unit but north of a line from the International Toll Bridge in Del Rio; thence northeast along U.S. Highway 277 Spur to U.S. Highway 90 in Del Rio; thence east along U.S. Highway 90 to Interstate Highway 10 at San Antonio; thence east along Interstate Highway 10 to the Texas-Louisiana State Line.

(3) South Zone: that part of the state not designated as being in the HPMMU or the North Zone.

(4) The September teal-only special season is statewide.

(b) Season dates and bag limits.

(1) HPMMU.

(A) For all species other than "dusky ducks": October 26-27, 2024 and November 1, 2024 - January 26, 2025; and

(B) "dusky ducks": November 4, 2024 - January 26, 2025.

(2) North Zone.

(A) For all species other than "dusky ducks": November 9 - December 1, 2024 and December 7, 2024 - January 26, 2025; and

(B) "dusky ducks": November 14, 2024 - December 1, 2024 and December 7, 2024 - January 26, 2025.

(3) South Zone.

(A) For all species other than "dusky ducks": November 2 - December 1, 2024 and December 14, 2024 - January 26, 2025; and

(B) "dusky ducks": November 7 - December 1, 2024 and December 14, 2024 - January 26, 2025.

(4) September teal-only season.

(A) During the September teal-only special season, the season is closed for all species of ducks other than teal ducks (blue-winged, green-winged, and cinnamon).

(B) Dates: September 14-29, 2024.

(c) Bag limits.

(1) The daily bag limit for ducks and mergansers is six in the aggregate, which may include no more than five mallards (only two of which may be hens); three wood ducks; one scaup (lesser scaup or greater scaup); two redheads; two canvasbacks; one pintail; and one "dusky" duck (mottled duck, Mexican duck, black duck and their hybrids) during the seasons established for those species in this section. For all species not listed, the daily bag limit shall be six. The daily bag limit for coots is 15.

(2) The daily bag limit during the September teal-only season is six in the aggregate.

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 July 22, 2024.

TRD-202403257
James Murphy
General Counsel
Texas Parks and Wildlife Department
Effective date: September 1, 2024
Proposal publication date: February 23, 2024
For further information, please call: (512) 389-4775

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SUBCHAPTER W. SPECIAL PERMITS

31 TAC §65.907

The Texas Parks and Wildlife Commission in a duly noticed meeting on May 23, 2024, adopted new 31 TAC §65.907, concerning Special Take Authorization - White-tailed and Mule Deer, with changes to the proposed text, to make a correction in grammar, as published in the April 19, 2024, issue of the *Texas Register* (49 TexReg 2435). The rule will be republished.

The new section governs the take of white-tailed or mule deer by landowners and their agents as authorized by the department when necessary to aid or assist the department's efforts to respond to chronic wasting disease (CWD).

The Texas Legislature during the most recent regular session passed House Bill 3065, which allows the take of wildlife by persons authorized by the department to do so "as part of a program or event designated by the executive director as being conducted for the diagnosis, management, or prevention of a disease in wildlife." The rule sets forth a carefully controlled and highly regulated process under which the department would authorize persons not employed by the department to take native deer as part of department-sponsored research and management activities. Prior to the passage of H.B. 3065, if the take of a species of wildlife was regulated by a season, time of day, bag limit, or means established by the commission, only department employees or academics conducting activities under a research permit could take such wildlife in contravention of those limitations. The emergence of CWD in deer breeding facilities and epidemiologically-linked release sites deer presents unique challenges with respect to the need for prompt removal of "trace

deer" (deer epidemiologically connected to a CWD-positive deer breeding facility) outside of deer hunting seasons. Prior to this rulemaking, if a release site became epidemiologically linked to a positive facility at a time of year when hunting was not lawful, there was no mechanism for the department to authorize persons not employed by the department to take deer to assist the department in disease management and research. The more expeditiously trace deer can be removed from the landscape and tested, the less likely it is that the deer, if infected with CWD, will have been able to infect additional animals or shed infectious prions at the release site. The department also could use this authority to conduct epidemiological investigations at other locations as part of a disease management response plan or to manage and reduce the occurrence of the disease.

The activities conducted under a special take authorization are not recreational hunting or traditional wildlife management, but rather they are part of the department's management efforts to facilitate disease surveillance and mitigate CWD transmission. Therefore, the provisions of the rules contain strict provisions to eliminate any possible confusion with respect to the purpose or intent of a special take authorization.

New subsection (a) sets forth the application and issuance process for special take authorizations, which include a site inspection (if deemed necessary by the department) and a stipulation that special take authorizations will be issued to named individuals only, and not to a corporation, association, or group. The department issues permits and licenses to named individuals only because it facilitates enforcement and compliance.

New subsection (b) conditions the validity of a special take authorization upon the recipient's acknowledgement, in writing, that he or she and any authorized agents have read and understand all provisions and conditions of the special take authorization. By obtaining written acknowledgment that a person to whom a special take authorization is issued (including any authorized agents) understands the rules and the conditions under which the activity is being authorized, the possibility of confusion, misunderstanding or disagreement will be reduced. The new subsection also includes a provision conditioning the validity of a special take authorization on the approval of the director of the department's law enforcement division (or designee) and the director of the department's wildlife division (or designee).

New subsection (c) stipulates that a special take authorization identify the specific deer or number of deer to be removed for testing. Trace deer, because they were breeder deer exposed to CWD prior to release, are of primary importance in an epidemiological investigation; however, if all or some trace deer cannot be located or identified it is necessary to post-mortem test additional free-ranging non-trace deer for CWD to develop an indication of whether CWD has been spread at the release site and if so, to what extent. Therefore, a special take authorization will identify specific trace deer and/or a number of other deer to be removed for testing.

New subsection (d) provides for the times, places, means, methods, and other measures to be stipulated in a special take authorization. The rule imposes limitations on the means and times of take to reduce wounding loss while still providing an efficient path for the removal of deer from the landscape; however, the high variability of geography and habitat across the state could make it necessary in some cases to authorize extraordinary means to quickly locate and dispatch deer. The new subsection stipulates that the activities authorized under a special take authorization must be conducted only by the person to whom the special take authorization is issued and any persons named in the special take authorization as agents. As noted previously, because the threat of CWD to indigenous deer populations creates a need to remove trace deer or other deer of epidemiological interest from the landscape as quickly as possible, the rules allow activities that are otherwise unlawful. To ensure that those activities are conducted appropriately, the department believes it is necessary to identify every person involved in activities under a special authorization.

New subsection (e) establishes an initial period of validity of 14 days for persons to whom a special take authorization is issued to remove the deer identified in the authorization. The new subsection also provides for extensions of validity in situations where specific deer cannot be located.

New subsection (f) stipulates the types of tissue samples to be collected and submitted under a special take authorization, requires the submission of any identifying tags, and prescribes deadlines for the submission of those items. The department believes that prompt submission of properly collected and identified epidemiologically valuable materials is crucial to the department's ability to determine disease prevalence, if any, at a release site or other location.

New subsection (g) stipulates that the owner of any tract of land where prospective special take authorization activities are to take place must be in compliance with all applicable provisions of Chapter 65, Subchapters A and B, as a condition of issuance of a special take authorization for the property, unless the department determines that the disease management value of the prospective activities warrants approval. The department believes that any person who is not compliant with applicable rules governing surveillance at release sites should not be able to obtain a benefit from the issuance of a special take authorization, unless it is in the interests of protecting a public resource to do so.

New subsection (h) requires the recipient of a special take authorization to notify the department of each deer taken under the special take authorization within 24 hours of take, which is necessary for the department to accurately and timely monitor authorized activities.

New subsection (i) prescribes disposal methods for carcasses of deer taken under a special take authorization. Because carcasses of deer taken from a location where the department believes CWD could be present have the potential to be infectious and because there is an amount of time between take and the receipt of test results, the department believes it prudent to prescribe carcass disposal requirements to minimize the infectivity potential of carcasses. The rule therefore requires carcasses to be disposed of by burial at a depth of at least three feet below ground level on the property where the take occurred, by delivery to a landfill authorized by the Texas Commission on Environmental Quality to receive such wastes; or as otherwise directed by the department in the special take authorization.

New subsection (j) conditions the issuance of a special take authorization on the applicant's agreement in writing not to record by means of video, photograph, or other electronic media the act of taking or attempting to take deer under a special take authorization, or to allow such recordings, or to make such recordings available to the public. As mentioned previously in this preamble, the department intends for the rules to function solely as a means to assist the department in disease management, research, and

prevention and does not intend for the rules to provide any kind of opportunity for commercial or entertainment exploitation.

New subsection (k) provides, for purposes of explicit clarification and emphasis, that nothing in the rules is to be construed to relieve any person of the obligation to comply with any applicable municipal, county, state, or federal law, except as may be specifically authorized with respect to Parks and Wildlife Code and the regulations of the commission.

New subsection (l) explicitly identifies specific acts that the department considers serious enough to warn the recipients of special take authorizations not to engage in.

New subsection (m) conditions the validity of a special take authorization on the conduct of the person to whom the special take authorization is issued and agents of that person and provides that failure to abide by or comply with any provision of a special take authorization, as determined by the department, automatically invalidates the authorization and subjects the violator to prosecution for applicable violations of Parks and Wildlife Code, Chapters 42, 43, 61, 62, or 63 and any department regulations related to the take of deer. The department believes that it is imperative for the public to be assured that non-recreational take of a public resource is taken by the department as a serious matter, and that persons who exhibit reckless, intentional, or negligent disregard for that resource should be held to account.

The department received ten comments opposing adoption of the rule as proposed. Of those comments, five provided a reason or rationale for opposing adoption. Those comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that prohibition of deer breeding would eliminate the threat of CWD. The department disagrees with the comment and responds that although deer breeding facilities appear to be the primary pathway by which CWD is being spread in Texas, there is no way to eliminate the threat because CWD exists in multiple locations, including free-range populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated, "Y'all have already killed more than 1,000,000 deer and destroyed ranchers herds with Y'alls BS politics. You've had plenty of deer to study. Leave ranchers alone. F'n bullies." The department disagrees with the comment and responds that in addition to making assertions that are incorrect, it indicates an unfamiliarity with the substance of the rule as proposed, as special take authorizations are not mandatory and no landowner is forced to obtain one. No changes were made as a result of the comment.

One commenter opposed adoption and stated, "I believe that the taking of deer is beyond the authority of the tpwd. This would grant them the authority to take, at will, any deer seen as a "threat" and they will be the ones who deem them so." The department disagrees with the comment and responds that the department absolutely and without question possesses the authority to take deer and in any case the rule does not affect that ability but rather, provides for the department to authorize persons not employed by the department to take specifically identified deer out of season to assist department investigations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the transport of live deer should be prohibited. The department disagrees with the comment and responds that although the cessation of deer movement via human agency would certainly result in an immediate and drastic reduction in the spread of CWD, the department believes that effective surveillance measures and cooperation from the regulated community can accomplish the same thing or close to it. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rule should allow all lawful means of take and not restrict lawful means of take to centerfire firearms. The commenter also stated opposition to the prohibition on the videorecording of permitted activities because video is necessary to inform the public about the threat of CWD. The department disagrees with the comment and responds that activities under a special authorization are not recreational hunting; thus, the department seeks to limit the means of take to the most efficient method, which is centerfire firearms (although the rules do provide for alternatives, when justified, on a case-by-case basis). The department further responds that the prohibition on recording activities under a special authorization applies to permittees, not to the department, and is necessary to prevent commercialization, sensationalization, and trivialization of a serious problem. No changes were made as a result of the comment.

The new rule is adopted under Parks and Wildlife Code, §12.013, which authorizes the commission to adopt rules governing the take of wildlife under the supervision of a department employee in a program or event designated by the director as being conducted for the diagnosis, management, or prevention of a disease in wildlife.

§65.907. Special Take Authorization - White-tailed and Mule Deer.

(a) The department may issue a special take authorization for the take of white-tailed or mule deer (hereinafter, "deer") for purposes of assisting the department in conducting wildlife disease diagnosis, management, or prevention (hereinafter, "special take authorization"), as provided in this subsection. A person may request a special take authorization by completing and submitting an application on a form supplied or approved by the department for that purpose.

(1) The department will not consider an incomplete application for a special take authorization.

(2) The department may, at its discretion, conduct a site inspection as a condition of issuance of a special take authorization.

(3) A special take authorization shall be issued only to a named individual and not in the name of any corporation, business, association, or group.

(b) A special take authorization is not valid until:

(1) the applicant has acknowledged, in writing via email to the department employee identified as the supervisory point of contact, that the applicant and all agents of the applicant have read and understand all:

(A) provisions of the special take authorization; and

(B) attendant obligations of the person to whom the special take authorization is issued and that person's agents; and

(2) it has been approved in writing by the director of the department's Wildlife Division or designee and the director of the department's Law Enforcement Division or designee.

(c) A special take authorization shall specify the number and type of deer to be taken. No deer other than the specified deer or number of deer authorized for take shall be taken.

(d) The take of deer under a special take authorization shall be:

(1) performed only by the person to whom the special take authorization is issued and/or persons identified by name on the special take authorization as agents of the person to whom the special take authorization is issued;

(2) by firearm using centerfire ammunition only;

(3) conducted during the time between 30 minutes before sunrise and 30 minutes after sunset, unless specifically authorized in writing by the department; or

(4) any other method of take as may be authorized by the department to remove specific deer.

(e) A special take authorization is valid for 14 days from the date specified in the special take authorization. The department may extend the period of validity based on extenuating or unavoidable circumstances (including inability to locate specific deer); however, a request for extension must be submitted to the department via email and approved by the department prior to the take of deer. A copy of the special take authorization or a reproduction of the special take authorization on an electronic device (such as a cell phone or tablet) shall be produced upon request of a department employee in the discharge of their official duties. A copy of the email from the department granting an extension of a special take authorization or a reproduction of that email on an electronic device (such as a cell phone or tablet) shall be produced upon request of a department employee in the discharge of their official duties.

(f) For each deer taken under a special take authorization, the following must be submitted to the Texas A&M Veterinary Medical Diagnostic Laboratory:

(1) the whole head, accompanied by all visible forms of identification borne by the deer at the time the deer was taken, including but not limited to ear tags, tattoos, RFID tags, or any other forms of identification;

(2) the medial retropharyngeal lymph nodes (MRLN), which must be collected by an accredited veterinarian, authorized department employee, or TAHC-certified CWD sample collector; and

(3) any other tissue samples, as directed by the department.

(4) A properly executed TVMDL accession form must accompany the head or tissue samples submitted under the requirements of this subsection.

(5) All tissue samples and body parts required to be submitted under this subsection must be submitted to TVMDL within two business days of completion of removal of all deer or within two business days upon conclusion of the last authorized collection date, whichever is sooner.

(6) It is an offense to remove an ear tag or deface or remove a tattoo prior to submission of deer head under this subsection.

(g) The department will not issue a special take authorization for the take of deer on any tract of land unless:

(1) the owner of the land is in compliance with all applicable provisions of Chapter 65, Subchapter A and Subchapter B, of this title; or

(2) the department determines that the disease management value of the prospective activities is a factor of such significance that approval is warranted.

(h) A deer taken during the period of validity of a special take authorization shall be reported to the department within 24 hours of removal via email or other department approved notification method to the department's wildlife division representative coordinating the authorization.

(i) Following submission to the department of any tissues or parts necessary as directed in a special take authorization, a person to whom the special take authorization or an agent thereof shall dispose of all remaining portions or parts of a deer taken under a special take authorization, either by:

(1) burial at a depth of at least three feet below ground level on the property where the take occurred;

(2) delivery to a landfill authorized by the Texas Commission on Environmental Quality to receive such wastes; or

(3) as directed otherwise by the department in the special take authorization.

(j) The department will not issue a special take authorization unless the applicant agrees in writing not to record by means of video, photograph, or other electronic media the act of taking or attempting to take deer under a special take authorization, or allow such recordings, or to make such recordings available to the public.

(k) This section shall not be construed to relieve any person of the obligation to comply with any applicable municipal, county, state, or federal law, except as may be specifically authorized with respect to Parks and Wildlife Code and the regulations of the commission.

(l) It is an offense for any person to:

(1) take or attempt to take a deer under a special take authorization without possessing a hunting license valid for the take of deer in Texas;

(2) sell, barter, offer to sell or barter, or otherwise give or receive anything of value in exchange for taking or allowing the take of deer or any parts of the animal, including antlers, under a special take authorization.

(m) The validity of a special take authorization is completely conditioned on the conduct of the person to whom the special take authorization is issued and agents of that person. Failure to abide by or comply with any provision of a special take authorization, as determined by the department, automatically invalidates the authorization and subjects the violator to prosecution for applicable violations of Parks and Wildlife Code, Chapters 42, 43, 61, 62, or 63 and any department regulations related to the take of deer.

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 July 22, 2024.

TRD-202403258
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Effective date: August 11, 2024
Proposal publication date: April 19, 2024
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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 365. RURAL WATER ASSISTANCE FUND

The Texas Water Development Board (TWDB) adopts 31 Texas Administrative Code §§365.2, 365.3, 365.5, 365.21 - 365.23, 365.41, and 365.43 - 365.45.

Section 365.22 and §365.41 are adopted with changes as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2680). The rules will be republished.

Sections 365.2, 365.3, 365.5, 365.21, 365.23, 365.43, 365.44, and 365.45 are adopted without changes as published in the April 26, 2024, issue of the *Texas Register* (49 TexReg 2680). The rules will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

Chapter 365 contains the agency's programmatic rules related to the Rural Water Assistance Fund.

The adopted amendments implement legislation and clarify the method in which interest rates will be set for loans when the source of funding is other than bond proceeds. Additionally, the adopted amendments modernize the language, provide consistency with TWDB's general financial assistance programs' rules, and clarify requirements for borrowers.

Senate Bill 469, 88th R.S. (2023), amended Chapters 15 and 17 of the Water Code by adding a general definition of "rural political subdivision." This general definition replaces the current definition applicable to the Rural Water Assistance Fund. The adopted amendments implement SB 469's definition of "rural political subdivision" applicable to the Rural Water Assistance Fund.

Senate Bill 28, 88th R.S. (2023), amended Chapter 15 of the Water Code to authorize the TWDB to use money in the Rural Water Assistance Fund to contract for outreach, financial, planning, and technical assistance to assist rural political subdivisions for a purpose described by Section 15.994 (Use of Fund), including obtaining and using financing from funds and accounts administered by TWDB. The adopted amendment in 31 Texas Administrative Code §365.3 implements SB 28's expansion of allowable technical assistance applicable to the Rural Water Assistance Fund.

31 Texas Administrative Code §365.5 contains rules related to the setting of interest rates. Under the adopted amendment, the Executive Administrator determines the lending rate scales for loans funded by a source other than bond proceeds.

These adopted amendments include substantive and non-substantive changes and updates to make Chapter 365 more consistent with TWDB rules and to clarify requirements for TWDB borrowers.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

Chapter 365 Rural Water Assistance Fund

Subchapter A. Introductory Provisions

Section 365.2. Definitions of Terms.

The adopted amendment revises the definition of rural political subdivision in §365.2(6) to implement SB 469. The amendment includes as a rural political subdivision those municipalities with a population of 10,000 or less.

Section 365.3. Use of Funds.

The adopted amendment revises §365.3(c) to implement SB 28's technical assistance requirements applicable to the Rural Water Assistance Fund, which broadens the TWDB's authority to provide technical assistance.

Section 365.5. Interest Rates for Loans.

The adopted amendment addresses the setting of interest rates for loans funded by a source other than bond proceeds. For loans funded by a source other than bond proceeds the Executive Administrator will determine the lending rate scale.

Subchapter B. Application Procedures

Section 365.21. Preapplication Meeting.

The adopted amendment requires an applicant to schedule a preapplication conference with board staff.

Section 365.22. Application for Assistance.

The adopted amendment modernizes the rule language, provides consistency with TWDB's general financial assistance programs' rules, and clarifies requirements for borrowers. The amendment removes the requirement that an application be in writing and replaces it with the requirement that an application be in the form and numbers prescribed by the executive administrator. The adopted amendment deletes the list of information required for an application to be considered an administratively complete and instead cites to 31 Texas Administrative Code §363.12 for the applicable requirements. The adopted amendment clarifies that the executive administrator may request any additional information needed to evaluate an application and may return an incomplete application.

Section 365.23. Pre-design Funding Option.

The adopted amendment modernizes the rule language, provides consistency with TWDB's general financial assistance programs' rules, and corrects citations.

Subchapter C. Closing and Release of Funds

Section 365.41. Loan Closing.

The adopted amendment modernizes the rule language, provides consistency with TWDB's general financial assistance programs' rules, and clarifies requirements for borrowers. The adopted amendment requires the transcript of proceedings within 60 days of closing. The adopted amendment removes the requirement of obtaining an opinion from a Water Supply Corporation's or Sewer Service Corporation's attorney when a loan agreement and promissory note are used for closing. The adopted amendment allows for Water Supply Corporations and Sewer Service Corporations whose total outstanding loans with the TWDB do not exceed $1,000,000 to satisfy the annual financial audit requirement by submitting an annually filed Internal Revenue Form 990. The adopted amendment clarifies that the requirement to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by the Securities and Exchange Commission rule 15c2-12 only applies if the rural political subdivision is issuing bonds or other authorized securities.

Section 365.43. Release of Funds.

The adopted amendment modernizes the rule language, provides consistency with TWDB's general financial assistance programs' rules, clarifies requirements for borrowers, and corrects citations. Under the adopted amendment for release of funds for

building purposes, prior executive administrator approval is required if the applicant is relying on evidence of its legal authority to complete necessary acquisitions. The adopted amendment clarifies, for projects constructed through one or more construction contracts, that the executive administrator may approve the release of funds only for a construction contract that has been approved for construction.

Section 365.44. Loan Agreements for Nonprofit Water Supply or Sewer Service Corporations.

The adopted amendment deletes the current list of information required and cites to §15.996 of the Water Code for applicable requirements.

Section 365.45. Engineering Design Approvals.

The adopted amendment modernizes the rules language, deletes the current list of information required, and cites to 31 Texas Administrative Code §363.41 for applicable contract document requirements.

REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB 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, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or 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. The intent of the adopted rulemaking is to clarify eligibility, requirements, and methodology for TWDB borrowers.

Even if the adopted rulemaking were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because 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 does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not 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; and (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §15.995. Therefore, this adopted rulemaking does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this adopted rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to clarify eligibility, requirements, and methodology for TWDB borrowers. The adopted rules would substantially advance this stated purpose by aligning the rule's definitions and permissible use of funds with Water Code, Chapter 15, clarifying how interest rates will be set for TWDB borrowers, and providing greater consistency between TWDB program rules.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking 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). The TWDB is the agency that implements the Rural Water Assistance Fund Program.

Nevertheless, the TWDB further evaluated this adopted rulemaking and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject adopted rulemaking does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rulemaking is merely an amendment to conform with statutory changes and clarify program methodology. It does not require regulatory compliance by any persons or political subdivisions. Therefore, the adopted rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENTS (Texas Government Code §2001.033(a)(1))

The following comments were received from the Texas Rural Water Association (TRWA).

Regarding

Section 365.3 Use of Funds.

Comment

The TRWA commented that one of the permissible uses of Rural Water Assistance Fund (RWAF) is for interim financing of construction projects. The TRWA comments there is not an expedited application process under the rules to accommodate this use. The TRWA requests the TWDB to promulgate rules that would implement an expedited application process for interim funding.

Response

TWDB appreciates this comment. No changes were made in response to this comment. The TWDB notes that it anticipates RWAF funds to be limited and available on a competitive basis and therefore interim financing is not a feasible approach under the program at this time.

Regarding

Section 365.22 Application for Assistance.

Comment

The TRWA commented that the application requirements pertaining to the Preliminary Engineering Feasibility Report and Environmental Assessment increase the cost of RWAF applications and add unnecessary burden and complication for small rural projects. The TRWA requested that the Preliminary Engineering Feasibility Report and Environmental Assessment requirements be omitted from the RWAF application process.

Response

The TWDB appreciates this comment. No direct changes have been made in response to this comment, but the TWDB notes the rule has been modified to delete the list of information required for an application to be considered administratively complete and instead cites to 31 Texas Administrative Code §363.12 for the applicable requirements. The TWDB notes that under 31 Texas Administrative Code §363.14, only preliminary environmental data is required at the application phase for projects that qualify for pre-design funding. The TWDB additionally notes that it is considering revisions to the Preliminary Engineering Feasibility Report and Environmental Assessment sections under 31 Texas Administrative Code §363.13 and §363.14. The TWDB notes that RWAF funding can be utilized for costs related to preparing an RWAF application, including the preparation of the Preliminary Engineering Feasibility Report and requirements related to an Environmental Assessment.

Comment

The TRWA commented that under the current rules, RWAF financing is not available to Rural Political Subdivisions with compliance issues as the application requires a certification that a system is currently, and will remain, in compliance.

Response

The TWDB appreciates this comment. No direct changes have been made in response to this comment, but the TWDB notes the rule has been modified to delete the list of information required for an application to be considered administratively complete and instead cites to 31 Texas Administrative Code §363.12 for the applicable requirements. The TWDB notes that the application affidavit requirement includes a certification in which the applicant can identify compliance issues. The TWDB notes that RWAF projects can include projects intended to address compliance issues if identified on the application affidavit. The TWDB notes that it is considering revisions to 31 Texas Administrative Code §363.12 for clarification.

Regarding

Section 365.41 Loan Closing.

Comment

The TRWA commented that requiring a financial audit for the life of an RWAF loan imposes a significant expense on Water Supply Corporations (WSCs) and Sewer Supply Corporations (SSCs). Additionally, the TRWA commented that rural WSCs and SSCs may have trouble locating and retaining an accounting firm to perform these types of audits. The TRWA suggests that the rule be amended to provide that WSCs and SSCs may instead submit annual certified financial statements.

Response

The TWDB appreciates this comment. The rules have been modified to allow for Water Supply Corporations and Sewer Service Corporations whose total outstanding loans with the TWDB do not exceed $1,000,000 to satisfy the annual financial audit requirement by submitting an annually filed Internal Revenue Form 990.

Comment

The TRWA commented that the requirement to disclose financial information and events, on an ongoing basis, substantially in the manner of the Securities and Exchange Commission (SEC) rule 15c2-12 has little bearing on WSCs and SSCs. The TRWA commented that WSCs and SSCs should be exempt from this requirement.

Response

The rules have been modified to clarify that the requirement for continuing disclosure substantially in the manner of the Securities and Exchange Commission (SEC) rule 15c2-12 only applies when a rural political subdivision is issuing bonds or other authorized securities. In the case of WSCs or SSCs who issues bonds or other authorized securities, the requirement enables TWDB to meet its continuing disclosure obligations if a WSC or SSC were to become a significant borrower.

Comment

The TRWA commented that omitting the loan closing requirement that WSCs and SSCs produce an opinion from its attorney that is acceptable to the Executive Administrator would lower the cost of closings.

Response

The rules have been modified to remove the requirement of an attorney opinion when a loan agreement and promissory note are used for closing.

SUBCHAPTER A. INTRODUCTORY PROVISIONS

31 TAC §§365.2, 365.3, 365.5

STATUTORY AUTHORITY (Texas Government Code §2001.033(a)(2))

The amendment is adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Water Code §15.995.

This rulemaking affects Texas Water Code, Chapter 15.

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 July 25, 2024.

TRD-202403369
Ashley Harden
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Texas Water Development Board
Effective date: August 14, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 463-6072

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SUBCHAPTER B. APPLICATION PROCEDURES

31 TAC §§365.21 - 365.23

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the

Water Code and other laws of the State, and also under the authority of Texas Water Code §15.995.

This rulemaking affects Water Code, Chapter 15.

§365.22. Application for Assistance.

(a) An application must be in the form and numbers prescribed by the executive administrator.

(b) The executive administrator may request any additional information needed to evaluate the application and may return any incomplete applications.

(c) The information required under §363.12 of this title (relating to General, Legal, and Fiscal Information) is required on all applications to the board for financial assistance to be considered an administratively complete application.

(d) A rural political subdivision may enter into an agreement with a federal agency, a state agency, or another rural political subdivision to submit a joint application for financial assistance under 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.

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

TRD-202403370
Ashley Harden
General Counsel
Texas Water Development Board
Effective date: August 14, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 463-6072

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SUBCHAPTER C. CLOSING AND RELEASE OF FUNDS

31 TAC §§365.41, 365.43 - 365.45

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §15.995.

This rulemaking affects Water Code, Chapter 15.

§365.41. Loan Closing.

(a) Instruments Needed for Closing. The documents which shall be required at the time of closing include the following:

(1) if not closing under the pre-design funding option, evidence that requirements and regulations of all identified local, state and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations;

(2) a certified copy of the bond ordinance, order or resolution adopted by the governing body authorizing the issuance of debt to be sold to the board, or an executed promissory note and loan agreement, that is acceptable to the executive administrator and which must have sections providing as follows:

(A) if loan proceeds are to be deposited into an escrow account, at the closing on all or a portion of the loan or grant, then an escrow account must be created that must be separate from all other accounts and funds, as follows:

(i) the account must be maintained by an escrow agent as defined in §363.2 of this title (relating to Definitions of Terms);

(ii) funds must not be released from the escrow account without written approval by the executive administrator;

(iii) upon request of the executive administrator, the escrow account statements must be provided to the executive administrator;

(iv) the investment of any loan or grant proceeds deposited into an escrow account must be handled in a manner that complies with the Public Funds Investment Act, Texas Government Code, Chapter 2256; and

(v) the escrow account must be adequately collateralized in a manner sufficient to protect the board's interest in the project and that complies with the Public Funds Collateral Act, Texas Government Code, Chapter 2257;

(B) that a construction account must be created, which must be separate from all other accounts and funds of the applicant;

(C) that a final accounting be made to the board of the total sources and authorized use of project funds within 60 days of the completion of the project and that any surplus loan funds be used in a manner as approved by the executive administrator;

(D) that an annual audit of the rural political subdivision, prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant be provided annually to the executive administrator, or if a promissory note and loan agreement is used and the rural political subdivision is a Water Supply Corporation or Sewer Service Corporation, then in lieu of an annual audit a filed Internal Revenue Service Form 990 may be provided annually so long as the balance of all outstanding loans from the board to the Water Supply Corporation or Sewer Service Corporation does not exceed $1,000,000;

(E) that the rural political subdivision must fix and maintain rates and collect charges to provide adequate operation, maintenance and insurance coverage on the project in an amount sufficient to protect the board's interest;

(F) that the rural political subdivision must document the adoption and implementation of an approved water conservation program for the duration of the loan, in accordance with §363.15 of this title;

(G) that the rural political subdivision must maintain current, accurate and complete records and accounts in accordance with generally accepted accounting principles necessary to demonstrate compliance with financial assistance related legal and contractual provisions;

(H) that the rural political subdivision covenants to abide by the board's rules and relevant statutes, including the Texas Water Code, Chapters 15 and 17;

(I) if the rural political subdivision is issuing bonds or other authorized securities, that the rural political subdivision or an obligated person for whom financial or operating data is presented, will undertake, either individually or in combination with other issuers of the rural political subdivision's obligations or obligated persons, in a written agreement or contract to comply with requirements for con-

tinuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the board were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the board and the beneficial owner of the rural political subdivision's obligations, if the board sells or otherwise transfers such obligations, and the beneficial owners of the board's obligations if the rural political subdivision is an obligated person with respect to such obligations under rule 15c2-12;

(J) that all payments must be made to the board via wire transfer or in a manner acceptable to the Executive Administrator at no cost to the board;

(K) that the partial redemption of bonds or other authorized securities be made in inverse order of maturity;

(L) that insurance coverage be obtained and maintained in an amount sufficient to protect the board's interest in the project;

(M) that the rural political subdivision must establish a dedicated source of revenue for repayment; and

(N) any other recitals mandated by the executive administrator;

(3) evidence that the rural political subdivision has adopted a water conservation program in accordance with §363.15 of this title (relating to Required Water Conservation Plan);

(4) an unqualified approving opinions of the attorney general of Texas and a certification from the comptroller of public accounts that such debt has been registered in that office;

(5) if obligations are issued, an unqualified approving opinion by a recognized bond attorney acceptable to the executive administrator;

(6) executed escrow agreement entered into by the entity and an escrow agent satisfactory to the executive administrator, in the event that funds are escrowed, or a certificate of trust as defined in §363.2 of this title, if applicable; and

(7) other or additional data and information, if deemed necessary by the executive administrator.

(b) Certified Transcript. Within 60 days of closing, the rural political subdivision must submit a transcript of proceedings relating to the debt purchased by the board which must contain those instruments normally furnished a purchaser of debt.

(c) Additional Closing Requirements for Bonds. A rural political subdivision will be required to comply with the following closing requirements if the applicant issues obligations that are purchased by the board:

(1) all bonds must be closed in book-entry-only form;

(2) the rural political subdivision must use a paying agent/registrar that is a depository trust company (DTC) participant;

(3) the rural political subdivision must be responsible for paying all DTC closing fees assessed to the rural political subdivision by the board's custodian bank directly to the board's custodian bank;

(4) the rural political subdivision must provide evidence to the board that one fully registered bond has been sent to the DTC or to the rural political subdivision's paying agent/registrar prior to closing; and

(5) the rural political subdivision must provide a private placement memorandum containing a detailed description of the issuance of debt to be sold to the board that is acceptable to the executive administrator.

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 July 25, 2024.

TRD-202403371
Ashley Harden
General Counsel
Texas Water Development Board
Effective date: August 14, 2024
Proposal publication date: April 26, 2024
For further information, please call: (512) 463-6072

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 17. STATE PENSION REVIEW BOARD

CHAPTER 601. GENERAL PROVISIONS

40 TAC §601.70

The Texas Pension Review Board (Board) adopts a new rule in Texas Administrative Code, Title 40, Part 17, Chapter 601, §601.70, related to employee leave pools. The new rule is adopted without changes to the proposed text published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1883). The rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The new rule implements the statutory requirements for state agencies to adopt rules for the operation of two employee leave pools.

The sick leave pool is intended to assist employees and their immediate families in dealing with catastrophic illnesses or injuries that force the employees to exhaust all of their available sick leave. Section 661.002(c), Texas Government Code requires state agencies to adopt rules for the operation of the sick leave pool.

The legislature passed H.B. 2063 in 2021, creating the family leave pool. The family leave pool is intended to provide eligible state employees more flexibility in bonding with and caring for children during a child's first year following birth, adoption, or foster placement and for caring for a seriously ill family member or the employee. Section 661.022(c), Texas Government Code requires the governing body of a state agency to adopt rules and prescribe procedures relating to the operation of the pool.

SECTION-BY-SECTION SUMMARY

The adopted rule adds §601.70, State Employee Sick and Family Leave Pools.

Subsection (a) specifies the purpose of the sick leave pool.

Subsection (b) specifies the purpose of the family leave pool.

Subsection (c) specifies that the executive director or designee administers both leave pools.

Subsection (d) specifies that the executive director or designee will establish operating procedures and forms for the administration of both leave pools.

Subsection (e) specifies that both pools must be operated consistently with Chapter 661, Texas Government Code, which includes the statutory requirements for the state employee leave pools.

PUBLIC COMMENTS

The agency did not receive any comments on the proposed rules during the public comment period.

BOARD ACTION

The Texas Pension Review Board (Board) met on March 6, 2024, to discuss the proposed rule. The Board recommended the proposed rule be published in the *Texas Register.* At its meeting on July 25, 2024, the Board adopted the proposed rule as published in the *Texas Register.*

STATUTORY AUTHORITY

The new rule is adopted under Government Code §661.022(c), which requires state agencies to adopt rules relating to the operation of the agency family leave pool, and Government Code, §661.002(c), which requires state agencies to adopt rules relating to the operation of the agency sick leave pool.

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 July 26, 2024.

TRD-202403405
Tamara Aronstein
General Counsel
State Pension Review Board
Effective date: August 15, 2024
Proposal publication date: March 22, 2024
For further information, please call: (512) 463-1736

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CHAPTER 605. STANDARDIZED FORM

40 TAC §605.1, §605.3

The Texas Pension Review Board (Board) adopts amendments to 40 TAC §605.1, Adoption of Standard Forms, and §605.3, Submission of Forms. The amendments to 40 TAC §605.1, Adoption of Standard Forms, are adopted with changes to the proposed text published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1885). This rule will be republished.

The Board adopts the amendments to §605.3, Submission of Forms, without changes to the proposed text published in the March 22, 2024, issue of the *Texas Register* (49 TexReg 1885), and this rule will not be republished.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

Section 801.201(c), Texas Government Code requires the Board to adopt a standard form to assist the Board in determining the actuarial soundness and financial condition of each public retirement system. The Board initially adopted the standard forms through rulemaking in 2003, with subsequent amendments.

The purpose of the amendments is to make minor technical corrections to the agency's rules, identified as part of the agency's four-year review of rules pursuant to Texas Government Code §2001.039.

The changes to the proposed amendments make technical edits for clarity and consistency.

SECTION-BY-SECTION SUMMARY

The amendments to 40 TAC §605.1 reference the section of state law that requires the Board to adopt these rules. The amendments also split one form currently required into two separate forms, creating an additional form for reporting benefit information. This change better reflects the way in which public retirement systems typically report information to the Board. The amendments also update the Board's website address and make a technical change to reflect the Board's style guidelines.

The proposed amendments to 40 TAC §605.3 reflect the change to create a new, separate form, the benefits report, and correct a typographical error.

PUBLIC COMMENTS

The agency did not receive any comments on the proposed amendments during the public comment period.

BOARD ACTION

The Board met on March 6, 2024, to discuss the proposed amendments. The Board recommended the proposed amendments be published in the Texas Register. At its meeting on July 25, 2024, the Board adopted the proposed amendments as published in the Texas Register.

STATUTORY AUTHORITY

The amendments are adopted under Government Code Section 801.201(c), which requires the Board to adopt by rule standard forms to assist the board in efficiently determining the actuarial soundness and current financial condition of public retirement systems.

§605.1. Adoption of Standard Forms.

(a) The Board hereby adopts by reference the standard forms identified under subsection (b) of this section to assist in efficiently determining the actuarial soundness and current financial condition of public retirement systems and to assist in the conduct of the Board's business, pursuant to Section 801.201(c), Texas Government Code.

(b) The standard forms hereby adopted by the Board are the following:

(1) Pension System Registration--Form Series PRB-100;

(2) Membership Report--Form Series PRB-200;

(3) Financial Statement Report--Form Series PRB-300;

(4) Actuarial Report--Form Series PRB-400;

(5) Benefits Report--Form Series PRB-500;

(6) Investment Returns and Assumptions Report--Form Series PRB-1000.

(c) A public retirement system can obtain the most current version of these forms from the offices of the State Pension Review Board and from its website at http://www.prb.texas.gov.

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 July 26, 2024.

TRD-202403406
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State Pension Review Board
Effective date: August 15, 2024
Proposal publication date: March 22, 2024
For further information, please call: (512) 463-1736

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